

# Community Land Management Act 1989

## See also:

*Statute Law (Miscellaneous Provisions) Bill (No 2) 2005*

## Reprint history:

Reprint No 1

15 November 1993

Reprint No 2

1 September 1997

Reprint No 3

22 September 1998

Reprint No 4

19 February 2002

## Long Title

An Act to provide for the management of community schemes, precinct schemes and neighbourhood schemes established by the subdivision of land under the *Community Land Development Act 1989*; and for other purposes.

## Part 1 – Preliminary

### 1 Name of Act

This Act may be cited as the *Community Land Management Act 1989*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Definitions

(1) In this Act: "**acquisition plan**" means a deposited plan that:

(a) is lodged for registration as a current plan, and

(b) shows the parts of lots and association property within a scheme that are to be purchased by a resuming authority under section 34 of the *Community Land Development Act 1989*.

"**Adjudicator**" means a Community Schemes Adjudicator appointed under section 109H. "**approved form**" means the form approved by the Minister for the purposes of each provision of this Act in which the expression appears. "**association**" means a community association, a precinct association or a neighbourhood association. "**association property**" means:

(a) in relation to a community scheme--the community property in the scheme, or

(b) in relation to a precinct scheme--the precinct property in the scheme, or

(c) in relation to a neighbourhood scheme--the neighbourhood property in the scheme.

**"by-laws"** means:

- (a) in relation to a scheme other than a strata scheme--by-laws included in the management statement in force for the scheme, or
- (b) in relation to a strata scheme--by-laws in force for the scheme under the *Strata Schemes Management Act 1996*.

**"common property"** means the common property in a strata scheme as defined in the *Strata Schemes (Freehold Development) Act 1973*. **"community association"** means the corporation that:

- (a) is constituted under section 25 of the *Community Land Development Act 1989* on the registration under that Act of a community plan, and
- (b) is established as a community association by section 5.

**"community development lot"** means a lot in a community plan that is not community property, a public reserve or a drainage reserve and is not land that has become subject to a subsidiary scheme or a lot that has been severed from the community scheme. **"community management statement"** means a statement that is registered with a community plan as a statement of the by-laws and other particulars governing participation in the community scheme. **"community parcel"** means land the subject of a community scheme. **"community plan"** means a plan for the subdivision of land into 2 or more community development lots and 1 other lot that is community property, whether or not the plan includes land that, on registration of the plan, would be dedicated as a public road, a public reserve or a drainage reserve. **"community plan of consolidation"** means a plan for the consolidation of 2 or more, but not all, of the community development lots in a community plan. **"community plan of subdivision"** means a plan (other than an acquisition plan) for the subdivision of a community development lot into 2 or more community development lots and no other lot or lots. **"community property"** means the lot shown in a community plan as community property. **"community roll"** means the roll required by section 25 to be maintained by a community association. **"community scheme"** means:

- (a) the manner of subdivision of land by a community plan, and
- (b) if land in the community plan is subdivided by a precinct plan--the manner of subdivision of the land by the precinct plan, and
- (c) the manner of subdivision of land in the community plan, or of land in such a precinct plan, by a neighbourhood plan or a strata plan, and
- (d) the proposals in any related development contract, and
- (e) the rights conferred, and the obligations imposed, by or under this Act, the *Community Land Development Act 1989* and the *Strata Schemes (Freehold Development) Act 1973* in relation to the community association, its community property, the subsidiary schemes and persons having interests in, or occupying, development lots and lots in the subsidiary schemes.

**"company nominee"**, in relation to a corporation, means the person named in a notice under section 47 as the nominee authorised by the corporation under section 111 to exercise its voting rights. **"consent authority"**, in relation to the giving of an approval, a consent or a certificate, means the council that has as a function the giving of the approval, consent or certificate under the *Environmental Planning and Assessment Act 1979* or Chapter 7 of the *Local Government Act 1993*. **"current plan"** means a registered plan that is a current plan within the meaning of the *Conveyancing Act 1919* but is not a plan that, under the *Strata Schemes (Freehold Development) Act 1973*, is a strata plan, a strata plan of subdivision or a strata plan of consolidation. **"deposited plan"** means a plan of division of land that is prepared for the purposes of the *Community Land Development Act 1989*, is not required to be registered under the *Strata Schemes (Freehold Development) Act 1973* and is registered after being lodged at the office of the Registrar-General in accordance with Division 3 of Part 23 of the *Conveyancing Act 1919*. **"Deputy**

**Registrar**" means a Deputy Registrar of the Tribunal. **"developer"** means:

- (a) in relation to a community scheme--the person who, for the time being, is the registered proprietor of a community development lot in the community plan, or
- (b) in relation to a precinct scheme--the person who, for the time being, is the registered proprietor of a precinct development lot in the precinct plan, or
- (c) in relation to a neighbourhood scheme--the original proprietor of the neighbourhood parcel.

**"development"**, in relation to land, means:

- (a) the erection of a building on the land, or
- (b) the carrying out of a work in, on, under or over the land, or
- (c) the use of the land or of a building or work on the land, or
- (d) the subdivision of the land,

not excluded by regulations under the *Environmental Planning and Assessment Act 1979* from the definition of **"development"** in that Act. **"development application"** means an application under Division 1 of Part 4 of the *Environmental Planning and Assessment Act 1979* for consent to carry out development. **"development consent"** means consent under Division 1 of Part 4 of the *Environmental Planning and Assessment Act 1979* to carry out development. **"development contract"** means instruments, plans and drawings that are registered with a community plan, precinct plan or neighbourhood plan and describe the manner in which it is proposed to develop the land in a community plan, precinct plan or neighbourhood plan to which they relate. **"development lot"** means a community development lot or a precinct development lot that has not been severed under section 15 of the *Community Land Development Act 1989* from the applicable scheme. **"Director-General"** means the Director-General of the Department of Fair Trading. **"drainage reserve"** means land that is set aside as a drainage reserve, under section 49 of the *Local Government Act 1993*. **"folio"** means folio of the Register. **"former development lot"** means a precinct parcel, neighbourhood parcel or strata parcel that, before it became subject to the precinct scheme, neighbourhood scheme or strata scheme, was a development lot. **"initial period"** means, in relation to:

- (a) a strata scheme--the initial period defined in the *Strata Schemes Management Act 1996*, or
- (b) a neighbourhood scheme--the period that commences when the neighbourhood association is constituted and ends when the sum of the unit entitlements of lots in the neighbourhood scheme of which the original proprietor is not the proprietor is at least one-third of the total unit entitlement under the neighbourhood scheme, or
- (c) a precinct scheme--the period that commences when the precinct association is constituted and ends when the sum of the unit entitlements of former development lots in the scheme that are the subject of neighbourhood or strata schemes for which the initial period has expired is at least one-third of the total unit entitlement under the precinct scheme, or
- (d) a community scheme--the period that commences when the community association is constituted and ends when the sum of the unit entitlements of former development lots in the scheme that are the subject of neighbourhood or strata schemes for which the initial period has expired is at least one-third of the total unit entitlement under the community scheme.

**"interim order"** means an interim order made by an Adjudicator under section 72. **"land"** means contiguous land held under the *Real Property Act 1900* in fee simple, no part of which is land in a qualified or limited folio and which:

- (a) is a lot or portion, or 2 or more lots or portions, in a current plan, or
- (b) is land the subject of a transaction referred to in section 23G of the *Conveyancing Act 1919*, or

(c) is land referred to in both paragraph (a) and paragraph (b).

**"management statement"** means a community management statement, a precinct management statement or a neighbourhood management statement. **"managing agent"**, in relation to an association, means a person who is, within the meaning of the *Property, Stock and Business Agents Act 2002*, the community managing agent for the association. **"mortgage"** means a charge (other than a statutory interest or a covenant charge) on land for securing the payment of money or money's worth. **"neighbourhood association"** means the corporation that:

(a) is constituted under section 25 of the *Community Land Development Act 1989* on the registration of a neighbourhood plan, and

(b) is established as a neighbourhood association by section 7.

**"neighbourhood lot"** means land that is a lot in a neighbourhood plan but is not neighbourhood property, a public reserve or a drainage reserve. **"neighbourhood management statement"** means a statement that is registered with a neighbourhood plan as a statement of the by-laws and other particulars governing participation in the neighbourhood scheme. **"neighbourhood parcel"** means land the subject of a neighbourhood scheme. **"neighbourhood plan"** means a plan (other than a community plan, a precinct plan or a strata plan) for the subdivision of land into 2 or more lots for separate occupation or disposition and 1 other lot that is neighbourhood property, whether or not the plan includes land that, on registration of the plan, would be dedicated as a public road, a public reserve or a drainage reserve. **"neighbourhood plan of consolidation"** means a plan for the consolidation of 2 or more, but not all, of the neighbourhood lots in the same neighbourhood plan. **"neighbourhood plan of subdivision"** means a plan that is not a strata plan or an acquisition plan and is:

(a) for the subdivision of 1 or more neighbourhood lots (whether or not the neighbourhood scheme is part of a community scheme) into 2 or more different neighbourhood lots, or

(b) for the subdivision of 1 or more neighbourhood lots (whether or not the neighbourhood scheme is part of a community scheme) into 1 or more different neighbourhood lots and related neighbourhood property, or

(c) for the subdivision of 1 or more neighbourhood lots and neighbourhood property in a neighbourhood scheme that is not part of a community scheme into 1 or more different neighbourhood lots and related neighbourhood property, or

(d) for the subdivision of neighbourhood property in a neighbourhood scheme that is not part of a community scheme into 1 or more neighbourhood lots and related neighbourhood property.

**"neighbourhood property"** means the lot shown in a neighbourhood plan as neighbourhood property. **"neighbourhood roll"** means the roll required by section 25 to be maintained by a neighbourhood association. **"neighbourhood scheme"** means:

(a) the manner of subdivision of land by a neighbourhood plan, and

(b) the proposals in any related development contract, and

(c) the rights conferred, and the obligations imposed, by or under this Act and the *Community Land Development Act 1989* in relation to the neighbourhood association, the neighbourhood property and the proprietors and other persons having interests in, or occupying, the neighbourhood lots.

