

Legislative Council—No 10A

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South Australia

Statutes Amendment (Community and Strata Titles) Bill 2011

A BILL FOR

An Act to amend the *Community Titles Act 1996* and the *Strata Titles Act 1988*.

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Schedule 1—Transitional provisions

1 Delegations made prior to commencement

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (Community and Strata Titles) Act 2011*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Community Titles Act 1996*

4—Amendment of section 3—Interpretation

(1) Section 3(1)—delete the definitions of *by-laws* and *building* and substitute:

body corporate manager—see section 78B;

building includes a fixed structure;

15 *business day* means any day except Saturday, Sunday or a public holiday;

by-laws—see Part 5;

(2) Section 3(1)—after the definition of *encumbrance* insert:

20 *ERD Court* means the Environment, Resources and Development Court established under the *Environment, Resources and Development Court Act 1993*;

(3) Section 3(1)—after the definition of *fence* insert:

first statutory general meeting means a meeting required to be convened in accordance with section 79 (and if more than 1 meeting is convened during the period of 3 months referred to in that section, the first of those meetings);

25 (4) Section 3(1), definition of *special resolution*, (b)(i)—after "resolution" insert:

and any other information of a kind prescribed by regulation

(5) Section 3(1), definition of *unanimous resolution*, (a)—after "resolution" insert:

and any other information of a kind prescribed by regulation

5—Amendment of section 4—Associates

30 Section 4(1)—delete "a developer" and substitute:

another person

6—Amendment of section 34—By-laws

(1) Section 34(3)—after paragraph (c) insert:

(ca) authorise or require the community corporation to act as agent for the owners of community lots in arranging policies of insurance; or

5 (2) Section 34(3)(e)—delete "\$500" and substitute:

the prescribed amount

(3) Section 34(6)—delete subsection (6) and substitute:

(6) The following provisions apply in relation to a penalty imposed on a person for contravention of, or failure to comply with, a by-law:

10 (a) the penalty is (despite section 29 of the *Acts Interpretation Act 1915*) payable to the community corporation in accordance with this subsection;

15 (b) subject to the making of an application under paragraph (e), the penalty is payable by the person on the date specified for payment in a notice served by the corporation on the person;

(c) the notice must—

(i) be in writing in the form prescribed by regulation; and

20 (ii) specify the amount of the penalty payable and a date for payment (being not less than 60 days after the notice is served);

25 (d) the penalty payable under the notice is recoverable by the community corporation as a debt and, in the case of a notice served on the owner of a community lot, may be recovered by the community corporation as if it were a contribution payable to the community corporation under section 114 (and interest will be payable on the penalty amount in the same way as if it were such a contribution);

30 (e) the person may, within 60 days after service of the notice, apply to the Magistrates Court for revocation of the notice and the Court must grant the application if either—

(i) the Court is not satisfied that the person committed the contravention or failure alleged in the notice; or

35 (ii) the Court is satisfied that the contravention or failure alleged in the notice is trifling;

(f) the community corporation is a party to an application under paragraph (e) and bears the onus of proving, on the balance of probabilities, that the person committed the contravention or failure alleged in the notice;

(g) if an application is made in accordance with paragraph (e), the penalty specified in the notice is not payable unless the application for revocation is withdrawn or otherwise discontinued by the applicant or is dismissed or refused by the Court (and, in such a case, the penalty will be payable on the date on which the application is so withdrawn, discontinued, dismissed or refused or on the date for payment specified in the notice, whichever occurs later).

(7) A person's contravention of, or failure to comply with, by-laws will, for the purposes of this section, be regarded as trifling if, and only if, the person establishes that the circumstances surrounding the commission of the contravention or failure were such that he or she ought to be excused from the imposition of a penalty on the ground that—

(a) there were compelling humanitarian or safety reasons for the conduct that allegedly constituted the contravention or failure; or

(b) the person could not, in all the circumstances, reasonably have averted committing the contravention or failure; or

(c) the conduct allegedly constituting the contravention or failure was merely a technical, trivial or petty instance of a contravention of or failure to comply with the relevant by-laws.

(8) The regulations may make further provision in relation to the enforcement of by-laws.

(9) In this section—

prescribed amount, in relation to a penalty imposed under by-laws of a community scheme, means—

(a) if the community scheme only includes lots that are used, or are intended to be used, solely or predominantly for business or commercial purposes—\$2 000; or

(b) in any other case—\$500.

7—Amendment of section 35—By-laws may exempt corporation from certain provisions of Act

Section 35(1)(a)—delete "first general meeting" and substitute:

first statutory general meeting

8—Amendment of section 37—Restrictions on making of by-laws

Section 37(2)—delete subsection (2) and substitute:

(2) A by-law may—

(a) prohibit or restrict the owner of a lot from leasing or granting rights of occupation in respect of the lot for valuable consideration for a period of less than 2 months; or

- (b) impose a monetary obligation on the owner of a lot in relation to the payment of an insurance premium, where the by-laws authorise or require the community corporation to act as agent for the owner in arranging the policy of insurance.

9—Amendment of section 38—Certain by-laws may be struck out by Court

Section 38(2)—delete subsection (2) and substitute:

- (2) An application referred to in subsection (1) can only be made by a person who was an owner of the lot when the by-law came into force and must be made within 3 months after the person (or either or any of the owners where the lot is owned by 2 or more persons) first knew, or could reasonably be expected to have known, that the by-law had been made.
- (3) For the purposes of this section, a reference to an *owner* of a lot includes a person who has contracted to purchase the lot.

10—Amendment of section 47—Development contracts

Section 47—after subsection (5) insert:

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

11—Amendment of section 49—Enforcement of development contract

- (1) Section 49(2)—delete "a court of competent jurisdiction" and substitute:

the Magistrates Court

- (2) Section 49—after subsection (2) insert:

- (2a) The Magistrates Court may, on the application of a party to proceedings under subsection (2), transfer the proceedings to the District Court if satisfied that it is appropriate to do so because of the complexity or significance of the matter.
- (2b) 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.

12—Amendment of section 59—Amendment by order of ERD Court

- (1) Section 59(1)—delete "District Court" and substitute:

ERD Court

(2) Section 59—after subsection (3) insert:

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

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

(3) Section 59(4)—delete "Court" and substitute:

ERD Court

13—Amendment of section 64—Cancellation by Registrar-General or ERD Court

Section 64(1)(b)—delete "District Court" and substitute:

ERD Court

14—Amendment of section 67—Application to ERD Court

(1) Section 67—delete "Court" wherever occurring and substitute in each case:

ERD Court

(2) Section 67—after subsection (1) insert:

(1a) If it appears to the Court that the proposed cancellation of the community plan could adversely affect a person who is not a party to the proceedings, the Court should not order the cancellation unless the Court is satisfied that the person has been notified of the possibility that such an order could be made and has been given a reasonable opportunity to make submissions to the court in relation to the matter.

(1b) In determining an application under this section the Court must have regard to the matters (if any) prescribed by regulation.

