



Regulatory impact statement

for proposed regulations under the
*Body Corporate and Community
Management Act 1997*



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1 Introduction

Under the *Statutory Instruments Act 1992*, subordinate legislation expires on 1 September after the tenth anniversary of its making or such extended period as is permitted under that Act. The following regulations under the *Body Corporate and Community Management Act 1997* are scheduled to expire on 1 September 2008:

- the *Body Corporate and Community Management (Accommodation Module) Regulation 1997*
- the *Body Corporate and Community Management (Commercial Module) Regulation 1997*
- the *Body Corporate and Community Management (Small Schemes Module) Regulation 1997*
- the *Body Corporate and Community Management (Standard Module) Regulation 1997*
- the *Body Corporate and Community Management Regulation 1997*.

A comprehensive review of these regulations has been conducted. As a result of this review, it is proposed to remake the regulations and to also make an additional regulation.

The *Statutory Instruments Act 1992* requires that if a proposed regulation is likely to impose appreciable costs on the community or part of the community, a regulatory impact statement (RIS) must be prepared before the regulation is made. A RIS is designed to determine whether or not a proposed regulation is the most efficient and effective way of achieving desired policy objectives. It does this by providing a mechanism by which the government's policy deliberations are clearly documented and subject to public scrutiny.

The purpose of this RIS is therefore to explain the need for the proposed regulations and to present an evaluation of the likely costs and benefits that would flow from their adoption in comparison with other options.

All members of the community are invited to comment on the information presented in this RIS.

For reference purposes, the *Body Corporate and Community Management Act 1997* and the regulations may be accessed free of charge on the Office of the Queensland Parliamentary Counsel website at www.legislation.qld.gov.au. The legislation can also be purchased from the Government Bookshop (phone 1800 679 778).

How to respond to this regulatory impact statement

The closing date for providing comment on this RIS is Friday, 14 March 2008.

Written comments can be provided either via email to:
legalpolicysubmissions@justice.qld.gov.au

or by post to: Strategic Policy
Department of Justice and Attorney-General
GPO Box 149
BRISBANE QLD 4000

Public access to submissions

Submissions may be accessible under the *Freedom of Information Act 1992*. Please identify any submission, or part of a submission, that needs to be treated as commercial-in-confidence. Similarly, if a submission contains details about a person's personal affairs (his or her experiences relevant to a matter covered in this document), and it is in the public interest to protect the person's privacy, the personal information in that submission would not be accessible under the *Freedom of Information Act 1992*.

Consideration of issues raised on the regulatory impact statement

After the public comment period closes, the government will consider issues raised by members of the community.

Further consultation may occur to address any concerns raised by the community prior to the development of a final position by the government.

2 Background

2.1 Community titles schemes in Queensland

What is a community titles scheme?

A community titles scheme involves the subdivision of land or buildings into lots and common property. The lots can be owned separately whereas the common property is owned communally by all lot owners as tenants in common.

Community titles schemes take a wide range of forms including townhouses, duplexes, high-rise apartment complexes, retirement villages, hotels, resorts, shopping centres, business parks, commercial offices, as well as mixed retail and residential unit complexes.

Key statistics for community titles schemes

Over the past decade the number of community titles schemes has risen significantly as community living has become an increasingly popular lifestyle choice for a diverse range of people, including retirees and inner-city dwellers. The use of community titles schemes as a form of development is likely to continue to grow in Queensland consistent with the strategic objectives of plans such as the *South East Queensland Regional Plan 2005-2026* which envisages a higher proportion of growth being provided by mixed-use or medium to high density forms of living.

There are now over 35 000 community titles schemes in Queensland, comprising over 324 000 individual lots. In the past three years 3881 schemes, comprising over 46 000 lots, have been established. This is an average of almost 1300 new schemes each year.

Over 90% of community titles schemes are small, comprising 20 lots or less. However, while less than ten percent of community titles schemes have more than 20 lots, these bigger schemes contain almost half of all lots.

Table 1: Distribution of community titles schemes in Queensland (30 September 2007)

Size of body corporate	No. of lots	% of total lots	No. of community titles schemes	% of community titles schemes
2 lots	23 092	7.1	11 546	32.7
3 to 6 lots	59 605	18.3	12 965	36.7
7 to 20 lots	82 842	25.5	7736	21.9
21 to 50 lots	65 265	20.1	2051	5.8
51 to 100 lots	53 315	16.4	761	2.2
Over 100 lots	40 827	12.6	263	0.7
TOTAL	324 946	100	35 322	100

Economic and social benefits of community titles schemes

The community titles sector contributes significantly to Queensland's economy. It attracts investor capital to Queensland, driving property development and providing employment in construction. The sector employs people in the management of bodies corporate and in the provision of caretaking or letting services for the scheme. The sector also supports the Queensland tourism industry by providing a viable source of traveller accommodation.

Community title schemes also offer significant social benefits, providing an opportunity to maintain housing affordability through implementing more efficient practices at a community level and through shared costs.

The efficient use of land and the sharing of costs involved in community titles schemes allows people to live in locations they could not otherwise afford and access extensive recreational facilities that would not otherwise be available.

A regulatory framework that offers certainty for, and confidence in, the community titles sector is vital to ensuring community titles schemes continue to be an attractive investment and lifestyle choice.

2.2 The current regulatory framework

Community titles legislation was first introduced in Queensland in 1965. Specific legislation exists for community titles schemes because of the collective ownership of property and assets involved.

The *Body Corporate and Community Management Act 1997* is the central element of the regulatory framework for community titles schemes in Queensland. The primary object of the Act is to provide for flexible and contemporary communally based arrangements for the use of freehold land. The Act therefore provides for the establishment, operation and management of community titles schemes.

The *Body Corporate and Community Management Act 1997* sets out how a community titles scheme is established, with various titling and subdivisional arrangements needed for the establishment of a community titles scheme carried out under the *Land Title Act 1994*.

The *Body Corporate and Community Management Act 1997* also contains core provisions for the operation and management of community titles schemes, with a set of regulation modules providing detailed management rules designed to meet the needs of different types of community titles schemes. Four regulation modules were established in 1997:

- The *Body Corporate and Community Management (Standard Module) Regulation 1997* (the Standard Module) provides significantly regulated management processes and acts as a default module. Any community titles scheme may operate under the Standard Module, though it is designed for predominantly owner-occupied schemes and schemes which are a mix of permanent residential and holiday letting.
- The *Body Corporate and Community Management (Accommodation Module) Regulation 1997* (the Accommodation Module) provides management processes that are less regulated than under the Standard Module, including fewer restrictions on service contractors and letting agents. It is designed for schemes

that are used predominantly as holiday letting or serviced apartment operations with the need for accommodation management.

- The *Body Corporate and Community Management (Commercial Module) Regulation 1997* (the Commercial Module) provides management processes that are less regulated than under the Standard or Accommodation Modules and is designed for commercial schemes or combined commercial/residential schemes where the residential component is small.
- The *Body Corporate and Community Management (Small Schemes Module) Regulation 1997* (the Small Schemes Module) provides very deregulated management processes and is restricted to schemes which have six or less lots and no letting agent.

Only one regulation module may apply to a community titles scheme at any point in time. The regulation module which applies is identified in the community management statement for the scheme recorded by the Registrar of Titles. Any community titles scheme may operate under the Standard Module which serves as the default module. A body corporate may choose to adopt another module if the characteristics of the community titles scheme meet the eligibility criteria set out in the module.

The flexible structure of the regulatory framework recognises the diversity of schemes established under the Act and that one set of rules cannot adequately meet the needs of the growing and dynamic community titles sector. As the number and diversity of schemes increases, the need for flexible legislative arrangements will continue to grow. The regulatory framework provides the flexibility to accommodate future trends in community titling through the development of additional regulation modules and also allows the government to address problems unique to a particular type of development without impacting on, and creating consequential problems for, other types of developments.

Table 2 sets out the number of schemes under each regulation module, with three quarters of all schemes currently regulated by the Standard Module.

Table 2: Number of schemes by regulation module (30 September 2007)

Module	Number of schemes	Percentage of total schemes*
Standard Module	25 945	73.9%
Small Schemes Module	5513	15.7%
Accommodation Module	2408	6.9%
Commercial Module	1256	3.6%

*Figures exceed 100% due to rounding.

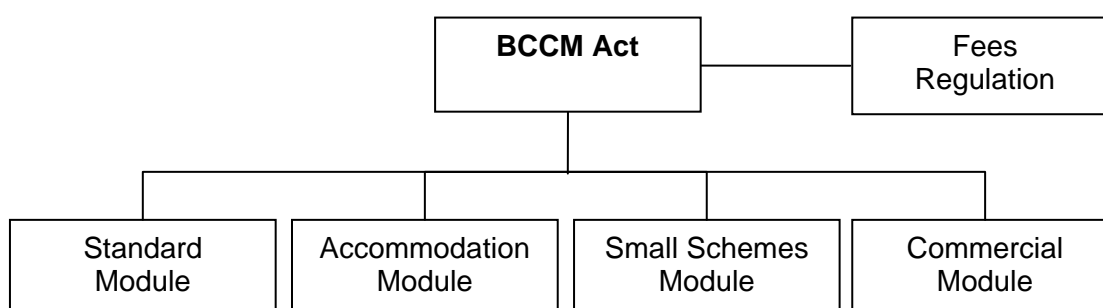
Self-management of community titles schemes is a fundamental principle of the *Body Corporate and Community Management Act 1997*. Consistent with this principle, the Act seeks to empower people involved with community titles schemes to resolve disputes related to their scheme. The Act provides for the appointment of a Commissioner for Body Corporate and Community Management to provide a dispute resolution service for certain disputes relating to the operation of community titles schemes under the Act, including a conciliation service and dispute resolution through department adjudicators and specialist adjudicators.

The Act also provides jurisdiction for the following judicial and quasi-judicial bodies to hear specified disputes:

- The Commercial and Consumer Tribunal may hear complex disputes and appeals of non-complex disputes decided by department adjudicators.
- The District Court may hear appeals of complex disputes decided by the Commercial and Consumer Tribunal or a specialist adjudicator.
- The Magistrates Court may deal with debt recovery matters relating to bodies corporate and the enforcement of adjudicators' orders.

The *Body Corporate and Community Management Regulation 1997* (the Fees Regulation) supports the dispute resolution service under the Act by the Office of the Commissioner for Body Corporate and Community Management by prescribing the fees payable for dispute resolution services.

The structure of the legislation can be illustrated as follows:



Management structures and arrangements for community titles schemes under the Act and regulation modules

Co-ownership of common property and assets in a community titles scheme inevitably requires the owners in the scheme to make shared decisions about their management. The *Body Corporate and Community Management Act 1997* provides for the creation of the legal entity of the body corporate to assist owners to make these shared decisions. The body corporate is automatically created when a community titles scheme is established and comprises the owners of all lots included in the scheme.

The body corporate is created by the *Body Corporate and Community Management Act 1997* and therefore only has the functions and powers set out in that Act. Under the Act, the body corporate's general functions are to:

- administer the common property and body corporate assets for the benefit of the owners of lots included in the scheme
- enforce the community management statement and by-laws for the scheme
- carry out other functions given to the body corporate under the Act and the community management statement.

The body corporate acts on behalf of lots owners in the scheme so it is important that the regulatory framework provides management structures and processes that ensure the body corporate is controlled by, and accountable, to those owners. The Act provides

three mechanisms to facilitate the self-management of the community titles scheme through the body corporate:

- voting by lot owners at general meetings (or by unanimous written vote of all lot owners)
- an elected committee empowered to act for the body corporate and which must put into effect the lawful decisions of the body corporate
- a body corporate manager authorised by the body corporate to exercise some or all of the powers of an executive member of the committee and, where there is no committee, the powers of a committee and an executive member of a committee.

A body corporate may also engage a service contractor to provide caretaking services for the scheme and a letting agent to perform letting functions.

The regulation modules prescribe arrangements for:

- the body corporate committee
- general meetings of the body corporate
- proxies
- the engagement, transfer and termination of body corporate managers, service contractors and letting agents
- financial management
- property management and insurance
- administrative matters including recordkeeping.

Each regulation module provides arrangements designed to meet the needs of the type of scheme the module applies to.

2.3 Review context and process

A comprehensive review of the five expiring regulations under the *Body Corporate and Community Management Act 1997* was conducted in 2006-07.

Significant work to reform the regulations had already been implemented through a number of reviews of the regulatory framework since its establishment in 1997. A review of the regulatory framework conducted during 1998-99 recommended substantial amendments to the Act and the regulation modules. The amendments to the regulation modules were progressed in stages so that the community titles sector could have the benefit of the changes as quickly as possible. The Standard and Accommodation Modules were amended in 2003.

Given the time that had elapsed since the 1998-99 review and the rapidly changing nature of the sector, the amendments to the Commercial and Small Schemes Modules were postponed and instead a review of body corporate and community management issues was undertaken to identify strategic and emerging issues facing the community titles industry and to develop a forward policy agenda for the sector (the BCCM review).

The BCCM review resulted in amendments to the Act to enhance dispute resolution arrangements. The fees in the *Body Corporate and Community Management Regulation 1997* were reviewed during the development of these amendments and new fees came into effect on 1 July 2007.

The review of the regulations considered the outstanding recommendations of the 1998-99 review relating the Commercial and Small Schemes Modules and submissions to the BCCM review. It also included numerous meetings with stakeholder groups and departmental staff to identify further enhancements to regulations.

2.4 Overview of the proposal

Remake existing regulation modules

Consultation with stakeholder groups has confirmed that the community titles sector considers the current regulatory framework comprising an Act and supporting regulation modules is necessary for the continued efficient and flexible management of community titles schemes.

The four modules have been in place for nearly 10 years and have been thoroughly tested over this period. Stakeholders are familiar with the various rules and processes. However, while the existing modules have been effective in providing flexible management arrangements for community titles schemes, the reviews have identified a number of ways their effectiveness and efficiency could be enhanced.

It is therefore proposed to remake the four existing regulation modules in a modified form. The remade regulation modules will be required to commence prior to 1 September 2008 when the existing regulation modules expire.

Remake the existing fees regulation

Given the recent review of the fees during the development of the amendments to the dispute resolution service under the *Body Corporate and Community Management Act 1997*, it is proposed to remake the fees regulation (the *Body Corporate and Community Management Regulation 1997*) in its current form.

The proposed fee structure balances the costs of the dispute resolution service with the need to protect some users of the service. The current fee structure supports the object of the *Body Corporate and Community Management Act 1997* to provide an effective and efficient dispute resolution service without having a significant adverse impact on the community or industry.

The remade fees regulation will be required to commence prior to 1 September 2008 when the existing fees regulation expires.

New module for residential two-lot schemes

It is also proposed to make a new regulation module specifically for residential schemes that consist of only two lots and that are not part of a layered arrangement of schemes ('residential two-lot schemes') to provide more appropriate management rules for these schemes.

The review of the regulations found that many residential two-lot schemes operate outside the regulatory framework, particularly in the areas of decision-making and financial management. For example, many bodies corporate in these schemes do not hold meetings and do not establish and maintain administrative and sinking funds.

Instead they operate less formally by, for example, agreeing to defer general meetings and sharing expenses and management and maintenance duties on a 50/50 basis as they arise. This suggests that owners in these two-lot schemes consider the requirements of the existing regulation modules excessive for their type of scheme.

The Act provides for decisions about the management of a scheme to be made through meetings of a committee elected by the scheme's body corporate or through meetings of the body corporate, with arrangements prescribed in the regulations. These arrangements include requirements for the preparation and distribution of meeting agendas and minutes.

These management structures and processes are appropriate for larger schemes, two-lot commercial schemes, and two-lot residential schemes that are part of a layered arrangement of schemes. However, owners in residential two-lot schemes are able to successfully make decisions more informally and with significantly less cost.

Also, the two-level system of a body corporate and a committee is unnecessarily complex for residential two-lot schemes as the committee for the body corporate in these schemes usually has the same composition as the body corporate itself, namely the owners of both lots. This makes it unnecessary to distinguish between what the committee decides and what the body corporate decides. It is proposed that the new Two-lot Schemes Module will provide for the body corporate in a residential two-lot scheme to make decisions by written agreement between the owners of the lots in the scheme.

The existing regulation modules prescribe financial management arrangements for bodies corporate to ensure the body corporate has funds required to carry out its functions such as the administration of the common property for the scheme. These requirements include establishing administrative and sinking accounts, deciding annual budgets, levying owners for contributions, keeping property accounting records and preparing an annual statement of accounts.

The benefits of these formal financial arrangements are often limited for a residential two-lot scheme and do not offset the associated costs. Given the small number of owners in a two-lot scheme and the often limited expenses involved in operating a residential two-lot scheme, owners can successfully use a simpler and more cost-effective process of paying for expenses by written agreement between owners. Also, in a residential two-lot scheme all owners are usually involved in authorising expenditure resulting in a reduced risk of financial management and a reduced need to account for spending to owners by keeping accounts and preparing financial statements. It is therefore proposed to reduce the administrative and financial burden for two-lot schemes by allowing these schemes to fund expenses in a way agreed between the owners.

The review also identified that the provisions for the enforcement of by-laws could be enhanced to allow more timely and effective management of by-law disputes in two-lot schemes. Under the BCCM Act, the body corporate is responsible for enforcing its by-laws. An owner or occupier who has a dispute against another owner or occupier who is contravening a by-law must seek enforcement of the by-law through the body corporate. Where the body corporate fails to issue a contravention notice, the owner may commence enforcement proceedings in the BCCM Office.

However, in two-lot schemes, where the body corporate comprises only the owners of the two lots, these processes requiring the body corporate to manage the enforcement of by-laws may result in the enforcement of by-laws being hampered or delayed

because it may be difficult for the two owners to agree on issuing a contravention notice or, if the notice is issued by the notice is not complied with, approving further enforcement action. This is especially the case where the person contravening the by-laws is one of the lot owners.

It is estimated that there are potentially up to 11 380 residential two-lot schemes in Queensland, comprising up to 22 760 lots. These schemes represent up to 32 percent of schemes and seven percent of lots. Simplifying management arrangements for residential two-lot schemes will therefore benefit a large portion of the community titles sector.

It is proposed to provide the simplified management arrangements through a new regulation module specifically for residential two-lot schemes. A new module aligns with the structure of the existing regulatory framework and its fundamental object of providing flexibility in the management of schemes by allowing these two-lot schemes the flexibility to adopt a module that provides more regulated management arrangements.

Self-management is a fundamental principle underlying the regulatory framework. It is therefore vital that the management rules for schemes are as clear and accessible as possible. The proposed management arrangements for residential two-lot schemes are significantly different to arrangements set out in the existing regulation modules and a new module is the simplest way of providing management rules for these two-lot schemes.

3 Title of the proposed legislation

- *Body Corporate and Community Management (Accommodation Module) Regulation 2008* (the proposed Accommodation Module)
- *Body Corporate and Community Management (Commercial Module) Regulation 2008* (the proposed Commercial Module)
- *Body Corporate and Community Management (Small Schemes Module) Regulation 2008* (the proposed Small Schemes Module)
- *Body Corporate and Community Management (Standard Module) Regulation 2008* (the proposed Standard Module)
- *Body Corporate and Community Management (Two-lot Schemes Module) Regulation 2008* (the proposed Two-lot Schemes Module)
- *Body Corporate and Community Management Regulation 2008* (the proposed Fees Regulation)

In this document 'the proposed regulation modules' means:

- the proposed Accommodation Module
- the proposed Commercial Module
- the proposed Small Schemes Module
- the proposed Standard Module
- the proposed Two-lot Schemes Module.

In this document 'the proposed regulations' means all of the proposed regulation modules as well as the proposed fees regulation.

4 Authorising law

The proposed regulations are to be made under section 322 of the *Body Corporate and Community Management Act 1997*.

5 Policy objectives

The policy objective of making the proposed regulations is to ensure the objects of the *Body Corporate and Community Management Act 1997* are achieved.

The primary object of the *Body Corporate and Community Management Act 1997* is to provide flexible and contemporary communally based arrangements for the use of freehold land. The Act seeks to achieve this object by providing for the establishment, operation and management of community titles schemes. The Act's secondary objects are:

- to balance the rights of individuals with the responsibility for self-management as an inherent aspect of community titles schemes
- to promote economic development by establishing sufficiently flexible administrative and management arrangements for community titles schemes
- to encourage the tourism potential of community titles schemes without diminishing the rights and responsibilities of owners, and intending buyers, of lots in community titles schemes
- to provide a legislative framework accommodating future trends in community titling
- to ensure that bodies corporate for community titles schemes have control of the common property and body corporate assets they are responsible for managing on behalf of owners of lots included in the schemes
- to provide bodies corporate with the flexibility they need in their operations and dealings to accommodate changing circumstances within community titles schemes
- to provide an appropriate level of consumer protection for owners and intending buyers of lots included in community titles schemes
- to ensure accessibility to information about community titles scheme issues
- to provide an efficient and effective dispute resolution process.

The proposed regulation modules support the achievement of these objects by providing a flexible set of rules for the management of the different types of community titles schemes that are developed under the *Body Corporate and Community Management Act 1997*.

The proposed fees regulation supports the object 'to provide an efficient and effective dispute resolution process' by setting out fees for the dispute resolution service provided by the Office of the Commissioner for Body Corporate and Community Management under the *Body Corporate and Community Management Act 1997*. Specifically, the fees regulation provides partial cost recovery for the dispute resolution services and contributes to an efficient and effective dispute resolution process by minimising frivolous and vexatious disputes and encouraging self-resolution of disputes by bodies corporate.

6 Legislative intent

Consultation with stakeholders groups and submissions to the 2004 review has confirmed that the current structure and form of the regulation modules is necessary for the continued efficient management of community titles schemes. However, while the regulations have been effective in achieving the policy objectives to date, some changes are required to improve their effectiveness and efficiency.

The policy objects of the Act will therefore be achieved by remaking the four existing regulation modules with some enhancements and making a new regulation module for residential two-lot schemes containing reduced regulatory requirements.

The regulation modules will provide flexible and appropriate management arrangements for the different types of schemes established under the Act relating to the matters that the Act states may be prescribed by a regulation module, namely, decision-making by the body corporate; contracts with body corporate managers, service contractors and letting agents; financial management; property management; and other administrative matters, for example, records management.

The policy objects of the Act will also be achieved by remaking the *Body Corporate and Community Management Regulation 1997* with the existing fee structure.

The proposed regulations are considered a reasonable and appropriate way of achieving the Act's objects because they will improve the effectiveness and efficiency of the management arrangements for community titles schemes and continue to support the provision of an effective and efficient dispute resolution service.

7 Consistency with the authorising law

The proposed regulations are consistent with the objects of the *Body Corporate and Community Management Act 1997*. The regulation modules are a key mechanism for providing for the management of community titles schemes and achieving the Act's object of flexible and contemporary communal arrangements for the use of freehold land. The scope of the regulations derives directly from various provisions of the Act that specify the subject matters for the regulation modules and the matters for which a fee can be prescribed in a regulation under the Act.

8 Consistency with other legislation

The *Body Corporate and Community Management Act 1997* and the proposed regulations provide for the establishment, operation and management of community titles schemes.

The regulation modules are not inconsistent with other Queensland legislation dealing with community titles schemes, namely, the *Land Title Act 1994* which deals with titling issues for community titles schemes.

The regulation modules are also not inconsistent with other legislation dealing with community developments, for example, the *Integrated Resort Development Act 1987* and the *Sanctuary Cove Resort Act 1985*.

The fees for dispute resolution services provided by the Office of the Commissioner for Body Corporate and Community Management under the *Body Corporate and*

Community Management Act 1997, set out in the fees regulation, are consistent with the fees for dispute resolution services offered under the *Building Units and Group Titles Act 1980*, set out in the *Building Units and Group Titles Regulation 1998*. (The *Building Units and Group Titles Act* provides dispute resolution services for some community developments established under legislation other than the *Body Corporate and Community Management Act 1997*.)

9 Options and alternatives

The *Statutory Instruments Act 1992* requires a RIS to contain 'if appropriate, a brief statement of any reasonable alternative way of achieving the policy objectives (including the option of not making regulations) and why the alternative was rejected'.

9.1 Options and alternatives – the proposed regulation modules

Three options for achieving the policy objective of providing flexible management rules for the community titles schemes were considered.

Option 1 – No regulation

This option would let the regulation modules expire, leaving the *Body Corporate and Community Management Act 1997* to operate without supporting regulation modules.

The regulation modules operate as part of an integrated package with the Act. They provide a comprehensive form of governance for the body corporate, including provisions relating to decision-making by the body corporate; the engagement of body corporate managers, letting agents and service contractors; financial management; property management; and recordkeeping. These governance arrangements ensure appropriate levels of efficiency, transparency, accountability, representation and consumer protection in the management of schemes and balance the interests of all owners and participants in the community titles sector.

Without the regulation modules, the management of community titles schemes would not be provided for and the Act's primary object of flexible and contemporary communal arrangements—to be achieved through providing for the establishment, operation and management of community titles schemes—would not be accomplished.

Option 2 – Remake of the existing regulation modules without changes

This option involves the *Body Corporate and Community Management Act 1997* continuing to operate in conjunction with the four existing regulation modules in their current form.

Remaking the existing regulations in their current form would provide the same management rules for community titles schemes as are currently provided. While the existing regulation modules have been effective in supporting the policy objectives of providing flexible and contemporary communal arrangements for the use of freehold land—specifically through providing flexible management arrangements for community

titles schemes—the review process and stakeholder consultation has identified changes that would enhance the management of community titles schemes under the regulatory framework.

The remake of the regulation modules provides the opportunity to incorporate these enhancements in an integrated and coherent manner, ensuring each module provides the most effective and efficient regulation and consumer protection appropriate to the particular type of scheme, keeping pace with industry growth and changing community needs.

Option 3 – Remake of the regulations with changes

The third and preferred option is to remake the regulation modules with enhancements to each of the existing regulatory modules identified in the review and to also make a new regulatory module designed to meet the management needs of residential two-lot schemes.