**"notice of resumption"** means a notice, notification or other instrument on publication of which land is resumed. **"open access way"** means an open access way set apart under Part 5 of the *Community Land Development Act 1989*. **"ordinary resolution"** means a resolution passed:

(a) except on a poll--by a majority in number of the votes cast, or

(b) on a poll--by a majority in value of the votes cast.

**"original proprietor"**, in relation to land, means the registered proprietor in fee simple

of the land at the time of registration of a community plan, precinct plan or neighbourhood plan subdividing the land. "**personal property**", in relation to an association, includes (but is not limited to) association rolls, books of account and other records. "**precinct association**" means the corporation:

- (a) constituted by section 25 of the *Community Land Development Act 1989* on the registration of a precinct plan, and
- (b) established as a precinct association by section 6 of this Act.

"**precinct development lot**" means a lot in a precinct plan that is not precinct property, a public reserve or a drainage reserve and is not land that has become subject to a subsidiary scheme or a lot that has been severed from the precinct scheme. "**precinct management statement**" means a statement that is registered with a precinct plan as a statement of the by-laws and other particulars governing participation in the precinct scheme. "**precinct parcel**" means land the subject of a precinct scheme. "**precinct plan**" means a plan for the subdivision of the land in a community development lot into 2 or more precinct development lots and 1 other lot that is precinct property, whether or not the plan includes land that, on registration of the plan, would be dedicated as a public road, a public reserve or a drainage reserve. "**precinct plan of consolidation**" means a plan for the consolidation of 2 or more, but not all, of the precinct development lots in the same precinct plan. "**precinct plan of subdivision**" means a plan (other than an acquisition plan) for the subdivision of a precinct development lot into 2 or more precinct development lots and no other lot or lots. "**precinct property**" means the lot shown in a precinct plan as precinct property. "**precinct roll**" means the roll required by section 25 to be maintained by a precinct association. "**precinct scheme**" means:

- (a) the manner of subdivision of land by a precinct plan, and
- (b) the manner of subdivision of land in the precinct plan by a neighbourhood plan or a strata plan, and
- (c) the proposals in any related development contract, and
- (d) the rights conferred, and the obligations imposed, by or under this Act, the *Community Land Development Act 1989* and the *Strata Schemes (Freehold Development) Act 1973* in relation to the precinct association, its precinct property, the subsidiary schemes and persons having interests in, or occupying, development lots, neighbourhood lots and strata lots in subsidiary schemes.

"**private access way**" means a private access way set apart under Part 5 of the *Community Land Development Act 1989*. "**proprietor**", in relation to a development lot or a neighbourhood lot, means:

- (a) a person for the time being recorded in the Register as entitled to an estate in fee simple in the lot, or
- (b) a person who has in the lot an interest referred to in section 47 of which notice has been given under that section to an association.

"**public authority**" includes a council within the meaning of the *Local Government Act 1993*. "**public reserve**" has the same meaning as it has in the *Local Government Act 1993*. "**public road**" has the same meaning as it has in the *Roads Act 1993*. "**Register**" means the Register kept under the *Real Property Act 1900*. "**registered**" means registered by the Registrar-General. "**registered valuer**" means a registered valuer under the *Valuers Act 2003*. "**Registrar**" means the Registrar of the Tribunal. "**restricted property**" means:

- (a) association property of which the use is restricted by a management statement, or
- (b) common property of which the use is restricted by by-laws in force under the strata scheme of which it forms part.

"**resume**" means compulsorily acquire under the authority of an Act or a Commonwealth Act. "**resuming authority**" means an authority in which land is proposed to be, or is,

vested by way of resumption. "**schedule of unit entitlements**", in the case of a strata scheme, means a schedule of unit entitlement under the *Strata Schemes (Freehold Development) Act 1973*. "**scheme**" means a community scheme, a precinct scheme, a neighbourhood scheme or a strata scheme. "**secretary**", in relation to an association, means the secretary of the executive committee of the association. "**sign**" includes seal and, in the case of a corporation other than an association or a strata corporation, includes sign as a person authorised by the corporation. "**special resolution**" means a resolution:

- (a) that is passed at a duly convened meeting of a community association and against which not more than one-quarter in value (ascertained in accordance with clause 12 of Schedule 5 or clause 15 of Schedule 6) of votes is cast, or
- (b) that is passed at a duly convened meeting of a precinct association and against which not more than one-quarter in value (ascertained in accordance with clause 26 of Schedule 5 or clause 35 of Schedule 6) of votes is cast, or
- (c) that is passed at a duly convened meeting of a neighbourhood association and against which not more than one-quarter in value (ascertained in accordance with clause 40 of Schedule 5 or clause 55 of Schedule 6) of votes is cast, or
- (d) that is passed at a duly convened meeting of a strata corporation and against which not more than one-quarter in value (ascertained in accordance with clause 18 (2) and (3) of Part 2 of Schedule 2 to the *Strata Schemes Management Act 1996*) of votes is cast.

"**staged scheme**" means a community scheme or precinct scheme developed in stages. "**statutory interest**" means a charge or other proprietary interest that:

- (a) is created by this or any other Act or a Commonwealth Act, and
- (b) affects land in a community plan, a precinct plan, a neighbourhood plan or a strata plan, and
- (c) is enforceable against a proprietor, an association or a strata corporation,

whether or not it has been recorded in the Register. "**strata corporation**" means the owners corporation constituted by section 11 of the *Strata Schemes Management Act 1996* for a strata scheme. "**strata lot**" means a lot within the meaning of the *Strata Schemes (Freehold Development) Act 1973* that is part of a community scheme. "**strata parcel**" means land the subject of a strata scheme. "**strata plan**" means a strata plan under the *Strata Schemes (Freehold Development) Act 1973* that includes common property. "**strata scheme**" means:

- (a) a strata scheme under the *Strata Schemes (Freehold Development) Act 1973* that includes common property and is part of a community scheme, and
- (b) the proposals in any related development contract, and
- (c) the rights conferred, and the obligations imposed, by or under the *Strata Schemes (Freehold Development) Act 1973*, this Act and the *Community Land Development Act 1989* in relation to the scheme.

"**subsidiary body**" means:

- (a) in relation to a community scheme--the precinct association, neighbourhood association or strata corporation constituted under a precinct scheme, neighbourhood scheme or strata scheme that is part of the community scheme, or
- (b) in relation to a precinct scheme--the neighbourhood association or strata corporation constituted under a neighbourhood scheme or strata scheme that is part of the precinct scheme.

"**subsidiary parcel**" means the precinct parcel, neighbourhood parcel or strata parcel in a subsidiary scheme. "**subsidiary scheme**" means:

- (a) in relation to a community scheme--a precinct scheme, neighbourhood scheme or strata scheme that is part of the community scheme, or
- (b) in relation to a precinct scheme--a neighbourhood scheme or strata scheme that is part of the precinct scheme.

**"Tribunal"** means the Consumer, Trader and Tenancy Tribunal established by the *Consumer, Trader and Tenancy Tribunal Act 2001*. **"unanimous resolution"** means a resolution passed at a duly convened general meeting of an association without a vote being cast against it.

(2) This Act is to be interpreted as part of the *Real Property Act 1900*, but, if there is an inconsistency between them, this Act prevails.

(3) For the purposes of this Act, land is contiguous even if it is divided by, or separated from other land by, a natural feature, a railway, a public road, a public reserve or a drainage reserve.

(4) A reference in this Act to a development consent, a development contract, a community management statement, a precinct management statement or a neighbourhood management statement includes a reference to the consent, contract or statement as modified or amended from time to time.

(5) In this Act:

(a) a reference to a function includes a reference to a power, authority and duty, and

(b) a reference to the exercise of a function includes, in relation to a duty, a reference to the performance of the duty.

### **3A Notes**

Notes included in this Act are explanatory notes and do not form part of this Act.

### **4 Compliance with Act by the Crown**

This Act binds the Crown except in relation to a requirement to obtain an approval, consent or certificate from a consent authority.

## **Part 2 – Management of community, precinct and neighbourhood schemes**

### **Division 1 – Associations**

#### **5 Community association**

(1) The corporation that:

(a) is constituted under the *Community Land Development Act 1989* by the registration of a community plan as a deposited plan, and

(b) has for its corporate name "Community Association D.P. No" (the number inserted being that of the deposited plan),

is a community association for the purposes of this or any other Act.

(2) The corporation has for its members:

(a) the proprietor of each community development lot in the community plan that has not become subject to a subsidiary scheme, and

(b) the precinct association constituted if such a development lot becomes subject to a precinct scheme, and

(c) the neighbourhood association constituted if such a development lot becomes subject to a neighbourhood scheme, and

(d) the strata corporation constituted if such a development lot becomes subject to a strata scheme.

(3) Section 50 (1) (d) of the *Interpretation Act 1987* does not apply to a community association.

(4) A community association is declared to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the whole of the Corporations legislation.

(5) A community association has the functions conferred or imposed on it by Schedule 1, by other provisions of this Act and by any other Act.

#### **6 Precinct association**

- (1) The corporation that:
  - (a) is constituted under the *Community Land Development Act 1989* by the registration of a precinct plan as a deposited plan, and
  - (b) has for its corporate name "Precinct Association D.P. No" (the number inserted being that of the deposited plan),is a precinct association for the purposes of this or any other Act.
- (2) The corporation has for its members:
  - (a) the proprietor of each precinct development lot in the precinct plan that has not become subject to a subsidiary scheme, and
  - (b) the neighbourhood association constituted if such a development lot becomes subject to a neighbourhood scheme, and
  - (c) the strata corporation constituted if such a development lot becomes subject to a strata scheme.
- (3) Section 50 (1) (d) of the *Interpretation Act 1987* does not apply to a precinct association.
- (4) A precinct association is declared to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the whole of the Corporations legislation.
- (5) A precinct association has the functions conferred or imposed on it by Schedule 1, by other provisions of this Act and by any other Act.