15—Amendment of section 69—Cancellation

Section 69(1) and (2)—delete "Court" wherever occurring and substitute in each case:

ERD Court

16—Amendment of section 75—Functions and powers of corporations

(1) Section 75(5)—delete "regulation" and substitute:

Division 1A

(2) Section 75(6) to (9)—delete subsections (6) to (9) (inclusive)

17—Insertion of Part 9 Division 1A

After section 78 insert:

Division 1A—Delegations by corporation

78A—Delegation of corporation's functions and powers

- 5 (1) A community corporation may delegate any of its functions and powers (except this power of delegation) to a member or employee of the corporation or to a member of a secondary or tertiary corporation within the same community scheme.
- 10 (2) A community corporation may delegate the following functions and powers to any person:
- (a) the receipt and holding of money and other personal property on behalf of the corporation;
 - (b) payment of money on behalf of the corporation;
 - 15 (c) the preparation of statements of expenditure and proposed expenditure and statements of accounts;
 - (d) the collection of money due to the corporation;
 - (e) entering into contracts of insurance with insurers on behalf of the corporation;
 - 20 (f) maintaining and keeping records on behalf of the corporation;
 - (g) issuing and signing notices on behalf of the corporation;
 - (h) preparing minutes of meetings of the corporation;
 - (i) providing information as required by the Act on behalf of the corporation;
 - 25 (j) investing money on behalf of the corporation;
 - (k) arranging for the maintenance and repair of the common property on behalf of the corporation.
- (3) A delegation by a community corporation is to be made by ordinary resolution of the community corporation.
- 30 (4) However, a community corporation cannot delegate a function or power under subsection (1) or (2) if the function or power is of a kind that can only be performed or exercised by the corporation by passing a special or unanimous resolution.
- (5) A delegation by a community corporation—
- 35 (a) may be absolute or conditional; and
 - (b) does not derogate from the power of the corporation to act in any matter; and
 - (c) is—

(i) in a case where there is a contract relating to the delegation between the corporation and a body corporate manager—revoked on termination or expiry of the contract; or

(ii) in any other case—revocable by the corporation at any time by notice given in writing (notwithstanding any agreement to the contrary by the corporation).

78B—Body corporate managers

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

(a) the delegation is made to a person (the *body corporate manager*) who carries on a business, or is an employee in a business, that consists of, or includes, acting as a delegate of community corporations or of strata corporations under the *Strata Titles Act 1988*; and

(b) the delegation is made after the commencement of this section or a contract, between the body corporate manager and the corporation, relating to the delegation is made, renewed or extended after the commencement of this section; and

(c) it is proposed that the body corporate manager be remunerated in respect of work performed in exercising the delegated functions or powers.

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

(a) the body corporate manager and the community corporation have entered into a contract in compliance with subsections (3) and (7); and

(b) the body corporate manager, prior to entering into the contract referred to in paragraph (a), provided the community corporation with documents of a kind prescribed by regulation verifying the body corporate manager's entitlement to act as a body corporate manager and any other prescribed matter; and

(c) the body corporate manager, whilst performing such work, maintained professional indemnity insurance complying with the requirements prescribed by the regulations,

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

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

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

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

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

 - (5) The right of a community corporation to terminate a contract under subsection (4) is in addition to, and does not derogate from, any other right of the community corporation to terminate the contract.

 - (6) A decision to terminate a contract in accordance with subsection (4) is to be made by ordinary resolution of the community corporation.

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

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

Maximum penalty: \$500.

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

- (10) An exemption granted by the Minister under subsection (9)—

(a) may be subject to conditions specified in the notice of exemption; and

(b) may be varied or revoked by the Minister at any time by subsequent notice in the Gazette.

- (11) In this section—

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

78C—General duties

- (1) For the avoidance of doubt—

(a) the body corporate manager stands in a fiduciary relationship with the community corporation; and

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

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

(a) must act honestly and in good faith in the performance of the manager's functions; and

(b) must exercise due care and diligence in the performance of the manager's functions; and

(c) must not make improper use of the manager's position to gain, directly or indirectly, an advantage personally or for any other person.

78D—Offences

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

Maximum penalty: \$15 000.

Example—

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

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- (2) If an employee or agent of a delegate has a direct or indirect pecuniary interest in a matter, the delegate is, for the purposes of subsection (1), taken to have a direct or indirect pecuniary interest in the matter.
 - (3) A delegate who is the owner of a community lot is not obliged by subsection (1) to disclose an interest that he or she has in common with all of the owners of the community lots.
 - (4) It is a defence to a charge of an offence against subsection (1) for the defendant to prove that he or she did not know and could not reasonably have been expected to know of his or her interest in the matter.
 - (5) A delegate of a community corporation must, on application by an owner of a community lot or a development lot, provide the applicant, on a quarterly basis, with a statement setting out details of dealings by the delegate with the corporation's money (and must continue to so provide the statements until the applicant ceases to be an owner or revokes the application).
Maximum penalty: \$500.
 - (6) If all delegations by a community corporation to a delegate are revoked, the delegate must return to, or make available for collection by, the corporation—
 - (a) all records of the corporation held by the delegate; and
 - (b) all trust money held pursuant to the delegations,in accordance with any requirements prescribed by the regulations.
Maximum penalty: \$2 000.
 - (7) A delegate of a community corporation who holds records of the corporation must, at the request of any member of the corporation—
 - (a) make those records available for the member to inspect within 10 business days of the request; and
 - (b) provide the member with a copy of any of the records on payment of a fee (not exceeding a fee calculated in accordance with the regulations).

Maximum penalty: \$500.

18—Amendment of section 79—First statutory general meeting

- (1) Section 79(1)—delete "two or more community lots are first owned by different persons" and substitute:

5 there are at least 2 different members of the community corporation (not including the developer or any person who the developer knows, or ought reasonably to know, is an associate of the developer)

- (2) Section 79(2)—delete "first meeting" and substitute:

meeting required under subsection (1)

19—Amendment of section 80—Business at first statutory general meeting

10 Section 80—delete "first general meeting" wherever occurring and substitute in each case:

first statutory general meeting

20—Amendment of section 81—Convening of general meetings

- 15 (1) Section 81—delete "first general meeting" wherever occurring and substitute in each case:

first statutory general meeting

- (2) Section 81(1)(d)—after "court" insert:

(made on the application of a person of a class specified in section 141)

- (3) Section 81—after subsection (2) insert:

20 (2a) A member may not nominate another person to be given notices referred to in subsection (2) on his or her behalf (although nothing prevents the community corporation from agreeing to provide notices to such a person in addition to the member).

- (4) Section 81(5)(d)—after subparagraph (iii) insert:

25 (iia) presentation of statements required under section 113; and

(iib) presentation of copies of all insurance policies required under Part 10 Division 2; and

21—Amendment of section 82—Annual general meeting

30 Section 82(2)—delete "one month after the annual general meeting of the primary or secondary corporation of which it is a member" and substitute:

6 months after the commencement of each financial year

22—Amendment of section 83—Procedure at meetings

- (1) Section 83(1)—delete "The" and substitute:

Subject to subsection (3a), the

- 35 (2) Section 83(2)—delete "first meeting" and substitute:

first statutory general meeting

(3) Section 83—after subsection (3) insert:

(3a) A person who is a body corporate manager in relation to a corporation, or is an employee of such a body corporate manager, may preside at a meeting of the corporation if a majority of the persons present and entitled to vote at the meeting agree to that person presiding (and the body corporate manager or employee is taken not to be entitled to vote for that purpose except in circumstances prescribed by the regulations).

(3b) The regulations may make further provision in relation to the procedures to be followed at a meeting at which a body corporate manager, or an employee of a body corporate manager, is to preside.

(4) Section 83—after subsection (6) insert:

(6a) A member may, in accordance with any requirements prescribed by regulation, attend, and vote, at a meeting by telephone, video-link, Internet connection or any similar means of remote communication (provided that no obligation lies on a community corporation to provide such facilities to members who wish to attend or vote in such a manner).