The proposed changes to each existing regulation module are outlined in detail in Appendices 1 to 4. The replacement regulation modules for the four existing modules are not intended to differ in effect from the modules they will replace except to the extent of the changes listed in the appendices. However, they will be remade in accordance with the wording and structure of modern drafting standards.

The proposed regulation module for residential two-lot schemes is outlined in Appendix 5.

The proposed regulation modules ensure owner participation and accountability in the management of the community titles scheme without making day-to-day management of schemes unnecessarily complicated, onerous or expensive.

Recommended option

The preferred option is option 3. Option 3 is considered the most appropriate and effective means of achieving the policy objectives of the *Body Corporate and Community Management Act 1997* as it incorporates improvements identified during the operation of the legislation over the last 10 years and the recent review of the regulations. These improvements will provide greater benefits to all stakeholders.

9.2 Options and alternatives – the proposed fees regulation

The fees associated with the dispute resolution service currently provide partial cost recovery for the government for providing this service. In particular, they provide partial cost recovery for use of the dispute resolution service and full cost recovery for services providing access to information about dispute resolution applications and orders.

Three alternatives to the proposed fees regulation were considered.

Option 1 – No regulation

This option would let the fees regulation expire, meaning that no fees would be prescribed for the dispute resolution service provided by the Office of the Commissioner

for Body Corporate and Community Management under the *Body Corporate and Community Management Act 1997*.

Under this option, the government, and ultimately the community, would fully fund the dispute resolution service. This is inconsistent with the principle that the beneficiary of a service should pay for its provision.

Letting the fees regulation expire would also have negative consequences for the achievement of the Act's object 'to provide an efficient and effective dispute resolution process'. The current fees are set at a level that discourages minor or frivolous applications and encourages parties to actively attempt to resolve their disputes within their body corporate before using the dispute resolution service. Not prescribing fees for the dispute resolution service may therefore encourage minor or frivolous applications and discourage earlier resolution of the dispute internally within the body corporate, with negative consequences for relationships in community titles schemes. This would also increase the number of disputes dealt with by the Office of the Commissioner for Body Corporate and Community Management and, in turn, result in reduced service delivery, for example, through extended dispute resolution timeframes.

Option 2 – Full cost recovery option

This option would remake the regulation with fee levels set to reflect the costs of providing the dispute resolution service.

If fees were set at a level to provide full cost recovery for the dispute resolution service, it would result in significantly higher fees. This would reduce accessibility to the dispute resolution service to customers on low incomes. Higher fees would limit the number of applications lodged (because many parties would not be able to afford the fee) and disputes in the sector would remain unresolved. Unscrupulous parties may take advantage of the difficulty of others in accessing justice. This could cause on-going tension and conflict in particular schemes and, more generally, undermine confidence in living or investing in community titles schemes.

This option would therefore not achieve the objective of the Act to provide an efficient and effective dispute resolution process.

Option 3 – Remake the existing regulation without changes

This option is to remake the *Body Corporate and Community Management Regulation 1997* with the current fee levels and the existing flexibility for applicants to apply to the Commissioner for Body Corporate and Community Management to waive the fee for a dispute resolution application in circumstances where it would cause financial hardship.

The fee structure in the existing fees regulation was reviewed during the development of recent amendments to the *Body Corporate and Community Management Act 1997* enhancing the dispute resolution service, with new fees coming into effect from 1 July 2007.

The current fee structure seeks to balance providing adequate consumer protection through ensuring that the dispute resolution service fees are not prohibitive for lower income households with the principle of user-pays and the associated argument that people with no association with community titles sector should not have to subsidise those who do.

While the current fee structure is not considered to be prohibitive for lower income households, any negative impact of the application fee for dispute resolution is mitigated by the ability for applicants to apply to the Commissioner for Body Corporate and Community Management for waiver of the fee in cases of genuine financial hardship.

The current fee structure supports the provision of an effective and efficient dispute resolution by discouraging minor or frivolous applications and encouraging parties to actively attempt to resolve disputes themselves rather than seeking formal intervention. It does this by encouraging parties to a dispute to recognise the seriousness of pursuing formal action, and to also better appreciate the cost of the service.

The current fee levels are in line with the fees charged by the Commercial and Consumer Tribunal for its services. As the Commercial and Consumer Tribunal and the Office of the Commissioner for Body Corporate and Community Management both deal with disputes under the *Body Corporate and Community Management Act 1997*, it is appropriate that the fees for the dispute resolution service provided by the two jurisdictions are consistent.

Recommended option

The preferred option is option 3. Option 3 is considered the only option that supports the Act's object of providing an efficient and effective dispute resolution process.

The proposed fees regulation is not intended to differ in effect from the existing fees regulation that it would replace. However, the government may periodically increase fees to reflect changes in the in the consumer price index.

10 Cost-benefit assessment

10.1 Who is likely to be affected?

The costs and benefits of the proposed regulations have been analysed according to the following categories of stakeholders.

Community

This category includes owners, occupiers, and prospective purchasers of lots in community titles schemes. It also includes bodies corporate for community titles schemes.

Owners of lots in community titles schemes

Owners may be permanent occupiers of their lot, periodic occupiers (for example, owners who occupy their lot only during holiday periods), or absentee owners (for example, owners who make their lot available for rent or lease).

Generally the letting agent for a scheme is the registered owner or lessee of a lot from which he or she conducts the letting agent business.

Property developers are also owners of lots in a community titles scheme until they sell the lots.

Owner-occupiers, owner-investors, letting agents and property developers are all unit owners; however, their needs in relation to their lot can be very different. It is important that the legislation caters for the legitimate interests of all these owners.

Occupiers who are not lot owners

Non-owner occupiers include short-term and long-term tenants. Short-term tenants include tourists and travellers.

Bodies corporate

Upon establishment of a community titles scheme, a body corporate is created for the scheme. The owners of all lots included in the scheme are members of the scheme's body corporate. The body corporate for a community titles scheme must administer the common property and body corporate assets for the benefit of the owners of the lots included in the scheme; enforce the community management statement (including any by-laws for the scheme); and carry out other functions given to the body corporate under the Act and the community management statement.

The body corporate is included in the category of community as it comprises the lot owners, and costs and benefits to the body corporate are ultimately costs and benefits to the owners of lots.

Industry

Key industry groups involved in the community titles sector include property developers, body corporate managers, letting agents, service contractors and financial institutions. These groups perform a key role in the establishment and management of community titles schemes. The needs of these industry groups must also be considered by the legislation to ensure their continued involvement in the community titles sector.

Property developers

A property developer establishes the community titles scheme, is part of the body corporate until all lots are sold, and has some responsibilities under the legislation during the original owner period.

Property developers also make key decisions that can affect the long term viability and functioning of a scheme. Most notably, the property developer constitutes the body corporate when the scheme is first established and may enter into contracts as the body corporate, such as a letting agent authorisation, a service contractor engagement and a body corporate manager engagement as a way to make the development attractive to prospective purchasers.

Body corporate managers

The Act empowers a body corporate to engage a body corporate manager to undertake administrative functions on behalf of the body corporate, such as issuing contribution levy notices and paying accounts.

Letting agents, service contractors and caretaking service contractors

A letting agent, often referred to in the sector as a 'resident manager', is a person authorised by the body corporate to conduct a letting business for the scheme. A letting agent offers letting services to owner-investors and is required under the *Property*

Agents and Motor Dealers Act 2000 to hold a licence to rent out lots and to collect rents. It is estimated that over 2000 schemes in Queensland have letting authorisations in place.

Letting of a lot on a regular basis is essential to investor-owner returns. Of course, owners are not compelled to be part of the letting pool in a complex managed by the letting agent and may instead choose to let their unit themselves or through another agency. However, where most owners are part of the letting pool, the letting agent has an important role in ensuring the economic viability of a holiday apartment complex through promoting the complex and ensuring lots are let out as often as possible. They also have an important role in the experience the customer (tenant, holiday maker or tourist) may have during their stay.

The nature of the letting business varies. Traditionally, the stronghold of 'mum and dad' operators, there is a growing trend for corporations to buy letting rights for a number of schemes and to install individual managers in each scheme.

A service contractor is a person engaged by the body corporate to provide services in areas such as caretaking or pool cleaning.

It is common for a letting agent for a scheme to also be engaged as a service contractor for the scheme. A person who is both a service contractor and a letting agent for the scheme is referred to as a caretaking service contractor.

The agreements to authorise a letting agent to perform letting services and to engage a service contractor to undertake caretaking services for the scheme are collectively known as management rights. There are significant funds involved in these management rights agreements. Generally the letting agent for a scheme is the registered owner or lessee of a lot from which he or she conducts the letting agent business and the agreements usually involve the price of a unit in a scheme. A service contract usually provides for guaranteed income for caretaking services for the period of the contract.

Government

A number of government agencies are involved with community titles schemes established under the *Body Corporate and Community Management Act 1997*.

The *Body Corporate and Community Management Act 1997* is administered by the Department of Justice and Attorney-General. The Office of the Commissioner for Body Corporate and Community Management, located within the Department of Justice and Attorney-General, is established under the Act to provide education and information services and manage the dispute resolution service established under the Act.

The *Body Corporate and Community Management Act 1997* also provides jurisdiction to a number of judicial and quasi-judicial bodies in relation to body corporate disputes. The Commercial and Consumer Tribunal, which also forms part of the Department of Justice and Attorney-General, has jurisdiction to hear complex disputes and appeals of non-complex disputes decided by department adjudicators. The District Court has jurisdiction to hear appeals of complex disputes decided by the Commercial and Consumer Tribunal or a specialist adjudicator. The Magistrates Court has jurisdiction to hear debt recovery matters relating to bodies corporate and to enforce adjudicators' orders.

The Department of Natural Resources and Water administers the *Land Titles Act 1994* which deals with tilting issues relating to community titles schemes. The provisions of the Land Titles Act work in conjunction with provisions of the *Body Corporate and Community Management Act 1997* to provide the establishment and operation of community titles schemes.

10.2 Impacts of the proposed regulation modules

Option 3 provides for the remaking of the existing regulation modules with some enhancements and the making of a new regulation module for residential two-lot schemes.

Each regulation module imposes a different level of regulation. The potential costs and benefits of the proposed regulation modules on an individual stakeholder will vary according to the regulation module that applies to the scheme that the stakeholder is involved with.

The module applying to a particular scheme is initially determined by the developer when lodging the scheme's community management statement for recording by the Registrar of Titles. However, the body corporate can subsequently change the module applying to the scheme by passing a motion by special resolution consenting to the change and lodging a new community management statement for recording by the Registrar.

Under Option 3, any community titles scheme may operate under the proposed Standard Module. The proposed Accommodation Module, proposed Commercial Module, proposed Small Schemes Module and proposed Two-lot Schemes Module may only be chosen if the characteristics of the scheme meet the relevant eligibility criteria for the module.

Of all the modules, the proposed Standard Module provides the highest level of regulation in all areas and therefore potentially imposes the greatest costs on stakeholders. As the proposed Standard Module can apply to any scheme, all stakeholders could potentially be exposed to this level of regulation and the associated level of cost. The impact assessment of the regulation modules has therefore been performed on the basis of costs and benefits of the proposed Standard Module. Costs to owners of lots in a scheme could potentially be reduced by the body corporate adopting a module with a reduced level of regulation if the scheme meets the relevant eligibility criteria.

While the proposed Standard Module provides a level of over-regulation in some areas for residential two-lot schemes that are not part of a layered arrangement of schemes, these schemes will be able to adopt a more appropriate level of regulation. The Standard Module will therefore only apply to these two-lot schemes if the body corporate decides to not adopt a more appropriate module for the scheme.

The impact assessment is based on the proposed Standard Module which is the existing Standard Module with the changes in Appendix 1. It is considered that the following parts of the proposed Standard Module have an appreciable impact on stakeholders:

- Part 3 – Body corporate committee
- Part 4 – General meetings

- Part 6 – Body corporate managers, service contractors and letting agents
- Part 7 – Financial management
- Part 8 – Property management
- Part 9 – Administrative matters
- Part 10 – Miscellaneous.

Part 3 – Body corporate committee

Purpose

The purposes of part 3 are:

- to provide for the composition of a committee for the body corporate for a community titles scheme, the choosing of members of the committee, and meetings of the committee; and
- to enable the body corporate to engage a body corporate manager to carry out the functions of a committee and each executive member of a committee.

Provisions

The proposed Standard Module prescribes there must be a committee for a body corporate unless the body corporate engages a body corporate manager to carry out the functions of a committee and each executive member of a committee.

The module sets out the way the committee must be composed, who is eligible for committee membership, the way the members of the committee are chosen, the term of office of a member of the committee, the way casual vacancies on the committee must be filled, restricted issues for the committee, administrative arrangements for committee meetings, voting procedures for committee meetings, requirements for minutes and other records of committee meetings.

The module also sets out when a body corporate manager may be engaged to carry out the functions of a committee and its executive members, the required form of the engagement, the term of the engagement, and the reports that the manager must give to the body corporate.

Comment

The proposed Standard Module will enhance the existing module by making the following changes:

- Provide that a person who is not an owner but is otherwise eligible to be a voting member of the committee is not eligible to be a voting member of the committee if the body corporate member who nominated the person owes a body corporate debt when the members of the committee are chosen.
- Clarify that a lot owner who owns more than one lot is entitled to nominate one individual for committee membership for each lot they own, up to a maximum of three nominations.
- Provide that the person chairing a meeting may appoint independent persons, for example, an owner of a lot included in the scheme who is not a candidate in the election, to assist in performing functions relating to ballot papers.

- Provision that a resolution on a motion before the committee is valid when passed outside a meeting if, amongst other things, the number of votes received from members entitled to vote on a motion is equivalent to a quorum for a committee meeting.
- Introduce a requirement that the body corporate must reconsider at each annual general meeting any issues the body corporate has previously reserved for decision by ordinary resolution of the body corporate.

The changes and their rationale are outlined in more detail in Appendix 4.

Impacts

Impact on community (owners or occupiers)

The arrangements set out in the proposed Standard Module for committee elections and committee meetings impose costs on the body corporate which are passed on to owners through their contribution levies.

Costs associated with the conduct of a committee election include:

- preparing and serving a notice on each lot owner inviting nominations
- preparing and forwarding to each candidate written acknowledgment of their nomination
- preparing and forwarding, with the notices for the annual general meeting, ballot-papers, envelopes and other materials
- appointing a scrutineer to assist with the detailed counting and recordkeeping requirements for the election.

Committee meeting costs include:

- preparing and giving written notice of committee meetings, including an agenda, to all committee members and giving advice of the proposed meeting to each lot owner
- for motions considered by the committee outside a committee meeting, preparing and giving notice of the motion to all committee members and giving advice of the motion to each lot owner
- taking the minutes of each meeting and giving these minutes to each committee member and each lot owner who is not a member of the committee
- keeping a record of each motion voted on other than at a meeting.

The costs of preparing and distributing these documents may involve both labour and material costs.

The documents may be prepared and distributed by a volunteer committee member. However, where the committee members are not able to, or are unwilling to, perform these functions (for example, because of the large size of the scheme or because of the complexity of the requirements) the functions may be performed by a body corporate manager engaged by the body corporate. Engaging a body corporate manager will increase the costs to a body corporate.

Similarly, where the body corporate is unable to form a committee and instead appoints a body corporate manager to carry out the functions of a committee and each executive

member of a committee, the body corporate must pay for the body corporate manager to carry out the functions of the committee.

Depending on the chosen method of distributing the above documents, material costs may include stationery, postage, or email costs.

The requirement for a committee and the associated procedures in the proposed Standard Module provide significant benefits to lot owners.

The requirement for a representative committee empowered to carry out certain body corporate functions enables efficient and cost-effective day-to-day administration of the community titles schemes by the body corporate. A committee reduces the costs to owners of making decisions about the management of the scheme by providing a cost-effective decision making alternative to general meetings and, depending on the number of owners in the scheme, the committee frees up some owners from being involved in the day-to-day management of the scheme.

The committee election processes provide a fair and transparent method for choosing committee members that ensures the committee is representative of lot owners.

The procedures for committee meetings are designed to ensure all committee members have the opportunity to participate in committee decision making. The procedures also ensure the committee is accountable to all lot owners by providing mechanisms by which owners can monitor committee decisions and performance in a timely manner.

Impacts on industry

The provisions relating to the body corporate committee in the proposed Standard Module impose no appreciable costs on industry groups.

The proposed Standard Module includes the body corporate manager and caretaking service contractor in the day-to-day administration of the scheme by providing they are automatically non-voting members of the body corporate committee. This recognises their important role in management of the scheme and the value of their advice on matters before the committee without allowing them to inappropriately influence decision making. The processes for committee meetings ensure that all committee members, including the non-voting committee members, are aware of decisions to be considered by the committee and the outcomes of these decisions.

The provisions relating to the committee also provides clear standards for body corporate managers involved in the administration of a scheme.

Impacts on government

It is considered the proposed Standard Module provides a clear process for decision making that has the potential to reduce the number and complexity of disputes and therefore reduce the cost to government of providing dispute resolution services.

Overall assessment of impacts

It is considered that the benefits of the committee requirements to owners, industry and government outweigh the costs involved.

Part 4 – General meetings

Purpose

The purpose of part 4 is to prescribe matters about general meetings of the body corporate for a community titles scheme.

Provisions

The proposed Standard Module provides all meetings of the body corporate are general meetings, either annual general meetings or extraordinary general meetings, and sets out when general meetings must be called.

The proposed Standard Module requires the body corporate to hold an annual general meeting within three months after the end of each financial year. The original owner (the developer) must call and hold the first annual general meeting. At an annual general meeting owners consider the financial position and direction of the body corporate, elect the committee for the next year (except where all lots are in identical ownership or there are only two owners in a scheme), and consider any motions proposed by the committee or submitted by lot owners.

An extraordinary general meeting must be called if the owners of 25 percent of all lots request a meeting. The committee may also call a general meeting.

The proposed Standard Module sets out who may call general meetings, how motions are put on the agenda, the material that must be distributed with the notice of meeting, administrative arrangements for meetings, voting procedures for general meetings, procedures for the conduct of meetings and requirements for minutes of general meetings.

Comment

The provisions in the proposed Standard Module are identical to the existing Standard Module with the exception that the proposed Standard Module will clarify that the secretary or other member of the committee (including a non-voting member) may call a meeting upon the committee passing a resolution directing the member to call the meeting.

The change and its rationale are outlined in more detail in Appendix 4.

Impacts

Impact on community (owners or occupiers)

The administrative arrangements for general meetings set out in the proposed Standard Module impose costs on the body corporate which are passed on to owners through their contribution levies.

Except where all lots have identical ownership, the general meeting costs for a body corporate include the cost of preparing, and giving to the owner of each lot, written notice of general meetings. The notice for a general meeting must include an agenda, a proxy form, a company nominee form where relevant, voting papers for all open motions, secret voting papers and associated material for all motions to be decided by secret ballot, an explanatory schedule for particular types of motions, as well as any other document which is required by the legislation to accompany the notice. The notice

for an annual general meeting must also include the body corporate's proposed budget, financial statement of account, any annual audit of accounts, and insurance details.

General meeting costs also include the cost of preparing and giving lot owners the minutes of the meetings within 21 days.

The costs of preparing and distributing these documents may involve both labour and material costs.

The documents may be prepared and distributed by a volunteer committee member. However, where the committee members are not able to, or are unwilling to, perform these functions (for example, because of the large size of the scheme or because of the complexity of the requirements) the functions may be performed by a body corporate manager engaged by the body corporate. Engaging a body corporate manager will increase the costs to a body corporate.

Similarly, where the body corporate is unable to form a committee and instead appoints a body corporate manager to carry out the functions of a committee and each executive member of a committee, the body corporate must pay for the body corporate manager to carry out the functions of the committee.

Depending on the chosen method of distributing the above documents, material costs may include stationery, postage, or email costs.

If a secret ballot is being considered at the general meeting, the body corporate may also incur costs in engaging a returning officer if a volunteer returning officer with the level of impartiality required by the proposed Standard Module cannot be obtained.

The costs for the body corporate of a particular scheme will be determined in part by how owners choose to conduct their body corporate and use the management mechanisms available to them. For example, one scheme may experience more costs than another scheme because it has restricted the decision-making ability of its committee or because particular activities are taking place that require a decision to be made at a general meeting, for example, decisions about improvements to the common property.

The general meeting procedures in the proposed Standard Module provide significant benefits to the community by ensuring the body corporate is controlled by, and accountable to, lot owners without imposing unnecessarily onerous requirements on bodies corporate.

The requirement for an annual general meeting provides a process that allows all lot owners to have input into important financial and management decisions, while the requirement to hold general meetings upon owner request provides a process for lot owners to have issues considered by their body corporate.

The requirement to distribute an agenda and explanatory material with the notice of meeting ensures that lot owners are adequately informed about the items for discussion. The requirement to distribute voting papers and a proxy form with the notice of meeting ensures that all lot owners have the opportunity to vote even if they are unable to attend a meeting. This is particularly important where lot owners may reside interstate or overseas.

The requirement to distribute minutes of the meeting to owners ensures owners are aware of decisions that affect them and for which they will have to contribute financially.

Impacts on industry

The provisions in the proposed Standard Module relating to general meetings may create a demand for professional body corporate management services. These services are provided according to contracts entered into by the particular body corporate.

The proposed Standard Module requires the developer (the 'original owner') of the community titles scheme to call and hold the first annual general meeting for the scheme. The Standard Module provides a maximum penalty of 150 penalty units (or \$11 250) for failing to do so.

The original owner must also give specified documents to the body corporate at the first annual general meeting or at the earliest practicable opportunity if they come into the original owner's possession after the meeting. There is a maximum penalty of 150 penalty units (or \$11 250) for failing to hand over these documents at the annual general meeting. Most of the documents to be provided by the original developer do not involve additional costs for the developer.

The first annual general meeting is critical in setting up the body corporate and committee to facilitate the day-to-day running of the scheme. It is also vital that the body corporate has possession of all documents and materials held by the original owner because of their importance to the ongoing administration of the scheme. The penalties encourage compliance with the requirements and are considered appropriate to the offence.

Impacts on government

It is considered the proposed Standard Module provides a clear process for making decisions between owners has the potential to reduce the number and complexity of disputes and therefore to reduce the cost for government of providing dispute resolution services.

Overall assessment of impacts

It is considered that the benefits of the general meeting requirements to owners, industry and government outweigh the costs involved.

Part 6 – Body corporate managers, service contractors and letting agents

Purpose

The purpose of part 6 is to prescribe matters about the engagement of a person as a body corporate manager or service contractor, or the authorisation of a person as a letting agent, for a community titles scheme, including matters about rights and obligations of the body corporate.

Provisions

The proposed Standard Module prescribes the required form of engagement for body corporate managers and service contractors and required form of authorisation for letting agents; the maximum term of an engagement and authorisation; circumstances under which the engagement or authorisation may be transferred or terminated; disclosure requirements applying to body corporate managers, service contractors and letting agents; and how the body corporate may authorise the occupation of common property for the engagement or authorisation.

Comments

The proposed Standard Module replaces the existing arrangements relating to the payment of an amount to the body corporate as a condition of approving a transfer of a person's rights under an engagement as a service contractor or authorisation as a letting agent.

Under the proposed Standard Module, if the body corporate approves a transfer within two years of the date on which the original engagement or authorisation was entered into by the transferor or on which the engagement or authorisation was assigned to the transferor, the body corporate must require as a condition of approving the transfer that the transferor pay the body corporate an amount which represents a percentage of fair market value for the transfer. The amount of this 'transfer fee' is three percent if the transfer is approved in the first year after the date and two percent if the transfer is approved in the second year after the date.

However, the body corporate must not require the payment of the amount if the transferor is seeking approval to the transfer on the basis of genuine hardship not reasonably foreseen by the transferor at the date on when they entered into or were assigned the engagement or authorisation.

The change and its rationale are outlined in more detail in Appendix 4.

Impacts

Impact on community (owners or occupiers)

The transfer provisions under the proposed Standard Module impose indirect costs on lot owners in a scheme.

The proposed Standard Module provides that a person's rights under an engagement as a body corporate manager or service contractor, or under an authorisation as a letting agent, may be transferred only if the body corporate approves the transfer. The body corporate may have regard to a number of matters in deciding whether to approve a transfer, including the proposed terms of the transfer, and the character, financial standing, qualifications and experience of the proposed transferee. However, the body corporate must not unreasonably withhold approval to the transfer.

While the body corporate may require reimbursement for expenses reasonably incurred by the body corporate in relation to the application for approval of a transfer, the transfer may result in indirect costs for lot owners in the form of short-term disruption for the body corporate, possibly resulting in short-term financial loss, while the new service contractor or letting agent settles into their role. Owners may potentially experience short-term financial loss in the case of a transfer of rights under a service contract if there is a reduced standard of caretaking that affects property values. Owners who use the scheme's letting agent may experience short-term financial loss in the case of a transfer of rights under a letting authorisation if there are reduced lettings while the new letting agent settles into their role.

However, the potential costs of the disruption caused by a high turnover in service providers are offset by the requirement that the body corporate must require a body corporate manager, service contractor or letting agent to pay the body corporate a transfer fee where the engagement or authorisation is transferred within two years of the contract being entered into or assigned. The fee also discourages early transfer and may therefore prevent these costs.

Impacts on industry

There are two costs imposed on industry in relation to transfers: one, the reimbursement of expenses reasonably incurred by the body corporate in relation to an application for approval of a transfer; and, two, the payment of a transfer fee to the body corporate as a condition of approving a transfer.

It is considered reasonable that the contractor/letting agent/body corporate manager must reimburse the body corporate for any expenses reasonably incurred in relation to the transfer application as the body corporate is required by the legislation to consider the application.

The transfer fee is designed to compensate the body corporate for the disruption caused by a quick turnover in letting agents and service contractors. This is considered reasonable given a caretaker is essentially breaking their contract by seeking a transfer and the body corporate cannot unreasonably refuse to agree to the transfer.

Reasonable protection is provided to letting agents and service contractors by an exemption from the transfer fee where the agent or contractor is applying for a transfer on grounds of genuine hardship not reasonably foreseeable at the time of the contract or assignment date.