## **7 Neighbourhood association**

- (1) The corporation that:
  - (a) is constituted under the *Community Land Development Act 1989* by the registration of a neighbourhood plan as a deposited plan, and
  - (b) has for its corporate name "Neighbourhood Association D.P. No" (the number inserted being that of the deposited plan),is a neighbourhood association for the purposes of this or any other Act.
- (2) The corporation has for its members the proprietors of the neighbourhood lots in the neighbourhood plan.
- (3) Section 50 (1) (d) of the *Interpretation Act 1987* does not apply to a neighbourhood association.
- (4) A neighbourhood association is declared to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the whole of the Corporations legislation.
- (5) A neighbourhood association has the functions conferred or imposed on it by Schedule 1, by other provisions of this Act and by any other Act.

## **8 Seal of association**

- (1) If an association has only 1 member, the seal of the association must be kept:
  - (a) by the member, or
  - (b) by the managing agent (if any).
- (2) If an association has 2 or more members, the seal of the association must be kept:
  - (a) by a member who is nominated by the association for the purpose, or
  - (b) by the managing agent (if any).
- (3) If an association has only 1 member, the seal of the association may not be affixed except in the presence of:
  - (a) the member, or
  - (b) the managing agent (if any).
- (4) If an association has 2 or more members, the seal of the association may not be affixed except in the presence of:
  - (a) its members, if it has only 2, or
  - (b) the prescribed persons, or
  - (c) the managing agent (if any).



- (5) A managing agent is entitled to custody of the seal of an association only to permit the exercise of functions delegated to the managing agent.
- (6) The affixing to an instrument by a managing agent of the seal of an association must be presumed to have been affixed under a delegation from the association unless the presumption operates to enable a person to fraudulently obtain a benefit.
- (7) For the purposes of subsection (6), a person does not fraudulently obtain a benefit if the benefit was, without any fraud by the person, obtained before the seal was affixed.
- (8) The seal of the association must be in the approved form and is not duly affixed unless the fact and date of its being affixed are attested by the signature of the person or persons in whose presence it is affixed in accordance with this section.
- (9) The provisions of section 50 (2) and (3) of the *Interpretation Act 1987* relating to the seal of a statutory corporation do not apply to an association.
- (10) In this section: "**prescribed persons**" means:
- (a) 2 persons nominated by the association, each of whom is a member of the association, or
  - (b) in the absence of nominations--the secretary and a member of the executive committee.

### **9 Meeting to be held by original proprietor**

- (1) The person who is, or was, the original proprietor of land subdivided by a community plan, precinct plan or neighbourhood plan must, within 2 months after expiration of the initial period for the association constituted by registration of the plan, convene and hold a general meeting of the association as prescribed.
- (2) A person who fails to comply with subsection (1) is guilty of an offence.
- (3) The person who is, or was, the original proprietor is guilty of an offence unless, at the meeting, there is delivered to the association:
- (a) all plans, specifications, certificates, diagrams, policies of insurance and other documents relating to the community parcel, precinct parcel or neighbourhood parcel that have been obtained or received by the original proprietor, and
  - (b) any agreements entered into by the original proprietor with respect to the construction, preparation or maintenance of association property, and
  - (c) a copy of any development contract relating to the scheme under which it is constituted as an association, and
  - (d) a copy of the diagram illustrating the situation of all service lines referred to in section 36 of the *Community Land Development Act 1989* that have been installed within the scheme under which the association is constituted, and
  - (e) the certificate of title for the association property, and
  - (f) the accounting records kept, and the latest financial statements prepared, as required by this Act.
- (4) Subsection (3) does not apply to:
- (a) the certificate of title for a development lot, neighbourhood lot or strata lot, or
  - (b) the certificate of title for association property if the certificate of title is not in the possession, or under the control, of the original proprietor, or
  - (c) documents that exclusively evidence rights or obligations of the original proprietor and are not capable of being used for the benefit of the association, a subsidiary body or the proprietor (other than the original proprietor) of a development lot, neighbourhood lot or strata lot.

### **10 First annual general meeting of association**

- (1) The first annual general meeting of an association is the meeting required to be convened and held by the original proprietor under section 9 or, if the original proprietor does not convene the meeting or, having convened the meeting, does not hold it:
- (a) the first annual general meeting held in accordance with an order of an Adjudicator under section 11, or

(b) if no application for such an order is made--the first meeting of the association, however convened and whenever held, that has the agenda specified in clause 3 of Schedule 5 in the case of a community association, clause 17 of Schedule 5 in the case of a precinct association or clause 31 of Schedule 5 in the case of a neighbourhood association.

(2) Schedule 5 has effect in relation to the first annual general meeting of an association.

### **11 Remedial meetings**

(1) If the original proprietor does not convene the first annual general meeting of an association or, having convened the meeting, does not hold it, an Adjudicator may, on application by:

- (a) the association, or
- (b) a member of the association, or
- (c) a mortgagee or covenant chargee of a development lot, neighbourhood lot or strata lot within the relevant scheme,

by order appoint a person nominated by the applicant to convene and hold the first annual general meeting of the association within a specified time.

(2) If there is not an executive committee of an association at any time after the first annual general meeting, an Adjudicator may by order appoint a person to convene and hold a meeting of the association within a specified time to elect the executive committee.

(3) If, at any time after the first annual general meeting, there is no chairperson, secretary and treasurer of the executive committee of an association, an Adjudicator may by order appoint a person to convene and hold a meeting of the committee within a specified time to elect the officers.

(4) A meeting may be ordered under subsection (2) or (3) on the application of:

- (a) a subsidiary body within the community scheme or precinct scheme, or
- (b) the proprietor, or a mortgagee or covenant chargee, of a development lot, neighbourhood lot or strata lot within the community scheme.

(5) The election of an executive committee under subsection (2) has effect as if it had taken place at the first annual general meeting.

(6) An order by an Adjudicator may provide:

- (a) for the appointed person to have the functions of chairperson at the meeting, and
- (b) for notice of the meeting to be given as specified, and
- (c) for ancillary matters,

and the order has effect even if it departs from Schedule 5 or 6.

(7) The convening and holding of a meeting under this section or otherwise is not a defence to a prosecution of an original proprietor for an offence under section 9.

### **12 General meetings other than first annual general meeting**

An association:

- (a) must, after the first annual general meeting, hold annual general meetings as provided by Schedule 6, and
- (b) may, before or after the first annual general meeting, hold special general meetings as provided by Schedule 6.

### **13 Binding effect of management statement**

(1) A community management statement is binding on:

- (a) the community association, and
- (b) each subsidiary body within the community scheme, and
- (c) each person who is the proprietor, lessee or occupier, or the mortgagee or covenant chargee in possession, of a development lot, neighbourhood lot or strata lot within the community scheme.

- (2) A precinct management statement is binding on:
  - (a) the precinct association, and
  - (b) each subsidiary body within the precinct scheme, and
  - (c) each person who is the proprietor, lessee or occupier, or the mortgagee or covenant chargee in possession, of a precinct development lot, neighbourhood lot or strata lot within the precinct scheme.
- (3) A neighbourhood management statement is binding on:
  - (a) the neighbourhood association, and
  - (b) each person who is the proprietor, lessee or occupier, or the mortgagee or covenant chargee in possession of, a neighbourhood lot within the neighbourhood scheme.
- (4) Subsections (1)-(3) have effect as if, in each case:
  - (a) the management statement included mutual covenants to observe its provisions entered into by the persons bound by it, and
  - (b) the persons so bound had executed the management statement under seal.

### **13A How can an association enforce the by-laws?**

An association may serve a notice, in a form approved by the Director-General, on the proprietor or occupier of a lot requiring the proprietor or occupier to comply with a specified provision of the by-laws if the association is satisfied that the proprietor or occupier has contravened that provision.

### **14 Amendment of management statement**

- (1) Except as provided by subsection (2), an association may amend its management statement in relation to the control, management, administration, use and enjoyment of the lots, or of the association property.
- (2) A management statement may not be amended:
  - (a) in a manner inconsistent with any restriction imposed by this Act on the making of the amendment, or
  - (b) in a manner that would make the management statement inconsistent with this Act or the *Community Land Development Act 1989*.
- (3) An amendment requires:
  - (a) a unanimous resolution if the amendment would affect by-laws made under section 17 to control or preserve the essence or theme of the scheme to which they relate, or
  - (b) a unanimous resolution if the amendment would affect a by-law the terms of which have effect because they are the terms of an order by the Tribunal, or
  - (c) in any other case--a special resolution.
- (4) An amendment has no effect until it is registered.
- (5) Lodgment of an amendment cannot be accepted later than 2 months after the passing of the resolution making the amendment.

### **15 Binding effect of development contract**

- (1) If a development contract is registered with a community plan, it has effect as if it included an agreement under seal with covenants to the effect of those set out in Part 1 of Schedule 2.
- (2) If a development contract is registered with a precinct plan, it has effect as if it included an agreement under seal with covenants to the effect of those set out in Part 2 of Schedule 2.
- (3) The development contract registered with a neighbourhood plan has effect as if it included an agreement under seal with covenants to the effect of those set out in Part 3 of Schedule 2.
- (4) Any attempt to exclude, modify or restrict the operation of the covenants is void.
- (5) The covenants do not affect any right or remedy a person has otherwise than under the

covenants.

(6) A covenant does not merge in a transfer.

(7) Part 4 (which relates to disputes) does not apply to matters arising under the covenants.

## **16 Amendment of development contract with approval of association**

(1) A development contract may be amended by the developer but any such amendment is ineffective unless:

(a) this section has been complied with in relation to the amendment, and

(b) the amendment is registered.

(2) A proposed amendment that involves a change in the basic architectural or landscaping design of the development, or in its essence or theme, may not be made unless it is approved:

(a) by the consent authority, and

(b) unless the developer is the only member of the association--by unanimous resolution of each association and strata corporation that is a party to the development contract.

(3) An amendment proposed in order to give effect to:

(a) a change in the law, or

(b) a change in the requirements of the consent authority,

may not be made unless it is approved by the consent authority and notified to each association that is a party to the development contract.

(4) Any other proposed amendment that would require a change in the terms of the development consent may not be made unless it is approved:

(a) by the consent authority, and

(b) by a special resolution of each association and strata corporation that is a party to the contract.