23—Amendment of section 84—Voting at general meetings

(1) Section 84(5)—delete subsection (5) and substitute:

(5) A nomination referred to in subsection (3)—

(a) must be made —

(i) in the case of a nomination relating to the first statutory general meeting—by written notice given to the person initially presiding at the meeting; or

(ii) in any other case—by written notice given to the secretary of the corporation; and

(b) must specify whether the nominated person—

(i) is nominated to attend and vote at all meetings, and in relation to all matters, on behalf of the owner; or

(ii) is nominated to attend and vote only at specified meetings, or in relation to specified matters, on behalf of the owner; and

(c) may specify conditions in relation to the nomination; and

(d) if a specified condition requires the nominated person to vote in a particular way in relation to a matter in which the owner has a direct or indirect pecuniary interest (other than an interest that the owner has in common with all the owners of the community lots)—must specify the nature of the owner's pecuniary interest; and

(e) may be revoked by the owner at any time by subsequent written notice to the secretary (and any contract or agreement to the contrary is unenforceable); and

(f) is effective for a period of 12 months or such lesser period as may be specified in the written notice of nomination unless the nomination is revoked earlier under paragraph (e); and

5 (g) does not derogate from the power of the owner to attend and vote at meetings on his or her own behalf.

(5a) Failure to comply with a requirement of subsection (5) will invalidate the nomination.

(2) Section 84(6)—after paragraph (b) insert:

10 (ba) may specify conditions in relation to the nomination; and

(bb) if a specified condition requires the nominated person to vote in a particular way in relation to a matter in which an owner has a direct or indirect pecuniary interest (other than an interest that the owner has in common with all the owners of the community lots)—must specify the nature of the owner's pecuniary interest; and

(3) Section 84—after subsection (6) insert:

20 (6a) Without limiting subsections (5) or (6), if a person who is a body corporate manager in relation to the corporation, or an employee of such a body corporate manager, is nominated under subsection (3) or (4), the nomination ceases to have effect on the person ceasing to be a body corporate manager in relation to the corporation or an employee of such a body corporate manager (as the case may require).

(4) Section 84—after subsection (9) insert:

25 (9a) If an owner appoints, by general power of attorney under section 5 of the *Powers of Attorney and Agency Act 1984*, a person as his or her attorney specifically for the purpose of attending and voting at meetings, or specified meetings, of the community corporation, the appointment is, despite any provision of that Act or the terms of the general power of Attorney, effective for a period of 12 months or

30 such lesser period as may be specified in the power of attorney unless the power of attorney is revoked earlier.

(9b) If a general power of attorney referred to in subsection (9a) appoints a body corporate manager, a copy of the instrument of appointment must be given to the secretary of the corporation before the meeting,

35 or the first of the meetings, to which it relates.

(5) Section 84—after subsection (10) insert:

40 (10a) A copy of each written notice of nomination and each instrument of appointment referred to in subsection (9b) applying in relation to the meeting must be made available by—

(a) in the case of a nomination relating to the first statutory general meeting—the person initially presiding at the meeting; or

(b) in any other case—the secretary of the corporation,

for inspection by persons attending the meeting before any matter is voted on at the meeting.

Maximum penalty: \$500.

24—Amendment of section 85—Duty to disclose interest

5 (1) Section 85(1)—delete subsection (1) and substitute:

 (1) If a person (whether a co-owner of a lot or not) has been nominated to attend and vote at a meeting of a community corporation on behalf of another person, the following provisions apply:

10 (a) if the nominated person has a direct or indirect pecuniary interest in any matter to be voted on at a meeting, the nominated person must—

 (i) disclose the nature of the interest—

 (A) if it is practicable to do so—to his or her principal before the vote is taken; or

15 (B) in any other case—to his or her principal as soon as practicable after the vote is taken; and

 (ii) disclose the nature of the interest to the members present at the meeting before the vote is taken;

20 (b) if the written notice of nomination declared a pecuniary interest in accordance with section 84(5)(d) or 84(6)(bb) in relation to the matter, the nominated person must disclose the nature of the pecuniary interest to the members present at the meeting before the vote on the matter is taken.

25 Maximum penalty: \$15 000.

 (2) Section 85—after subsection (2) insert:

 (2a) A person who—

 (a) attends and is entitled to vote (other than as a nominee) at a meeting of a community corporation; or

30 (b) presides at such a meeting,

and who has a direct or indirect pecuniary interest in any matter to be voted on at the meeting must disclose the nature of the interest to the members present at the meeting before the vote is taken.

Maximum penalty: \$15 000.

35 (2b) An owner of a community lot is not obliged by subsection (2a) to disclose an interest that he or she has in common with all of the owners of the community lots.

 (3) Section 85(3)—delete "subsection (1)" and substitute:

 this section

25—Amendment of section 87—Value of votes cast at general meeting

Section 87(3)—delete subsection (3) and substitute:

- 5 (3) If the developer owns 1 or more of the community lots in a community parcel and a person (other than the developer or a prescribed associate of the developer) owns 1 or more of the community lots, the following provisions apply:
- (a) if none of the other lots is owned by a prescribed associate of the developer, the developer is entitled to—
- 10 (i) the aggregate of the votes, determined in accordance with subsection (1), in respect of the lots owned; or
- (ii) a number of votes equivalent to the aggregate of the votes, determined in accordance with that subsection, that may be exercised by all the other members of the corporation,
- 15 whichever is the lesser;
- (b) if 1 or more of the other lots is owned by a prescribed associate of the developer, the developer and the prescribed associate are each entitled to—
- 20 (i) the aggregate of the votes, determined in accordance with subsection (1), in respect of the lots owned; or
- (ii) the aggregate of the votes, determined in accordance with subsection (1), in respect of the lots owned, proportionately adjusted so that the aggregate of the votes that may be exercised by the developer and the votes that may be exercised by all prescribed associates of the developer is equivalent to the aggregate of the votes that may be exercised by all other members of the corporation,
- 25 30 whichever is the lesser.¹

Note—

- 35 1 The effect of this provision is that neither the voting power of the developer, nor the combined voting power of the developer and prescribed associates, can ever be greater than the combined voting power of the other members of the corporation.

- (4) In this section—

prescribed associate of a developer means—

- 40 (a) a person who is an associate of the developer where a relationship of a kind referred to in section 4(2)(e), (f) or (g) exists between the developer and the person; or
- (b) a related body corporate;

related body corporate has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

26—Amendment of section 88—Special resolutions—3 lot schemes

Section 88(2)(a)—after "resolution" insert:

5 and any other information of a kind prescribed by regulation

27—Amendment of section 101—Power to enforce duties of maintenance and repair etc

(1) Section 101(3)—delete "of the lot has been given reasonable notice" and substitute:
and the occupier of the lot have been given at least 2 days notice in writing

10 (2) Section 101—after subsection (4) insert:

(4a) Despite any other provision of this section, an officer of a community corporation or a person or persons authorised by a community corporation may, if satisfied that urgent action is necessary to avert a risk of death or injury or significant damage to property, enter a lot (using such force as may be reasonably necessary in the circumstances) and carry out such work as is reasonably necessary to deal with the risk.

(4b) A person proposing to enter a lot in accordance with subsection (4a) must give such notice (if any) to the owner and occupier of the lot as he or she considers reasonable in the circumstances.

28—Amendment of section 102—Alterations and additions in relation to strata schemes

(1) Section 102(1)—delete "A person" and substitute:

Subject to subsection (1a), a person

25 (2) Section 102—after subsection (1) insert:

(1a) Subsection (1) does not apply to prescribed work carried out in compliance with a direction under section 23 of the *Housing Improvement Act 1940*.

29—Amendment of section 104—Other insurance by community corporation

30 Section 104—after subsection (2) insert:

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

Maximum penalty: \$15 000.

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

(5) An exemption granted by the Minister—

40 (a) may be subject to conditions specified in the notice of exemption; and

- (b) may be varied or revoked by the Minister at any time by subsequent notice in the Gazette.