Impacts on government

Nil

Overall assessment of impacts

The restrictions are considered to strike a reasonable balance between providing protection to owners against the disruption and financial loss of transfers and flexibility for body corporate managers, service contractors and letting agents. The large costs involved for service contractors are outweighed by the economic benefit derived from management rights arrangements and the flexible transfer requirements provided under the legislation.

Part 7 – Financial management

Purpose

The purpose of part 7 is to prescribe the financial management arrangements that apply to the body corporate for a community titles scheme.

Provisions

The proposed Standard Module prescribes that the body corporate must keep an administrative fund budget (to cover expenditure of a recurrent nature including the cost of maintaining common property and body corporate assets) and a sinking fund budget (to cover expenditure of a capital or non-recurrent nature such as painting the common property) and must adopt a budget for each of these funds annually. The module also provides for levying lot owners for contributions based on the budgets, discounts and penalties relating to the payment of contributions, recovery of unpaid contributions, powers and restrictions relating to borrowing, controls on spending including committee spending limits and requiring quotes for major spending, account keeping, and audit requirements.

Comment

The proposed Standard Module enhances the existing Standard Module by making the following changes:

- Provide that the relevant limit for committee spending is an amount worked out by multiplying the number of lots included in the scheme by \$200, unless the body corporate sets another amount by ordinary resolution at a general meeting.
- Provide that the relevant limit for major spending is an amount worked out by multiplying the number of lots in the scheme by \$1100.

The changes and their rationale are outlined in more detail in Appendix 4.

Impacts

Impacts on community (owners or occupiers)

The financial management requirements in the proposed Standard Module impose the following costs on the body corporate which are passed on to owners through their contribution levies:

- The body corporate is required to start proceedings to recover contributions from lot owners that have been outstanding for two years. Proceedings are typically started in a Magistrates Court, a relatively low cost jurisdiction that does not require legal representation. The body corporate can minimise its costs by using provisions allowing the body corporate to recover as a debt any costs it reasonably incurs recovering outstanding contributions, including court costs and legal fees. However, costs are awarded at the court's discretion.
- The body corporate for a scheme that includes other schemes is required to have the statement of accounts audited by an auditor each financial year. Other schemes may resolve by special resolution not to have the statement of accounts audited each financial year.
- Costs associated with financial management functions, including the costs of:
 - establishing and keeping an administrative fund and sinking fund
 - preparing a sinking fund budget anticipating major expenditure 10 years in advance
 - keeping proper accounting records
 - preparing a statement of accounts showing the annual income and spending of the body corporate each financial year
 - obtaining two quotes where proposed expenditure is over a major spending limit, which is set by multiplying the number of lots included in the scheme by \$1000.

The costs to the body corporate relating to these administrative functions will partly depend on whether the functions are performed by a volunteer committee member, or by someone paid by the body corporate, for example, a body corporate manager.

The financial arrangements in the proposed Standard Module provide a number of important benefits to lot owners that offset these costs.

The requirements for keeping and administering funds, keeping proper accounting records, and preparing a statement of account for each financial year all provide

important protection against poor administration of finances of the body corporate and makes the individuals managing funds accountable to lot owners. Without these requirements, there may be risks to the body corporate's funds, and ultimately owners. Some annual budgets in large high-rise residential towers can be of a significant size and there may be risks to those funds if those who manage body corporate funds are not made accountable. These requirements also ensure that the body corporate plans for future major expenditure so the scheme can be maintained appropriately without unfairly burdening future owners.

The compulsory auditing requirements for schemes that include other schemes are an important mechanism for ensuring accountability of the higher schemes to lot owners in subsidiary schemes, who are not directly members of the higher level scheme's body corporate.

The requirement to obtain two quotes for major spending encourages prudent financial decisions.

The problem of arrears for contributions can cause severe financial hardship for the body corporate. The debt recovery provisions act as incentive for owners to pay the fees on time and offer significant benefits by ensuring the body corporate receives funds necessary to perform its functions under the Act, for example, the maintenance of common property. The potential costs incurred will ultimately benefit owners by ensuring that body corporate funds are available.

Impacts on Industry

Under the proposed Standard Module, a body corporate manager who administers the body corporate's administrative or sinking fund under an authorisation given by the body corporate can be subject to penalties for certain offences relating to the management of these funds. A body corporate manager who does not comply with the requirements for administering the funds commits an offence, with a maximum penalty of 20 penalty units (or \$1500). A body corporate manager who, not later than 30 days after the day the authorisation is revoked or the day the engagement ends, fails to give to the body corporate certain financial records is subject to a maximum penalty of 20 penalty units (or \$1500). The penalty for these offences is considered to be set at a reasonable level and necessary to deter non-compliance.

The financial management arrangements in the proposed Standard Module relate to the protection of owners and therefore offer few direct benefits to industry participants. However, good financial management supports general confidence in community titles schemes which will have indirect flow-on benefits to industry participants through continuing growth of the sector. The provisions also encourage professional standards of conduct by body corporate managers that ultimately have a positive effect on the reputation of the industry.

Impacts on government

The comprehensive financial arrangements for bodies corporate in the proposed Standard Module may result in better financial management for schemes and fewer disputes and therefore reduce the cost of providing dispute resolution services.

Overall assessment of impacts

The benefits of the financial arrangements in the proposed Standard Module are considered to outweigh the costs to community, industry and government in most schemes.

Part 8 – Property management

Purpose

Part 8 prescribes matters about property management for a community titles scheme, including matters about the rights and obligations of the body corporate.

Provisions

The proposed Standard Module imposes certain standards and obligations on bodies corporate in relation to the maintenance, management and insurance of common property and body corporate assets. It sets out the particular responsibilities of bodies corporate and individual lot owners.

Comments

The proposed Standard Modules enhances the existing Regulation Module by making the following changes:

- Provide that the body corporate may make improvements to the common property if authorised by an ordinary resolution of the body corporate and the value of the improvements is between an amount worked out by multiplying the number of lots included in the scheme by \$300 and an amount worked out by multiplying the number of lots included in the scheme by \$3000. Provide that improvements valued over an amount worked out by multiplying the number of lots included in the scheme by \$3000 may only be made by special resolution.
- Provide that a lot owner may make significant improvements (over \$250) to the common property if authorised by an ordinary resolution of the body corporate.
- Require a body corporate, at least every five years, to obtain from a quantity surveyor or registered valuer an independent valuation stating the replacement value of all property it is liable to insure.
- Provide that the body corporate may adjust the contribution payable by a lot owner for public liability insurance in a way that fairly reflects the proportion of the total risks covered by the policy attributable to activities carried on, or proposed to be carried on, at the owner's lot.

The changes and their rationale are outlined in more detail in Appendix 4.

Impacts

Impacts on community (owners or occupiers)

The proposed Standard Module imposes a number of costs on the body corporate relating to property maintenance and insurance, which are passed on to individual lot owners through contribution levies. These costs include:

- maintaining common property and body corporate assets in good condition
- to the extent that lots included in the scheme are created under a building format plan of subdivision:
 - maintaining foundation structures, roofing structures and essential supporting framework in a structurally sound condition

- maintaining certain items that are on the boundary of a lot and common property, situated in a boundary wall separating a lot from common property, or provide protection for lots or common property in a good condition
- maintaining public risk insurance of the common property and body corporate assets for which it is practicable to maintain public risk insurance
- insuring to full replacement value:
 - common property and body corporate assets
 - for a building format plan of subdivision, each building which contains a lot
 - for a standard format plan of subdivision where a building on one lot has a common wall with a building on an adjoining lot, each building.

Costs imposed directly on owners by the proposed Standard Module include the costs of:

- maintaining their lot, and utility infrastructure within the boundaries of their lot, in a good condition
- for owners of a lot given exclusive use of common property under an exclusive use by-law, maintaining and the common property to which the exclusive use by-law applies
- maintaining devices providing a utility service to a lot (for example, hot-water systems, washing machines and clothes dryers) to the extent the infrastructure relates only to supply utility services to a particular lot.

Costs imposed on an occupier of a lot (who may also be an owner) include keeping the parts of the lot readily observable from another lot or common property in a clean and tidy condition

The cost of the body corporate's maintenance responsibilities will vary from scheme to scheme depending on the extent of common property and body corporate assets and from lot to lot depending on the particular characteristics of the lot. However, there are significant benefits to the body corporate and individual lot owners from these requirements. Common property, body corporate assets, and lots that are well maintained will benefit the market value of individual lots in the scheme and the amenity of the scheme as a whole and consequently, the enjoyment of scheme land by lot owners and occupiers.

The requirement that a body corporate must maintain public risk insurance of the common property and body corporate assets for which it is practicable to maintain public risk insurance and must insure the common property, body corporate assets and certain buildings to full replacement value imposes significant costs given there are over 34,000 schemes. The cost of insurance obtained through the body corporate may be slightly higher for some individual lot owners than the cost of insurance obtained individually as an individual lot owner may be able to take advantage of a pensioner discount or a multiple policy discount with a particular insurer.

However, the insurance requirements offer significant benefits to owners. The requirements for insuring common property and body corporate assets provide a clear process for insuring shared property and assets that ensures each owner's interest is protected against loss and each owner is protected from being sued for accidents that take place on the common property or involve body corporate assets.

The requirement for replacement insurance for common property and particular buildings ensures certainty and protection for lot owners where conjoined lots rely on

other lots or common property for their integrity. For example, lots in a high-rise building rely on lots above and below and exterior common property walls of the building for structural support, while single storey conjoined buildings share a common structural wall. A lot owner in a conjoined or high-rise building is at risk if a supporting lot collapses which is not adequately insured. The insurance requirements ensure that one lot owner will not be negatively affected by the failure of a neighbouring property to take out adequate insurance.

The provisions for maintenance and insurance provide clarity and transparency about the upkeep of, and insurance of, property in the scheme. It is considered that this will reduce disputes in bodies corporate about these matters, with positive consequences for relationships within schemes.

The proposed Standard Module also enables the body corporate to decide to make improvements to the common property, that will impose costs on all lots. However, while the Standard Module empowers bodies corporate to make decisions about improvements, the actual details and costs are ultimately a matter for the particular body corporate.

Impacts on industry

The provisions relating to insurance and maintenance do not have a significant impact on industry participants.

The Act requires that the original owner for the scheme must ensure that, when the scheme is established, policies of insurance that are required for the scheme under the regulation module applying to the scheme are immediately in force for 12 months. The insurance requirements in the Standard Module therefore also apply to the original owner (the developer) during the original owner control period. However, the original owner is typically the owner of all or most lots at the time of the establishment of the scheme and it is therefore in the original owner's interest to have insurance for the scheme. The original owner is able to require the payment of proportionate amounts from owners who subsequently purchase a lot. .

The property maintenance and insurance provisions may generally create demand for the services of service contractors and for insurance products that benefit some participants in the industry.

Impacts on government

Providing a clear requirement and process for maintenance will also reduce disputes between owners about upkeep of and liability for upkeep of common property and therefore the costs to the government of providing dispute resolution services.

Overall assessment

The benefits of the property management provisions in the proposed Standard Module are considered to outweigh the costs to community.

10.3 Impacts of the proposed fees regulation

Proposed fees

The proposed fees regulation sets out the fees for dispute resolution services provided by the Office of the Commissioner for Body Corporate and Community Management under the *Body Corporate and Community Management Act 1997*. The fees prescribed under the proposed fees regulation and the impacts associated with each fee are discussed below.

Fees for dispute resolution applications

Section 238 of the Act sets out who may make a dispute resolution application. A dispute resolution application may take the form of an application for conciliation or an application for adjudication. A fee of \$57 applies for a dispute resolution application, except in the case of an application that includes a request for the commissioner to consider whether an interim order should be considered by an adjudicator. In this case, a fee of \$118 applies.

The fees for dispute resolution applications were increased by the consumer price index in 2003, 2004, 2005 and 2006. An increase in fees above the consumer price index came into effect on 1 July 2007 after a review of fees conducted during the development of amendments to the Act to enhance the dispute resolution service.

The fees may be further adjusted periodically to reflect changes in the consumer price index.

A person may apply to the commissioner for a waiver of the dispute resolution application fee. The commissioner may waive payment of the fee if satisfied payment of the fee would cause the applicant financial hardship.

Fees to inspect adjudication applications, submissions and the applicant's reply to the submissions

Under section 246 of the Act, the commissioner must, on application by an interested person, allow the person to inspect, or give the person copies of, all or any of the following documents relating to an application for adjudication:

- the application
- submissions made about the application
- the applicant's reply to the submissions or give the person.

The prescribed fee that must accompany the application by an interested person to inspect all or any of these documents is \$11.70 for each hour or part of an hour, with \$47.60 the maximum fee payable for a day.

The prescribed fee to be given copies of all or any of these documents for each page is:

- for less than 20 pages - \$1.40
- for 20 to 50 pages - \$1.20
- for more than 50 pages - \$1.00.

These fees were increased by the consumer price index in 2003, 2004, 2005, 2006 and 2007. Minor changes to the fees came into effect from 1 July 2007 to bring them in line with the fees charged by the Commercial and Consumer Tribunal which also deals with body corporate disputes.

The fees may be further adjusted periodically to reflect changes in the consumer price index.

Fees for applications for information about orders (searches of orders)

Section 299 of the Act requires the commissioner to provide, on application, information about whether an order has been made within the previous six years under the body corporate legislation about a community titles scheme mentioned in the application and, if so, the nature and effect of the order and whether there is, in relation to the scheme, an application that has not been disposed of and, if so, the nature of the application.

The prescribed fees for an application vary according to the method by which this information is provided. The fee is \$12.20 if the information is given to the applicant in person, \$14.90 if the information is posted to the applicant, and \$18.90 if the information is faxed to the applicant.

Impacts

Impacts on community (owners or occupiers)/Impacts on industry

It is appropriate to present the impacts on community and industry together because of the similarity of impacts.

Dispute resolution applications

An application for conciliation or adjudication can potentially be lodged by or against the owner of a lot, the occupier of a lot, the body corporate, the committee, a member of the committee, the body corporate manager for the scheme, the caretaking service contractor for the scheme, the service contractor for the scheme or the letting agent for the scheme.

Owners, occupiers and bodies corporate are the most significant users of the dispute resolution service, with 71 percent of applications in 2006-07 being lodged by owners and occupiers and 27 percent by bodies corporate, body corporate committees or committee members. Two percent of applications were lodged by body corporate managers, letting agents, service contractors and caretaking service contractors.

The overall impact of the fees is relatively small considering that only a limited number of people lodge applications. It is estimated that 1550 applications for dispute resolution will be received in 2007-08. The total costs to the owners, occupiers, bodies corporate and industry groups are likely to increase as disputes increase in line with growth in the number of community titles schemes.

The actual cost to government, and ultimately the community, of providing conciliation and adjudication is much higher than the prescribed fees for these services. While a beneficiary of a good or service should generally pay for the service (rather than the community as a whole), the current dispute resolution application fees, and the provision to apply for a waiver of the relevant application fee, are a customer protection measure which ensures that people in the community titles sector on low incomes are not financially disadvantaged by the cost of dispute resolution or prevented from using

the dispute resolution service because of incapacity to pay. The current fee levels therefore provide an important social benefit to community and industry participants involved in community titles schemes.

The fee structure also supports harmonious relationships in the community titles sector by discouraging minor and frivolous disputes and by encouraging parties to actively attempt to resolve their disputes within their body corporate before using the dispute resolution service.

Inspection of applications, submissions and the applicant's reply to the submissions

The Act allows people interested in a particular application for adjudication (including the applicant, respondent, and body corporate) to inspect or obtain copies of the dispute resolution application, submissions made about the application and the applicant's reply to the submissions. To ensure the best defence of their position, it is in the best interests of the respondent to obtain a copy of the application in preparing a submission and it is in the best interests of an applicant to obtain copies of the submissions made about an application in preparing their reply to submissions. The large majority of applicants view the submissions made about the application.

The prescribed fees for inspection are considered to be reflective of the costs of the Office of the Commissioner for Body Corporate and Community Management in providing this service. This is consistent with the government's principle that those who benefit from the provision of a good or service should pay for it while ensuring people involved in a dispute have reasonable access to documents relating to the dispute (and are not precluded from reasonable access to this information on the basis of incapacity to pay).

The overall impact of the fees on the community and industry is relatively small considering that only a limited number of people are affected. In 2006-07, the Office of the Commissioner for Body Corporate and Community Management received 1246 applications for adjudication. The number of applications for adjudication in 2007-08 is expected to be substantially lower with the introduction of amendments to the Act that require a person to apply for and undertake conciliation before applying for adjudication.

Applications for information about orders (searches of orders)

These searches are usually conducted by a prospective purchaser for the purpose of identifying the history of disputes in a particular scheme and whether there are any orders affecting the lot they are considering purchasing.

The search fees are considered to be reflective of the costs of the Office of the Commissioner for Body Corporate and Community Management in providing this service. This is consistent with the government's principle that those who benefit from the provision of a good or service should pay for it, while also ensuring prospective purchasers have reasonable access to information that could assist in deciding whether to purchase a particular property.

In 2006-07, 7032 applications for information about orders were received. If a similar number of applications are received in 2007-08, the cost on the community will be between \$85 790 and \$132 905, depending on whether the search results are provided in person, by mail or by facsimile.

Impacts on government

While the fees set for the inspection of applications, submissions and the applicant's reply to the submissions and the fees set for applications for information about orders are considered are set at a level that provides full cost recovery, government incurs significant costs in providing the dispute resolution service. As indicated above, the fees set for dispute resolution are significantly below the cost of providing this service.

There are negligible costs to government of assessing applications for a waiver of the dispute resolution application fee.

Overall assessment

The current fee structure supports the provision of an efficient and effective dispute resolution service that provides significant benefits to stakeholders and reduces the financial burden on government of providing the service, without imposing significant costs on, or making the service inaccessible to, stakeholders.

11 Fundamental legislative principles

The *Legislative Standards Act 1992* requires that legislation has sufficient regard to fundamental legislative principles, that is, the rights and liberties of individuals and the institution of Parliament.

Some provisions in the proposed regulation modules may raise issues related to fundamental legislative principles. However, it is considered the proposed regulation modules reasonably balance regard to fundamental legislative principles with community benefits accruing from the underlying policy intent. The provisions in the proposed regulation modules largely reflect those currently in place under the existing regulation modules.

Sufficient regard to the rights and liberties of individuals

Engagements and authorisations

The proposed regulation modules prescribe matters about the engagement of a person as a body corporate manager or service contractor or the authorisation of a person as a letting agent.

These engagements and authorisations are typically formed when a community titles scheme is first established. When the scheme is established, a body corporate is created for the scheme. The body corporate is comprised of the owners of all lots in the scheme. The developer, as the initial owner of the lots, is the body corporate until lots in the scheme are sold. Soon after the body corporate is created, the developer often enters into a number of agreements for the scheme acting in the capacity of the body corporate.

These agreements often include an engagement to provide body corporate management services, an engagement to supply caretaking services to the scheme, and an authorisation to conduct a letting business in the scheme. The authorisation to conduct a letting business in the scheme usually provides a high level of exclusivity for letting arrangements for the scheme because of the usual inclusion of a letting office in the letting agent's lot.

The regulation modules contain a number of provisions that may restrict the capacity of parties to contract freely and establish and enforce their contractual entitlements through traditional legal means. These provisions and their rationale are set out below.

Form of engagement or authorisation

The regulation modules prescribe that an engagement or authorisation is void unless it is in the form prescribed in the module. This restriction is a consumer protection measure that seeks to ensure full disclosure to the body corporate about, for example, the term of the contract, the basis of payment for services and the role to be performed. This information is necessary so the body corporate can make an informed decision about whether to engage or authorise a person.

Term of engagement or authorisation

The regulation modules limit the maximum term of an engagement of a person as a body corporate manager, an engagement of a person as a service contractor and the authorisation of a person as a letting agent.

Under the proposed Standard, Accommodation and Commercial Modules, the term of engagement of a body corporate manager must not be longer than three years. Under the proposed Small Schemes and Two-lot Schemes Modules the term must be no longer than one year.

Under the proposed Standard Module, the term of engagement of a service contractor and the term of authorisation of a letting agent must not be longer than 10 years. Under the proposed Accommodation and Commercial Modules the term of engagement of a service contractor and the term of authorisation of letting agent must not be longer than 25 years. Under the Small Schemes Module and the Two-lot Scheme Module, the term of engagement of a service contractor must not be longer than one year.

These limits were put in place to prevent such agreements from being everlasting agreements over which the body corporate had no control. The limits were determined during the development of the *Body Corporate and Community Management Act 1997*, in consultation with the management rights industry and their financiers, as being terms that allowed a reasonable prospect of obtaining a return on investment. The 25-year limit was set in recognition of the higher costs involved in operating and maintaining hotel-type developments.

Transfer of engagement or authorisation

The proposed Standard and Accommodation Modules prescribe that a person's rights under an engagement as a body corporate manager or service contractor, or an authorisation as a letting agent, may be transferred only if the body corporate approves the transfer. The body corporate may have regard to several factors in deciding whether to approve a proposed transfer but cannot unreasonably refuse a transfer and must not require or receive a fee or other consideration for approving the transfer.

These transfer provisions provide significant flexibility to body corporate managers, service contractors and letting agents to assign their rights to another party. This provision particularly protects letting agents and service contractors, who have usually invested significant funds in purchasing the letting or caretaking rights, from significant financial loss if they are unable to continue their role.

However, this flexibility is balanced with provisions that protect owners from being disadvantaged by the transfer by allowing the body corporate to refuse a transfer to a particular transferee on reasonable grounds and to also seek reimbursement for costs

reasonably incurred in considering the transfer. The interests of owners are also protected by the requirement that the body corporate must also require, as a condition of a transfer of rights under a letting authorisation or service contract, payment of an amount if the transfer is approved within two years of the contract being entered into or assigned to the letting agent/service contractor.

Termination of engagement or authorisation

The proposed regulation modules provide the grounds and process by which the body corporate may terminate a person's engagement as a body corporate manager or service contractor or authorisation as a letting agent.

A body corporate can terminate the agreements by agreement, under the Act or under the engagement or authorisation.

The body corporate may also terminate a person's engagement as a body corporate manager or service contractor, or authorisation as a letting agent, if the person:

- is convicted of an indictable offence involving fraud or dishonesty or is convicted on indictment of an assault or an offence involving an assault
- carries on a business involving supply of services to the body corporate and the carrying on of the business is contrary to law
- transfers an interest in the engagement or authorisation without the body corporate's approval.

It is considered appropriate that these persons act within the law and that failing to do this is an appropriate reason to allow the termination of a contract.

The body corporate may also terminate a person's engagement as a body corporate manager or service contractor or letting agent if the person:

- engages in misconduct, or is grossly negligent, in failing to carry out functions required under the engagement/authorisation
- fails to carry out duties under the engagement/authorisation
- contravenes the relevant code of conduct
- fails to comply with disclosure requirements (body corporate manager, service contractor or caretaking service contractors only)
- fails to meet certain financial management requirements under the module (body corporate manager only).

It is appropriate that the relevant contractor provide the expected standard of service under their engagement/authorisation and act according to the standards set in the relevant code of conduct and therefore that the body corporate be able to terminate the contract if they are not receiving competent service. The rights of a contractor are protected by a requirement that the body corporate cannot exercise its power to terminate on these grounds unless the contractor has been given a notice and the opportunity to undertake necessary action to remedy the behaviour that is grounds for the termination.

Lien against body corporate property

If a person has possession or control of a body corporate asset, a record or other document of a body corporate, or a body corporate seal, and took possession or control

of the specified property in the person's capacity as a body corporate or committee member or as body corporate manager or service contractor (or an associate of one of these), the proposed regulation modules require the person to return the specified property on being given a notice requiring the return of the property. The regulations provide that a person who is given the notice cannot claim a lien on the body corporate records and seal.

This provision is considered necessary because the records and seal are essential for the functioning of the body corporate. The provision does not extend to other body corporate property.

Sufficient regard to the institution of Parliament

Whether subordinate legislation has sufficient regard to the institution of Parliament depends on whether, amongst other things, the subordinate legislation 'contains only matter appropriate to subordinate legislation' (*Legislative Standards Act 1992*, section 4(5)(c)).

In its consideration of the *Body Corporate and Community Management Bill 1997*, the Scrutiny of Legislation Committee reported some concern about certain matters being delegated to be dealt with by regulation rather than being protected in a principal Act of Parliament. The committee recognised that the Bill had been carefully structured to provide protection for individuals balanced against a requirement to provide flexibility and appeared to strike an appropriate balance in its division of matters between the principal Act and subordinate legislation. However, the Committee identified some matters delegated to be dealt with by regulation that in its view affected individual rights or obligations and therefore may be more appropriately dealt with and protected in the principal Act. In particular, the committee was concerned by clauses of the Bill which provide that the relevant regulation module may:

- prescribe certain details about the engagement of a person as a body corporate manager or service contractor, or the authorisation of a person as a letting agent
- make specified provision for financial management arrangements applying to a scheme
- provide for making improvements to the common property of the scheme
- make provision about, for example, the conditions in an exclusive use by-law and the obligations imposed
- require the body corporate to put in place insurance for the scheme.

The primary object of the *Body Corporate and Community Management Act 1997* is to provide flexible and contemporary communally based arrangements for the use of freehold land. To achieve the flexibility in the legislative framework to accommodate the diverse types of schemes established under the Act, it is considered necessary to include these matters in the regulation modules. Including management provisions tailored to different types of schemes in the Act would be impractical and cumbersome and is unlikely to achieve the same level of flexibility and simplicity as the current regulatory framework.

It is considered that the division of matters between the Act and the regulations is still appropriate given the intent of the legislation to provide flexible management arrangements for community titles schemes and given the successful operation of this regulatory framework to date.

12 Conclusion

It is recommended that option 3 be adopted.

The proposed regulation modules

It is considered the proposed regulation modules are the most reasonable and appropriate means of achieving the Act's object of flexible management of community titles schemes. The cost-benefit assessment indicates that the benefits of the proposed regulation modules to all stakeholders significantly outweigh the costs involved.