(5) Any other proposed amendment that would not require a change in the terms of the development consent may be made only if:

(a) it is approved by the consent authority and by an ordinary resolution of each association and strata corporation that is a party to the development contract, and

(b) the application for registration is accompanied by a certificate of the consent authority to the effect that a change in the terms of the development consent is not required.

(6) For the purposes of this section, an approval given under section 107 by the Land and Environment Court to an amendment of a development contract has the same effect as an approval of the amendment duly given under this section by an association or strata corporation.

(7) A consent authority that approves an amendment of a development contract must provide the applicant for the approval with a copy of the instruments, plans and drawings that describe and illustrate the amendment and a certificate to the effect:

(a) that the copy describes and illustrates the approved amendment, and

(b) that the development contract, if amended as approved by the authority, would not be inconsistent with the related development consent.

## **17 By-laws fixing details of development**

(1) The by-laws for a scheme may relate to the control or preservation of the essence or theme of the development under the scheme by:

(a) limiting occupancy under the scheme to persons of a particular description, or

(b) fixing the architectural, building or landscaping styles to be permitted, or

(c) limiting the kind of materials that may be used in buildings and other structures, or

(d) requiring that specified association property be used only for particular purposes, or

- (e) imposing any other kind of restriction.
- (2) If a by-law made in accordance with subsection (1) is identified in the by-laws as relating to the control and preservation of the essence or theme of the scheme to which it relates, it may be amended or revoked only by a unanimous resolution of the association, or the strata corporation, constituted under the scheme.

### **18 Lessee to comply with management statement**

- (1) In a lease of a community development lot or a lease of community property there is implied an agreement by the lessee to comply with the community management statement.
- (2) In a lease of a precinct development lot or a lease of precinct property there is implied an agreement by the lessee to comply:
  - (a) with the precinct management statement, and
  - (b) with the community management statement for the community scheme of which the precinct scheme forms part.
- (3) In a lease of a neighbourhood lot or neighbourhood property there is implied an agreement by the lessee to comply:
  - (a) with the neighbourhood management statement, and
  - (b) if the neighbourhood scheme is part of a precinct scheme--with the precinct management statement, and
  - (c) if the neighbourhood scheme is part of a community scheme (whether or not as part of a precinct scheme)--with the community management statement.

### **19 Lessor to provide copy of management statement**

If:

- (a) a lessee of association property is not a member of the association, or
  - (b) a lessee of a development lot is not a member of the community association or precinct association for which the lot is a development lot, or
  - (c) a lessee of a neighbourhood lot is not a member of the neighbourhood association,
- the lessor is guilty of an offence unless a copy of the management statement the subject of the implied agreement by the lessee under section 18 was annexed to the copy of the lease submitted for execution by the lessor.

### **20 Levy on member of association**

- (1) An association may levy a contribution payable to it by a member under Part 4 of Schedule 1 by serving on the member a written notice of the contribution payable.
- (2) A precinct association may not levy a contribution payable by a subsidiary body without including in the notice under subsection (1) a statement of:
  - (a) the amounts of any regular periodic contributions required to be made by the precinct association to the administrative fund, and the sinking fund, of the community association of which the precinct association is a member, and
  - (b) the dates on which those contributions are required to be paid, and
  - (c) the amount of any such contribution that is unpaid when the notice is served.
- (3) The contribution to be paid to a community association by each of its members is the amount that bears to the total amount to be raised by the contributions the same proportion as is borne to the total unit entitlement for the community scheme:
  - (a) if the member is the proprietor of a community development lot--by the unit entitlement for the development lot, or
  - (b) if the member is a precinct association--by the unit entitlement for the former community development lot the subject of the precinct scheme, or
  - (c) if the member is a neighbourhood association or a strata corporation--by the unit entitlement for the former community development lot the subject of the neighbourhood scheme or strata scheme.

- (4) The contribution to be paid to a precinct association by each of its members is the amount that bears to the total amount to be raised by the contributions the same proportion as is borne to the total unit entitlement for the precinct scheme:
- (a) if the member is the proprietor of a precinct development lot that is not the subject of a subsidiary scheme--by the unit entitlement for the development lot, or
  - (b) if the member is a neighbourhood association or a strata corporation--by the unit entitlement for the former precinct development lot the subject of the neighbourhood scheme or strata scheme.
- (5) The contribution to be paid to a neighbourhood association by the proprietor of each neighbourhood lot is an amount that bears to the total amount to be raised by the contributions the same proportion as is borne to the total unit entitlement for the neighbourhood scheme by the unit entitlement for the neighbourhood lot.
- (6) If, at the time a person becomes the proprietor of a development lot or a neighbourhood lot, another person is liable in respect of the lot to pay a contribution, the proprietor is jointly and severally liable with the other person for the payment of the contribution and of any interest on the contribution.
- (7) If, at the time a development lot becomes subject to a precinct scheme, a neighbourhood scheme or a strata scheme, the proprietor of the development lot was liable in respect of the lot to pay a contribution or interest or both, the precinct association, neighbourhood association or strata corporation is jointly and severally liable with the proprietor for the payment.
- (8) Subsections (6) and (7) do not apply in relation to a contribution or interest that is not payable because it should have been, but was not, disclosed in a certificate given under clause 2 of Schedule 4.
- (9) A mortgagee or covenant chargee in possession of a development lot or a neighbourhood lot is jointly and severally liable with the proprietor of the lot:
- (a) for any contributions to the administrative fund or sinking fund by regular periodic instalments, and
  - (b) for any other contribution if the mortgagee or covenant chargee has been given written notice of the levy of the contribution, and
  - (c) for interest on any of those contributions.
- (10) A contribution is due and payable as directed by the association when deciding to make the levy.
- (11), (12) (Repealed)
- (13) The amount of a contribution, together with any interest:
- (a) is recoverable by the association as a debt, and
  - (b) forms part of the fund to which the contribution is payable.

## **20A Interest and discounts on contributions**

- (1) A contribution, if not paid at the end of one month after it becomes due and payable, bears until paid simple interest at an annual rate of 10 per cent or, if the regulations provide for another rate, that other rate.
- (2) However, an association may by special resolution determine (either generally or in a particular case) that a contribution is to bear no interest.
- (3) An association may, by special resolution, determine (either generally or in a particular case) that a person may pay 10 per cent less of a contribution levied if the person pays the contribution before the date on which it becomes due and payable.

## **21 Change of address for service of notices on association**

- (1) An association may change its address for service of notices:
- (a) by deciding in general meeting to make the change, and
  - (b) by lodging with the Registrar-General a notice in a form approved by the Registrar-General, and
  - (c) if it is a precinct association--by giving written notice of the change to the

community association of which it is a member, and

(d) if it is a neighbourhood association within a community scheme--by giving written notice of the change to the community association and, if it is a member of a precinct association, to the precinct association.

(2) A change of address does not take effect until it is recorded in the folio for the association property.

## **22 Provision of amenities or services**

(1) A community association may agree with the proprietor or occupier of a development lot, a neighbourhood lot or a strata lot within the community scheme, to provide amenities or services to the lot or to the proprietor or occupier.

(2) A precinct association may agree with the proprietor of a precinct development lot, a neighbourhood lot or a strata lot within the precinct scheme to provide amenities or services to the lot or to the proprietor or occupier.

(3) A neighbourhood association may agree with the proprietor or occupier of a neighbourhood lot to provide amenities or services to the lot or to the proprietor or occupier.

## **23 Restriction on powers during initial period**

(1) During the initial period for its related scheme, an association may not, unless an order made under subsection (4) otherwise provides:

- (a) incur a debt of an amount in excess of the amount then available for repayment of the debt from the administrative fund or sinking fund, or
- (b) borrow money or give security for the repayment of money, or
- (c) make, amend or repeal a by-law creating restricted property.

(2) During the initial period for a neighbourhood scheme, the neighbourhood association may not, unless an order made under subsection (4) otherwise provides:

- (a) grant a lease of neighbourhood property, or
- (b) create an easement burdening land within the neighbourhood scheme or a restriction on the use of any such land, or
- (c) release an easement, or a restriction on the use of land, that benefits neighbourhood property, or
- (d) dedicate association property, or
- (e) transfer neighbourhood property except by way of sale to a resuming authority under section 34 of the *Community Land Development Act 1989*, or
- (f) erect a structure on neighbourhood property, or
- (g) subdivide or create neighbourhood property.

(3) During the initial period for a scheme, a developer may not, unless an order made under subsection (4) otherwise provides:

- (a) convert to association property a neighbourhood lot within the scheme, or
- (b) subdivide a neighbourhood lot within the scheme.

(4) A restriction imposed by subsection (1), (2) or (3) may be waived, varied or extinguished by order of the Tribunal on application by the association or developer to which the restriction applies.

(5) An association may recover from the original proprietor under the relevant scheme:

- (a) as a debt--any liability incurred by the association because of a breach of subsection (1), (2) or (3), or
- (b) as damages--any loss suffered by the association as a result of such a breach.

(6) A member of an association other than the original proprietor under the relevant scheme may recover from the original proprietor as damages any loss suffered by the member because of a breach of subsection (1), (2) or (3).

(7) It is a defence to an action under this section for debt or damages if it is proved that the original proprietor:

- (a) did not know of the breach on which the action is based, or

(b) was not in a position to influence the conduct of the association in relation to the breach, or

(c) being in such a position, used due diligence to try to prevent the breach.

(8) A remedy available under this section does not affect any other remedy.

#### **24 Termination of certain agreements**

(1) This section applies to an agreement with a person (other than a public authority) for the continuing provision to an association, or to the members of an association, of services or recreational facilities.

(2) If, during the initial period for a scheme, an association enters into an agreement to which this section applies, the agreement terminates at the end of the first annual general meeting of the association unless:

(a) its effect was disclosed in the association's management statement before the transfer of any lots in the scheme, or

(b) it is ratified at the meeting.

(3) An association is guilty of an offence if:

(a) during the initial period, it enters into an agreement to which this section applies, and

(b) the agreement would terminate at the end of the first annual general meeting of the association unless ratified at the meeting, and

(c) the association did not, before entering into the agreement, inform the other party, or each of the other parties, to the agreement that it would so terminate.

(4) In this section: "**services**" does not include the services of a managing agent.