30—Amendment of section 106—Insurance to protect easements

Section 106(2)—delete subsection (2) and substitute:

- 5 (2) A person who is required by subsection (1) to insure a building must provide such evidence as is required by the regulations of his or her compliance with that requirement—
- 10 (a) to the community corporation as soon as practicable after complying with that requirement and after any subsequent change to the terms and conditions of the insurance policy; and
- 15 (b) if a request is made by an owner or prospective owner, or the registered mortgagee or prospective mortgagee, of a community lot or a development lot that benefits from the easement—to the person making the request within 5 business days after the making of the request.

Maximum penalty: \$500.

31—Amendment of section 108—Right to inspect policies of insurance

- (1) Section 108—after "owner" wherever occurring insert:

20 , and a prospective owner,

- (2) Section 108—after "registered mortgagee" wherever occurring insert:

, and a prospective mortgagee,

- (3) Section 108—after subsection (3) insert:

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

Maximum penalty: \$500.

32—Amendment of section 113—Statement of expenditure etc

- (1) Section 113(1)—before paragraph (a) insert:

30 (aa) proposed expenditure (other than recurrent expenditure) for the period prescribed by the regulations for the purposes of this paragraph (which must not exceed 5 years); and

- (2) Section 113—after subsection (1) insert:

35 (1a) New information must be prepared for the purposes of subsection (1)(aa) at the times prescribed by regulation.

- (3) Section 113(2)—delete "first general meeting" and substitute:

first statutory general meeting

(4) Section 113—after subsection (2) insert:

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

(4) The regulations may exclude a community corporation of a specified class from the operation of subsections (1)(aa) and (1a).

33—Amendment of section 126—Keeping of records

(1) Section 126(3)—after "corporation" second occurring insert:

, within 5 business days after the making of the request,

(2) Section 126(3), penalty provision—delete "\$8 000" and substitute:

\$500

34—Amendment of section 127—Audit of trust accounts

(1) Section 127(1)(b)—delete "lodge with" and substitute:

forward to the secretary of

(2) Section 127(2)(b)—delete "lodge the audit statement" and substitute:

forward the audit statement to the secretary of the community corporation

35—Amendment of section 135—Register of owners of lots

Section 135(1)—delete subsection (1) and substitute:

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

(a) the owner's last contact address, telephone number and email address known to the corporation; and

(b) the owner's lot entitlement.

36—Amendment of section 138—Audit

Section 138(4)—delete subsection (4) and substitute:

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

(a) if—

(i) the aggregate of the contributions made or to be made by members of the corporation in respect of that year does not exceed the amount prescribed by regulation; and

(ii) the balance standing to the credit of the administrative fund and the sinking fund at the commencement of that year does not exceed the amounts prescribed by regulation;

(b) if all community lots are owned by the same person;

(c) if—

- (i) the community scheme consists only of lots used for residential purposes; and
- (ii) there are not more than 6 community lots; and
- (iii) the community corporation, by unanimous resolution, resolves not to have the statement of accounts for that financial year audited.

37—Amendment of section 139—Information to be provided by corporation

- (1) Section 139(1)—after "development lot" insert:

, within 5 business days after the making of the application

- (2) Section 139(1)—after paragraph (c) insert:

and

- (d) if the community corporation is a party to a contract with a body corporate manager—make available for inspection a copy of the contract; and

- (e) make available for inspection the register maintained under section 135.

- (3) Section 139—after subsection (1) insert:

- (1a) A community corporation must, on application by an owner of a community lot or a development lot provide the applicant, on a quarterly basis, with ADI statements for all accounts maintained by the corporation (and must continue to so provide the statements until the applicant ceases to be an owner or revokes the application).

Maximum penalty: \$500.

- (1b) Subsection (1a) does not apply to a community corporation if a body corporate manager maintains the accounts on behalf of the corporation.

38—Amendment of section 141—Persons who may apply for relief

Section 141—after paragraph (b) insert:

- (ba) a person who has contracted to purchase a development lot or community lot; or

39—Amendment of section 142—Resolution of disputes etc

- (1) Section 142(1)(b)—after "corporation or of the" insert:

developer or the

- (2) Section 142(8)—after paragraph (b) insert:

- (ba) order a party to have any accounts audited or to reimburse any person for the costs of having any accounts audited; or

- (3) Section 142(8)—after paragraph (d) insert:

(da) make a declaration as to the validity of—

- (i) any by-law or purported by-law of the corporation; or

- (ii) any decision or purported decision of the corporation; or
- (4) Section 142(8)(e)(i)—after "scheme" insert:

(and make any necessary consequential changes to the scheme description and development contracts)

- 5 (5) Section 142(8)—after paragraph (e) insert:

(ea) vary, avoid or terminate a contract entered into (whether before or after the commencement of this paragraph) between a community corporation and any of the following:

- (i) the developer;
- 10 (ii) an associate of the developer;
- (iii) the body corporate manager;
- (iv) an associate of the body corporate manager; or

- (6) Section 142—after subsection (9) insert:

15 (9a) A court should not make an order to vary, avoid or terminate a contract entered into between a community corporation and another party unless the court is satisfied that the contract involves a breach of fiduciary duties or other duties under this Act.

- (7) Section 142(13), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$15 000.

20 **40—Insertion of sections 142A and 142B**

Before section 143 insert:

142A—Holding of deposit and other contract moneys when lot is pre-sold

- 25 (1) A person must not sell a lot in a proposed community scheme before the plan of community division is deposited in the Lands Titles Registration Office unless the contract of sale provides, in accordance with any requirements specified in the regulations, for any consideration payable by the purchaser prior to the deposit of the plan to be held on trust by a specified legal practitioner, registered agent or registered conveyancer until the plan is deposited.
- 30 (2) All consideration payable by the purchaser prior to the deposit of the plan of community division in the Lands Titles Registration Office under a contract referred to in subsection (1) must be paid by the purchaser to the legal practitioner, registered agent or registered conveyancer named or specified in the contract of sale.
- 35 (3) In the event of a contravention of subsection (1), the purchaser may, by notice in writing given at any time before the plan of community division is deposited in the Lands Titles Registration Office, avoid the contract of sale.

(4) If the plan of community division is not deposited in the Lands Titles Registration Office—

(a) within such period after the date of the contract as is specified in the contract in accordance with any requirements specified in the regulations; or

(b) if the contract doesn't specify a period in accordance with paragraph (a)—within 6 months after the date of the contract,

the purchaser may, by notice in writing to the vendor, avoid the contract of sale at any time before the plan is deposited.

(5) Despite a provision of this section, a purchaser cannot avoid a contract of sale under this section if the purchaser has entered into a subsequent contract to sell the lot to another purchaser (unless that contract has been avoided by that purchaser).

(6) If a purchaser avoids a contract of sale, all consideration paid by the purchaser under the contract is recoverable by the purchaser from the legal practitioner, registered agent, registered conveyancer or other person to whom it was paid (but the purchaser may be liable to pay an occupation rent for any period during which he or she was in occupation of the lot or entitled to receive the rents and profits of the lot, if the payment of such rent has been agreed by the purchaser).

(7) In this section—

date of the contract means the day on which the contract of sale referred to in subsection (1) was signed or, if the parties signed it on different days, the last of those days;

registered agent means a person registered as an agent under the *Land Agents Act 1994*;

registered conveyancer means a person registered as a conveyancer under the *Conveyancers Act 1994*.

142B—Developer stands in fiduciary relationship with community corporation

(1) For the avoidance of doubt—

(a) the developer stands in a fiduciary relationship with the community corporation and, before the community corporation is established, with the proposed community corporation; and

(b) the duties owed by the developer under this Act are in addition to, and do not derogate from, the duties arising out of that fiduciary relationship.