The proposed fees regulation

It is considered the proposed fees regulation is required to support the achievement of the Act's object of providing an effective and efficient dispute resolution service. The cost-benefit assessment indicates that the fee structure in the proposed fees regulation will not have a significant adverse impact on the community and industry and will align fees with the principle that those who benefit for services should pay for the services, with some adjustment of fees to ensure protection of lower income households in accessing the dispute resolution service.

Appendix 1

Changes proposed for the *Body Corporate and Community Management (Accommodation Module) Regulation 2008*

Notes

- The proposed *Body Corporate and Community Management (Accommodation Module) Regulation 2008* remakes the *Body Corporate and Community Management (Accommodation Module) Regulation 1997* with some changes. The table below indicates the proposed changes in effect to the current provisions of the *Body Corporate and Community Management (Accommodation Module) Regulation 1997*.
- Section numbers in the *Body Corporate and Community Management (Accommodation Module) Regulation 1997* are given to indicate the intended change relative to the current provisions. However equivalent provisions in the proposed *Body Corporate and Community Management (Accommodation Module) Regulation 2008* will not necessarily retain the same section numbers, structure and wording, even though the effect may be the same.

Item No.	Existing or new provision	Subject	Reason for new provision or change to existing provision	Proposed new provision, or change in existing provision
1.1	s. 11	Eligibility for committee membership	<p>The regulation module seeks to prevent owners who are not fulfilling their financial obligations to the scheme from having a say in the running of the scheme, including through representation on the committee. Section 10 provides that an owner is not eligible to be a voting committee member if the owner owes a body corporate debt when members of the committee are chosen and also that an owner may not nominate a person for committee membership if the owner owes a body corporate debt when the nomination is received by the secretary.</p> <p>However, an anomaly exists under the current provisions in that an owner may nominate a person for committee membership as long as they do not owe a debt when the nomination is received by the secretary, and this non-owner may be elected even if the nominating owner subsequently owes a body corporate debt at the time of the election.</p>	A person who is not an owner but is otherwise eligible to be a voting member of the committee is not eligible to be a voting member of the committee if the body corporate member who nominated the person owes a body corporate debt when the members of the committee are chosen.
1.2	s. 14	Nomination procedures for election of the committee	This section is unclear on whether a lot owner who owns more than one lot in a scheme is able to nominate an individual for committee membership for each lot that they own.	Clarify that a lot owner who owns more than one lot is entitled to nominate one individual for committee membership for each lot they own, up to a maximum of three nominations.

Item No.	Existing or new provision	Subject	Reason for new provision or change to existing provision	Proposed new provision, or change in existing provision
			<p>There has been criticism of allowing a lot owner who owns more than one lot in a scheme to nominate an individual for committee membership for each lot that they own as this can, at an extreme, result in a committee that is completely controlled by one owner.</p> <p>On the other hand, restricting a lot owner who owns more than one lot to just one nomination may be seen as a significant restriction on entitlements stemming from ownership. Given the protections in the Act that are directed to requiring the committee to act in the interests of all owners, it may be appropriate to provide that a lot owner who owns more than one lot is entitled to nominate one individual for committee membership for each lot they own. These protections include the committee code of conduct requiring a committee voting member to act in the best interests of the body corporate and provisions preventing committee members from voting where they have a conflict of interest.</p> <p>Having said this, owners of more than one lot still exercise their greater voting power in electing the nominated committee members and allowing those owners to nominate multiple members in the initial round of nominations may lead to higher levels of disputation and lack of confidence that the committee is acting in the interests of all owners. The appropriate balance may best be achieved by restricting each owner to one nomination for each lot that they own, up to a maximum of three nominations. A body corporate committee has a maximum of seven members (except where there are less than seven lots in the scheme), and limiting nominations to three members would go some way to addressing concerns that a single owner may be able to have a majority vote on matters considered by the committee.</p>	
1.3	New provision	Issues reserved for decision by ordinary resolution of	Under existing provisions, the committee cannot make a decision on an issue which the body corporate has previously reserved, by ordinary resolution, for decision by ordinary resolution of the body corporate.	Introduce a requirement that the body corporate must reconsider at each annual general meeting any issues the body corporate has previously reserved for decision by ordinary resolution of the body corporate. If the body corporate does not reaffirm the issue at the meeting as an issue reserved for decision by ordinary resolution of

Item No.	Existing or new provision	Subject	Reason for new provision or change to existing provision	Proposed new provision, or change in existing provision
		the body corporate	However, the issues reserved for decision by ordinary resolution of the body corporate are often poorly recorded in general meeting minutes and difficult to locate. This may result in a committee unintentionally acting on behalf of the body corporate on issues which the committee is not empowered to act.	the body corporate, the issue will no longer be a restricted issue for the committee.
1.4	s. 33	Voting outside committee meetings	To enable the committee to make timely decisions on matters that arise between committee meetings, this section provides for the committee to vote on motions outside a committee meeting. However, the number of votes required to pass a motion outside a committee meeting is higher than the number of votes required to pass the motion at a committee meeting. This sometimes makes it difficult to achieve a decision outside a committee meeting. It may be appropriate to make the voting requirements for decisions outside committee meetings consistent with the voting requirements for decisions at committee meetings.	Provide that a resolution passed by the committee outside a meeting is valid if: (a) notice of the motion is given to all committee members, including non-voting members, and (b) within seven days, or a longer period provided in the notice for the return of votes, a majority of votes received from members of the committee who are entitled to vote on the motion agree to the motion, and (c) the number of votes received from members entitled to vote on a motion is equivalent to a quorum for a committee meeting. However, in an emergency, provide that a resolution is valid if: (a) notice of a motion may be given to as many members as it is practicable to contact, and (b) a majority of votes received from members of the committee who are entitled to vote agree to the motion, and (c) the number of votes received from members entitled to vote on a motion is equivalent to a quorum for a committee meeting.
1.5	s. 38	Who may call general meetings	Section 38 provides that a general meeting may be called by a committee member authorised by the committee to call the meeting. The intention of this section, namely that a general meeting will only be called by the secretary or another committee member when the committee has passed a resolution directing the member to call the particular meeting, could be further clarified. It is intended that the person directed to call the meeting will retain the flexibility to deal with issues such as the venue and time of the meeting as these matters may require some flexibility.	Clarify that the secretary or other member of the committee (including a non-voting member) may call a general meeting upon the committee passing a resolution directing the member to call the meeting.

Item No.	Existing or new provision	Subject	Reason for new provision or change to existing provision	Proposed new provision, or change in existing provision
1.6	s. 83	Payment of an amount on transfer of rights under an engagement as a service contractor or authorisation as a letting agent	<p>Under existing provisions, a person can transfer their rights under an engagement as a service contractor or authorisation as a letting agent (together known as 'management rights') if the body corporate approves the transfer. The body corporate may require the transferor to pay an amount to the body corporate as a condition of approving the transfer where the transfer is approved within three years after the date the engagement or authorisation was entered into or the term of the engagement or authorisation was extended. However, the body corporate may not require payment of the amount if the transferor is seeking approval to the transfer on the basis of genuine hardship.</p> <p>While a caretaker is essentially breaking their contract by seeking a transfer, the body corporate cannot unreasonably refuse to agree to the transfer. The 'transfer fee' is designed to protect the body corporate from the disruption of having management rights sold on a regular basis.</p> <p>The non-compulsory nature of the transfer fee creates conflict between letting agents and bodies corporate, as well as within bodies corporate, about the application of the fee. Making the transfer fee mandatory would result in a fairer and more transparent process for applying the fee and therefore less disputation.</p> <p>The transfer fee can currently be applied if a transfer is approved within three years after the date the engagement or authorisation was entered into or the term of the engagement or authorisation was extended. However, often the transfer of management rights takes place through an assignment of rights rather than through a new contract.</p> <p>As the fee is designed to protect the body corporate from the disruption of having management rights sold on a regular basis, it may be appropriate for the fee to also apply to a transfer approved within a certain period after the date a contract was <i>assigned</i> to a service contractor or letting agent.</p>	<p>Provide that the body corporate must require payment of the transfer fee as a condition of approving the transfer if the date on which the body corporate approves the transfer is within two years of the date on which the original engagement or authorisation was entered into by the transferor or on which the engagement or authorisation was assigned to the transferor. However, the body corporate must not require the payment of the transfer fee if the transferor is seeking approval to the transfer on the basis of genuine hardship not reasonably foreseen by the transferor at the date on when they entered into or were assigned the engagement or authorisation.</p> <p>Provide that the transfer fee to be applied is three percent if the transfer is approved in the first year after the contract date and two percent if the transfer is approved in the second year after the contract date.</p>

Item No.	Existing or new provision	Subject	Reason for new provision or change to existing provision	Proposed new provision, or change in existing provision
			<p>Stakeholder groups have proposed that a fairer arrangement for owners, letting agents and service contractors would be for the transfer fee to apply within a set period after the date a contract was first entered into by or assigned to the service contractor or letting agent. This would result in every service contractor and letting agent who transfers their rights within a certain period of first obtaining those rights being subject to the fee and may better protect the body corporate from the disruption of transfers.</p> <p>To retain the existing balance between lot owner and service contractor/letting agent interests, it is proposed that the period that the mandatory fee is applied be reduced from three years to two years.</p>	
1.7	s. 90	Review of remuneration under engagement of service contractor	This section only had effect until the end of 30 June 2007 and is therefore redundant.	Omit the provision.
1.8	s. 101, schedule	Spending by the committee	<p>The committee may authorise expenditure within the 'relevant limit for committee spending' which is an amount worked out by multiplying the number of lots included in the scheme by \$125.</p> <p>However, the relevant limit for committee spending no longer reflects the costs of goods and services which a body corporate is likely to require on a regular basis. Committees therefore are unable to approve routine expenditure and instead need to call a general meeting to obtain body corporate approval for the expenditure.</p> <p>Currently if the spending is above the relevant limit for major spending, and is proposed by the committee, the committee must also obtain at least two quotations in accordance with section 104. Currently the committee itself is unable to approve spending</p>	<p>Provide that the relevant limit for committee spending is an amount worked out by multiplying the number of lots included in the scheme by \$200, unless the body corporate sets another amount by ordinary resolution at a general meeting.</p> <p>Provide that a limit set by ordinary resolution will have effect until the next annual general meeting held or the limit is otherwise amended by ordinary resolution.</p> <p>Provide that, for the purposes of determining the spending limit for a principal scheme in a layered arrangement of schemes, where a lot in the principal scheme forms a subsidiary community titles scheme, that lot is taken to be the same number of lots that is included in the subsidiary scheme.</p>

Item No.	Existing or new provision	Subject	Reason for new provision or change to existing provision	Proposed new provision, or change in existing provision
			<p>over the relevant limit for major spending. However, under the proposed amendment to this section, it would be possible for the body corporate to set a relevant limit for committee spending that is higher than the relevant limit for major spending. It is therefore appropriate for the requirement to obtain two quotations for spending about the relevant limit for major spending to also apply to spending approved by the committee.</p>	<p>Require that the committee obtain two quotations for spending that is above the relevant limit for major spending before the committee approves the expenditure.</p> <p>Provide that the relevant limit for committee spending prescribed in the legislation excludes GST.</p>
1.9	s. 102, schedule	Spending that requires two quotations	<p>If a motion to be moved at a general meeting of the body corporate involves a proposal that will cost more than the 'relevant limit for major spending', lot owners must be given copies of at least two quotations for the proposal with the notice for the meeting at which the motion is to be considered. If, for exceptional reasons, it is not practicable to obtain two quotations, a single quotation must be obtained and must accompany the notice of meeting. The relevant limit for major spending is an amount worked out by multiplying the number of lots in the scheme by \$250.</p> <p>Some stakeholders have suggested that this requirement places an excessive burden on bodies corporate and that the current limit is too low.</p>	<p>Provide that the relevant limit for major spending is an amount worked out by multiplying the number of lots in the scheme by \$1100.</p> <p>Provide that, for the purposes of determining the relevant limit for major spending for a principal scheme in a layered arrangement of schemes, where a lot in the principal scheme forms a subsidiary community titles scheme, the lot is taken to be the same number of lots that is included in the subsidiary scheme.</p> <p>Provide that the relevant limit for major spending excludes GST.</p>
1.10	s. 112	Improvements to common property	<p>The regulation module prescribes body corporate responsibilities for the maintenance of common property, but also provides for the body corporate to make improvements to the common property. In an aging scheme, an improvement is often necessary to maintain a scheme's amenity which influences the value of the scheme and, depending on the scheme, its tourism potential. Many schemes are now 25 or 30 years old.</p> <p>Currently, a body corporate can generally only make a significant improvement (an improvement with a cost over an amount worked out by multiplying the number of lots included in the scheme by \$300) to common property if the body corporate passes a special resolution. It may be appropriate to facilitate improvements to schemes by reducing the approval</p>	<p>Provide that the body corporate may make improvements to the common property if authorised by an ordinary resolution of the body corporate and the value of the improvements is between an amount worked out by multiplying the number of lots included in the scheme by \$300 and an amount worked out by multiplying the number of lots included in the scheme by \$3000. Provide that improvements valued over an amount worked out by multiplying the number of lots included in the scheme by \$3000 may only be made by special resolution.</p>

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			requirements, but to provide a protection to lot owners with limited financial resources by limiting the reduced approval requirements to improvements of a certain value.	
1.11	ss. 113, 123	Improvements to common property by lot owner	Currently, a body corporate may only authorise a lot owner to make a significant improvement to common property (over \$250) if the body corporate passes a special resolution. It may be appropriate to facilitate improvements to schemes by reducing the approval requirements. As the improvements are made by a particular lot owner, other lot owners in the scheme are not generally affected monetarily by the improvements.	Provide that a lot owner may make significant improvements (over \$250) to the common property if authorised by an ordinary resolution of the body corporate.
1.12	New provision; s. 125A	Valuations to be obtained for the purposes of insurance	Determining the replacement value of a property is a complex process, involving a variety of factors including the cost of building materials and labour. It may be appropriate to require a body corporate to obtain a regular valuation of the property they are required to insure under the regulation to reduce the risk of underinsurance for community titles schemes.	Require a body corporate, at least every five years, to obtain from a quantity surveyor or registered valuer an independent valuation stating the replacement value of all property it is liable to insure. Completing existing insurance disclosure requirements in section 126A, provide that the notice of the annual general meeting, or a note attached to the administrative fund budget proposed for adoption at the annual general meeting, must include the amount of the latest valuation of all property required to be insured by the body corporate and the date of the valuation.
1.13	s. 135	Public risk insurance	The body corporate is required to maintain public risk insurance of the common property and relevant assets. It is reasonable that the body corporate be able to adjust the contribution payable by a lot owner for public liability insurance where a premium for the body corporate policy is increased by the insurer because of the increased risk of liability through the activities of a particular lot, for example, a nightclub being operated from the lot.	Provide that the body corporate may adjust the contribution payable by a lot owner for public liability insurance in a way that fairly reflects the proportion of the total risks covered by the policy attributable to activities carried on, or proposed to be carried on, at the owner's lot. Provide that a lot owner must give the body corporate details of any use of their lot that is likely to increase the premium for public risk insurance required to be taken out by the body corporate.

Appendix 2

Changes proposed for the *Body Corporate and Community Management (Commercial Module) Regulation 2008*

Notes

- The proposed *Body Corporate and Community Management (Commercial Module) Regulation 2008* remakes the *Body Corporate and Community Management (Commercial Module) Regulation 1997* with some changes. The table below indicates the proposed changes in effect to the current provisions of the *Body Corporate and Community Management (Commercial Module) Regulation 1997*.
- Section numbers in the *Body Corporate and Community Management (Commercial Module) Regulation 1997* are given to indicate the intended change relative to the current provisions. However equivalent provisions in the proposed *Body Corporate and Community Management (Commercial Module) Regulation 2008* will not necessarily retain the same section numbers, structure and wording, even though the effect may be the same.

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2.1	s.7	Community management statements – permitted inclusions	Staged developments that are also layered arrangements often require arrangements between the principal body corporate and subsidiary schemes about access to, and use of, principal scheme common property. For example, there may be a need for car parking for subsidiary schemes on principal scheme common property. It is proposed to clarify that such arrangements can be put in place.	A community management statement for a principal scheme in a layered arrangement or a scheme to be developed progressively may include arrangements or proposed arrangements for the use of common property or body corporate assets by subsidiary schemes.
2.2	s.10	Composition of committee	<p>It is proposed to provide that only voting members are to be included in the count of persons on the committee. This will allow a body corporate to elect a committee up to the maximum number of persons who are able to participate and vote as committee members.</p> <p>A body corporate manager who has been chosen as secretary and/or treasurer is a non-voting member of the committee under section 11 and therefore cannot be included in the count of persons. The proposed amendment means the body corporate must elect the minimum number to the committee and not rely on the body corporate manager to make up the numbers.</p> <p>In relation to schemes where there are at least three different owners, the module provides that the committee</p>	<p>Provide that only voting members are to be included in the count of persons on the committee.</p> <p>In relation to schemes where there are at least three different owners but less than seven lots, provide that the</p>

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			must consist of at least three but not more than seven persons. For these schemes, it is proposed to provide that a scheme with less than seven lots can have a committee of no more than the number of lots in the scheme.	number of persons on the committee must be at least three but not more than the number of lots in the scheme.
2.3	s. 11	Eligibility for committee membership	A body corporate member who owes a body corporate debt currently does not have a right to vote at general meetings or choose a member of a committee. It is also appropriate that a body corporate member, or a non-owner nominated by a body corporate member, not be eligible to be a committee member if the body corporate member owes a body corporate debt at the time the committee members are chosen. Further, it is appropriate that a body corporate member not be able to nominate a person for committee membership if the lot owner owes a body corporate debt when the nomination is made by the body corporate member.	Provide that a body corporate member, or a non-owner nominated by a body corporate member, is not eligible to be a committee member if the body corporate member owes a body corporate debt when the committee members are chosen. Also provide that a body corporate member may not nominate a person for membership of the committee if the body corporate member owes a body corporate debt when the nomination is made by the body corporate member.
2.4	s.14	Term of office	It is appropriate that committee members have a continuing connection to the body corporate. It is therefore proposed to provide that a committee member's term of office will end if their connection to the body corporate ends. To maintain consistency with section 11, which provides that a person is not eligible to be a voting member of the committee if the person is a body corporate manager or an associate of a body corporate manager, it is also proposed to provide that a committee member becomes ineligible to hold the member's position if the person is engaged as a body corporate manager.	Provide that a member becomes ineligible to hold the member's position if the member: <ul style="list-style-type: none"> was a body corporate member when elected but ceases to be a member of the body corporate was not a member of the body corporate when elected and was nominated for membership by a member who is no longer a member was elected as a voting member and is engaged as a body corporate manager for the scheme.
2.5	s.15	Restricted issues for the committee	A number of amendments are proposed in relation to decisions that the committee is empowered to make. The committee has responsibility for the day-to-day management of the body corporate. As the committee normally gives a by-law contravention notice, it is appropriate to provide the committee with the power to also seek to enforce the notice without reference to a general meeting of the body corporate. It is also	Extend the power of a committee to start proceedings for an offence if an owner or occupier fails to comply with a by-law contravention notice and to start dispute resolution proceedings (other than an appeal against an adjudicator's order). Provide that a decision is a decision on a restricted issue for the committee if it is a decision that may only be made by majority resolution of the body corporate.

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			<p>appropriate that the committee has the power to make an application under the dispute resolution provisions of the Act and enforce an order made under those provisions.</p> <p>This section will also be amended to recognise a 'majority resolution', provided for in section 107 of the Act, as a level of resolution at a general meeting.</p>	
2.6	New provision	Issues reserved for decision by ordinary resolution of the body corporate	<p>Under section 15, the committee cannot make a decision on an issue which the body corporate has previously reserved, by ordinary resolution, for decision by ordinary resolution of the body corporate.</p> <p>However, the issues reserved for decision by ordinary resolution of the body corporate are often poorly recorded in general meeting minutes and difficult to locate. This may result in a committee unintentionally acting on behalf of the body corporate on issues which the committee is not empowered to act.</p>	Introduce a requirement that the body corporate must reconsider at each annual general meeting any issues the body corporate has previously reserved for decision by ordinary resolution of the body corporate. If the body corporate does not reaffirm the issue at the meeting as an issue reserved for decision by ordinary resolution of the body corporate, the issue will no longer be a restricted issue for the committee.
2.7	s.16	Who may call committee meetings	This section requires the secretary or the chairperson to call a committee meeting if requested in writing by enough committee members to form a quorum at a committee meeting. To ensure that the secretary or chairperson cannot prevent a meeting being held by ignoring a request to call a committee meeting, it is proposed to provide that if the secretary or chairperson does not hold the requested meeting within 21 days, another member of the committee may call the meeting if that member has the agreement of enough members to form a quorum at a committee meeting.	Provide that if the secretary or chairperson receives a written request to call a committee meeting from enough committee members to form a quorum, and the meeting is not held within 21 days after the request is received, the meeting may be called by another member of the committee acting with the agreement of enough members to form a quorum.
2.8	s.17	Notice of committee meetings	<p>It is proposed to provide that a committee may, with the agreement of all committee members, reduce the seven day notice period for committee meetings to two days.</p> <p>Lot owners currently only receive at least 24 hours advice of a committee meeting. It is proposed to require that advice of the meeting must be given individually to each lot owner when the notice of meeting is given to committee members. This ensures interested lot owners have the same notice of committee meetings as</p>	<p>Allow the committee, with the agreement of all committee members, to reduce the period for notice of committee meetings from at least seven days before the meeting to at least two days before the meeting.</p> <p>Require advice of proposed committee meetings to be placed on the notice board and delivered to lot owners when the notice of meeting is given to committee members.</p>

Item No.	Existing or new provision	Subject	Reason for new provision or change to existing provision	Proposed new provision, or change in existing provision
			committee members and have time to discuss the issues proposed to be considered by the committee or organise to attend the committee meeting.	
2.9	s.19	Agenda for committee meetings	An amendment is proposed to ensure the committee, which has an obligation to keep full and accurate minutes of its meetings and a full and accurate record of each motion voted on other than at a meeting, takes responsibility for the records of its decisions. The amendment will also ensure the actions of the committee are transparent to the body corporate.	Provide that the agenda for committee meetings must include motions to confirm the minutes of the preceding committee meeting and any resolutions passed outside committee meetings.
2.10	s.20	Chairing committee meetings	Currently, if the chairperson is absent from a meeting, a member must be chosen to chair the meeting by the member's present. It is proposed to provide that the replacement chairperson can only be a person chosen by those present and entitled to vote.	Provide that, if the chairperson is absent, a committee meeting is to be chaired by the member chosen by voting members present at the meeting.
2.11	New provision	Attendance at committee meetings by persons who are not committee members	The legislation is silent on whether a lot owner who is not a committee member has the right to attend a committee meeting. As the committee manages the day-to-day operation of the body corporate, and the owners who choose the committee have a vested interest in committee decisions as body corporate members, owners should be able to observe the decision making process of their elected representatives.	<p>Allow lot owners to attend a meeting of the committee if they give the secretary at least 24 hours written notice of their intention to attend.</p> <p>Allow other people to be invited to attend by a majority of voting members present at the meeting personally or by proxy.</p> <p>Provide that the committee may decide that a person attending the meeting must not be present for certain specified items of business (e.g. by-law contraventions, proceedings and body corporate disputes).</p> <p>Provide that a person at a committee meeting who is not a committee member may only speak when invited by the committee.</p>
2.12	s.24	Voting outside committee meetings	<p>To enable the committee to make timely decisions on matters that arise between committee meetings, this section provides that a committee decision may be made without holding a meeting, by the members voting in writing on a motion before the committee.</p> <p>While under the proposed amendment to section 17 lot owners are advised of a proposed committee meeting,</p>	<p>Require the committee to advise each lot owner of a motion to be voted on outside committee meetings.</p> <p>Require a motion voted on outside a committee meeting to be confirmed at the next committee meeting.</p> <p>Provide that a resolution passed by the committee outside a meeting is valid if:</p>

Item No.	Existing or new provision	Subject	Reason for new provision or change to existing provision	Proposed new provision, or change in existing provision
			<p>the committee is not required to inform lot owners of a resolution to be considered outside a meeting prior to making a decision.</p> <p>Also, the number of votes required to pass a motion outside a committee meeting is higher than the number of votes required to pass the motion at a committee meeting. This sometimes makes it difficult to achieve a decision outside a committee meeting. It may be appropriate to make the voting requirements for decisions outside committee meetings consistent with the voting requirements for decisions at committee meetings.</p>	<p>(a) notice of the motion is given to all committee members, including non-voting members, and (b) within seven days, or a longer period provided in the notice for the return of votes, a majority of votes received from members of the committee who are entitled to vote on the motion agree to the motion, and (c) the number of votes received from members entitled to vote on a motion is equivalent to a quorum for a committee meeting.</p> <p>However, in an emergency, provide that a resolution is valid if: (a) notice of a motion may be given to as many members as it is practicable to contact, and (b) a majority of votes received from members of the committee who are entitled to vote agree to the motion, and (c) the number of votes received from members entitled to vote on a motion is equivalent to a quorum for a committee meeting.</p>
2.13	ss.25 and 26	Minutes and other records of committee	<p>Currently, the minutes of a meeting and a copy of a resolution voted on other than at a meeting must be given to lot owners who have indicated they wish to receive this information. A committee member does not have the right to receive this information if that person is not a lot owner. Every committee member should have the right to receive a copy of this information.</p> <p>It is also proposed to require that the minutes and a copy of a resolution voted on other than at a meeting must be given to each committee member and lot owner who is not a member of the committee, with the exception of when the lot owner who is not a member of the committee advises they do not wish to receive these documents.</p> <p>The legislation currently provides no guidance on what constitutes full and accurate minutes of a committee meeting and a full and accurate record of each motion</p>	<p>Provide the minutes of committee meetings and a copy of resolutions voted on other than at a meeting must be given to each committee member and to each lot owner, who is not a committee member.</p> <p>Provide that these documents do not have to be given to a lot owner who is not a member of the committee if the lot owner advises they don't wish to receive the documents.</p> <p>Specify that full and accurate minutes include the date, time and place of the meeting, the meeting attendees, the words of each question decided, details of correspondence, details of the next meeting and the secretary's contact details.</p> <p>Specify that a full and accurate record of a motion voted on other than at a meeting means the date notice of the motion was given, the names of committee members</p>