#### **25 Association roll**

(1) An association is guilty of an offence if it does not prepare and maintain a roll in accordance with the requirements of Schedule 3 applicable to the association.

(2) The roll may be maintained in any medium.

(3) An association may make or amend entries in the roll on the basis of:

(a) information in the Register, or

(b) information provided under Division 4 to the extent that it is not inconsistent with information in the Register.

(4) Information provided under Division 4 may be presumed to be consistent with information in the Register unless the contrary is evident.

#### **26 Inspection of records and provision of certificates**

(1) An association is guilty of an offence if it does not:

(a) make records available for inspection in accordance with clause 1 of Schedule 4, or

(b) supply a certificate in accordance with clause 2 of Schedule 4,

on written application for the inspection or certificate being made under subsection (2) or (3) and the prescribed fee being paid.

(2) An application to a community association or precinct association may be made:

(a) in relation to a development lot--by, or with the written authority of, a proprietor or mortgagee of the lot, or

(b) in relation to a subsidiary scheme--by, or with the written authority of, a proprietor or mortgagee of a neighbourhood lot or strata lot within the scheme, or

(c) in relation to a subsidiary scheme--by, or with the written authority of, the association or strata corporation constituted under the subsidiary scheme.

(3) An application to a neighbourhood association may be made in relation to a neighbourhood lot by, or with the written authority of, a proprietor or mortgagee of the lot.

(4) An association is guilty of an offence if it does not, without charge:

(a) make records available for inspection by the Director-General in accordance with clause 1 of Schedule 4, or



- (b) supply the Director-General with a certificate in accordance with clause 2 of Schedule 4,  
on being informed by the Director-General that the inspection or certificate is required in order to assist the Director-General in the exercise of his or her functions.
- (5) A certificate given in accordance with clause 2 of Schedule 4 is, in favour of a person taking for valuable consideration an estate or interest in a lot to which the certificate relates, conclusive evidence of the matters certified.

## **Division 2 – Executive committee of association**

### **27 Executive committee of association with 3 members or fewer**

- (1) If an association has 3 members or fewer, it has an executive committee consisting of:
- (a) the nominee of each member that is a subsidiary association or other corporation, and
  - (b) each other member or the nominee of the member.
- (2) A member may not have more than 1 nominee and a nominee must not be a corporation.
- (3) For the executive committee constituted by this section for a community association or a precinct association, the nominee of a subsidiary body must be a member of the subsidiary body who would be eligible under section 29 for election to the executive committee if the association had 4 members or more.
- (4) The executive committee constituted by this section:
- (a) takes office at the first annual general meeting of the association or at such earlier time as the persons who would constitute the committee decide, and
  - (b) ceases to hold office on the election of an executive committee under section 28 following an increase in the membership of the association.
- (5) The executive committee constituted by this section continues in office until the election of an executive committee at the general meeting, or at the special general meeting, called to elect the executive committee following an increase to 4 or more in the number of members of the association.

### **28 Executive committee of association with 4 members or more**

- (1) If the membership of an association increases to 4 or more:
- (a) it may, if the increase occurs before the first annual general meeting, elect its executive committee at the first annual general meeting or at an earlier special general meeting called for the purpose, or
  - (b) it must, if the increase occurs after the first annual general meeting, elect its executive committee at a special general meeting called for the purpose.
- (2) An association must elect its executive committee at each annual general meeting that succeeds the first election of the committee.
- (3) The size of an elected executive committee must be decided by the association but the number of its members:
- (a) must not be more than the number of members of the association, and
  - (b) must not exceed 9.
- (4) For the purpose of electing an executive committee before the first annual general meeting:
- (a) a general meeting may be called as provided by Schedule 6 for the calling of a special general meeting of the association, and
  - (b) except in relation to the agenda, Schedule 5 applies to the general meeting as if it were the first annual general meeting of the association.

### **29 Candidates for election to community or precinct executive committee**

- (1) To be eligible for election to the executive committee of a community association or a precinct association, a person must be:
- (a) a member of the association (other than a subsidiary body or other corporation), or

- (b) the only nominee of a member of the association that is a corporation but is not a subsidiary body, or
  - (c) the only nominee of a member of the association who is eligible to be, but is not, a candidate, or
  - (d) a member of, or of the executive committee of, a subsidiary body who is nominated by an ordinary resolution of the subsidiary body and is the only person nominated by it.
- (2) A joint proprietor of a development lot may not be a candidate for election to the executive committee of the relevant association unless nominated as a candidate by:
- (a) a member of the association other than a joint proprietor of the development lot, or
  - (b) a joint proprietor of the development lot who is not a candidate.
- (3) A member of the association who is not a joint proprietor of a development lot and is not a corporation may nominate himself or herself as a candidate.
- (4) Under this section:
- (a) a corporation may not be nominated as a candidate, and
  - (b) a corporation or other person entitled to nominate a candidate may not nominate more than 1, and
  - (c) of joint proprietors, not more than 1 may be nominated as a candidate.

### **30 Candidates for election to neighbourhood executive committee**

- (1) To be eligible for election to the executive committee of a neighbourhood association, a person must be:
- (a) a member of the association (other than a corporation), or
  - (b) the only nominee of a member of the association that is a corporation, or
  - (c) the only nominee of a member of the association who is eligible to be, but is not, a candidate.
- (2) A joint proprietor of a neighbourhood lot may not be a candidate for election unless nominated as a candidate by:
- (a) a member of the association other than a joint proprietor of the lot, or
  - (b) a joint proprietor of the lot who is not a candidate.
- (3) A member of the association who is not a joint proprietor of a neighbourhood lot and is not a corporation may nominate himself or herself as a candidate.
- (4) Under this section:
- (a) a corporation may not be nominated as a candidate, and
  - (b) a corporation or other person entitled to nominate a candidate may not nominate more than 1, and
  - (c) of joint proprietors, not more than 1 may be nominated as a candidate.

### **31 Substitute members of executive committee**

- (1) A member of the executive committee of an association may, with the consent of the committee, appoint a person who is eligible for election to, or is a member of, the committee to act in his or her place at a meeting of the committee.
- (2) While acting in the place of a member of the committee, a person appointed under subsection (1) has the functions of the member.
- (3) A person appointed under subsection (1) who is already a member of the committee may vote both as a member and as a substitute member.

### **32 Vacation of office by member of community or precinct executive committee**

- (1) An elected member of the executive committee of a community association or precinct association vacates office as such a member if he or she:
- (a) having been a member of the association when elected, ceases to be such a member, or
  - (b) was nominated by a corporation other than a subsidiary body and the nominator ceases to be a member of the association or withdraws the nomination

- by written notice given to the executive committee, or
- (c) was nominated by a member of the association who was eligible to be, but was not, a candidate and the nominator withdraws the nomination, or
- (d) was nominated by a subsidiary body on the basis of being a member of the subsidiary body or of its executive committee or its council and ceases to be such a member, or
- (e) was nominated by a subsidiary body which withdraws the nomination by written notice given to the committee after being authorised by an ordinary resolution of the subsidiary body, or
- (f) resigns from the committee by written notice given to the committee, or
- (g) is declared by special resolution of the association to have vacated the office.

(2) On the occurrence under subsection (1) of a vacancy in the office of a member of the executive committee of a community association or a precinct association, the committee must, as soon as practicable, appoint to the office a person who would be eligible for election to the committee.

(3) Each person holding office as a member of the executive committee (including a person appointed under subsection (2)) holds office until the next succeeding election of the committee unless the office is earlier vacated.

### **33 Vacation of office by member of neighbourhood executive committee**

(1) An elected member of the executive committee of a neighbourhood association vacates office as such a member if he or she:

- (a) having been a member of the association when elected, ceases to be such a member, or
- (b) is a nominee and the nominator ceases to be a member of the association or withdraws the nomination by written notice given to the committee, or
- (c) resigns from the committee by written notice given to the committee, or
- (d) is declared by special resolution of the association to have vacated the office.

(2) On the occurrence under subsection (1) of a vacancy in the office of a member of the executive committee of a neighbourhood association, the committee must, as soon as practicable, appoint to the office a person who would be eligible for election to the committee.

(3) Each person holding office as a member of the executive committee (including a person appointed under subsection (2)) holds office until the next succeeding election of the committee unless the office is earlier vacated.

### **34 Officers of executive committee**

(1) The executive committee of an association must, at its first meeting after taking office, appoint from among its members a chairperson, secretary and treasurer as the officers of the committee.

(2) The committee may appoint the same member to more than one office.

(3) The person appointed to an office vacates the office if he or she:

- (a) ceases to be a member of the executive committee, or
- (b) resigns the office by written notice to the committee, or
- (c) is replaced by the committee.

### **35 Chairperson to preside at meetings**

The chairperson or, in the absence of the chairperson, another member of the committee elected for the purpose by the persons present and entitled to vote is to preside at a meeting of the executive committee of an association.

### **36 Functions relating to money and accounts**

(1) This section applies to any function of an association, its executive committee or its treasurer that relates to:

- (a) the receipt or spending of money, or

- (b) accounting for money, or
  - (c) the keeping of books of account.
- (2) A person who exercises a function to which this section applies is guilty of an offence unless the person is:
- (a) the treasurer exercising a function that is not the subject of an order referred to in paragraph (b) or is exercised in accordance with such an order, or
  - (b) a person with whom the treasurer is required by order of the executive committee to exercise the function jointly and who is exercising the function to enable the treasurer to exercise the function, or
  - (c) a managing agent or registered public accountant authorised by the association to exercise the function, or
  - (d) during the initial period only--a person authorised by the developer to exercise the function.
- (3) The treasurer may, in accordance with an approval given by the executive committee, delegate any of his or her functions to another member of the executive committee.