- 5 (2) Without derogating from subsection (1), where the community corporation intends, during the developer control period, to delegate functions or powers to a body corporate manager or to enter into a contract for services, the developer must exercise reasonable skill, care and diligence and act in the best interests of the community corporation (as it will be constituted after the developer control period ends).

Note—

10 An application may be made under section 142 if the developer contravenes this subsection.

- (3) In this section—

developer control period means a period during which—

- 15 (a) the community corporation is constituted solely by the developer; or
- (b) the developer owns the majority of lots in the community scheme or in any other way controls the voting of the corporation.

41—Amendment of section 149A—Applications to Magistrates Court

Section 149A—after "any provision of this Act" insert:

20 (other than an application under section 49(2))

42—Substitution of section 152

Section 152—delete the section and substitute:

152—Commencement of prosecutions

- 25 (1) A prosecution for an offence against this Act cannot be commenced except by—
- (a) the Commissioner for Consumer Affairs; or
- (b) an authorised officer under the *Fair Trading Act 1987*; or
- (c) a person who has the consent of the Minister to commence the prosecution.
- 30 (2) In any proceedings, an apparently genuine document purporting to be a certificate of the Minister certifying authorisation of, or consent to, a prosecution for an offence against this Act will be accepted, in the absence of proof to the contrary, as proof of the authorisation or consent.

35 **43—Amendment of section 155—Service**

Section 155(1)—after paragraph (c) insert:

- (ca) if the person consents to receiving the notice by email—by transmitting the notice by email to the email address provided by the person for that purpose; or

44—Insertion of section 155A

After section 155 insert:

155A—Indemnity fund under *Land Agents Act 1994*

5 Money standing to the credit of the indemnity fund maintained under section 29 of the *Land Agents Act 1994* may be applied by the Commissioner for Consumer Affairs for any of the following purposes:

- 10 (a) the costs of investigating compliance with this Act;
- (b) the costs of prosecutions for offences against this Act;
- (c) the payment of amounts, approved by the Minister and the Minister responsible for the administration of the *Land Agents Act 1994*, towards the cost of prescribed advisory services or educational programs relating to this Act conducted for the benefit of members of the public.

155B—Review of operation of Act

15 The Minister must, as soon as is practicable after the second anniversary of the commencement of the *Statutes Amendment (Community and Strata Titles) Act 2011* or any provision of that Act—

- 20 (a) cause a report to be prepared on the operation of this Act insofar as it was amended by the *Statutes Amendment (Community and Strata Titles) Act 2011*; and
- (b) cause a copy of the report to be laid before each House of Parliament.

45—Amendment of section 156—Regulations

25 Section 156(2)—after paragraph (d) insert:

- (da) assign specified functions to an officer of a community corporation of a specified class;

Part 3—Amendment of *Strata Titles Act 1988*

46—Amendment of section 3—Interpretation

- 30 (1) Section 3(1)—after the definition of *allotment* insert:

body corporate manager—see section 27B;

- (2) Section 3(1)—after the definition of *building* insert:

business day means any day except Saturday, Sunday or a public holiday;

- 35 (3) Section 3(1)—after the definition of *encumbrance* insert:

ERD Court means the Environment, Resources and Development Court established under the *Environment, Resources and Development Court Act 1993*;

- (4) Section 3(1)—after the definition of *occupier* insert:

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 unit holders present and voting on the resolution;

- 5 (5) Section 3(1), definition of *special resolution*, (a)—after "resolution" insert:
and any other information of a kind prescribed by regulation

- (6) Section 3(1), definition of *special resolution*, (b)—delete paragraph (b) and substitute:

(b) —

- 10 (i) in the case of a strata corporation in which there are only 3 units and the owner of each unit is entitled to 1 vote in respect of his or her unit—the resolution is passed at a properly convened meeting of the strata corporation at which either no vote, or only 1 vote, is cast against the resolution; or
- 15 (ii) in any other case—the resolution is passed at a properly convened meeting of the strata corporation at which the number of votes (if any) cast against the resolution is 25% or less of the total number of votes that could be cast at a meeting at which all unit holders are present and entitled to
- 20 vote;

47—Amendment of section 13—Amendment by order of Court

- (1) Section 13—delete "Court" wherever occurring and substitute in each case:

ERD Court

- (2) Section 13—after subsection (3) insert:

25 (3a) If it appears to the Court that the proposed amendment of the strata plan could adversely affect a person who is not a party to the proceedings, the Court should not order the amendment unless the Court is satisfied that the person has been notified of the possibility

30 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.

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

48—Amendment of section 17—Cancellation

- 35 (1) Section 17—delete "Court" wherever occurring and substitute in each case:

ERD Court

(2) Section 17—after subsection (4) insert:

(4a) If it appears to the Court that the proposed cancellation of the strata plan could adversely affect a person who is not a party to the proceedings, the Court should not order the cancellation unless the Court is satisfied that the person has been notified of the possibility that such an order could be made and has been given a reasonable opportunity to make submissions to the court in relation to the matter.

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

49—Amendment of section 19—Articles of strata corporation

(1) Section 19—after subsection (3) insert:

(3a) The articles of a strata corporation may impose a penalty, not exceeding the prescribed amount, for contravention of, or failure to comply with, any articles.

(3b) The following provisions apply in relation to a penalty imposed on a person for contravention of, or failure to comply with, articles:

- (a) the penalty is (despite section 29 of the *Acts Interpretation Act 1915*) payable to the strata corporation in accordance with this subsection;
- (b) subject to the making of an application under paragraph (e), the penalty is payable by the person on the date specified for payment in a notice served by the corporation on the person;
- (c) the notice must—
 - (i) be in writing in the form prescribed by regulation; and
 - (ii) specify the amount of the penalty payable and a date for payment (being not less than 60 days after the notice is served);
- (d) the penalty payable under the notice is recoverable by the strata corporation as a debt and, in the case of a notice served on a unit holder, may be recovered by the strata corporation as if it were a contribution payable to the strata corporation under section 27 (and interest will be payable on the penalty amount in the same way as if it were such a contribution);
- (e) the person may, within 60 days after service of the notice, apply to the Magistrates Court for revocation of the notice and the Court must grant the application if either—
 - (i) the Court is not satisfied that the person committed the contravention or failure alleged in the notice; or
 - (ii) the Court is satisfied that the contravention or failure alleged in the notice is trifling;

- (f) the strata corporation is a party to an application under paragraph (e) and bears the onus of proving, on the balance of probabilities, that the person committed the contravention, or failure alleged in the notice;
- 5 (g) if an application is made in accordance with paragraph (e), the penalty specified in the notice is not payable unless the application for revocation is withdrawn or otherwise discontinued by the applicant or is dismissed or refused by the Court (and, in such a case, the penalty will be payable on the date on which the application is so withdrawn, discontinued, dismissed or refused or on the date for payment specified in the notice, whichever occurs later).
- 10 (3c) A person's contravention of, or failure to comply with, articles will, for the purposes of this section, be regarded as trifling if, and only if, the person establishes that the circumstances surrounding the commission of the contravention or failure were such that he or she ought to be excused from the imposition of a penalty on the ground that—
- 15 (a) there were compelling humanitarian or safety reasons for the conduct that allegedly constituted the contravention or failure; or
- 20 (b) the person could not, in all the circumstances, reasonably have averted committing the contravention or failure; or
- 25 (c) the conduct allegedly constituting the contravention or failure was merely a technical, trivial or petty instance of a contravention of or failure to comply with the relevant articles.
- (3d) The regulations may make further provision in relation to enforcement of the articles of a strata corporation.
- 30 (2) Section 19—after subsection (4) insert:
- (5) In this section—
- prescribed amount*, in relation to a penalty imposed under articles of a strata corporation, means—
- 35 (a) if the strata scheme only includes units that are used, or are intended to be used, solely or predominantly for business or commercial purposes—\$2 000; or
- (b) in any other case—\$500.