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			voted on other than at a meeting. It is proposed to provide more direction on this.	given notice, the words of the motion, the names of the committee members who voted on the motion, and the number of votes for and against the motion.
2.14	New provision	Reporting of particular payments to committee	To increase the accountability of body corporate managers to the body corporate in relation to payments made on their behalf, it is proposed to introduce new requirements for reporting by body corporate managers.	Require a body corporate manager who pays an account on the basis of an authorisation of the committee or body corporate to provide a written report about the payment to the committee if required by the committee or body corporate.
2.15	s.29	Who may call general meetings	Currently a general meeting may be called by the secretary, or by a member of the committee authorised by the committee to call the meeting. This power may be easily abused by a secretary to continually call meetings. It is proposed to tighten the provisions for calling general meetings to ensure the committee maintains control over the calling of general meetings.	Provide the secretary or other member of the committee may call a general meeting upon the committee passing a resolution directing the member to call the meeting.
2.16	s.30	Submitting agenda motions	<p>The current provision is silent on whether a committee can propose a motion for a general meeting. It is proposed to clarify that a committee has the power to submit a motion to a general meeting.</p> <p>It is also proposed to provide that the requirement that a motion may only be included on the agenda for an annual general meeting if it is submitted before the end of the financial year does not apply to a motion submitted by the committee. It is not appropriate for this restriction to apply to the committee because it has to include statutory motions on the agenda for an annual general meeting, and may also have to prepare motions with alternatives based on motions that have been submitted by owners and/or the committee.</p> <p>It is also proposed to provide that motions dealing with particular subjects cannot be included on the agenda of a general meeting more than once in a financial year. This will eliminate a practice where general meetings are continually called to deal with a motion that was defeated at an earlier meeting. This practice has led to the threat of constant meeting costs being used as a tactic to harass lot owners into voting for a particular issue. Stakeholders</p>	<p>Specify that a committee may submit a motion for consideration at a general meeting at any time and that a motion need not be submitted by the committee before the end of the financial year for the motion to be included on the agenda.</p> <p>Restrict the inclusion on an agenda of motions for the following if a motion has already been considered in that financial year:</p> <ul style="list-style-type: none"> • motions about changing the remuneration paid to a particular service contractor • motions proposing a right or option of extension or renewal of the term of engagement of a service

Item No.	Existing or new provision	Subject	Reason for new provision or change to existing provision	Proposed new provision, or change in existing provision
			indicate that motions dealing with remuneration paid to a service contractor and the term of a contract with a service contractor or letting agent cause the most problems.	contractor or the term of authorisation of a person as a letting agent.
2.17	New provision; s.31	Requirements for voting papers	<p>Under current provisions, voting papers must accompany the notice of a meeting unless the body corporate decides that the voting paper requirements do not need to be complied with.</p> <p>It is proposed to make voting papers mandatory. To eliminate the problem of selective editing of motions by the committee before motions are put to vote, it is also proposed to require that voting papers state the motion in the form in which it was submitted without amendment.</p>	<p>Provide that the secretary must prepare:</p> <ul style="list-style-type: none"> one voting paper for all open motions to be decided at a general meeting a voting paper for a motion to be decided at the meeting by secret ballot. <p>Provide the voting paper must state:</p> <ul style="list-style-type: none"> each motion in the form in which it was submitted without amendment instructions on how a voter may cast an electronic vote on each motion.
2.18	New provision; s.34	Motion with alternatives	<p>It is usual for the agenda of a general meeting to include motions relating to the same subject. This occurs, for example, where the committee may submit more than one quotation proposing the carrying out of work.</p> <p>Existing provisions provide that the committee must prepare the agenda for each general meeting, but do not make provision for the grouping of motions about the same subject. As a result, currently a committee is able to unfairly manipulate decisions on a particular subject by putting the motion with the outcome they favour higher on the agenda than motions with less favoured outcomes. If the favoured motion is passed, subsequent motions on the subject can then be ruled out of order as redundant.</p>	<p>Provide that if two or more motions are submitted proposing alternative ways of dealing with the same subject, the notice and agenda for the meeting must list the alternatives under one motion submitted by the committee.</p> <p>Provide that a person may either vote for the motion by voting for the motion and one of the alternatives or against the motion.</p>
2.19	New provision: s. 31	Explanatory material	<p>Often explanatory material for voters provided by the submitter of a motion is not clearly distinguished from material provided by the committee. In some instances the committee has altered the explanatory material provided by the owner. Amendments are proposed to ensure authorship of explanatory material is clear.</p> <p>It is also important that owners are provided with advice on how to vote for a motion with alternatives and</p>	<p>An explanatory schedule will be required to accompany a voting paper for a general meeting for the following motions:</p> <ul style="list-style-type: none"> a motion for which the submitter of a motion provides an explanatory note not longer than 300 words about the motion. The schedule must include the note in the form given by the motion's submitter. a motion at an annual general meeting about adopting administrative, sinking and promotion fund

Item No.	Existing or new provision	Subject	Reason for new provision or change to existing provision	Proposed new provision, or change in existing provision
			important information about particular motions.	<p>budgets. The schedule must include an explanatory note stating that the amount of the budget adopted may be not more or less than 10% of the proposed budget.</p> <ul style="list-style-type: none"> • a motion to change regulation module. The schedule must include an explanatory note in the approved form explaining the effect of the proposed change. • a motion with alternatives. The schedule must include each motion in its submitted form, an explanatory note about each motion given by the motion's submitter if the note is not longer than 300 words, and an explanatory note explaining how to vote. <p>Provide that the notice of general meeting may be accompanied by explanatory material given by the committee if the material is contained in a schedule of the committee's explanatory material that is separate from the explanatory schedule.</p>
2.20	s.34	Agenda for general meeting	It is proposed to also require the agenda for an annual general meeting to include a motion reviewing each insurance policy held by the body corporate. This will ensure that bodies corporate consider the adequacy of insurance arrangements annually.	Provide that the agenda for an annual general meeting must include a motion reviewing each insurance policy held by the body corporate.
2.21	s.36	Power of a person chairing a meeting to rule a motion out of order	Lot owners are generally not aware of their right to reverse a ruling of the chairperson that a motion is out of order. It is proposed to amend this section to better balance the power of the chairperson to guide the orderly conduct of a meeting and the potential for misuse of this power by including a requirement for the chair to inform lot owners about their right to reverse a ruling that a motion is out of order.	<p>Require the person chairing the meeting, when ruling a motion out of order, to also state how the ruling may be reversed.</p> <p>Also extend the power of a person chairing a general meeting to rule a motion out of order to include the situation where a motion conflicts with a motion already voted on at the meeting.</p>
2.22	s.37	Quorum for general meetings	It is proposed to amend this section to recognise in the quorum count a voter voting electronically.	Provide that a voter for a general meeting is also taken to be present at the meeting if the voter is present at the meeting by electronic voting paper.
2.23	s.38	Meaning of 'voter' for a general meeting	Under the current provisions, some uncertainty has existed as to whether a representative includes a person appointed under a power of attorney.	Provide that a person may vote as the representative of an owner if the person holds a power of attorney from the owner and is not the original owner (except if the power

Item No.	Existing or new provision	Subject	Reason for new provision or change to existing provision	Proposed new provision, or change in existing provision
				of attorney is given under section 211 or 219 of the Act) or a body corporate manager or service contractor for the scheme.
2.24	s.40	Exercise of vote at general meetings	This section details how a voter may vote on a motion. It is proposed to amend this section to include electronic voting as an additional voting option for open motions if allowed by the body corporate and to provide that the voting options in this section do not apply to secret ballots, for which separate voting options are provided in item 2.26.	Recognise the voting options in section 40 do not apply to secret ballots. Recognise electronic voting as an additional voting option for open motions, subject to the body corporate deciding that voters for general meetings may record votes electronically.
2.25	s.41	Voting at general meeting	<p>The existing section 41 provides that voting papers are to be given to the person chairing the meeting. This is inconsistent with section 40 which requires voting papers be given to the secretary. The secretary is the most appropriate executive officer to receive the papers, leaving the chairperson with the business of presiding over the meeting.</p> <p>Consistent with section 36(1)(b), it is proposed to explicitly provide that a general meeting may pass a resolution not included as an item of business on the agenda if the motion is a procedural motion for the conduct of a meeting or a motion to amend another motion or correct minutes. It is unnecessary and impractical to require procedural motions to be included on the agenda when they relate to the conduct of the meeting as they generally address issues arising at the meeting. It is also impractical to require motions on matters that would be expected to be raised from the floor of the meeting, such as motions to amend a motion or correct minutes, to be on the agenda.</p>	<p>Provide that voting must be by show of hands or by giving completed voting papers to the secretary or, if the secretary is not present, the person chairing the meeting.</p> <p>Provide that a general meeting may pass a resolution not included as an item of business on the agenda if the motion is a procedural motion for the conduct of a meeting or a motion to amend another motion or correct minutes.</p>
2.26	New provisions	Secret ballots and appointment of returning officer for secret ballots	<p>A body corporate decision, under section 139 of the Act, to give a code contravention notice to a letting agent must be by secret ballot, and the subsequent decision to require the transfer also must be by secret ballot.</p> <p>Also, proposed amendments outlined in items 2.40 and 2.41 will make secret ballot voting compulsory for a motion to:</p>	<p>Provide that a motion must be decided by secret ballot if:</p> <ul style="list-style-type: none"> the motion is required under the Act or regulation to be decided by secret ballot the committee has recommended that the motion be decided by secret ballot the body corporate has by ordinary resolution required that the motion be decided by secret ballot.

Item No.	Existing or new provision	Subject	Reason for new provision or change to existing provision	Proposed new provision, or change in existing provision
			<ul style="list-style-type: none"> • terminate a person's engagement as a service contractor if the person is a caretaking service contractor • terminate a person's authorisation as a letting agent • engage a person as a service contractor if the person is to be a caretaking service contractor • authorise a person as a letting agent • amend an engagement as a service contractor or authorisation as a letting agent to include a right or option of extension or renewal. <p>It is proposed to set out clearly when a motion must be decided by secret ballot and a process for conducting the ballot that ensures the integrity of the vote.</p>	<p>Provide how a secret ballot must be conducted and how a vote can be cast for a secret ballot. A process similar to the secret ballot process set out in sections 53A and 53B of the Standard Module will be provided.</p> <p>Provide for the compulsory appointment of a returning officer for any motion to be voted on by secret ballot and also provide that the returning officer cannot be a lot owner, the body corporate manager, service contractor or letting agent, or an associate of the body corporate manager, service contractor or letting agent.</p>
2.27	New provision	Declaration of voting results on motions	It is proposed to make provision for the keeping of a voting tally-sheet. The tally-sheet, rather than the meeting minutes, will document how each individual lot owner voted on a motion.	<p>Provide that the person chairing a general meeting must declare the result of voting on motions at the meeting.</p> <p>Provide a voting tally-sheet must be kept.</p>
2.28	s.43	Amendment of motions at general meetings	If a voter who is not present at a general meeting has not voted on a particular motion, it is appropriate that the person should not be taken into account for the vote for a motion to amend the particular motion, or for an amended motion. Instead, the motion should be determined by those voters who are either present at the meeting personally or by proxy, and voters who have voted on the motion by written or electronic vote.	<p>Provide that in counting the votes cast for or against a motion to amend a motion, or an amended motion, a person who is not present at the meeting and has not cast a vote on the motion must not be counted as voting for or against the motion.</p> <p>Also, as a voter who is present at a meeting by written or electronic vote has expressed an interest in the motion by voting, provide that that person is automatically taken as having voted against the motion to amend the motion and the amended motion.</p>
2.29	s.45	Minutes of general meetings	The current provisions require the body corporate to take full and accurate minutes of each general meeting and give a copy of the minutes to each lot owner as soon as practicable. There is uncertainty about the meaning of 'full and accurate minutes' and 'as soon as practicable'.	<p>Specify that the minutes of a general meeting must include the date, time and place of the meeting, the meeting attendees, details of proxies tabled, the words of each motion voted on, the votes for each motion and the secretary's contact details.</p> <p>Specify that a copy of the minutes must be given to each lot owner within 21 days after the meeting.</p>

Item No.	Existing or new provision	Subject	Reason for new provision or change to existing provision	Proposed new provision, or change in existing provision
2.30	s.47	Extraordinary general meetings	<p>It is proposed to provide that if the secretary or chairperson does not call a requested extraordinary general meeting, the owners will be able to ask another committee member to call the meeting.</p> <p>It is also proposed to place a time limit of 14 days on the person who received a request to call the meeting. This limit will provide certainty to the requesting lot owners as to when they can take other steps to have the requested meeting called.</p>	<p>Provides that a requested extraordinary general meeting must be called, within 14 days after the notice is given, by the person to whom the notice is given.</p> <p>Provide if the meeting is not called within 14 days after the notice, the lot owners may in writing request another committee member to call the meeting and that committee member must call the meeting within 14 days after the written request is given to the member.</p> <p>Provide if a meeting is called by a person other than the secretary that person must perform all the functions of the secretary for the meeting, and the secretary must provide the person with the records and documents necessary to perform the secretary's function.</p>
2.31	s.48	First annual general meeting	The requirement for the holding of the first annual general meeting within 1 month of certain events occurring is often difficult to achieve. For example, it may be difficult for the original owner to determine when 50 of lots have been sold, have the notice of the meeting completed, and give the minimum of 21 days notice to each lot owner all within one month.	Require that the first annual general meeting must be held within two months of certain events occurring.
2.32	New provision	First annual general meeting for a scheme established by amalgamation	The existing provisions about first annual general meetings do not make adequate provision for the first annual general meeting of a new scheme created by the amalgamation of existing schemes.	<p>Require the first annual general meeting of a new scheme established by the amalgamation of two or more schemes to be called and held by the former secretary or secretaries within three months of the amalgamation.</p> <p>Provide that the agenda must include the items mentioned in section 48(3).</p>
2.33	s.49	Documents to be handed over to the body corporate at the first annual general meeting	<p>The Act provides that if the regulation module applying to a scheme requires a building to be insured for full replacement value, the original owner must obtain an independent valuation of the building and must ensure the policy of insurance covers that value. The original owner should be required to give this valuation to the body corporate at the first annual general meeting.</p> <p>The existing provisions require the original owner to provide a budget showing estimated spending for the</p>	<p>Require the original owner to give the independent valuation required for each building that must be insured to the body corporate at the first annual general meeting.</p> <p>Require the original owner to give the body corporate administrative and sinking fund budgets and, if applicable, a promotion fund budget, showing the estimated spending for the body corporate's first financial year.</p>

Item No.	Existing or new provision	Subject	Reason for new provision or change to existing provision	Proposed new provision, or change in existing provision
			body corporate's first financial year. It is proposed to clarify the obligation of the original owner to provide both administrative and sinking fund budgets and, if applicable, a promotion fund budget.	
2.34	Part 5, Division 2	Proxies for committee meetings	<p>To remove the potential for abuse that exists in the current provisions dealing with proxies for committee meetings, it is proposed to permit only a voting member of the committee to give a proxy, and only to another voting committee member. The effect of this amendment is that only those persons chosen or appointed to the committee as voting members will be able to exercise a vote on a question before the committee. As a body corporate manager is a non-voting member, they cannot give or hold a proxy.</p> <p>In a layered arrangement, each subsidiary body corporate in the scheme is taken to be a lot and as such has representation on the body corporate of the scheme of which it is a lot. To ensure each of these lots participates in the running of the scheme and is required to have a representative at committee meetings for the principal scheme, it is proposed to remove the right to give proxies for a committee meeting for a principal scheme.</p>	<p>Provide that only a voting member may give a proxy, and only to another voting member.</p> <p>Provide that a vote by proxy must not be exercised at a meeting of the committee if the community titles scheme is the principal scheme in a layered arrangement of community titles schemes.</p>
2.35	s. 60	Proxies for general meetings	Manipulation of a general meeting vote through the possession and use of proxies, particularly for motions on specific matters, is common. Consequently, it is proposed to expand the range of instances in which proxies are prohibited so that owners express their view personally on these matters through a vote rather than through giving a proxy to another person who may have a financial or vested interest in the result.	<p>Provide a proxy must not be exercised at a general meeting:</p> <ul style="list-style-type: none"> • for voting for a majority resolution • on a motion approving the engagement of a person as the body corporate manager or a service contractor, the authorisation of a person as a letting agent, or the amendment or termination of an engagement or authorisation. • on a motion decided by secret ballot • if the community titles scheme is the principal scheme in a layered arrangement of community titles schemes.

Item No.	Existing or new provision	Subject	Reason for new provision or change to existing provision	Proposed new provision, or change in existing provision
2.36	ss.63 and 64	Form of engagement of body corporate managers and service contractors and form of authorisation of letting agents	Amendments are proposed to the requirements for engagements for body corporate managers and service contractors and authorisations for letting agents to ensure full disclosure of the term of the engagement or authorisation and to also ensure, for the engagement of a body corporate manager, transparency about the powers of an executive committee member that the body corporate manager is authorised to exercise.	<p>Provide that the engagement of a person as a body corporate manager or service contractor and the authorisation of a person as a letting agent must state when the term begins and ends and the term of any rights or options of extension or renewal of the engagement.</p> <p>Provide that the engagement of a body corporate manager must state any powers of an executive committee member the manager is authorised to exercise.</p>
2.37	s.65	Term of engagement of body corporate managers	Amendments are proposed to bring certainty to the issue of the term of the engagement for body corporate managers.	Provide that the term of engagement for a body corporate manager (after allowing for any rights or options of extension or renewal, whether provided for in the engagement or subsequently agreed to) must not be longer than three years and at the end of the term the agreement ends and a new engagement is required.
2.38	s.66	Term of engagement of service contractors	Amendments are proposed to bring certainty to the issue of the term of the engagement for service contractors.	<p>Provide that the term of engagement for a service contractor (after allowing for any rights or options of extension or renewal, whether provided for in the engagement or subsequently agreed to) must not be longer than 25 years and at the end of the term the agreement ends and a new engagement is required.</p> <p>Provide that the body corporate has the ability to grant extensions to the term of an engagement for a period of not more than five years and cannot cause the unexpired term of the agreement to be greater than 25 years.</p>
2.39	s.67	Term of authorisation of letting agent	Amendments are proposed to bring certainty to the issue of the term of the authorisation for letting agents.	<p>Provide that the term of authorisation for a letting agent (after allowing for any rights or options of extension or renewal, whether provided for in the authorisation or subsequently agreed to) must not be longer than 25 years and at the end of the term the agreement ends and a new authorisation is required.</p> <p>Provide that the body corporate has the ability to grant extensions to the term of an authorisation for a period of not more than five years and cannot cause the unexpired term of the agreement to be greater than 25 years.</p>

Item No.	Existing or new provision	Subject	Reason for new provision or change to existing provision	Proposed new provision, or change in existing provision
2.40	New provisions; ss.70, 71, and 72	Termination of engagement of body corporate managers and service contractors and termination of authorisation of letting agents	<p>It is proposed to consolidate existing provisions relating to the termination of an engagement or authorisation. It is also proposed to extend the grounds on which the body corporate may terminate an engagement or authorisation and outline the steps the body corporate must follow to terminate.</p> <p>In the interests of achieving natural justice for appropriate situations, it is proposed to include a process to provide for remedial action, and to set out the rights of the body corporate to terminate where the person takes no action to remedy the situation.</p>	<p>Provide that the body corporate may terminate a person's engagement as a body corporate manager or service contractor, or authorisation as a letting agent, under the Act, by agreement or under the engagement if the termination is approved by ordinary resolution.</p> <p>Provide that the body corporate may terminate a person's engagement as a body corporate manager or service contractor, or authorisation as a letting agent, if the person is:</p> <ul style="list-style-type: none"> • convicted of an indictable offence involving fraud or dishonesty • is convicted on indictment of an assault or an offence involving an assault • carries on a business involving the supply of services to the body corporate, or owners or occupiers of lots, and the carrying on of the business is contrary to law • transfers an interest in the engagement or authorisation without the body corporate's approval. <p>The termination on these grounds must be approved by ordinary resolution of the body corporate and, for the termination of a person's engagement as a service contractor if the person is a caretaking service contractor, or the termination of a person's authorisation as a letting agent, the motion to approve the termination must be decided by secret ballot.</p> <p>Provide that, in certain circumstances, such as where the person engages in misconduct, is grossly negligent, fails to carry out their duties, or fails to comply with the legislation or code of conduct, the body corporate may terminate a person's engagement if:</p> <ul style="list-style-type: none"> • the person has been given a remedial action notice which sets out the issue that has led to the termination action and the period within which it can be rectified, and • the person fails to comply with the notice.

Item No.	Existing or new provision	Subject	Reason for new provision or change to existing provision	Proposed new provision, or change in existing provision
2.41	s.69	Authority to make or amend engagement of body corporate managers and service contractors or authorisation of letting agents	It is proposed to tighten the process by which a body corporate can make or amend an engagement of a body corporate manager or service contractor or an authorisation of a letting agent. Such decisions can be controversial and divisive.	Provide that motions on the following matters must be decided by secret ballot: <ul style="list-style-type: none"> • an engagement or authorisation • an agreement to amend a person's engagement or authorisation to include a right or option of extension or renewal. Provide certain material must be forwarded to members for the general meeting including, for an engagement or authorisation, details of the terms of engagement and, for an amendment to include a right or option of extension or renewal, an explanatory note in the approved form.
2.42	ss.70, 71, and 72	Disclosure requirements	Under section 72, body corporate managers are required to disclose commissions they may receive from a person with whom the body corporate is considering entering into a contract. It is proposed to extend this disclosure requirement to caretaking service contractors. It is proposed to include a penalty for non-compliance with the disclosure provisions in sections 70-72.	Extend the disclosure requirements in section 72 to caretaking service contractors. Include a maximum penalty of 20 penalty units (or \$1500) for failing to comply with the requirements in sections 70-72.
2.43	s.73	Occupation of common property by service contractor or letting agent	A service contractor cannot have exclusive use of common property but may be given an occupation authority by the body corporate under section 73. However, some bodies corporate have strictly interpreted this section as only allowing the contractor access across common property to the area shown in the authority, and not allowing any other access over common property. As that was never the intention of the section, it is proposed to clarify the extent of access.	Provide a resolution under section 73(1) may give the service contractor a right of access over parts of the common property to enable the contractor to perform obligations under their engagement as a service contractor.
2.44	s.74	Review of remuneration under engagement of service contractor	This section only had effect until the end of 30 June 2007 and is therefore redundant.	Omit the provision.
2.45	s.76	Budgets	The administrative and sinking fund budgets (and where applicable, the promotion fund budget) are prepared to assist in the planning and management of the body corporate's finances. When the body corporate adopts these budgets, it is endorsing the plan, but is not approving the expenditure of each of the items in the	Provide that the inclusion of an item of expenditure in a budget adopted by the body corporate is not, of itself, authority for the expenditure.

Item No.	Existing or new provision	Subject	Reason for new provision or change to existing provision	Proposed new provision, or change in existing provision
			budget. An amendment will clarify that the body corporate's approval of a budget is not approval of expenditure.	
2.46	New provision	Adjusting proposed budgets at annual general meeting	<p>The agenda for an annual general meeting includes budgets for the administrative and sinking funds, with contributions calculated based on these budgets. The body corporate may also adopt a promotion fund budget.</p> <p>The agenda may also contain motions to approve expenditure for certain items that may or may not be in the budgets. If the meeting passes a motion to approve expenditure that is not included in the budget, this may have an effect on the proposed expenditure for the year, which in turn will affect the contributions to be made by members of the body corporate. To provide such flexibility, while at the same time providing certainty to those persons voting on the motion to accept the budget, it is proposed to place a cap of 10 percent on the amount by which the budget can be varied. This allows a person who intends to vote electronically or in writing to make a decision about whether to vote for or against the motion to approve the budget, in the knowledge that the total budget will not be varied by more than 10 percent, regardless of the outcome of other motions on the agenda that may seek approval for expenditure on items that may or may not be in the budgets.</p>	Provide that the administrative, sinking or promotion fund budget proposed in the agenda for an annual general meeting may be varied at the meeting by an amount not more than 10 percent of the proposed budget amount.
2.47	s.77	Contributions to be levied on owners	<p>At each annual general meeting, the body corporate approves a budget for the financial year.</p> <p>Section 77(3) provides for the committee to fix an interim contribution prior to the actual contributions being determined at the annual general meeting. Section 77(4) sets out the basis for determining the interim contribution, including the period to which the interim contribution must relate, i.e., from the end of the previous financial year to 30 days after the annual general meeting. However, as the annual general meeting has not been held, this period cannot be determined with certainty.</p>	Provide that the amount of an interim contribution must relate, as closely as practicable, to the period from the end of the previous financial year to two months after the proposed date of the annual general meeting.