### **37 Delivery of property of association**

- (1) The executive committee of an association may serve on a person in possession, or having control, of personal property of the association written notice of a resolution of the committee requiring the person to deliver the property to a named member of the committee not later than 7 days after service of the notice.
- (2) The person served with the notice is guilty of an offence unless the notice is complied with not later than the prescribed time after service of the notice.
- (3) If a managing agent appointed by an association is served with a written notice of a resolution of the executive committee ending the appointment, the managing agent is guilty of an offence unless, not later than the prescribed time after service of the notice, all personal property of the association in the possession or under the control of the managing agent is delivered to a member of the executive committee named in the notice.
- (4) If a person has a right to possession of property conferred by a lien or otherwise, this section does not apply to the property.
- (5) A notice under this section may be served:
- (a) personally or by post, or
  - (b) by leaving it at the place of residence or business of the person to be served with someone who seems to be at least 16 years old.
- (6) In this section: "**prescribed time**", in relation to a notice, means:
- (a) the time, being not less than 7 days, stated in the notice, or
  - (b) such further time as may be allowed by the person to whom the notice requires the property to be delivered.

### **38 Meetings of executive committee**

- (1) A quorum at a meeting of the executive committee of an association is:
- (a) if there is only 1 member of the committee--the member, or
  - (b) if there are only 2 members of the committee--both of them, or
  - (c) if there are more than 2 members of the committee--at least one-half of them.
- (1A) If 2 executive committee meetings are held at the same time, both meetings are invalid.
- (2) A decision made at a meeting of the committee at which a quorum is present is a decision of the committee if:
- (a) the quorum is 1 member and the decision is made by the member, or
  - (b) the quorum is 2 members and the decision is made by both of them, or
  - (c) the quorum exceeds 2 members and the decision is made by a majority of those voting.
- (3) The committee may not make a decision on a matter that, before the decision is due, is opposed by a notice given to the secretary by members of the association who have a

majority of the unit entitlements.

(4) A subsidiary body may not join in a notice under subsection (3) to the secretary of a community association or a precinct association unless it has been authorised by an ordinary resolution to do so.

(5) Except in relation to a restricted matter, a decision of the committee is a decision of the association.

(6) An act or proceeding of an executive committee done in good faith is valid even if, at the time the act or proceeding was done, taken or commenced there was:

- (a) a vacancy in the office of a member of the committee, or
- (b) a defect in the appointment, or a disqualification, of a member of the committee.

(7) The committee must ensure that:

- (a) minutes of its meetings, and
- (b) records of its decisions, and
- (c) records of notices under subsection (3),

are properly kept.

(8) In this section: "**restricted matter**" means a matter:

- (a) that may be decided only by a unanimous or special resolution or at a general meeting, or
- (b) that a general meeting of the association has resolved may be decided only at a general meeting of the association.

### **38A Can members of the executive committee be paid?**

An association may pay to a person who is the chairperson, secretary, treasurer or a member of the executive committee such amount as the association determines at an annual general meeting in recognition of services performed by the person for the association in the period since the last annual general meeting.

## **Division 3 – Insurance**

### **39 Insurance against damage or destruction**

(1) An association is guilty of an offence if any building or structure on its association property is not at all times fully insured, with an insurer approved by the Minister, against damage or destruction by fire, lightning, explosion or other prescribed risk.

(1A) Any such building or structure is to be insured for at least the value of the building or structure indicated by the last valuation obtained for the building or structure in accordance with this Division.

(2) Subsection (1) does not apply to an association to the extent that an Adjudicator exempts it from the operation of the subsection (whether or not subject to conditions) on application authorised by a unanimous resolution.

### **39A Valuations to be obtained for the purposes of insurance**

(1) A valuation of a building or structure that is required to be insured under this Division must be obtained at least once every 5 years by the association.

(2) The valuation must be carried out by a person who has the qualifications prescribed by the regulations.

### **40 Other insurance required**

(1) An association is guilty of an offence unless at all times it maintains insurances in accordance with this section.

(2) The association must effect insurance:

- (a) in respect of any event against which it is required by law to insure, including any insurance required to be effected under the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998*, and
- (b) in respect of damage to property and in respect of death and bodily injury (including damage, death and bodily injury occurring on an open access way or a

private access way) for which the association could become liable in damages, and

(c) against damages for which the association could become liable because of work done by a voluntary worker, and

(d) against accidental injury to, or accidental death of, a voluntary worker, and

(e) against the possibility of the members of the association becoming jointly liable under a claim arising out of any other event against which the association decides by special resolution to insure, and

(f) of any other prescribed class.

(3) Insurance under subsection (2) must be:

(a) effected with an insurer approved by the Minister, and

(b) for a cover of not less than the prescribed amount or an amount determined as prescribed.

#### **41 Optional insurance**

(1) An association may insure any property:

(a) in which it has an insurable interest, and

(b) which it is not required by this Division to insure.

(2) This Division does not limit any right of a proprietor of a lot to effect insurance.

(3) An association may take out insurance, at its own expense, in respect of either or both of the following:

(a) damage to property, death or bodily injury for which a person holding the office of chairperson, secretary, treasurer or member of the executive committee of the association could become liable in damages because of an act or omission, committed or omitted in good faith, in performing the functions of that office,

(b) misappropriation of money or other property of the association.

#### **42 Building on association property**

(1) Money paid by an insurer to an association in respect of the destruction of, or damage to, a building on association property must, without delay, be applied by the association in rebuilding, replacing, repairing or restoring the building.

(2) Subsection (1) has effect subject to any order in force under Part 7 of the *Community Land Development Act 1989* (which relates to variation or termination of a scheme).

#### **43 Insurance generally**

(1) Despite section 23 of the *Imperial Acts Application Act 1969* or any other law relating to insurance, an association has an insurable interest in the subject-matter of any insurance it is required by this Division to maintain.

(2) A member of an association may bring against the association any action that could have been brought if the member had not been a member.

(3) An insurer of an association has no right of subrogation in respect of a member of the association based on an act or omission of the member unless it is proved that the act or omission was wilful.

(4) Despite anything in a contract of insurance effected by the proprietor of a lot, that insurance:

(a) does not affect, and

(b) is not to be taken into consideration in determining,

the amount payable under a policy of insurance entered into by an association under this Division.

#### **44 Approved insurers**

The Director-General must maintain a record of insurers approved by the Minister for the purposes of this Division.

### **Division 4 – Notices**

#### **45 Notices relating to subsidiary body**

(1) The person who was the proprietor of a development lot immediately before it became subject to a subsidiary scheme is guilty of an offence unless, not later than 14 days after registration of a precinct plan, or the neighbourhood plan or strata plan, for the subsidiary scheme, the community association and, if there is a precinct association, the precinct association, are given notice of:

- (a) the name of the person, and
- (b) the name of the subsidiary body, and
- (c) the date of registration, and the number, of the relevant precinct plan, neighbourhood plan or strata plan.

(2) A subsidiary body is guilty of an offence unless, not later than 14 days after the registration of the plan by which it is constituted, written notice of the address for service of notices on the subsidiary body that is recorded in the Register is given:

- (a) to the community association, and
- (b) if it is also a subsidiary body in a precinct scheme--to the precinct association.

#### **46 Notice of lease**

(1) Not later than 14 days after the commencement of a lease of a development lot or a neighbourhood lot, or the execution of an assignment of such a lease, the proprietor of the lot must give to the relevant association a written notice that states:

- (a) the name of the lessee or assignee, and
- (b) the date of commencement of the lease or execution of the assignment, and
- (c) the name of any agent acting for the proprietor in respect of the lease.

(2) In this section: "**relevant association**" means:

- (a) in relation to a community development lot--the community association, or
- (b) in relation to a precinct development lot--the precinct association, or
- (c) in relation to a neighbourhood lot--the neighbourhood association.

#### **46A Notice to be given to association of mortgagee taking possession of lot**

If a mortgagee of a lot takes possession of the lot, the mortgagee must give notice of that fact to the association within 14 days of taking possession of the lot.

#### **47 Other notices**

(1) A person whose interest in a development lot or neighbourhood lot confers a right to vote at a meeting of an association may give the association written notice of the interest.

(2) The notice must:

- (a) state the full name of, and the address for service of notices on, the person, and
- (b) identify the lot and state the nature of the interest, and
- (c) state the date on which the interest was acquired, and
- (d) in the case of a corporation--state the full name of, and the address for service of notices on, the nominee authorised by the corporation under section 111 to exercise its voting rights.

(3) If the interest is that of a first mortgagee:

- (a) the notice must bear written confirmation by the mortgagor of the information it contains, or
- (b) the information in the notice must be verified by statutory declaration.

(4) If the interest:

- (a) is that of an executor, administrator, liquidator or receiver in bankruptcy, or
- (b) is an interest arising by operation of law or the order of a court, or
- (c) is an interest arising in any other manner except under a transfer or a discharge of mortgage,

the notice must bear a statement, verified by statutory declaration, of the manner in which the interest arises.

#### **48 Change of address or change of nominee**

A person who has given an association a notice under this Division may, by a further written

notice given to the association, inform the association of:

- (a) any change of address for service of notices, or
- (b) any change of nominee authorised under section 111 to exercise voting rights.

#### **49 Failure to give notice**

(1) The secretary of an association, if of the opinion that a person obliged or entitled to give a notice under this Division has not done so, may serve on the person a written notice requiring the person:

- (a) to inform the secretary whether or not the person is obliged or entitled to give a notice under this Division, and
- (b) if the person is such a person--to give the notice,

within 14 days after service of the notice given by the secretary.

(2) A person given a notice under subsection (1) is not entitled to vote at a meeting of the association unless, before the meeting and whether or not within the time allowed in the notice:

- (a) the requirements of the notice are complied with, and
- (b) the name of the person is entered on the association roll.

#### **Division 5 – Managing agents**

##### **50 Appointment of, and delegation to, managing agent**

(1) An association may, by instrument in writing authorised by a resolution at a general meeting:

- (a) appoint a managing agent, and
- (b) delegate to the managing agent any function of the association or its executive committee, or of its secretary or other officers.

(2) Subsection (1) does not confer power to delegate:

- (a) the powers conferred by that subsection, or
- (b) the power to make a decision on a restricted matter, or
- (c) the power to determine contributions by members or to make levies on them.

(3) An association may not appoint a person as managing agent unless the person holds any licence required by law to be held by a managing agent for the association.

(4) A community association, or a precinct association, that appoints a managing agent during the initial period may terminate the appointment at the first annual general meeting of the association.

(5) Subsection (4) does not authorise termination of the appointment of a managing agent earlier than 2 years after the appointment unless there is reasonable cause for the termination.