50—Insertion of section 19A

After section 19 insert:

40 **19A—Certain articles may be struck out by Court**

- (1) Any articles that—
- (a) reduce the value of a unit; or

(b) unfairly discriminate against a unit holder,
may be struck out by order of the Magistrates Court or the District
Court on an application made under Part 3A.

5 (2) An application referred to in subsection (1) can only be made by a
person who was a unit holder when the articles came into force and
must be made within 3 months after the person (or either or any of
the unit holders where the unit is held by 2 or more persons) first
knew, or could reasonably be expected to have known, that the
articles had been made.

10 (3) For the purposes of this section, a reference to a *unit holder* includes
a person who has contracted to purchase the unit.

51—Insertion of section 26A

After section 26 insert:

26A—Delegation of functions or powers

15 A strata corporation can only delegate its functions or powers to the
extent permitted by Division 2A.

52—Amendment of section 27—Power to raise money

(1) Section 27(2)—delete "resolution" and substitute:

ordinary resolution

20 (2) Section 27(4)—delete subsection (4) and substitute:

(4) A strata corporation may, by ordinary resolution—

(a) permit contributions to be paid in instalments specified in
the resolution; and

25 (b) fix (in accordance with the regulations) interest payable in
respect of a contribution, or an instalment of a contribution,
that is in arrears.

53—Insertion of Part 3 Division 2A

After section 27 insert:

Division 2A—Delegations by strata corporation

27A—Delegation of corporation's functions and powers

30 (1) A strata corporation may delegate any of its functions and powers
(except this power of delegation) to a member or employee of the
corporation.

35 (2) A strata corporation may delegate the following functions and
powers to any person:

(a) the receipt and holding of money and other personal
property on behalf of the corporation;

(b) payment of money on behalf of the corporation;

- 5
- (c) the preparation of statements of expenditure and proposed expenditure and statements of accounts;
- (d) the collection of money due to the corporation;
- (e) entering into contracts of insurance with insurers on behalf of the corporation;
- (f) maintaining and keeping records on behalf of the corporation;
- (g) issuing and signing notices on behalf of the corporation;
- (h) preparing minutes of meetings of the corporation;
- 10 (i) providing information as required by the Act on behalf of the corporation;
- (j) investing money on behalf of the corporation;
- (k) arranging for the maintenance and repair of the common property on behalf of the corporation.
- 15 (3) A delegation by a strata corporation is to be made by ordinary resolution of the strata corporation.
- (4) However, a strata corporation cannot delegate a function or power under subsection (1) or (2) if the function or power is of a kind that can only be performed or exercised by the corporation by passing a special or unanimous resolution.
- 20 (5) A delegation by a strata corporation—
- (a) may be absolute or conditional; and
- (b) does not derogate from the power of the corporation to act in any matter; and
- 25 (c) is—
- (i) in a case where there is a contract relating to the delegation between the corporation and a body corporate manager—revoked on termination or expiry of the contract; or
- 30 (ii) in any other case—revocable by the corporation at any time by notice given in writing (notwithstanding any agreement to the contrary by the corporation).

27B—Body corporate managers

- 35 (1) This section applies to a delegation of functions or powers by a strata corporation if—
- (a) the delegation is made to a person (the *body corporate manager*) who carries on a business, or is an employee in a business, that consists of, or includes, acting as a delegate of strata corporations or of community corporations under the *Community Titles Act 1996*; and
- 40

(b) the delegation is made after the commencement of this section or a contract, between the body corporate manager and the corporation, relating to the delegation is made, renewed or extended after the commencement of this section; and

(c) it is proposed that the body corporate manager be remunerated in respect of work performed in exercising the delegated functions or powers.

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

(a) the body corporate manager and the strata corporation enter into a contract in compliance with subsections (3) and (7); and

(b) the body corporate manager, prior to entering into the contract referred to in paragraph (a), provided the strata corporation with documents of a kind prescribed by regulation verifying the body corporate manager's entitlement to act as a body corporate manager and any other prescribed matter; and

(c) the body corporate manager, whilst performing such work, maintains professional indemnity insurance complying with the requirements prescribed by the regulations,

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

(3) The contract must—

(a) be in writing; and

(b) specify the term of the contract; and

(c) set out the functions or powers to be delegated; and

(d) specify the rights of the strata corporation under subsection (4); and

(e) set out the remuneration payable to the body corporate manager in respect of the work performed in exercising the delegated functions or powers, or set out the basis on which such remuneration is to be calculated; and

(f) contain any other particulars required by the regulations; and

(g) have annexed to it a copy of each document provided by the body corporate manager in accordance with subsection (2)(b).

(4) Where—

(a) there is a contract (other than a contract that is for a period of 12 months or less) in force between a strata corporation and a body corporate manager; and

(b) the strata corporation has had relevant contractual arrangements with the body corporate manager for a continuous period of at least 12 months,

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

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

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

(6) A decision to terminate a contract in accordance with subsection (4) is to be made by ordinary resolution of the strata corporation.

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

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

Penalty: Division 9 fine.

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

(10) An exemption granted by the Minister under subsection (9)—

(a) may be subject to conditions specified in the notice of exemption; and

(b) may be varied or revoked by the Minister at any time by subsequent notice in the Gazette.

(11) In this section—

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

27C—General duties

- (1) For the avoidance of doubt—
- (a) the body corporate manager stands in a fiduciary relationship with the strata corporation; and
 - (b) the duties owed by the body corporate manager under this Act are in addition to, and do not derogate from, the duties arising out of that fiduciary relationship.
- (2) Without derogating from subsection (1), a body corporate manager—
- (a) must act honestly and in good faith in the performance of the manager's functions; and
 - (b) must exercise due care and diligence in the performance of the manager's functions; and
 - (c) must not make improper use of the manager's position to gain, directly or indirectly, an advantage personally or for any other person.

27D—Offences

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

Penalty: Division 4 fine.

Example—

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

- (2) If an employee or agent of a delegate has a direct or indirect pecuniary interest in a matter, the delegate is, for the purposes of subsection (1), taken to have a direct or indirect pecuniary interest in the matter.
- (3) A delegate who is a unit holder is not obliged by subsection (1) to disclose an interest that he or she has in common with all of the unit holders.
- (4) It is a defence to a charge of an offence against subsection (1) for the defendant to prove that he or she did not know and could not reasonably have been expected to know of his or her interest in the matter.

- 5 (5) A delegate of a strata corporation must, on application by a unit holder, provide the applicant, on a quarterly basis, with a statement setting out details of dealings by the delegate with the corporation's money (and must continue to so provide the statements until the applicant ceases to be a unit holder or revokes the application).

Maximum penalty: \$500.

- 10 (6) If all delegations by a strata corporation to a delegate are revoked, the delegate must return to, or make available for collection by, the corporation—

(a) all records of the corporation held by the delegate; and

(b) all trust money held pursuant to the delegations,

in accordance with any requirements prescribed by the regulations.

Penalty: Division 7 fine.

- 15 (7) A delegate of a strata corporation who holds records of the corporation must, at the request of any unit holder—

(a) make those records available for the unit holder to inspect within 10 business days of the request; and

(b) provide the unit holder with a copy of any of the records on payment of a fee (not exceeding a fee calculated in accordance with the regulations).