Item No.	Existing or new provision	Subject	Reason for new provision or change to existing provision	Proposed new provision, or change in existing provision
			It is proposed to alter the period so that it applies from the end of the previous financial year to two months after the proposed date of the annual general meeting. This allows for alteration of the date of the annual general meeting without affecting the committee's compliance with the requirements of subsection (4).	
2.48	s.81	Payment and recovery of body corporate debts	The recovery of contributions owed to the body corporate by lot owners is a significant issue for some bodies corporate, to the extent that in some instances contributions can be in arrears for a number of years. The problem of arrears can cause severe financial hardship for the body corporate.	Require a body corporate to start proceedings within two months to recover contributions that have been outstanding for more than two years. Allow a body corporate to recover any costs reasonably incurred in recovering the outstanding amount.
2.49	s.82	Administrative, sinking and promotion funds	A common practice in bodies corporate is to transfer monies between the administrative, sinking and promotion funds to meet shortfalls. It is considered that the transfer of money between funds should not be permitted because the money in each fund is allocated for specific and identified body corporate costs and there are existing provisions that allow for a special contribution to be fixed to meet liability for which no provision, or inadequate provision, has been made. The amendment clarifies this position and will compel bodies corporate to budget properly. It is proposed to provide additional protection for body corporate funds by requiring that payments be made out of the administrative and sinking funds only when there is appropriate written evidence of the requirement for the payment.	Provide that funds must not be transferred between the administrative, sinking and promotion funds. Provide that payments may only be made from the administrative, sinking or promotion funds on receipt of written request for payment or written evidence of payment.
2.50	New provision	Administration of administrative or sinking fund by body corporate manager	A number of new requirements are proposed to enhance the management of body corporate funds by body corporate managers and ensure the body corporate's access to its records after termination or ending of a body corporate manager's engagement.	Require body corporate managers who administer body corporate funds to comply with section 82 in administering body corporate funds and to return the records of the body corporate if the manager's engagement ends or is revoked. Include a maximum penalty of 20 penalty units (or \$1500) for non-compliance. Require a body corporate manager administering body

Item No.	Existing or new provision	Subject	Reason for new provision or change to existing provision	Proposed new provision, or change in existing provision
				<p>corporate funds to prepare monthly reconciliation statements for each account within 21 days of the end of the month.</p> <p>Also, if a fund is not administered by a body corporate manager, provide that the body corporate may require the treasurer to prepare monthly reconciliation statements for each account within 21 days of the end of the month.</p>
2.51	s.89	Duties of body corporate about common property	<p>It is proposed to provide that, in relation to a building format plan of subdivision, the body corporate is not responsible for maintaining covering structures that are of a less substantial nature than roofing if the structures are not common property. This is considered reasonable because such structures would normally exist for the benefit of one lot only.</p> <p>It is also proposed to further clarify that where utility infrastructure on common property relates only to the supply of services to a particular lot, the owner of the lot is responsible for the maintenance of that infrastructure.</p>	<p>In relation to lots created under a building format plan of subdivision, provide that the body corporate is not responsible for maintaining covering structures that are not common property.</p> <p>Clarify that where utility infrastructure on common property relates only to the supply of services to a particular lot, the owner of the lot is responsible for the maintenance of that infrastructure.</p>
2.52	s.91	Leasing or licensing common property	The section only refers to granting or amending leases over common property even though the empowering section of the Act (s.154) allows the body corporate to grant or amend a licence over common property.	Extend the current provision to include the licensing of common property.
2.53	s.102	Body corporate's power to remedy defective building work	Currently the body corporate's power to take action to remedy defective building work is limited to those situations where the defect is likely to adversely affect the support or shelter of another part of scheme land. It is appropriate to broaden this power to ensure that the scheme as a whole does not contain defective building work. For example, such defective building work may affect the safety of persons residing in the scheme.	Empower the body corporate to take action to remedy any defective building work carried out for the owner of a lot.
2.54	s.103	Conditions and obligations under exclusive use by-laws	This section provides that an owner who has exclusive use of common property is responsible for the maintenance of that common property unless the by-law specifically provides otherwise. However, this is generally not appropriate in a building format scheme in relation to common property that provides shelter and support for the general benefit of the scheme.	Provide that, for a lot created by a building format plan of subdivision, an owner to whom exclusive use of common property is given is not responsible for the maintenance of roofing membranes and structures on the common property that exist for the shelter and support of the scheme, unless the exclusive use by-law specifically provides otherwise.

Item No.	Existing or new provision	Subject	Reason for new provision or change to existing provision	Proposed new provision, or change in existing provision
2.55	s. 106	Definition of 'building' for insurance purposes	In certain types of schemes, the body corporate is responsible for the insurance of some or all of the buildings in the scheme. The term building is defined to include improvements and fixtures, except for: <ul style="list-style-type: none"> • carpet • temporary wall, floor and ceiling covers • fixtures that are removable by tenants or lessees. It is proposed to extend the list of items that are not included in the meaning of the term building for the purposes of insurance to clarify responsibility for these items.	Clarify that the term building does not include: <ul style="list-style-type: none"> • air conditioning units servicing a particular lot • curtains, blinds and other internal window coverings • mobile dishwashers, dryers and other electrical or gas appliances not wired or plumbed in.
2.56	New provision	Valuations to be obtained for the purposes of insurance	Determining the replacement value of a property is a complex process, involving a variety of factors including the cost of building materials and labour. It may be appropriate to require a body corporate to obtain a regular valuation of the property it is required to insure to reduce the risk of underinsurance of community titles schemes.	Require a body corporate, at least every five years, to obtain from a quantity surveyor or registered valuer an independent valuation stating the replacement value of all property it is liable to insure.
2.57	New provision	Disclosure of insurance details at annual general meeting	Item 2.20 details a proposal to provide that the agenda for an annual general meeting must include a motion reviewing each insurance policy held by the body corporate. To ensure members of the body corporate can make a properly informed decision at the annual general meeting about the motion to review each insurance policy held by the body corporate, it is proposed to set out information about insurance policies that must be included in the material for the annual general meeting.	Provide that certain information about insurance policies must be included in material for an annual general meeting, including the insurer, the amount of cover, the type of cover, the premium, the amount of any excess payable, the expiry date for the cover, the amount of the latest valuation of all property required to be insured by the body corporate and the date of the valuation.
2.58	s.107	Insurance of common property and body corporate assets	It is proposed to make an amount payable by an owner for replacement insurance for the common property and body corporate assets a 'contribution', thereby permitting the amount to be included in the administrative fund budget, to be levied in a similar way to other body corporate expenses and to be recovered under debt recovery provisions if it is not paid.	In relation to the policy of insurance for common property and body corporate assets under this section, provide that the owner of each lot that is included in the scheme is liable to pay a contribution levied by the body corporate proportionate to the amount of the premium that reflects the interest schedule lot entitlement of the lot.

Item No.	Existing or new provision	Subject	Reason for new provision or change to existing provision	Proposed new provision, or change in existing provision
2.59	s.110	Premium	<p>It is proposed to amend this section to make the amount payable by lot owners for the specified insurance a 'contribution', thereby permitting the amount to be included in the administrative fund budget, to be levied in a similar way to other body corporate expenses and to be recovered under debt recovery provisions if it is not paid.</p> <p>It is also appropriate to provide for fairer sharing of the costs of insurance by enabling the body corporate to adjust the contribution payable by a lot owner to reflect improvements made to the common property that benefit that owner's lot.</p>	<p>Provide that the amount payable by the owner of each lot for reinstatement insurance required to be taken out by the body corporate is a contribution.</p> <p>Allow the proportion of the contribution payable by a lot owner towards the premium for reinstatement insurance to be adjusted to the extent the premium relates to improvements to common property that benefit the owner's lot.</p>
2.60	s.111	Improvements affecting premium	<p>Proposed amendments to section 110 allow the contribution payable by a lot owner towards the insurance premium to be adjusted on the basis of improvements to the common property that benefit the owner's lot. It is proposed to amend section 111 to require the owner to provide the body corporate with information regarding the nature and value of such improvements to the common property, so that appropriate adjustments can be made to the contributions for insurance.</p>	<p>Require that, if improvements to common property are made for the benefit of a lot and the premium for reinstatement insurance required to be taken out by the body corporate is likely to increase because of the improvements, the lot owner must provide the body corporate with information regarding the nature and value of such improvements.</p>
2.61	s.114	Insurance for buildings with no common walls	<p>This section provides the basis for the body corporate to establish a voluntary insurance scheme for stand-alone buildings on standard format plans of subdivision. It is proposed to:</p> <ul style="list-style-type: none"> • change the basis of the insurance from estimated value to replacement value • provide that an amount payable by an owner towards the cost of this insurance is a contribution, thereby permitting the amount to be included in the administrative fund budget, to be levied in a similar way to other body corporate expenses and to be recovered under debt recovery provisions if it is not paid. <p>Also, in schemes where the lots are created under a standard format plan of subdivision, it is difficult for the body corporate to obtain insurance unless there is a building insured under the policy. For this reason, if an</p>	<p>In relation to a voluntary insurance scheme established by the body corporate:</p> <ul style="list-style-type: none"> • change the basis of the insurance from estimated value to replacement value • provide that an amount payable by an owner towards the cost of this insurance is a contribution. <p>Provide if an owner of a lot on which there is a stand alone building makes an improvement to the common property and the body corporate does not establish a voluntary insurance scheme, the owner of that lot must take out insurance for the full replacement value of the improvements.</p>

Item No.	Existing or new provision	Subject	Reason for new provision or change to existing provision	Proposed new provision, or change in existing provision
			owner of a lot on which there is a stand alone building makes an improvement to the common property and the body corporate does not establish a voluntary insurance scheme, it is proposed to require the owner of that lot to take out insurance for the full replacement value of the improvements.	
2.62	s.116	Public risk insurance	<p>The body corporate is required to maintain public risk insurance of the common property and relevant assets.</p> <p>There has been uncertainty as to the obligation of lot owners to obtain public risk insurance in relation to their property. It is proposed to clarify this obligation.</p> <p>It is reasonable that the body corporate be able to adjust the contribution payable by a lot owner for public liability insurance where a premium for the body corporate policy is increased by the insurer because of the increased risk of liability through the activities of a particular lot, for example, a nightclub being operated from the lot.</p>	<p>Clarify that the body corporate is not required to maintain public risk insurance for lots in the scheme.</p> <p>Provide that the body corporate may adjust the contribution payable by a lot owner for public liability insurance in a way that fairly reflects the proportion of the total risks covered by the policy attributable to activities carried on, or proposed to be carried on, at the owner's lot.</p> <p>Provide that a lot owner must give the body corporate details of any use of their lot that is likely to increase the premium for public risk insurance required to be taken out by the body corporate.</p>
2.63	s.117	Use of insurance money	This provision currently requires the body corporate to apply any insurance money it receives for damaged property to the repair, reinstatement or replacement of the damaged property. However, in certain circumstances the body corporate may not wish to replace damaged property. For example, a barbeque area may have been severely vandalised and the body corporate may prefer to apply the insurance money to the demolition of the barbeque area and the landscaping of that area.	Provide that the body corporate can decide, by resolution without dissent, to apply insurance money for damage to property (other than an amount paid under a voluntary insurance scheme) in a way other than to repair, reinstate or replace the damaged property.
2.64	s.123	Roll of lots and entitlements	To make it easier to contact owners in a scheme and the original owner, it is proposed to require that the roll contain for owners and the original owner both the residential or business address and the address for service.	Require that the residential or business address and address for service (if it is different from the residential or business address) of owners and the original owner be included on the roll.
2.65	ss. 128 and 129	Keeping and disposal of records	Proposed amendments to the module will necessitate minor changes to the record keeping requirements.	Require the body corporate to keep: <ul style="list-style-type: none"> secret voting documentation written agreements of committee members reducing the notice period for committee meetings

Item No.	Existing or new provision	Subject	Reason for new provision or change to existing provision	Proposed new provision, or change in existing provision
				<ul style="list-style-type: none"> • any reconciliation statements prepared for an account kept for the administrative, sinking or promotion fund.
2.66	s. 130	Access to records	<p>The provisions requiring the body corporate to give an adjudicator access to the body corporate's records are redundant because provision is now made for this in section 271(5) of the Act.</p> <p>If the body corporate records contain defamatory material, the requirement for the body corporate to provide access to these records may expose the body corporate to action for supplying defamatory material. It is appropriate that the body corporate be protected from this situation.</p>	<p>Remove the requirement for the body corporate to allow an adjudicator access to the body corporate's records.</p> <p>Provide that the body corporate is not obliged to provide access to a part of a record it believes contains defamatory material.</p>
2.67	s.133	Return of body corporate property	<p>This section currently provides a process for ensuring the return of body corporate assets by certain persons.</p> <p>However, the body corporate records and seal are also essential for the functioning of the body corporate and it is important that these items are also returned to the body corporate and also that a person cannot claim a lien on the body corporate records or seal for this reason.</p>	<p>It is proposed to enhance the current provisions about the return of body corporate property by:</p> <ul style="list-style-type: none"> • broadening the provisions to cover body corporate records and the body corporate seal • broadening the provisions to cover the taking of the property by an associate of a body corporate manager or service contractor • providing that the person cannot claim a lien on the body corporate records or seal.

Appendix 3

Changes proposed for the *Body Corporate and Community Management (Small Schemes Module) Regulation 2008*

Notes

- The proposed *Body Corporate and Community Management (Small Schemes Module) Regulation 2008* remakes the *Body Corporate and Community Management (Small Schemes Module) Regulation 1997* with some changes. The table below indicates the proposed changes in effect to the current provisions of the *Body Corporate and Community Management (Small Schemes Module) Regulation 1997*.
- Section numbers in the *Body Corporate and Community Management (Small Schemes Module) Regulation 1997* are given to indicate the intended change relative to the current provisions. However equivalent provisions in the proposed *Body Corporate and Community Management (Small Schemes Module) Regulation 2008* will not necessarily retain the same section numbers, structure and wording, even though the effect may be the same.

Item No.	Existing or new provision	Subject	Reason for new provision or change to existing provision	Proposed new provision, or change in existing provision
3.1	s.11	Eligibility to be secretary or treasurer	<p>Currently, a person is eligible to be the secretary or treasurer if the person is an individual and either is a member of the body corporate or is nominated by a member of the body corporate.</p> <p>A body corporate member who owes a body corporate debt currently does not have a right to vote at general meetings or chose a member of a committee. It is also appropriate that a member of the body corporate, or a non-owner nominated by the member, is not eligible to be secretary or treasurer if the member owes a body corporate debt at the time the secretary or treasurer is chosen. Further, it is appropriate that the member not be able to nominate a person for membership if the lot owner owes a body corporate debt when the nomination is made by the owner.</p> <p>To minimise conflicts of interest and to ensure the committee acts in the best interests of owners, it is also proposed that a body corporate manager or service contractor will not be eligible to be a member of the committee.</p>	<p>Provide that a member of the body corporate, or a non-owner nominated by the member, is not eligible to be secretary or treasurer if the member owes a body corporate debt when the secretary or treasurer is chosen.</p> <p>Also provide that the member may not nominate a person for membership of the committee if the member owes a body corporate debt when the nomination is made by the owner.</p> <p>Provide that a person is not eligible to be secretary or treasurer if they are a body corporate manager or service contractor for the scheme, or an associate of a body corporate manager or service contractor for the scheme.</p>
3.2	s.14	Term of office	<p>It is appropriate that committee members have a continuing connection to the body corporate and it is therefore proposed to provide that a committee member's term of office will end if their connection to the body corporate ends.</p>	<p>Provide that a person's term of office as secretary or treasurer ends if the person becomes ineligible to hold the position.</p> <p>Provide that a person is ineligible to hold the position if the person:</p> <ul style="list-style-type: none"> was a body corporate member when elected but ceases to be

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			<p>To maintain consistency with the effect of the amendments to section 11, it is also proposed to provide that a committee member's position becomes vacant if the person is engaged as a body corporate manager or service contractor.</p> <p>Also, consequential to the body corporate's ability to engage a body corporate manager to exercise the functions of the committee and the secretary and treasurer, this section will be amended to provide that the term of office of all committee members ends when the body corporate manager is engaged.</p>	<p>a member of the body corporate</p> <ul style="list-style-type: none"> • was not a member of the body corporate when elected and was nominated for membership by a member who is no longer a member • is engaged as a body corporate manager or service contractor for the scheme. <p>Provide that if the body corporate engages a body corporate manager to perform the functions of the committee and the secretary and treasurer, the term of the office of the secretary and treasurer ends.</p>
3.3	s.15	Restricted issues	<p>A number of amendments are proposed in relation to decisions that the committee is empowered to make.</p> <p>The committee has responsibility for the day-to-day management of the body corporate. As the committee normally gives a by-law contravention notice, it is appropriate to provide the committee with the power to also seek to enforce the notice without reference to a general meeting of the body corporate. It is also appropriate that the committee has the power to make an application under the dispute resolution provisions of the Act and enforce an order made under those provisions.</p> <p>It is also proposed to improve the regulation of monies reimbursed to committee members for expenses in two ways. Firstly, the existing provisions provide that the committee may decide to pay remuneration, allowances or expenses to the secretary or treasurer if the reimbursement is for expenses of not more than \$50. This amount of \$50 is not limited in any way and is open to abuse by, for example, weekly claims for reimbursement of \$50. It is proposed to restrict the amount of reimbursement for each meeting to \$50 and the total amount of reimbursement for a 12 month period to \$200. Any claims exceeding these amounts must be approved at a general meeting of the body corporate.</p> <p>Secondly, it is proposed to introduce requirements requiring greater disclosure for motions considered at body corporate</p>	<p>Extend the power of a committee to start proceedings for an offence if an owner or occupier fails to comply with a by-law contravention notice and to start dispute resolution proceedings (other than an appeal against an adjudicator's order).</p> <p>Provide the committee can only decide to pay remuneration to the secretary or treasurer for attending a committee meeting if the amount is not more than \$50 <u>and</u> if the reimbursement does not result in the secretary or treasurer being reimbursed more than \$200 in a 12 month period for committee meeting attendance.</p> <p>Require that motions put to the body corporate when claiming expenses must detail the full amount and the reason the expenses were incurred and that an explanatory schedule stating full details of the remuneration must accompany the agenda for the meeting at which the motion is considered.</p>

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			meetings relating to reimbursement of committee members to prevent the practice of blanket approvals being sought without disclosure of the reason for the claim.	
3.4	New provision	Issues reserved for decision by ordinary resolution of the body corporate	<p>Under section 15, the committee cannot make a decision on an issue which the body corporate has previously reserved, by ordinary resolution, for decision by ordinary resolution of the body corporate.</p> <p>However, the issues reserved for decision by ordinary resolution of the body corporate are often poorly recorded in general meeting minutes and difficult to locate. This may result in a committee unintentionally acting on behalf of the body corporate on issues which the committee is not empowered to act.</p>	Introduce a requirement that the body corporate must reconsider at each annual general meeting any issues the body corporate has previously reserved for decision by ordinary resolution of the body corporate. If the body corporate does not reaffirm the issue at the meeting as an issue reserved for decision by ordinary resolution of the body corporate, the issue will no longer be a restricted issue for the committee.
3.5	s.19	Minutes of committee meetings	<p>There is currently no requirement for the minutes of committee meetings to be provided to lot owners and committee members. To enhance the accountability of the committee, it is proposed to require that the secretary give lot owners and committee members a full and accurate record of the deliberations and decisions of the committee.</p> <p>The legislation also currently provides no guidance on what constitutes full and accurate minutes.</p>	<p>Require the secretary to give a copy of the minutes of each meeting to the treasurer and each lot owner who is not a member of the committee within 21 days of the meeting unless the lot owner has advised the secretary in writing that they do not wish to receive copies.</p> <p>Specify that the minutes must include the date, time and place of the meeting, the meeting attendees, the words of each question decided, details of correspondence, details of the next meeting and the secretary's contact details.</p>
3.6	New provision	Reporting particular payments to committee	To increase the accountability of body corporate managers to the body corporate in relation to payments made on their behalf, it is proposed to introduce new requirements for reporting by body corporate managers.	Require a body corporate manager who pays an account under authorisation of the committee or body corporate to provide a written report about the payment to the committee if required.
3.7	New provisions; ss.5, 8, 9, 12, 14 and 100	Engagement of body corporate manager to carry out functions of the committee, secretary and treasurer	<p>It is proposed to allow the body corporate to engage a body corporate manager to carry out the functions of a committee and the secretary and treasurer. The effect of the engagement is that there will be no committee.</p> <p>It is envisaged that this type of arrangements would usually apply where all the lot owners are absentee owners who, as they do not live in close proximity, find it difficult to manage the day-to-day operations of the body corporate.</p> <p>It is proposed to set out strict operational requirements that the</p>	<p>Provide that there must be a committee for the body corporate unless the body corporate engages a body corporate manager to carry out the functions of a committee and the secretary and treasurer.</p> <p>Provide that there is no committee for the body corporate if the body corporate engages a body corporate manager to carry out the functions of a committee and the secretary and treasurer.</p> <p>Provide that the body corporate may engage a body corporate manager to carry out the functions of the committee if approved by</p>

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			body corporate manager must comply with under such an engagement.	<p>special resolution of the body corporate without the use of proxies after the original owner control period has ended.</p> <p>Provide Part 6 (Body corporate managers and service contractors), Division 2 (Requirements for engagements) will not apply to an engagement of a body corporate manager to carry out the functions of a committee and the secretary and treasurer. Instead, the following engagement requirements will be provided:</p> <ul style="list-style-type: none"> • Engagements must be in writing and state the basis on which payment for the body corporate manager’s services is to be worked out. • The term of engagement ends at the next annual general meeting or 12 months after the engagement began, whichever is earlier. <p>Require the body corporate manager to report in writing every three months to each member of the body corporate about certain aspects of the administration of the scheme.</p>
3.8	s.22	Who may call a general meeting	<p>Currently a general meeting may be called by the secretary or a member of the body corporate. This power may be easily abused by a secretary or owner to continually call meetings.</p> <p>It is proposed to tighten the provisions for calling general meetings to provide that, unless there is only 1 committee member, a general meeting may only be called by a committee member when the committee has passed a resolution directing the member to call the meeting.</p> <p>New provisions detailed in item 3.19 will provide a separate process for members of the body corporate to request extraordinary general meetings.</p>	<p>Provide that a general meeting (other than an extraordinary general meeting) may only be called by:</p> <ul style="list-style-type: none"> • a person who holds the positions of secretary and treasurer, or • if the positions of secretary and treasurer are held by two persons—the secretary or treasurer upon the committee passing a resolution directing the member to call the meeting, or • a person authorised by adjudicator’s order.
3.9	s.23	Submitting agenda motions	The current provision is silent on whether a committee can propose a motion for a general meeting.	Provide that, like a member of the body corporate, a committee may submit a motion for consideration at a general meeting at any time.
3.10	New provision; s. 26	Motion with alternatives	It is usual for the agenda of a general meeting to include motions relating to the same subject. This occurs, for example, where the committee may submit more than one quotation proposing the	Provide that if two or more motions are submitted proposing alternative ways of dealing with the same subject, the notice and agenda for the meeting must list the alternatives under one motion

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			<p>carrying out of work.</p> <p>Existing provisions provide that the committee must prepare the agenda for each general meeting, but do not make provision for the grouping of motions about the same subject. As a result, currently a committee is able to unfairly manipulate decisions on a particular subject by putting the motion with the outcome they favour higher on the agenda than motions with less favoured outcomes. If the favoured motion is passed, subsequent motions on the subject can then be ruled out of order as redundant.</p>	<p>submitted by the committee.</p> <p>Provide that a person may either vote for the motion by voting for the motion and one of the alternatives or against the motion.</p>
3.11	New provision; s.24	Explanatory material	<p>Often explanatory material for voters provided by the submitter of a motion is not clearly distinguished from material provided by the committee. In some instances the committee has altered the explanatory material provided by the owner.</p> <p>It is also important that owners are provided with advice on how to vote for a motion with alternatives.</p>	<p>An explanatory schedule will be required to accompany the notice of a general meeting for the following motions:</p> <ul style="list-style-type: none"> • a motion for which the submitter of a motion provides an explanatory note not longer than 300 words about the motion. The schedule must include the note in the form given by the motion's submitter. • a motion at an annual general meeting about adopting administrative and sinking fund budgets. The schedule must include an explanatory note stating that the amount of the budget adopted may be not more or less than 10% of the proposed budget. • a motion to change regulation module. The schedule must include an explanatory note in the approved form explaining the effect of the proposed change. • a motion with alternatives. The schedule must include each motion in its submitted form, an explanatory note about each motion given by the motion's submitter if the note is not longer than 300 words, and an explanatory note on how to vote. <p>Provide that the notice of general meeting may be accompanied by explanatory material given by the committee if the material is contained in a schedule of the committee's explanatory material that is separate from the explanatory schedule.</p>
3.12	s. 26	Agenda for general meeting	It is proposed to also require the agenda for an annual general meeting to include a motion reviewing each insurance policy held by the body corporate. This will ensure that bodies corporate consider the adequacy of insurance arrangements annually.	Provide that the agenda for an annual general meeting must include a motion reviewing each insurance policy held by the body corporate.

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3.13	s.28	Power to rule a motion out of order	Lot owners are generally not aware of their right to reverse a ruling of the chairperson that a motion is out of order. It is proposed to amend this section to better balance the power of the chairperson to guide the orderly conduct of a meeting and the potential for misuse of this power by including a requirement for the chair to inform lot owners about their right to reverse a ruling that a motion is out of order.	Require the person chairing the meeting, when ruling a motion out of order, to also state how the ruling may be reversed. Also extend the power of a person chairing a general meeting to rule a motion out of order to include the situation where a motion conflicts with a motion already voted on at the meeting.
3.14	s. 29	Quorum for general meetings	It is proposed to amend this section to recognise in the quorum count a voter voting in a way permitted by the body corporate under section 32.	Provide that a voter for a general meeting is also taken to be present at the meeting if the voter is present at the meeting by a vote cast in a way permitted by the body corporate under section 32.
3.15	s.30	Meaning of 'voter'	Under the current provisions, some uncertainty has existed as to whether a representative includes a person appointed under a power of attorney.	Provide that a person may vote as the representative of an owner if the person holds a power of attorney from the owner and is not the original owner (except if the power of attorney is given under section 211 or 219 of the Act) or a body corporate manager or service contractor for the scheme.
3.16	s.32	Voting at general meeting	A body corporate may only pass a resolution on a motion if the motion is included as an item of business on the agenda. However, it is unnecessary and impractical to require procedural motions to be included on the agenda when they relate to the conduct of the meeting as they generally address issues arising at the meeting. It is also impractical to require motions on matters that would be expected to be raised from the floor of the meeting, such as motions to amend a motion or correct minutes, to be on the agenda.	Provide that a general meeting may pass a resolution not included as an item of business on the agenda if the motion is a procedural motion for the conduct of a meeting or a motion to amend another motion or correct minutes.
3.17	s.34	Amendment of motions at general meetings	If a voter who is not present at a general meeting has not voted on a particular motion it is appropriate that the person should not be taken into account for the vote for a motion to amend the particular motion, or for an amended motion. Instead, the motion should be determined by those voters who are either present at the meeting personally or by proxy, and voters who have voted on the motion by written or electronic vote.	Provide that in counting the votes cast for or against a motion to amend a motion, or an amended motion, a person who is not present at the meeting and has not cast a vote on the motion must not be counted as voting for or against the motion. Also, as a voter who is present at a meeting by written or electronic vote has expressed an interest in the motion by voting, provide that that person is automatically taken as having voted against the motion to amend the motion and the amended motion.