(6) A managing agent for a neighbourhood association who is appointed during the initial period ceases to be the managing agent at the end of the first annual general meeting of the association unless the appointment is ratified at the meeting.

(7) A community association or precinct association that appoints a managing agent during the initial period is guilty of an offence unless, before making the appointment, it informed the managing agent that the appointment could be terminated after 2 years.

(8) A neighbourhood association that appoints a managing agent during the initial period is guilty of an offence unless, before making the appointment, it informed the managing agent that the appointment would terminate at the end of the first annual general meeting of the association unless ratified at the meeting.

(9) In this section: "**restricted matter**" means a matter:

- (a) that may be decided by the association only by a unanimous or special resolution or at a general meeting, or
- (b) that a general meeting of the association has decided may be decided only at a general meeting.

##### **51 Provision of information by managing agent**



- (1) An association may serve on its managing agent written notice of a resolution requiring the managing agent to deliver to a member of the executive committee named in the notice a written statement giving the information prescribed by such one or more of subsections (4)-(7) as the resolution specifies.
- (2) A managing agent who fails to comply with a notice given under subsection (1) within 7 days after its service is guilty of an offence unless reasonable cause for the failure is shown.
- (3) A managing agent who knowingly provides false or misleading information in a statement delivered in compliance with a notice given under subsection (1) is guilty of an offence.
- (4) The information prescribed by this subsection is:
  - (a) the name and number of the trust account that the managing agent is required by law to maintain, and
  - (b) the name of the bank, building society or credit union in which the trust account is current, and
  - (c) the balance in the trust account standing to the credit of the association on a specified date, and
  - (d) particulars of all cheques drawn on the trust account on behalf of the association as at that date and not presented and duly paid.
- (5) The information prescribed by this subsection is:
  - (a) the names and numbers of any other accounts on which the managing agent operates in the exercise of functions of the association, and
  - (b) the names of the banks, building societies or credit unions in which the accounts are current, and
  - (c) the balance in each of those accounts standing to the credit of the association on a specified date, and
  - (d) particulars of all cheques drawn on each of those accounts on behalf of the association as at that date and not presented and duly paid.
- (6) The information prescribed by this subsection is:
  - (a) full particulars relating to the payment of money to, or receipt of money by, the managing agent on behalf of the association, and
  - (b) if the money is not still held by the managing agent--the manner and time of disposing of the money.
- (7) The information prescribed by this subsection is--full particulars of a transaction specified in the notice that has been entered into by or with the managing agent on behalf of the association.
- (8) If a managing agent licensed under an Act to carry on business as a managing agent ceases to hold the licence or dies:
  - (a) subsections (1)-(5) apply to any person who, by the licensing Act, is required to maintain a trust account in connection with the business of the former licensee, and
  - (b) subsections (1)-(7), except subsection (4), apply to any person required by an Act to preserve records kept by the former licensee,and so apply as if the person were the managing agent.
- (9) If an Act under which managing agents and others are licensed provides for a licensee or other person to give information relating to a transaction, the provision does not operate in relation to the affairs of an association.
- (10) A managing agent or other person is not required to provide information under this section in relation to a transaction that took place more than 3 years before service of the notice requiring the information.

## **52 Liability of managing agent under delegated duty**

If:

- (a) a failure by an association to exercise a function is an offence under this Act, and
- (b) the exercise of the function was, at the time of the failure, delegated to a managing agent,

a reference to the association in the provision conferring or imposing the function is to be read as a reference to the managing agent.

## **Part 3 – Association property**

### **53 Value of interests of members of an association**

(1) The comparative value of the relevant interests of the members of a community association or a precinct association is the same as the proportion that is borne to the total unit entitlement for the community scheme or precinct scheme:

- (a) in the case of a member who is proprietor of a development lot--by the unit entitlement for the development lot, or
- (b) in the case of a member that is a precinct association, a neighbourhood association or a strata corporation--by the unit entitlement for the former development lot that is subject to the precinct scheme, neighbourhood scheme or strata scheme.

(2) The comparative value of the relevant interests of the members of a neighbourhood association is the same as the proportion that is borne to the total unit entitlement for the neighbourhood scheme by the respective unit entitlements for the neighbourhood lots.

(3) In this section: "**relevant interest**" in relation to a member, means:

- (a) the value of the member's vote on a poll at a meeting of the association, or
- (b) the amount of a levy on the member in relation to the total levies on all members of the association, or
- (c) the interest of the member in the association property, or
- (d) the interest of the member in an amount of surplus funds being distributed by the association, or
- (e) the interest of the member in the community parcel, precinct parcel, neighbourhood parcel or strata parcel on termination of the applicable scheme.

### **54 Restricted property**

(1) A by-law in a community management statement may restrict the use of part of the community property:

- (a) to the proprietor or proprietors of one or more development lots, neighbourhood lots or strata lots, or
- (b) to one or more precinct associations, neighbourhood associations or strata corporations,

within the community scheme.

(2) A by-law in a precinct management statement may restrict the use of part of the precinct property:

- (a) to the proprietor or proprietors of one or more development lots, neighbourhood lots or strata lots, or
- (b) to one or more neighbourhood associations or strata corporations,

within the precinct scheme.

(3) A by-law in a neighbourhood management statement may restrict the use of part of the neighbourhood property to the proprietor or proprietors of one or more neighbourhood lots.

(4) A by-law for a subsidiary scheme within a community scheme or a precinct scheme may restrict the use of part of the association property or common property to one or more of the following:

- (a) the proprietor or proprietors of one or more development lots within the

- community scheme or precinct scheme, or
  - (b) the proprietor or proprietors of one or more precinct development lots, neighbourhood lots or strata lots within another subsidiary scheme, or
  - (c) the community association, or
  - (d) if the subsidiary scheme is part of a precinct scheme--the precinct association, or
  - (e) a precinct association, neighbourhood association or strata corporation within another subsidiary scheme.
- (5) A by-law restricting the use of property under this section may not be made, amended or revoked by amending a management statement or the by-laws under a strata scheme:
- (a) during the initial period for the community scheme, precinct scheme, neighbourhood scheme or strata scheme affected, or
  - (b) without the written consent of each person entitled by the by-law to use the restricted property.
- (6) The consent under subsection (5) (b) of an association or a strata corporation must be given by special resolution.
- (7) A by-law made for the purposes of this section must include:
- (a) a description of the property to which it applies, and
  - (b) details of the persons entitled to use the property, and
  - (c) the terms and conditions on which those persons may use the property, and
  - (d) particulars relating to access to the property and the provision and keeping of any key necessary, and
  - (e) particulars of the hours during which the property may be used, and
  - (f) provisions relating to the maintenance of the property, and
  - (g) matters relating to the determination, imposition and collection of levies on those entitled to use the property.
- (8) A failure to comply with a condition precedent to the making of a by-law restricting the use of association property, or to the amendment or revocation of such a by-law, is not a ground for invalidating the by-law, amendment or revocation more than 2 years after the event.
- (9) If a person entitled to use restricted property:
- (a) fails to comply with a condition of its use imposed by the by-law restricting use of the property, or
  - (b) fails to pay when due any money owed to the association (whether or not in relation to the use of the property),
- the association may serve on the person a written notice requiring compliance with the condition, or payment of the money, within a time stated in the notice.
- (10) A person served with a notice under subsection (9) ceases to be entitled to use the restricted property:
- (a) until the notice is complied with, or
  - (b) whether the notice is complied with or not--if the management statement is amended to revoke the right of the person to use the property.
- (11) If a motion is put to amend a management statement to revoke the right of a person to use restricted property, a vote on the motion by the person does not count.

## **55 Consequences of restricting use of association property**

- (1) While it remains in force, a by-law referred to in section 54 that restricts the use of association property operates as appurtenant to, and for the benefit of:
- (a) any development lot, former development lot, neighbourhood lot or strata lot in respect of which it was made, and
  - (b) any association or strata corporation to which the use of the property is restricted, and
  - (c) the proprietor or occupier of any development lot, neighbourhood lot or strata

lot to which the use of the property is restricted.

(2) The obligation of an association or strata corporation to maintain association property or common property in good condition is discharged to the extent, if any, that a by-law restricting the use of the property operates to waive the obligation.

(3) An amount of money that at any time:

(a) a proprietor is required to pay to an association or a strata corporation, or

(b) an association is required to pay to another association or a strata corporation,  
or

(c) a strata corporation is required to pay to an association,  
under a by-law restricting the use of association property or common property is money that the person required to make the payment owes to the association or strata corporation in which the restricted property is vested.

(4) If a person becomes proprietor of a development lot, neighbourhood lot or strata lot when another person owes money under subsection (3) in respect of the lot, the new proprietor is jointly and severally liable under subsection (3) with the other person for payment of the money.

(5) Subsections (3) and (4) do not apply in relation to money owed that a person is absolved from paying because it was not disclosed in a certificate given under clause 2 of Schedule 4.

### **56 Payments to or by association in relation to association property**

An association may, by unanimous resolution, make an agreement with a member of the association regarding:

(a) payment to the member of money that would otherwise be payable to the association under a transaction involving association property, or

(b) payment of money by the member in relation to restricted property.

### **57 Carrying out of work on association property by developer**

(1) This section applies to an agreement for the carrying out of a work of preparation, construction or maintenance on association property made between the developer and a person other than the association in which the property is vested.

(2) For the purpose of ensuring that a work is carried out in accordance with an agreement to which this section applies, the association in which is vested the association property on which the work has been, or is to be, carried out may, as if it were a party to the agreement:

(a) enforce against the developer a right or remedy available to another party to the agreement, or

(b) enforce against another party to the agreement a right or remedy available to the developer.

(3) Subsection (2):

(a) does not oblige an association to carry out a work or pay for the carrying out of a work, and

(b) does not relieve the developer from any obligation to pay for the carrying out of a work.

(4) The rights conferred by subsection (2) are in addition to, and do not derogate from, a right or remedy enforceable under the agreement:

(a) against the developer by another party, or

(b) by the developer against another party.