20 Penalty: Division 9 fine.

54—Amendment of section 28—Power to enforce duties of maintenance and repair

- 25 (1) Section 28(3)—delete "has been given reasonable notice" and substitute:

and the occupier of the unit have been given at least 2 days notice in writing

- (2) Section 28—after subsection (3) insert:

30 (3a) Despite any other provision of this section, an officer of a strata corporation or a person or persons authorised by a strata corporation may, if satisfied that urgent action is necessary to avert a risk of death or injury or significant damage to property, enter a unit (using such force as may be reasonably necessary in the circumstances) and carry out such work as is reasonably necessary to deal with the risk.

35 (3b) A person proposing to enter a unit in accordance with subsection (3a) must give such notice (if any) to the unit holder and the occupier of the unit as he or she considers reasonable in the circumstances.

55—Amendment of section 29—Alterations and additions

- (1) Section 29(1)—delete "A person" and substitute:

Subject to subsection (1a), a person

(2) Section 29—after subsection (1) insert:

- (1a) Subsection (1) does not apply to prescribed work carried out in compliance with a direction under section 23 of the *Housing Improvement Act 1940*.

5 **56—Amendment of section 31—Other insurance by strata corporation**

After subsection (2) insert:

- (2a) A strata corporation (other than a corporation of a kind prescribed by regulation) must maintain fidelity guarantee insurance complying with the requirements prescribed by the regulations.

10 Penalty: Division 4 fine.

- (2b) The Minister may, by notice in the Gazette, exempt strata corporations from compliance with subsection (2a) for such period as the Minister thinks fit.

(2c) An exemption granted by the Minister—

15 (a) may be subject to conditions specified in the notice of exemption; and

(b) may be varied or revoked by the Minister at any time by subsequent notice in the Gazette.

20 **57—Amendment of section 32—Right of unit holders etc to satisfy themselves as to insurance**

Section 32(1)—delete "at the request of a unit holder" and substitute:

within 5 business days after the making of a request by a unit holder, a mortgagee of a unit or a prospective purchaser or mortgagee of a unit

25 **58—Amendment of section 33—Holding of general meetings**

(1) Section 33(2)—after paragraph (d) insert:

or

- (e) order of the Magistrates Court (made on the application of a person of a class specified in section 41AA).

(2) Section 33—after subsection (3) insert:

30 (3aa) A unit holder may not nominate another person to be given notices referred to in subsection (3) on his or her behalf (although nothing prevents the strata corporation from agreeing to provide notices to such a person in addition to the unit holder).

(3) Section 33—after subsection (4) insert:

35 (4a) The notice convening a general meeting must set out the agenda for the meeting.

(4b) 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 an annual general meeting—
- 5 (i) presentation of the accounts for the previous accounting period; and
- (ii) contributions to be paid by members for the current accounting period; and
- (iii) presentation of statements required under section 33A; and
- 10 (iv) presentation of copies of all insurance policies required under this Act; and
- (v) such other matters as are required by regulation.
- (4) Section 33(8)—delete subsection (8) and substitute:
- 15 (8) Subject to subsection (9), 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.
- (9) A person who is a body corporate manager in relation to a corporation, or is an employee of such a body corporate manager, may preside at a meeting of the corporation if a majority of the
- 20 persons present and entitled to vote at the meeting agree to that person presiding (and the body corporate manager or employer is taken not to be entitled to vote for that purpose except in circumstances prescribed by the regulations).
- (10) The regulations may make further provision in relation to the
- 25 procedures to be followed at a meeting at which a body corporate manager, or an employee of a body corporate manager, is to preside.
- (11) A unit holder may, in accordance with any requirements prescribed by regulation, attend, and vote, at a meeting by telephone, video-link, Internet connection or any similar means of remote communication
- 30 (provided that no obligation lies on a strata corporation to provide such facilities to unit holders who wish to attend or vote in such a manner).
- (12) In this section—
- 35 ***accounting period***, for a strata corporation, means the accounting period for the corporation under section 40(2).

59—Insertion of section 33A

After section 33 insert:

33A—Statement of expenditure etc

- 5 (1) A statement setting out the following information must be presented by a strata corporation to each annual general meeting of the corporation:
- 10 (a) proposed expenditure (other than recurrent expenditure) for the period prescribed by the regulations for the purposes of this paragraph (which must not exceed 5 years);
- (b) 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;
- 15 (c) the estimated expenditure in future years for which funds should be raised now and held in reserve;
- (d) the amount to be raised by way of contributions from unit holders to cover the expenditure referred to in paragraphs (b) and (c).
- (2) New information must be prepared for the purposes of subsection (1)(a) at the times prescribed by regulation.
- 20 (3) A statement presented to a meeting in accordance with this section forms part of the minutes of the meeting.
- (4) The regulations may exclude a strata corporation of a specified class from the operation of subsections (1)(a) and (2).
- (5) In this section—
- 25 **recurrent**, in relation to expenditure, means expenditure for a particular purpose that is normally made every year or more frequently.

60—Amendment of section 34—Voting at general meetings

- (1) Section 34—after subsection (2) insert:

30 (2a) A unit holder may nominate another person (a **proxy**) to attend and vote at meetings on his or her behalf.

- (2) Section 34—after subsection (3) insert:

(3a) The nomination of a person as a proxy of a unit holder—

(a) must—

35 (i) be made by written notice to the secretary of the strata corporation; and

(ii) specify whether the nominated person—

(A) is nominated to attend and vote at all meetings, and in relation to all matters, on behalf of the unit holder; or

40

(B) is nominated to attend and vote only at specified meetings, or in relation to specified matters, on behalf of the unit holder; and

- 5 (b) may specify conditions in relation to the nomination; and
- (c) if a specified condition requires the nominated person to vote in a particular way in relation to a matter in which the unit holder has a direct or indirect pecuniary interest (other than an interest that the unit holder has in common with all the holders of the strata units)—must specify the nature of the unit holder's pecuniary interest; and
- 10 (d) may be revoked by the unit holder at any time by subsequent written notice to the secretary (and any contract or agreement to the contrary is unenforceable); and
- 15 (e) is effective for a period of 12 months or such lesser period as may be specified in the written notice of nomination unless the nomination is revoked earlier under paragraph (d); and
- 20 (f) does not derogate from the power of the unit holder to attend and vote at meetings on his or her own behalf.

(3b) Failure to comply with a requirement of subsection (3a)(a) will invalidate the nomination.

25 (3c) Without limiting subsection (3a), if a person who is a body corporate manager or an employee of a body corporate manager is nominated as a proxy of a unit holder of the corporation, the nomination ceases to have effect on the person ceasing to be a body corporate manager in relation to the corporation or an employee of such a body corporate manager (as the case may require).

30 (3d) If a unit holder appoints, by general power of attorney under section 5 of the *Powers of Attorney and Agency Act 1984*, a person as his or her attorney specifically for the purpose of attending and voting at meetings, or specified meetings, of the strata corporation, the appointment is, despite any provision of that Act or the terms of the general power of Attorney, effective for a period of 12 months or such lesser period as may be specified in the power of attorney unless the power of attorney is revoked earlier.

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(3e) If a general power of attorney referred to in subsection (3d) appoints a body corporate manager, a copy of the instrument of appointment must be provided to the secretary of the corporation before the meeting, or the first of the meetings, to which it relates.

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(3f) The secretary of the corporation must ensure that a copy of each written notice of nomination, and each instrument provided under subsection (3e), applying in relation to a meeting is available for inspection at the meeting before any matter is voted on.

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Penalty: Division 9 fine.

(3) Section 34(8)—delete subsection (8) and substitute:

- (8) Except where otherwise provided by this Act or by the articles of a strata corporation, the decisions of the corporation in general meeting will be made by ordinary resolutions.