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3.18	s.36	Minutes of general meetings	The current provisions require the body corporate to take full and accurate minutes of each general meeting and give a copy of the minutes to each lot owner as soon as practicable. There is uncertainty about the meaning of 'full and accurate minutes' and 'as soon as practicable'.	Specify that the minutes of a general meeting must include the date, time and place of the meeting, the meeting attendees, details of proxies tabled, the words of each motion voted on, the votes for each motion and the secretary's contact details. Specify that a copy of the minutes must be given to each lot owner within 21 days after the meeting.
3.19	New provision	Extraordinary general meetings	It is appropriate that owners are provided with some power to call an extraordinary general meeting to decide particular motions.	Provide that an extraordinary general meeting must be called if 25 percent of owners sign a notice asking for an extraordinary general meeting to consider and decide certain motions and the notice is given to the secretary or, in the secretary's absence, to the treasurer (or the original owner if a committee has not yet been chosen). Provide that the meeting must be called within 14 days of the notice being given and must be held within six weeks of the notice being given, and provide that, if a meeting is not called within 14 days after the notice is given, a lot owner may call the meeting. If a meeting is called by a person other than the secretary, provide that the person must perform all the functions of the secretary for the meeting and the secretary must provide the person with the necessary records and documents to perform the functions.
3.20	s.38	First annual general meeting	The requirement for the holding of the first annual general meeting within one month of certain events occurring is often difficult to achieve. For example, it may be difficult for the original owner to determine when 50% of lots have been sold, have the notice of the meeting completed, and give the minimum of 21 days notice to each lot owner all within the prescribed one month period.	Require that the first annual general meeting must be held within two month of certain events occurring.
3.21	New provision	First annual general meeting for a scheme established by amalgamation	The existing provisions about first annual general meetings do not make adequate provision for the first annual general meeting of a new scheme created by the amalgamation of existing schemes.	Require the first annual general meeting of a new scheme established by the amalgamation of two or more schemes to be called and held by the former secretary or secretaries within three months of the amalgamation. Provide that the agenda must include the items mentioned in section 38(3).

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3.22	s.39	Documents to be handed over to the body corporate at the first annual general meeting	<p>The Act provides that if the regulation module applying to a scheme requires a building to be insured for full replacement value, the original owner must obtain an independent valuation of the building and must ensure the policy of insurance covers that value. The original owner should be required to give this valuation to the body corporate at the first annual general meeting.</p> <p>The existing provisions require the original owner to provide a budget showing estimated spending for the body corporate's first financial year. It is proposed to clarify the obligation of the original owner to provide both administrative and sinking fund budgets.</p>	<p>Require the original owner to give the independent valuation required for each building that must be insured to the body corporate at the first annual general meeting.</p> <p>Require the original owner to give the body corporate administrative and sinking fund budgets showing the estimated spending for the body corporate's first financial year.</p>
3.23	s.46	Form of engagement of body corporate managers and service contractors	Amendments are proposed to the requirements for engagements for body corporate managers and service contractors to ensure full disclosure of the term of the engagement and to also ensure, for the engagement of a body corporate manager, transparency about the powers of the secretary and treasurer that will be performed by the body corporate manager under the engagement.	<p>Provide that the engagement of a person as a body corporate manager or service contractor must state when the term begins and ends and the term of any right or options of extension or renewal of the engagement.</p> <p>Provide that where the engagement of a body corporate manager includes the delegation of certain powers of the secretary or treasurer these powers must be stated.</p>
3.24	ss. 47 and 48	Term of engagement of body corporate managers and service contractors	Amendments are proposed to bring certainty to the issue of the term of the engagement for body corporate managers and service contractors.	Provide that the term of engagement for a body corporate manager or service contractor (after allowing for any rights or option of extension or renewal, whether provided for in the engagement or subsequently agreed to) must not be longer than 1 year and at the end of the term the agreement ends and a new engagement is required.
3.25	New provision	Authority to make or amend engagement of body corporate managers and service contractors	<p>It is proposed to provide a clear process by which a body corporate can make or amend an engagement of a body corporate manager or service contractor. Such decisions can be controversial and divisive and there is currently no clear process. In particular, to ensure the body corporate is appropriately informed in making their decision it is proposed to require certain information be provided with the material for the general meeting at which the relevant motion is to be considered.</p> <p>Item 3.7 details separate provisions for the engagement of body</p>	<p>Provide a body corporate may only engage a person as a body corporate manager or service contractor or agree to amend such an engagement by ordinary resolution.</p> <p>Provide certain material must be forwarded to members for the general meeting including details of the terms of engagement and, for an amendment to include a right or option of extension or renewal, an explanatory note in the approved form.</p>

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			corporate manager to perform the full functions of a committee and the secretary and treasurer.	
3.26	New provisions, consequential amendments to ss.50, 51, 52, and 53	Termination of engagement of body corporate managers and service contractors	<p>It is proposed to consolidate existing provisions relating to termination and to clarify the steps the body corporate must follow to terminate an engagement.</p> <p>Also, termination of an engagement of a body corporate manager or service contractor under the current provisions has never allowed for remediation of the issue that has led to the termination action arising. In the interests of achieving some measure of natural justice, it is proposed to include a process to provide for remedial action, and to set out the rights of the body corporate where the person takes no action to remedy the situation. The amendment will make the termination process fair and transparent.</p>	<p>Provide that the body corporate may only terminate a person's engagement as a body corporate manager or service contractor under the Act, by agreement or under the engagement if the termination is approved by ordinary resolution.</p> <p>Provide that, in certain circumstances, such as where the person engages in misconduct, is grossly negligent, fails to carry out their duties, or fails to comply with the legislation or code of conduct, the body corporate may terminate a person's engagement if the person has been given a remedial action notice which sets out the issue that has led to the termination action and the period within which it can be rectified, and the person fails to comply with the notice.</p>
3.27	ss. 51, 52 and 53	Disclosure requirements	<p>Body corporate managers are required to disclose to the body corporate any relationship with proposed or current service providers or commissions they may receive.</p> <p>It is proposed to extend these disclosure requirements to service contractors and to include a penalty.</p>	<p>Extend disclosure requirements that currently apply to body corporate managers to service contractors.</p> <p>Include a maximum penalty of 20 penalty units (or \$1500) for failing to comply with the requirements.</p>
3.28	New provisions	Occupation of common property by service contractor and right of access	It is proposed to enable the body corporate to give a service contractor an occupation authority, including rights of access, necessary to allow the contractor to perform obligations under their engagement.	Allow the body corporate, by ordinary resolution, to give a service contractor authority to occupy part of the common property for particular purposes necessary to enable the contractor to perform their obligations under their engagement. This may include a right of access over other parts of the common property.
3.29	s.55	Budgets	The administrative and sinking fund budgets are prepared to assist in the planning and management of the body corporate's finances. When the body corporate adopts these budgets, it is endorsing the plan, but is not approving the expenditure of each of the items in the budget. An amendment will clarify that the body corporate's approval of a budget is not approval of expenditure.	Provide that the inclusion of an item of expenditure in a budget adopted by the body corporate is not, of itself, authority for the expenditure.
3.30	New provision	Adjusting proposed budgets at	The agenda for an annual general meeting will include budgets for the administrative and sinking funds, with contributions calculated based on these budgets. The agenda may also	Provide that the administrative or sinking fund budget proposed in the agenda for an annual general meeting may be varied at the meeting by an amount not more than 10 percent of the proposed

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		annual general meeting	contain motions to approve expenditure for certain items that may or may not be in the budgets. If the meeting passes a motion to approve expenditure that is not included in the budget, this may have an effect on the proposed expenditure for the year, which in turn will affect the contributions to be made by members of the body corporate. To provide such flexibility, while at the same time providing certainty to those persons voting on the motion to accept the budget, it is proposed to place a cap of 10% on the amount by which the budget can be varied. This allows a person who intends to vote electronically or in writing to make a decision about whether to vote for or against the motion to approve the budget, in the knowledge that the total budget will not be varied by more than 10 percent, regardless of the outcome of other motions on the agenda that may seek approval for expenditure on items that may or may not be in the budgets.	budget amount.
3.31	s.60	Payment and recovery of body corporate debts	The recovery of contributions owed to the body corporate by lot owners is a significant issue for some bodies corporate, to the extent that in some instances contributions can be in arrears for a number of years. The problem of arrears can cause severe financial hardship for the body corporate.	Require a body corporate to start proceedings within two months to recover contributions that have been outstanding for more than two years. Allow a body corporate to recover any costs reasonably incurred in recovering the outstanding amount.
3.32	s.61	Administrative and sinking funds	A common practice in bodies corporate is to transfer monies between the administrative and sinking funds to meet shortfalls. It is considered that the transfer of money between funds should not be permitted because the money in each fund is allocated for specific and identified body corporate costs and there are existing provisions that allow for a special contribution to be fixed to meet liability for which no provision, or inadequate provision, has been made. The amendment clarifies this position and will compel bodies corporate to budget properly. It is proposed to provide additional protection for body corporate funds by requiring that payments be made out of the administrative and sinking funds only when there is appropriate written evidence of the requirement for the payment.	Provide that funds must not be transferred between the administrative and sinking funds. Provide that payments may only be made from the administrative or sinking funds on receipt of written request for payment or written evidence of payment.
3.33	New provisions	Administration of administrative	A number of new requirements are proposed to enhance the management of body corporate funds by body corporate managers and ensure the body corporate's access to its records	Require body corporate managers who administer body corporate funds to comply with section 61 in administering body corporate funds and to return the records of the body corporate if the

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		or sinking fund by body corporate manager	after termination or ending of a body corporate manager's engagement.	<p>manager's engagement ends or is revoked.</p> <p>Include a maximum penalty of 20 penalty units (or \$1500) for non-compliance.</p> <p>Require a body corporate manager administering body corporate funds to prepare monthly reconciliation statements for each account within 21 days of the end of the month.</p> <p>Also, if a fund is not administered by a body corporate manager, provide that the body corporate may require the treasurer to prepare monthly reconciliation statements for each account within 21 days of the end of the month.</p>
3.34	s. 64, schedule	Spending by committee	<p>This section provides for spending by the committee and requires the committee to obtain consent for spending over the 'relevant limit for committee spending' which is an amount worked out by multiplying the number of lots included in the scheme by \$200.</p> <p>However, the relevant limit for committee spending no longer reflects the costs of goods and services a body corporate is likely to require on a regular basis. Committees therefore are unable to approve routine expenditure and instead need to call a general meeting to obtain body corporate approval for the expenditure.</p> <p>Currently if the spending is above the relevant limit for major spending, and is proposed by the committee, the committee must also obtain at least two quotations in accordance with section 65. The requirements of section 65 should not apply to spending authorised by an adjudicator to meet an emergency and spending necessary to comply with section 64(1)(d).</p> <p>It is proposed above that the body corporate be able to set a relevant limit for committee spending that is higher than the relevant limit for major spending. The requirement to obtain two quotations or estimates for spending about the relevant limit for major spending should therefore also apply to spending approved by the committee.</p>	<p>Provide that the relevant limit for committee spending is an amount worked out by multiplying the number of lots included in the scheme by \$200, unless the body corporate sets another amount by ordinary resolution at a general meeting.</p> <p>Provide that a limit set by ordinary resolution will have effect until the next annual general meeting held or the limit is otherwise amended by ordinary resolution.</p> <p>Provide that, for the purposes of determining the spending limit for a principal scheme in a layered arrangement of schemes, where a lot in the principal scheme forms a subsidiary community titles scheme, that lot is taken to be the same number of lots that is included in the subsidiary scheme.</p> <p>Exclude spending authorised by an order, notice or judgement under section 64(c) and (d) from being subject to section 65.</p> <p>Provide that the relevant limit for committee spending prescribed in the legislation excludes GST.</p>

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3.35	s.65, schedule	Quotes for major spending	<p>If a motion to be moved at a general meeting of the body corporate involves a proposal that will cost more than the 'relevant limit for major spending', lot owners must be given copies of at least two quotations or estimates for the proposal with the notice for the meeting at which the motion is to be considered. If, for exceptional reasons, it is not practicable to obtain two quotations or estimates, a single quotation or estimate must be obtained and must accompany the notice of meeting. The relevant limit for major spending is an amount worked out by multiplying the number of lots in the scheme by \$200.</p> <p>Some stakeholders have suggested that this requirement places an excessive burden on bodies corporate and that the current limit is too low.</p> <p>Consequential to the introduction of motions with alternatives, the amendment will require consideration of quotes for items above the relevant limit for major spending as motions with alternatives to ensure the process followed for making a decision on the quotes does not favour any particular party.</p> <p>It is also proposed to clarify the matters that must be considered in determining whether or not an item is above the relevant limit for major spending. This is to prevent an item being divided into a number of components to avoid compliance with the requirements in relation to major spending.</p>	<p>Provide that the relevant limit for major spending is an amount worked out by multiplying the number of lots in the scheme by \$1100.</p> <p>Provide that, for the purposes of determining the relevant limit for major spending for a principal scheme in a layered arrangement of schemes, where a lot in the principal scheme forms a subsidiary community titles scheme, the lot is taken to be the same number of lots that is included in the subsidiary scheme.</p> <p>Provide that the relevant limit for major spending excludes GST.</p> <p>Require quotations obtained for items above the relevant limit for major spending be presented for the body corporate's consideration as motions with alternatives.</p> <p>For the purpose of determining whether a cost is over the relevant limit for major spending and therefore requires two quotes, provide:</p> <ul style="list-style-type: none"> the cost of engaging a body corporate manager or service contractor is the total cost of the engagement for the entire term including any options for extension or renewal if the expenditure relates to a project that has a number of components, the entire cost of the project must be considered.
3.36	s.66	Statement of accounts	An amendment to the requirements for the annual statement of accounts is proposed to provide disclosure of payments to committee members from body corporate funds.	Provide that the statement of accounts must disclose all payments to committee members from body corporate funds.
3.37	s.70	Duties of body corporate about common property	It is proposed to provide that, in relation to a building format plan of subdivision, the body corporate is not responsible for maintaining covering structures that are of a less substantial nature than roofing if the structures are not common property. This is considered reasonable because such structures would normally exist for the benefit of one lot only.	In relation to lots created under a building format plan of subdivision, provide that the body corporate is not responsible for maintaining covering structures that are not common property. Clarify that where certain types of utility infrastructure (for example hot-water systems, washing machines and clothes dryers) on common property relate only to the supply of services to a particular lot, the owner of the lot is responsible for the

Item No.	Existing or new provision	Subject	Reason for new provision or change to existing provision	Proposed new provision, or change in existing provision
			It is also proposed to further clarify that where certain types of utility infrastructure on common property relate only to the supply of services to a particular lot, the owner of the lot is responsible for the maintenance of that infrastructure.	maintenance of that infrastructure.
3.38	s.72	Leasing or licensing common property	The section only refers to granting or amending leases over common property even though the empowering section of the Act (s.154) allows the body corporate to grant or amend a licence over common property.	Extend the current provision to include the licensing of common property.
3.39	s. 74	Improvements to common property by the body corporate	<p>The regulation module prescribes body corporate responsibilities for the maintenance of common property, but also provides for the body corporate to make improvements to the common property.</p> <p>In an aging scheme, an improvement by the body corporate is often necessary to maintain a scheme's amenity which influences the value of the scheme and, depending on the scheme, its tourism potential. Many schemes are now 25 or 30 years old.</p> <p>Currently, a body corporate may by ordinary resolution make an improvement to common property under an amount worked out by multiplying the number of lots in the scheme by \$250 (the 'improvements limit'), and may make an improvement over the improvements limit by special resolution. It may be appropriate to raise the improvements limit to reflect increases in costs, and it may also be appropriate to facilitate improvements to schemes by reducing the approval requirements, but to provide a protection to lot owners with limited financial resources by limiting the reduced approval requirements to improvements of a certain value.</p> <p>It is also proposed to further clarify that the provisions relating to spending by the committee and quotes for major spending apply to expenditure on improvements to common property by the body corporate and also that if the total cost of a project is greater than the improvements limit, each of the components of the project is to be considered as having a cost of greater than the improvements limit.</p>	<p>Provide that the body corporate may make improvements to the common property if the total cost of the project is not more than an amount worked out by multiplying the number of lots in the scheme by \$300 or the improvements are authorised by ordinary resolution.</p> <p>Provide that the body corporate may make improvements to the common property if</p> <ul style="list-style-type: none"> • the improvements are not more than an amount worked out by multiplying the number of lots in the scheme by \$300 • the improvements are authorised by an ordinary resolution of the body corporate and the value of the improvements is between an amount worked out by multiplying the number of lots included in the scheme by \$300 and an amount worked out by multiplying the number of lots included in the scheme by \$3000. <p>Provide that improvements valued over an amount worked out by multiplying the number of lots included in the scheme by \$3000 may only be made by special resolution.</p> <p>Clarify that the provisions relating to spending by the committee and quotes for major spending apply to expenditure on improvements to common property.</p> <p>Provide if the cost of a project is more than the improvements limit each component of the project must be considered as having a cost greater than the improvements limit and must therefore be approved by ordinary resolution.</p>

Item No.	Existing or new provision	Subject	Reason for new provision or change to existing provision	Proposed new provision, or change in existing provision
3.40	ss. 75 and 85	Improvements to common property by lot owners	<p>Section 75 and 85 provide for the body corporate to authorise a lot owner to make improvements to the common property. A number of changes are proposed to standardise the authorisation required for improvements.</p> <p>Section 75 provides that the body corporate may authorise the owner of a lot to make an improvement to the common property for the benefit of the owner's lot and that the improvement must be authorised by special resolution unless the improvement is a minor improvement (an improvement with an installed value of \$200 or less).</p> <p>It may be appropriate to facilitate improvements to schemes by reducing the approval requirements. As the improvements are made by a particular lot owner, other lot owners in the scheme are not generally affected monetarily by the improvements. To facilitate improvements by owners and recognise increases in costs since the module was introduced, it is proposed to amend the definition of minor improvement to include improvements with an installed value of up to \$250 and to provide that an improvement other than a minor improvement may be approved by an ordinary resolution rather than a special resolution.</p> <p>Under Section 85, if a lot owner has an exclusive use by-law over part of the common property and the by-law does not authorise the lot owner to make an improvement, the lot owner may make the improvement only if the body corporate authorises it to be made. If the improvement is more than \$200, the making of the improvement must be authorised by a special resolution of the body corporate. To ensure equivalent requirements in sections 75 and 85, it is proposed to amend section 85 to provide that if the improvement is more than <u>\$250</u>, the making of the improvement must be authorised by an <u>ordinary resolution</u> of the body corporate.</p>	<p>Provide that the body corporate may authorise the owner of a lot to make an improvement to the common property for the benefit of the owner's lot and that the improvement must be authorised by ordinary resolution unless the improvement has an installed value of \$250 or less.</p> <p>In relation to an improvement by a lot owner on common property for which the lot owner has an exclusive use by-law and the by-law does not provide for the improvement, provide that body corporate authorisation is required for the improvement and that, if the improvement is more than \$250, the making of the improvement must be authorised by an ordinary resolution of the body corporate.</p>
3.41	s.83	Body corporate's power to remedy	Currently the body corporate's power to take action to remedy defective building work is limited to those situations where the defect is likely to adversely affect the support or shelter of another part of scheme land. It is appropriate to broaden this	Empower the body corporate to take action to remedy any defective building work carried out for the owner of a lot.

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		defective building work	power to ensure that the scheme as a whole does not contain defective building work. For example, defective building work may affect the safety of persons residing in the scheme.	
3.42	s.84	Conditions and obligations under exclusive use by-laws	This section provides that an owner who has exclusive use of common property is responsible for the maintenance of that common property unless the by-law specifically provides otherwise. However, this is generally not appropriate in relation to common property in a building format scheme that provides shelter and support for the general benefit of the scheme, even if the common property is the subject of an exclusive use by-law.	Provide that, in a scheme created by a building format plan of subdivision, an owner to whom exclusive use of common property is given is not responsible for the maintenance of roofing membranes and structures that exist for the shelter and support of the scheme, unless the exclusive use by-law specifically provides otherwise.
3.43	s.87	Definition of 'building' for insurance purposes	In certain types of schemes, the body corporate is responsible for the insurance of some or all of the buildings in the scheme. The term building is defined to include improvements and fixtures, except for carpet; temporary wall, floor and ceiling covers; and those fixtures that are removable by tenants or lessees. The amendment extends the list of items that are not included in the meaning of the term building for the purposes of insurance to clarify responsibility for these items.	Clarify that the term building does not include: <ul style="list-style-type: none"> air conditioning units servicing a particular lot; curtains, blinds and other internal window coverings; mobile dishwashers, dryers and other electrical or gas appliances not wired or plumbed in.
3.44	New provision	Valuations to be obtained for the purposes of insurance	Determining the replacement value of a property is a complex process, involving a variety of factors including the cost of building materials and labour. It may be appropriate to require a body corporate to obtain a regular valuation of the property they are required to insure to reduce the risk of underinsurance of community titles schemes.	Require a body corporate, at least every five years, to obtain from a quantity surveyor or registered valuer an independent valuation stating the replacement value of all property it is liable to insure.
3.45	New provision	Disclosure of insurance details at annual general meeting	Item 3.12 details a proposal to provide that the agenda for an annual general meeting must include a motion reviewing each insurance policy held by the body corporate. To ensure members of the body corporate can make a properly informed decision at the annual general meeting about the motion to review each insurance policy held by the body corporate, it is proposed to set out information about insurance policies that must be included in the material for the annual general meeting.	Provide that certain information about insurance policies must be included in material for an annual general meeting, including the insurer, the amount of cover, the type of cover, the premium, the amount of any excess payable, the expiry date for the cover, the amount of the latest valuation of all property required to be insured by the body corporate and the date of the valuation.
3.46	s.88	Insurance of common property and	It is proposed to make an amount payable by an owner for replacement insurance for the common property and body corporate assets a 'contribution', thereby permitting the amount	Provide that the owner of each lot that is included in the scheme is liable to pay a contribution levied by the body corporate proportionate to the amount of the premium that reflects the interest

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		body corporate assets	to be included in the administrative fund budget, to be levied in a similar way to other body corporate expenses and to be recovered under debt recovery provisions if it is not paid.	schedule lot entitlement of the lot.
3.47	s. 91	Premium	<p>It is proposed to make an amount payable by an owner for reinstatement insurance a 'contribution', thereby permitting the amount to be included in the administrative fund budget, to be levied in a similar way to other body corporate expenses and to be recovered under debt recovery provisions if it is not paid.</p> <p>It is also appropriate to provide for fairer sharing of the costs of insurance by enabling the body corporate to adjust the contribution payable by a lot owner to reflect improvements made to the common property that benefit that owner's lot.</p>	<p>Provide that the owner of each lot that is included in the scheme and is covered by reinstatement insurance required to be taken out by the body corporate is liable to pay a contribution levied by the body corporate.</p> <p>Allow the proportion of the contribution payable by a lot owner towards the premium for reinstatement insurance to be adjusted if the premium is affected because of improvements to common property that benefit the owner's lot.</p>
3.48	s. 92	Improvements affecting premium	Proposed amendments to section 91 allow the contribution payable by a lot owner towards the insurance premium to be adjusted on the basis of improvements to the common property that benefit the owner's lot. It is proposed to amend section 92 to require the owner to provide the body corporate with information regarding the nature and value of such improvements to the common property, so that appropriate adjustments can be made to the contributions for insurance.	Require that, if improvements to common property are made for the benefit of a lot and the premium for reinstatement insurance required to be taken out by the body corporate is likely to increase because of the improvements, the lot owner must provide the body corporate with information regarding the nature and value of such improvements.
3.49	s.95	Insurance for buildings with no common walls	<p>This section provides the basis for the body corporate to establish a voluntary insurance scheme for stand-alone buildings on standard format plans of subdivision. It is proposed to:</p> <ul style="list-style-type: none"> change the basis of the insurance from estimated value to replacement value provide that an amount payable by an owner towards the cost of this insurance is a contribution, thereby permitting the amount to be included in the administrative fund budget, to be levied in a similar way to other body corporate expenses and to be recovered under debt recovery provisions if it is not paid. <p>Also, in schemes where the lots are created under a standard format plan of subdivision, it is difficult for the body corporate to obtain insurance unless there is a building insured under the policy. For this reason, if an owner of a lot on which there is a</p>	<p>In relation to a voluntary insurance schemes established by the body corporate:</p> <ul style="list-style-type: none"> change the basis of the insurance from estimated value to replacement value provide that an amount payable by an owner towards the cost of this insurance is a contribution. <p>Provide if an owner of a lot on which there is a stand alone building makes an improvement to the common property and the body corporate does not establish a voluntary insurance scheme, the owner of that lot must take out insurance for the full replacement value of the improvements.</p>

Item No.	Existing or new provision	Subject	Reason for new provision or change to existing provision	Proposed new provision, or change in existing provision
			stand alone building makes an improvement to the common property and the body corporate does not establish a voluntary insurance scheme, it is proposed to require the owner of that lot to take out insurance for the full replacement value of the improvements.	
3.50	s.97	Public risk insurance	<p>The body corporate is required to maintain public risk insurance of the common property and relevant assets.</p> <p>There has been uncertainty as to the obligation of lot owners to obtain public risk insurance in relation to their property. It is proposed to clarify this obligation.</p> <p>It is reasonable that the body corporate be able to adjust the contribution payable by a lot owner for public liability insurance where a premium for the body corporate policy is increased by the insurer because of the increased risk of liability through the activities of a particular lot, for example, a nightclub being operated from the lot.</p>	<p>Clarify that the body corporate is not required to maintain public risk insurance for lots in the scheme.</p> <p>Provide that the body corporate may adjust the contribution payable by a lot owner for public liability insurance in a way that fairly reflects the proportion of the total risks covered by the policy attributable to activities carried on, or proposed to be carried on, at the owner's lot.</p> <p>Provide that a lot owner must give the body corporate details of any use of their lot that is likely to increase the premium for public risk insurance required to be taken out by the body corporate.</p>
3.51	s.98	Use of insurance money	This provision currently requires the body corporate to apply any insurance money it receives for damaged property to the repair, reinstatement or replacement of the damaged property. However, in certain circumstances the body corporate may not wish to replace damaged property. For example, a barbeque area may have been severely vandalised and the body corporate may prefer to apply the insurance money to the demolition of the barbeque area and the landscaping of that area.	Provide that the body corporate can decide, by resolution without dissent, to apply insurance money for damage to property (other than an amount paid under a voluntary insurance scheme) in a way other than to repair, reinstate or replace the damaged property.
3.52	s.104	Roll of lots and entitlements	To make it easier to contact owners in a scheme and the original owner, it is proposed to require that the roll contain for owners and the original owner both the residential or business address and the address for service.	Require the residential or business address and address for service (if it is different from the residential or business address) of owners and the original owner to be included on the roll.
3.53	s.108	Keeping and disposal of records	The proposed reporting requirements for body corporate managers require changes to the record keeping requirements under the legislation.	<p>Require the body corporate to keep:</p> <ul style="list-style-type: none"> • reports given by a body corporate manager engaged to carry out the functions of the committee and each executive member • any reconciliation statements prepared for an account kept for the administrative or sinking fund.
3.54	s.109	Access to records	The provisions requiring the body corporate to give an adjudicator access to the body corporate's records are	Remove the requirement for the body corporate to allow an adjudicator access to the body corporate's records.