5 **61—Insertion of section 34A**

After section 34 insert:

34A—Duty to disclose interest

10 (1) If a person (whether a co-owner of a unit or not) has been nominated to attend and vote at a meeting of a strata corporation on behalf of another person, the nominated person must—

(a) if the nominated person has a direct or indirect pecuniary interest in any matter to be voted on at a meeting—

15 (i) if it is practicable to do so, disclose the nature of the interest to his or her principal before the vote is taken; or

(ii) in any other case, disclose the nature of the interest to his or her principal as soon as practicable after the vote is taken; and

20 (b) if the nominating person declared a pecuniary interest in accordance with section 34(3a)(c) in relation to the matter, the nominated person must disclose the nature of the interest to the members present at the meeting before the vote on the matter is taken.

Penalty: Division 4 fine.

25 (2) A co-owner of a unit 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) A person who—

30 (a) attends and is entitled to vote at, a meeting of a strata corporation; or

(b) presides at such a meeting,

and who has a direct or indirect pecuniary interest in any matter to be voted on at the meeting must disclose the nature of the interest to the members present at the meeting before the vote is taken.

35 Penalty: Division 4 fine.

(4) A unit holder is not obliged by subsection (3) to disclose an interest that he or she has in common with all of the unit holders.

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

62—Amendment of section 35—Management committee

Section 35(1) and (5)—delete "resolution" wherever occurring and substitute in each case:

ordinary resolution

5 **63—Amendment of section 36G—Keeping of records**

(1) Section 36G(3)—after "corporation" second occurring insert:

, within 5 business days after the making of the request,

(2) Section 36G(3), penalty provision—delete "Division 5" and substitute:

Division 9

10 **64—Amendment of section 36H—Audit of trust accounts**

(1) Section 36H(1)(b)—delete "lodge with" and substitute:

forward to the secretary of

(2) Section 36H(2)(b)—delete "lodge the audit statement" and substitute:

forward the audit statement to the secretary of the strata corporation

15 **65—Insertion of section 39A**

After section 39 insert:

39A—Register of unit holders

(1) A strata corporation must maintain a register of the names of the unit holders which shows—

20 (a) the unit holder's last contact address, telephone number and email address known to the corporation; and

(b) the unit holder's unit entitlement.

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

25 **66—Amendment of section 41—Information to be furnished**

(1) Section 41(1)—after "unit" second occurring insert:

, within 5 business days after the making of the application

(2) Section 41(1)—after paragraph (c) insert:

30 (d) if the strata corporation is a party to a contract with a body corporate manager—make available for inspection a copy of the contract;

(e) make available for inspection the register maintained under section 39A.

(3) Section 41—after subsection (1) insert:

(1a) A strata corporation must, on application by a unit holder, provide the applicant, on a quarterly basis, with ADI statements for all accounts maintained by the corporation (and must continue to so provide the statements until the applicant ceases to be a unit holder or revokes the application).

Penalty: Division 9 fine.

(1b) Subsection (1a) does not apply to a strata corporation if a body corporate manager maintains the accounts on behalf of the corporation.

67—Insertion of section 41AA

Before section 41A insert:

41AA—Persons who may apply for relief

The following persons may apply for relief under this Part:

- (a) a strata corporation;
- (b) the owner or occupier of a unit;
- (c) a person who has contracted to purchase a unit;
- (d) any other person bound by the articles of a strata corporation except for persons invited to or visiting the site.

68—Amendment of section 41A—Resolution of disputes etc

(1) Section 41A(1)(a)—delete "a strata corporation or a member of a strata corporation" and substitute:

the applicant

(2) Section 41A(1)(b)—delete paragraph (b) and substitute:

- (b) if the applicant claims to have been prejudiced, as occupier of a strata unit, by the wrongful act or default of the strata corporation or a delegate or the management committee of the strata corporation, or of some other member of the strata corporation; or

(3) Section 41A(1)(c)—delete "or of" and substitute:

or a delegate or

(4) Section 41A(9)—after paragraph (b) insert:

- (ba) order a party to have any accounts audited or to reimburse any person for the costs of having any accounts audited;

(5) Section 41A(9)—after paragraph (d) insert:

- (da) make a declaration as to the validity of—
 - (i) any articles or purported articles of the corporation; or
 - (ii) any decision or purported decision of the corporation;

(6) Section 41A(9)—after paragraph (e) insert:

(ea) vary, avoid or terminate a contract entered into (whether before or after the commencement of this paragraph) between a strata corporation and either of the following:

- 5 (i) the body corporate manager;
(ii) an associate of the body corporate manager;

(7) Section 41A—after subsection (10) insert:

10 (10a) A court should not make an order to vary, avoid or terminate a contract entered into between a community corporation and a body corporate manager or an associate of the body corporate manager unless the court is satisfied that the contract involves a breach of fiduciary duties or other duties under this Act.

(8) Section 41A(19)—delete subsection (19)

69—Substitution of section 47

15 Section 47—delete the section and substitute:

47—General defence

20 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.

70—Amendment of section 49—Service

Section 49—delete subsection (1) and substitute:

- 25 (1) A document to be served under this Act or the articles of a strata corporation may be served—
(a) personally; or
(b) by post; or
(c) if the recipient consents to receiving the document by email—by transmitting the document by email to the email
30 address provided by the person for that purpose.

71—Amendment of section 50—Proceedings for offences

Section 50(2) and (3)—delete subsections (2) and (3) and substitute:

- 35 (2) A prosecution for an offence against this Act cannot be commenced except by—
(a) the Commissioner for Consumer Affairs; or
(b) an authorised officer under the *Fair Trading Act 1987*; or
(c) a person who has the consent of the Minister to commence the prosecution.

- 5
- (3) In any proceedings, an apparently genuine document purporting to be a certificate of the Minister certifying authorisation of, or consent to, a prosecution for an offence against this Act will be accepted, in the absence of proof to the contrary, as proof of the authorisation or consent.

72—Insertion of section 50A

After section 50 insert:

50A—Indemnity fund under *Land Agents Act 1994*

10 Money standing to the credit of the indemnity fund maintained under section 29 of the *Land Agents Act 1994* may be applied by the Commissioner for Consumer Affairs for any of the following purposes:

- 15
- (a) the costs of investigating compliance with this Act;
 - (b) the costs of prosecutions for offences against this Act;
 - (c) the payment of amounts, approved by the Minister and the Minister responsible for the administration of the *Land Agents Act 1994*, towards the cost of prescribed advisory services or educational programs relating to this Act conducted for the benefit of members of the public.

50B—Review of operation of Act

20 The Minister must, as soon as is practicable after the second anniversary of the commencement of the *Statutes Amendment (Community and Strata Titles) Act 2011* or any provision of that Act—

- 25
- (a) cause a report to be prepared on the operation of this Act insofar as it was amended by the *Statutes Amendment (Community and Strata Titles) Act 2011*; and
 - (b) cause a copy of the report to be laid before each House of Parliament.

73—Amendment of section 51—Regulations

30 Section 51(2)—after paragraph (b) insert:

- (ba) may assign specified functions to an officer of a strata corporation of a specified class;

Schedule 1—Transitional provisions

1—Delegations made prior to commencement

(1) A delegation of functions or powers made by a community corporation before the commencement of section 17 or made by a strata corporation before the commencement of section 53 is revocable as follows:

(a) in a case where there is a contract relating to the delegation between the corporation and a body corporate manager—the delegation is revoked on termination or expiry of the contract;

(b) in any other case—the delegation is revocable by the corporation at any time by notice given in writing (notwithstanding any agreement to the contrary by the corporation).

(2) In this clause—

body corporate manager means a person who carries on a business, or is an employee in a business, that consists of, or includes, acting as a delegate of community corporations under the *Community Titles Act 1996* or of strata corporations under the *Strata Titles Act 1988*.