Item No.	Existing or new provision	Subject	Reason for new provision or change to existing provision	Proposed new provision, or change in existing provision
			<p>redundant because provision is now made for this in section 271(5) of the Act.</p> <p>If the body corporate records contain defamatory material, the requirement for the body corporate to provide access to these records may expose the body corporate to action for supplying defamatory material. It is appropriate that the body corporate be protected from this situation.</p> <p>Section 205 of the Act provides for payment of a fee by lot owners to access records. To ensure consistency with the Act, it is proposed to restrict free access to body corporate records to only the secretary and treasurer. It is reasonable that the secretary and treasurer have free access to these records as access to the records is required to perform these committee roles.</p>	<p>Provide that the body corporate is not obliged to provide access to a part of a record it believes contains defamatory material.</p> <p>Provide that body corporate records may be without payment of a fee by the secretary and treasurer.</p>
3.55	s. 112	Return of body corporate property	<p>This section currently provides a process for ensuring the return of body corporate assets by certain persons.</p> <p>However, the body corporate records and seal are also essential for the functioning of the body corporate and it is important that these items are also returned to the body corporate and that a person cannot claim a lien on the body corporate records or seal for this reason.</p>	<p>It is proposed to enhance the current provisions about the return of body corporate property by:</p> <ul style="list-style-type: none"> • broadening the provisions to cover body corporate records and the body corporate seal • broadening the provisions to cover the taking of the property by an associate of a body corporate manager or service contractor • providing that where there is no committee the property can be returned to a nominated member of the body corporate • providing that the person cannot claim a lien on the body corporate records or seal.

Appendix 4

Changes proposed for the *Body Corporate and Community Management (Standard Module) Regulation 2008*

Notes

- The proposed *Body Corporate and Community Management (Standard Module) Regulation 2008* remakes the *Body Corporate and Community Management (Standard Module) Regulation 1997* with some changes. The table below indicates the proposed changes in effect to the current provisions of the *Body Corporate and Community Management (Standard Module) Regulation 1997*.
- Section numbers in the *Body Corporate and Community Management (Standard Module) Regulation 1997* are given to indicate the intended change relative to the current provisions. However equivalent provisions in the proposed *Body Corporate and Community Management (Standard Module) Regulation 2008* will not necessarily retain the same section numbers, structure and wording, even though the effect may be the same.

Item No.	Existing or new provision	Subject	Reason for new provision or change to existing provision	Proposed new provision, or change in existing provision
4.1	s. 10	Eligibility for committee membership	<p>The regulation module seeks to prevent owners who are not fulfilling their financial obligations to the scheme from having a say in the running of the scheme, including through representation on the committee. Section 10 provides that an owner is not eligible to be a voting committee member if the owner owes a body corporate debt when members of the committee are chosen and also that an owner may not nominate a person for committee membership if the owner owes a body corporate debt when the nomination is received by the secretary.</p> <p>However, an anomaly exists under the current provisions in that an owner may nominate a person for committee membership as long as they do not owe a debt when the nomination is received by the secretary, and this non-owner may be elected even if the nominating owner subsequently owes a body corporate debt at the time of the election.</p>	A person who is not an owner but is otherwise eligible to be a voting member of the committee is not eligible to be a voting member of the committee if the body corporate member who nominated the person owes a body corporate debt when the members of the committee are chosen.
4.2	s. 13	Nomination procedures for election of the committee	<p>This section is unclear on whether a lot owner who owns more than one lot in a scheme is able to nominate an individual for committee membership for each lot that they own.</p> <p>There has been criticism of allowing a lot owner who owns more</p>	Clarify that a lot owner who owns more than one lot is entitled to nominate one individual for committee membership for each lot they own, up to a maximum of three nominations.

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			<p>than one lot in a scheme to nominate an individual for committee membership for each lot that they own as this can, at an extreme, result in a committee that is completely controlled by one owner.</p> <p>On the other hand, restricting a lot owner who owns more than one lot to just one nomination may be seen as a significant restriction on entitlements stemming from ownership. Given the protections in the Act that are directed to requiring the committee to act in the interests of all owners, it may be appropriate to provide that a lot owner who owns more than one lot is entitled to nominate one individual for committee membership for each lot they own. These protections include the committee code of conduct requiring a committee voting member to act in the best interests of the body corporate and provisions preventing committee members from voting where they have a conflict of interest.</p> <p>Having said this, owners of more than one lot still exercise their greater voting power in electing the nominated committee members and allowing those owners to nominate multiple members in the initial round of nominations may lead to higher levels of disputation and lack of confidence that the committee is acting in the interests of all owners. The appropriate balance may best be achieved by restricting each owner to one nomination for each lot that they own, up to a maximum of three nominations. A body corporate committee has a maximum of seven members (except where there are less than seven lots in the scheme), and limiting nominations to three members would go some way to addressing concerns that a single owner may be able to have a majority vote on matters considered by the committee.</p>	
4.3	s. 20	Committee elections— Conduct of ballots for positions on the committee	This section provides that, for a ballot for positions on the committee, the person chairing the meeting must perform various functions relating to the ballot papers, including confirming that each ballot paper is the vote of a person who has the right to vote in the election. However, it is sometimes impractical for the person chairing a meeting to complete this requirement.	Provide that the person chairing a meeting may appoint independent persons, for example, an owner of a lot included in the scheme who is not a candidate in the election, to assist in performing functions relating to ballot papers.

Item No.	Existing or new provision	Subject	Reason for new provision or change to existing provision	Proposed new provision, or change in existing provision
4.4	New provision	Issues reserved for decision by ordinary resolution of the body corporate	<p>Under existing provisions, the committee cannot make a decision on an issue which the body corporate has previously reserved, by ordinary resolution, for decision by ordinary resolution of the body corporate.</p> <p>However, the issues reserved for decision by ordinary resolution of the body corporate are often poorly recorded in general meeting minutes and difficult to locate. This may result in a committee unintentionally acting on behalf of the body corporate on issues which the committee is not empowered to act.</p>	<p>Introduce a requirement that the body corporate must reconsider at each annual general meeting any issues the body corporate has previously reserved for decision by ordinary resolution of the body corporate. If the body corporate does not reaffirm the issue at the meeting as an issue reserved for decision by ordinary resolution of the body corporate, the issue will no longer be a restricted issue for the committee.</p>
4.5	s. 35	Voting outside committee meetings	<p>To enable the committee to make timely decisions on matters that arise between committee meetings, this section provides for the committee to vote on motions outside a committee meeting. However, the number of votes required to pass a motion outside a committee meeting is higher than the number of votes required to pass the motion at a committee meeting. This sometimes makes it difficult to achieve a decision outside a committee meeting. It may be appropriate to make the voting requirements for decisions outside committee meetings consistent with the voting requirements for decisions at committee meetings.</p>	<p>Provide that a resolution passed by the committee outside a meeting is valid if:</p> <ul style="list-style-type: none"> (a) notice of the motion is given to all committee members, including non-voting members, and (b) within seven days, or a longer period provided in the notice for the return of votes, a majority of votes received from members of the committee who are entitled to vote on the motion agree to the motion, and (c) the number of votes received from members entitled to vote on a motion is equivalent to a quorum for a committee meeting. <p>However, in an emergency, provide that a resolution is valid if:</p> <ul style="list-style-type: none"> (a) notice of a motion may be given to as many members as it is practicable to contact (b) a majority of votes received from members of the committee who are entitled to vote agreed to the motion (c) the number of votes received from members entitled to vote on a motion is equivalent to a quorum for a committee meeting.
4.6	s. 40	Who may call general meetings	<p>Section 40 provides that a general meeting may be called by a committee member authorised by the committee to call the meeting. The intention of this section, namely that a general meeting will only be called by the secretary or another committee member when the committee has passed a resolution directing the member to call the particular meeting, could be further clarified.</p>	<p>Clarify that the secretary or other member of the committee (including a non-voting member) may call a general meeting upon the committee passing a resolution directing the member to call the meeting.</p>

Item No.	Existing or new provision	Subject	Reason for new provision or change to existing provision	Proposed new provision, or change in existing provision
			<p>It is intended that the person directed to call the meeting will retain the flexibility to deal with issues such as the venue and time of the meeting as these matters may require some flexibility.</p>	
4.7	s. 85	<p>Payment of an amount on transfer of rights under an engagement as a service contractor or authorisation as a letting agent</p>	<p>Under existing provisions, a person can transfer their rights under an engagement as a service contractor or authorisation as a letting agent (together known as 'management rights') if the body corporate approves the transfer. The body corporate may require the transferor to pay an amount to the body corporate as a condition of approving the transfer where the transfer is approved within three years after the date the engagement or authorisation was entered into or the term of the engagement or authorisation was extended. However, the body corporate may not require payment of the amount if the transferor is seeking approval to the transfer on the basis of genuine hardship.</p> <p>While a caretaker is essentially breaking their contract by seeking a transfer, the body corporate cannot unreasonably refuse to agree to the transfer. The 'transfer fee' is designed to protect the body corporate from the disruption of having management rights sold on a regular basis.</p> <p>The non-compulsory nature of the transfer fee creates conflict between letting agents and bodies corporate, as well as within bodies corporate, about the application of the fee. Making the transfer fee mandatory would result in a fairer and more transparent process for applying the fee and therefore less disputation.</p> <p>The transfer fee can currently be applied if a transfer is approved within three years after the date the engagement or authorisation was entered into or the term of the engagement or authorisation was extended. However, often the transfer of management rights takes place through an assignment of rights rather than through a new contract.</p>	<p>Provide that the body corporate must require payment of the transfer fee as a condition of approving the transfer if the date on which the body corporate approves the transfer is within two years of the date on which the original engagement or authorisation was entered into by the transferor or on which the engagement or authorisation was assigned to the transferor. However, the body corporate must not require the payment of the transfer fee if the transferor is seeking approval to the transfer on the basis of genuine hardship not reasonably foreseen by the transferor at the date on when they entered into or were assigned the engagement or authorisation.</p> <p>Provide that the transfer fee to be applied is three percent if the transfer is approved in the first year after the contract date and two percent if the transfer is approved in the second year after the contract date.</p>

Item No.	Existing or new provision	Subject	Reason for new provision or change to existing provision	Proposed new provision, or change in existing provision
			<p>As the fee is designed to protect the body corporate from the disruption of having management rights sold on a regular basis, it may be appropriate for the fee to also apply to a transfer approved within a certain period after the date a contract was <i>assigned</i> to a service contractor or letting agent.</p> <p>Stakeholder groups have proposed that a fairer arrangement for owners, letting agents and service contractors would be for the transfer fee to apply within a set period after the date a contract was first entered into by or assigned to the service contractor or letting agent. This would result in every service contractor and letting agent who transfers their rights within a certain period of first obtaining those rights being subject to the fee and may better protect the body corporate from the disruption of transfers.</p> <p>To retain the existing balance between lot owner and service contractor/letting agent interests, the period that the mandatory fee is applied could be reduced from three years to two years.</p>	
4.8	s. 92	Review of remuneration under engagement of service contractor	This section only had effect until the end of 30 June 2007 and is therefore redundant.	Omit the provision.
4.9	s. 103, schedule	Spending by the committee	<p>The committee may authorise expenditure within the 'relevant limit for committee spending' which is an amount worked out by multiplying the number of lots included in the scheme by \$125.</p> <p>However, the relevant limit for committee spending no longer reflects the costs of goods and services which a body corporate is likely to require on a regular basis. Committees therefore are unable to approve routine expenditure and instead need to call a general meeting to obtain body corporate approval for the expenditure.</p>	<p>Provide that the relevant limit for committee spending is an amount worked out by multiplying the number of lots included in the scheme by \$200, unless the body corporate sets another amount by ordinary resolution at a general meeting.</p> <p>Provide that a limit set by ordinary resolution will have effect until the next annual general meeting held or the limit is otherwise amended by ordinary resolution.</p> <p>Provide that, for the purposes of determining the spending limit for a principal scheme in a layered arrangement of schemes, where a</p>

Item No.	Existing or new provision	Subject	Reason for new provision or change to existing provision	Proposed new provision, or change in existing provision
			<p>Currently if the spending is above the relevant limit for major spending, and is proposed by the committee, the committee must also obtain at least two quotations in accordance with section 104. Currently the committee itself is unable to approve spending over the relevant limit for major spending. However, under the proposed amendment to this section, it would be possible for the body corporate to set a relevant limit for committee spending that is higher than the relevant limit for major spending. It is therefore appropriate for the requirement to obtain two quotations for spending about the relevant limit for major spending to also apply to spending approved by the committee.</p>	<p>lot in the principal scheme forms a subsidiary community titles scheme, that lot is taken to be the same number of lots that is included in the subsidiary scheme.</p> <p>Require that the committee obtain two quotations for spending that is above the relevant limit for major spending before the committee approves the expenditure.</p> <p>Provide that the relevant limit for committee spending prescribed in the legislation excludes GST.</p>
4.10	s. 104, schedule	Spending that requires two quotations	<p>If a motion to be moved at a general meeting of the body corporate involves a proposal that will cost more than the 'relevant limit for major spending', lot owners must be given copies of at least two quotations for the proposal with the notice for the meeting at which the motion is to be considered. If, for exceptional reasons, it is not practicable to obtain two quotations, a single quotation must be obtained and must accompany the notice of meeting. The relevant limit for major spending is an amount worked out by multiplying the number of lots in the scheme by \$250.</p> <p>Some stakeholders have suggested that this requirement places an excessive burden on bodies corporate and that the current limit is too low.</p>	<p>Provide that the relevant limit for major spending is an amount worked out by multiplying the number of lots in the scheme by \$1100.</p> <p>Provide that, for the purposes of determining the relevant limit for major spending for a principal scheme in a layered arrangement of schemes, where a lot in the principal scheme forms a subsidiary community titles scheme, the lot is taken to be the same number of lots that is included in the subsidiary scheme.</p> <p>Provide that the relevant limit for major spending excludes GST.</p>
4.11	s. 113	Improvements to common property by the body corporate	<p>The regulation module prescribes body corporate responsibilities for the maintenance of common property, but also provides for the body corporate to make improvements to the common property. In an aging scheme, an improvement is often necessary to maintain a scheme's amenity which influences the value of the scheme and, depending on the scheme, its tourism potential. Many schemes are now 25 or 30 years old.</p> <p>Currently, a body corporate can generally only make a significant improvement (an improvement with a cost over an amount</p>	<p>Provide that the body corporate may make improvements to the common property if authorised by an ordinary resolution of the body corporate and the value of the improvements is between an amount worked out by multiplying the number of lots included in the scheme by \$300 and an amount worked out by multiplying the number of lots included in the scheme by \$3000. Provide that improvements valued over an amount worked out by multiplying the number of lots included in the scheme by \$3000 may only be made by special resolution.</p>

Item No.	Existing or new provision	Subject	Reason for new provision or change to existing provision	Proposed new provision, or change in existing provision
			worked out by multiplying the number of lots included in the scheme by \$300) to common property if the body corporate passes a special resolution. It may be appropriate to facilitate improvements to schemes by reducing the approval requirements, but to provide a protection to lot owners with limited financial resources by limiting the reduced approval requirements to improvements of a certain value.	
4.12	ss. 114, 124	Improvements to common property by lot owner	Currently, a body corporate may only authorise a lot owner to make a significant improvement to common property (over \$250) if the body corporate passes a special resolution. It may be appropriate to facilitate improvements to schemes by reducing the approval requirements. As the improvements are made by a particular lot owner, other lot owners in the scheme are not generally affected monetarily by the improvements.	Provide that a lot owner may make significant improvements (over \$250) to the common property if authorised by an ordinary resolution of the body corporate.
4.13	New provision, s. 126A	Valuations to be obtained for the purposes of insurance	Determining the replacement value of a property is a complex process, involving a variety of factors including the cost of building materials and labour. It may be appropriate to require a body corporate to obtain a regular valuation of the property they are required to insure under the regulation to reduce the risk of underinsurance for community titles schemes.	<p>Require a body corporate, at least every five years, to obtain from a quantity surveyor or registered valuer an independent valuation stating the replacement value of all property it is liable to insure.</p> <p>Complementing existing insurance disclosure requirements in section 126A, provide that the notice of the annual general meeting, or a note attached to the administrative fund budget proposed for adoption at the annual general meeting, must include the amount of the latest valuation of all property required to be insured by the body corporate and the date of the valuation.</p>
4.14	s. 136	Public risk insurance	The body corporate is required to maintain public risk insurance of the common property and relevant assets. It is reasonable that the body corporate be able to adjust the contribution payable by a lot owner for public liability insurance where a premium for the body corporate policy is increased by the insurer because of the increased risk of liability through the activities of a particular lot, for example, a nightclub being operated from the lot.	<p>Provide that the body corporate may adjust the contribution payable by a lot owner for public liability insurance in a way that fairly reflects the proportion of the total risks covered by the policy attributable to activities carried on, or proposed to be carried on, at the owner's lot.</p> <p>Provide that a lot owner must give the body corporate details of any use of their lot that is likely to increase the premium for public risk insurance required to be taken out by the body corporate.</p>

Appendix 5

Proposed *Body Corporate and Community Management (Two-lot Schemes) Regulation Module 2008*

The key provisions of the proposed *Body Corporate and Community Management (Two-lot Schemes) Regulation Module 2008* (the proposed Two-lot Schemes Module) are set out below.

Application of the Two-lot Schemes Module

The module will provide that, for the module to apply to a community titles scheme, all of the following must apply for the scheme:

- the scheme is not part of a layered arrangement of schemes
- there is no letting agent for the scheme
- the scheme contains only two lots
- the lots in the scheme are residential lots, that is, lots used for residential purposes, whether or not the lot is also the subject of (or available to be the subject of) a lease or letting for accommodation for residential purposes or part of a hotel.

Decisions of the body corporate

The module will provide the following arrangements for body corporate decisions:

- the provisions of the BCCM Act providing for decision making by written agreement apply to a community titles scheme to which this module applies
- the written agreement must:
 - state the date of the agreement
 - state the terms of the agreement
 - state the names of the persons who are parties to the agreement
 - state the lot number that person owns or represents
 - include a statement about the contribution of each lot owner to the cost of the agreed body corporate expense (if any) arising as a consequence of the agreement, the date on which payment of the contribution is due and how the payment is to be made
 - include any documents such as a quote or invoice which would evidence the decision, or was relied on to make the decision
- a lot owner, or their authorised representative, may give agreement by electronic mail
- an agreement may be amended or revoked by another written agreement
- the agreement of a lot owner, or their authorised representative, to a body corporate expense is taken to be an amount payable to the body corporate by the owner.

Representatives

The module will enable a lot owner to authorise a person to act for the owner in body corporate matters. This may be necessary where the owner lives interstate or overseas. The module will not limit who the owner may appoint, and it could be the owner of the other lot.

The module will provide for the following:

- a lot owner may, by written notice to the body corporate and other lot owner, authorise a person to act for the owner in matters relating to the community titles scheme
- the notice must be signed by the lot owner and the person authorised to act for the owner
- the notice must state the authorised representative's residential or business address, and address for service (if it is different from the residential or business address)
- the notice must state whether the person is authorised to act for the lot owner for particular things described in the notice for all matters associated with the body corporate
- the notice must state period of time that the person is authorised to act for the lot owner
- the authorisation continues for the period stated in the notice, or until the authorising lot owner gives a further written notice to the body corporate and to the other lot owner of the termination of the authorisation or of an amendment of the authorisation
- when a lot owner receives a notice from the owner of the other lot, the owner receiving the notice is entitled to rely on the notice in dealing with the authorised representative for the things described in the notice until the owner receives a further notice from the owner of the other lot terminating the authorisation or otherwise amending the authorisation
- the authorisation of a person to act for a lot owner does not limit the obligation of the owner to the body corporate
- to avoid any doubt, the agreement of a person authorised to act for a lot owner to a body corporate decision is taken to be the agreement of the owner.

Body corporate managers and service contractors

The module will prescribe matters about the engagement of a person as a body corporate manager or service contractor for a community titles scheme. The provisions will be in line with the provisions of the proposed Small Schemes Module, with appropriate modifications to suit the management arrangements in the Two-lot Schemes Module.

Financial management

The module will prescribe the following financial management arrangements:

- the contribution of the owner of each lot to an agreed body corporate expense (other than contributions payable for insurance and any other matter for which, under the Act or this regulation, the liability attaching to each lot is calculated

other than on the basis of the lot's contribution schedule lot entitlement) must be proportionate to the contribution schedule lot entitlement of the lot

- if a contribution is not paid by a lot owner by the agreed date for payment, the owner of the other lot in the scheme may, on behalf of the body corporate, recover the amount of the contribution as a debt
- a liability to pay a contribution payable to the body corporate in relation to a lot is enforceable jointly and severally against the person who was the owner of the lot when the contribution became payable and a person (including a mortgagee in possession) who becomes an owner of the lot before the contribution is paid
- if there are two or more owners of a lot, they are jointly and severally liable to pay a contribution under the Act or the module, or another amount payable to the body corporate in relation to the lot
- the body corporate may decide to borrow amounts up to \$3000 on security agreed between the body corporate and the person from whom the amounts are borrowed
- the body corporate may decide to pay amounts received by the body corporate into one or more accounts kept solely in the name of the body corporate at a financial institution
- the body corporate may decide to pay money from any accounts kept solely in the name of the body corporate at a financial institution

Property management

The module will prescribe property management and insurance requirements equivalent to the requirements in the Standard Module, but tailored to the management arrangements in the Two-lot Schemes Module.

Administrative matters

The module will prescribe matters about the rights and obligations of the body corporate for administrative arrangements.

Body corporate's seal

The module will contain provisions prescribing matters about the use and custody of body corporate's seal that are equivalent to the provisions in the other proposed modules, with appropriate modifications to suit the management arrangements in the Two-lot Schemes Module.

Notices for roll

The module will prescribe notice requirements that are equivalent to the requirements in the other proposed modules, with appropriate modifications to suit the management arrangements in the Two-lot Schemes Module.

Register of written agreements

In line with the other proposed modules, the module will require the body corporate to keep a roll of lots and entitlements, a register of assets, and a register of allocations under exclusive use by-laws.

The module will require the body corporate to establish and maintain a register of written agreements. The register must include each written agreement made by the owners on behalf of the body corporate and any associated documentation supporting the agreement. This requirement will ensure that body corporate decisions are documented and accessible.

Original owner obligations in relation to body corporate records

The module will require the original owner to hand over to the body corporate specified documents relating to the community titles scheme within two months after the first of the following to happen:

- a lot included in the scheme is no longer in the ownership of the original owner
- six months elapse after the establishment of the scheme.

These documents are essential for the functioning of the body corporate. The provision also acknowledges that even where all lots are owned by the original owner, the body corporate is an entity distinct from the original owner and that the records of the body corporate must be kept separately from the records of the original owner.

A maximum penalty of 150 penalty units (or \$11 250) will apply if the original owner fails to comply with this requirement.

Who is to keep body corporate records after the original owner period

The body corporate must decide who is to keep and maintain records for the scheme. If the owners cannot agree, the records must be kept and maintained by the owners of both lots unless otherwise determined under the dispute resolution provisions of the Act.

Documents and information

The module will require the body corporate to keep specified records, including:

- written notices authorising a person to act for an owner in body corporate matters
- written notices terminating the authorisation of a person to act for an owner, or otherwise amending the original authorisation
- written agreements between the owners of the lots evidencing decisions made as a body corporate.

Access to records

The module will require the body corporate to give body corporate members access to the body corporate's records without payment of a fee. The module will also prescribe a fee for inspection of the body corporate's records under section 205 of the Act. The fee will be consistent with the fee payable under the other modules.

Miscellaneous

The module will prescribe requirements for the return of body corporate property and the return of documents in the custody of body corporate manager equivalent to the requirements in the other proposed modules with appropriate modifications to suit the management arrangements in the Two-lot Schemes Module.

The module will also provide for the application of a simplified by-law process. Under this process, an owner or occupier may issue a contravention notice to another owner or occupier who has contravened the by-laws where the contravention is likely to continue or be repeated. If the owner/occupier who is issued the notice does not comply with the notice, the complainant owner/occupier may commence enforcement proceedings in the BCCM Office. The complainant owner/occupier must also provide a copy of the contravention notice to the body corporate at the same time the notice is issued to the other owner/occupier.