### **58 Community association or precinct association may do certain work**

(1) If the proprietor of a development lot does not do work on or in relation to the lot in accordance with a notice given to the proprietor by a public authority, the relevant association may do the work after giving the proprietor notice that it proposes to do so.

(2) If the proprietor, mortgagee or covenant chargee in possession, lessee or occupier of a

development lot:

- (a) is required to do work under a by-law relating to restricted property of a relevant association and fails to do the work, or
- (b) is in breach of the duty imposed by section 110 and does not do work required to remedy the breach, or
- (c) is in breach of the duty not to interfere with the passage or provision of services and does not do work required to remedy the breach,

the relevant association may do the work.

(3) If an order by an Adjudicator or the Tribunal to carry out work in relation to a development lot is not complied with, the relevant association may do the work.

(4) If, without any breach of duty referred to in subsection (2), there is a defect in the services within a development lot, the defect may be remedied by the relevant association at its own expense.

(5) Except where work is done under subsection (4), the relevant association may recover the cost of the work, as a debt, from the person who failed to do the work or from a subsequent proprietor of the lot.

(6) Subsection (5) does not apply to a subsequent proprietor who is absolved from payment because the debt was not disclosed in a certificate given under clause 2 of Schedule 4.

(7) In this section: "**relevant association**" means:

- (a) in relation to a community development lot--the community association, or
- (b) in relation to a precinct development lot--the precinct association.

"**subsequent proprietor**", in relation to a development lot, includes a precinct association, neighbourhood association or strata corporation constituted under a scheme to which the development lot has become subject.

### **59 Neighbourhood association may do certain work**

Section 58 applies in relation to a neighbourhood association, a neighbourhood lot and neighbourhood property in the same way as it applies in relation to a relevant association under that section, a development lot and association property.

### **60 Powers of entry of association**

(1) An association may, by its servants, agents or contractors, enter any part of the community, precinct or neighbourhood parcel:

- (a) to exercise its powers under section 58 or 59, or
- (b) to do any work ordered by an Adjudicator or the Tribunal, or
- (c) to renew or replace its personal property or any fixtures that are part of its association property.

(2) An association may, by its servants, agents or contractors, enter on any part of the parcel for the purpose of determining whether any work is required to be carried out by the association in accordance with this Act.

(2A) In an emergency, the association may enter any part of the parcel for those purposes at any time.

(2B) In a case that is not an emergency, the association, may enter any part of the parcel for those purposes with the consent of any occupier of that part of the parcel or, if the occupier does not consent, in accordance with an order of an Adjudicator.

(3) A person who obstructs or hinders an association in the exercise of its powers under this section is guilty of an offence.

(4) An association is liable for any damage to a development lot, neighbourhood lot or strata lot, or its contents, caused by, or arising from:

- (a) the carrying out of work under section 58 or 59, or
- (b) the exercise of the powers conferred by this section.

(5) Subsection (4) does not apply in relation to damage that would not have occurred but

for the commission of an offence under subsection (3), whether or not there has been a conviction for the offence.

### **61 Duties in relation to association property or common property**

A proprietor, mortgagee or covenant chargee in possession, lessee or occupier of a development lot, neighbourhood lot or strata lot must not:

- (a) use or enjoy association property or common property in a way that unreasonably interferes with the right of any other person to use and enjoy the lot or the property, or
- (b) use or enjoy restricted property in a way that unreasonably interferes with the right of a person to use and enjoy other association property or common property, or
- (c) unless authorised to do so by a management statement or the by-laws for a strata scheme--damage, or use for his or her own purposes as a garden, any association property or common property, or
- (d) obstruct the lawful use of association property or common property by another person, or
- (e) use or enjoy association property or common property in a way that interferes with the statutory easement created by section 36 of the *Community Land Development Act 1989* or with any service lines referred to in that section that define the easement.

## **Part 4 – Disputes**

### **Division 1 – Application for order to resolve issue relating to community scheme**

#### **62 Application for order on dispute**

Application for an order under Division 3 or 4 for settlement of a dispute or complaint may be made by:

- (a) an association or a strata corporation, or
- (b) a managing agent, or
- (c) the proprietor of a development lot, neighbourhood lot or strata lot, or
- (d) a person who has an estate or interest in, or is the occupier of, such a lot.

#### **63 Application for order to be made to Registrar**

- (1) An application for an order under this Part must be made to the Registrar and must:
  - (a) be in writing stating the grounds on which it is based, and
  - (b) specify the order sought, and
  - (c) be accompanied by the fee prescribed by the regulations.
  - (d) (Repealed)
- (2) The grounds stated as the basis for the application must disclose a dispute or complaint about:
  - (a) an exercise of, or a failure to exercise, a function conferred or imposed by or under this Act in relation to a scheme, or
  - (b) the operation, administration or management of a scheme under this Act.
- (3) For the purposes of subsection (2), an association, or a strata corporation, fails to exercise a function:
  - (a) if it decides not to exercise the function, or
  - (b) if application is made to it to exercise the function and it fails for 2 months to exercise the function or inform the applicant that it has decided not to do so.

#### **64 Registrar to be satisfied mediation has been attempted before accepting application**

- (1) The Registrar must not accept an application for an order under this Part (other than an order under Division 6A) unless satisfied that:
  - (a) mediation was attempted but was unsuccessful, or
  - (b) the matter the subject of the application is not appropriate for mediation.
- (2) A matter to which an application relates is not appropriate for mediation unless:
  - (a) it involves a dispute or complaint, and

- (b) each person (other than the applicant) involved in the dispute or against whom the complaint is made agrees to have the matter mediated.
- (3) If a matter is appropriate for mediation and mediation has not been attempted, the Registrar must inform the applicant that the applicant should arrange for mediation of the matter.
- (4) The applicant may apply to the Director-General for mediation of the matter in accordance with Division 2 or may make other arrangements for the mediation of the matter.
- (5) If the Registrar accepts an application for an order, the Registrar must deal with the application under Division 2A.

## **Division 2 – Mediation and resolution of disputes by Director-General**

### **65 Definitions**

In this Division:

**"mediation"** means a structured negotiation process in which the mediator, as a neutral and independent party, assists the parties to a dispute to achieve their own resolution of the dispute.

**"mediation session"** means a meeting arranged for the mediation of a matter under this Division.

**"mediator"** means the Director-General or any person approved by the Director-General in writing to be a mediator for the purposes of this Division.

### **66 Mediation of disputes relating to community schemes**

- (1) A person may apply to the Director-General for mediation of any matter that the person is entitled to apply for an order to resolve under this Part.
- (2) On receipt of an application for mediation, the Director-General must, if the Director-General thinks the circumstances of the case are appropriate, arrange for the mediation of the matter in accordance with the regulations.

### **67 Director-General may dismiss certain applications**

The Director-General may dismiss an application for mediation under this Division if the Director-General believes that the application is frivolous, vexatious, misconceived or lacking in substance.

### **68 Agreements and arrangements arising from mediation sessions**

- (1) An Adjudicator may make orders to give effect to any agreement or arrangement arising out of a mediation session.
- (2) An order referred to in subsection (1) may be made whether or not the mediation was carried out in accordance with this Division or by a mediator within the meaning of this Division.
- (3) This Division does not affect the enforceability of any other agreement or arrangement that may be made, whether or not arising out of a mediation session, in relation to the matters the subject of a mediation session.

### **69 Privilege**

- (1) In this section, **"mediation session"** includes any steps taken in the course of making arrangements for the session or in the course of the follow-up of a session.
- (2) Subject to subsection (3), the same privilege with respect to defamation as exists with respect to judicial proceedings and a document produced in judicial proceedings exists with respect to:
- (a) a mediation session, or
  - (b) a document or other material sent to, or produced at an office of, the Director-General for the purpose of enabling a mediation session to be arranged.

- (3) The privilege conferred by subsection (2) only extends to a publication made:
- (a) at a mediation session, or
  - (b) as provided by subsection (2) (b), or
  - (c) as provided by section 70.
- (4) Evidence of anything said or of any admission made in a mediation session is not admissible in any proceedings before any court, tribunal or body.
- (5) A document prepared for the purposes of, or in the course of, or as a result of, a mediation session, or any copy of such a document, is not admissible in evidence in any proceedings before any court, tribunal or body.
- (6) Subsections (4) and (5) do not apply with respect to any evidence or document:
- (a) if the persons in attendance at, or identified during, the mediation session and, in the case of a document, all persons identified in the document, consent to the admission of the evidence or document, or
  - (b) in proceedings instituted with respect to any act or omission in connection with which a disclosure has been made under section 70 (c).

### **70 Secrecy**

A mediator may disclose information obtained in connection with the administration or execution of this Part only in one or more of the following circumstances:

- (a) with the consent of the person from whom the information was obtained,
- (b) in connection with the administration or execution of this Part,
- (c) if there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to any person or damage to any property,
- (d) if the disclosure is reasonably required for the purpose of referring any party or parties to a mediation session to any person, agency, organisation or other body and the disclosure is made with the consent of the parties to the mediation session for the purpose of aiding in the resolution of a dispute between those parties or assisting the parties in any other manner,
- (e) in accordance with a requirement imposed by or under a law of the State (other than a requirement imposed by a subpoena or other compulsory process) or the Commonwealth.

### **70A Exoneration from liability for mediators**

No matter or thing done or omitted to be done by a mediator subjects the mediator to any action, liability, claim or demand if the matter or thing was done in good faith for the purposes of a mediation session under this Division.

## **Division 2A – Procedure after Registrar receives application**

### **70B Notice of application to be given**

- (1) The Registrar must give a copy of an application for an order under this Part to each person (other than the applicant) who, in the Registrar's opinion, would be affected if the order sought were made.
- (2) The copy of the application must be accompanied by a notice stating that the person to whom the notice is given may make a written submission to the Registrar within a time specified in the notice, or within a longer time specified in any further notice given by the Registrar.
- (3) The Registrar must give a notice to the applicant for the order stating that the applicant may make further written submissions to the Registrar within a time specified in the notice, or within a longer time specified in any further notice given by the Registrar.
- (4) The Registrar may extend the time for the making of submissions by a further notice given to each of the persons to whom the original notice was given.
- (5) Subsections (2)-(4) do not apply to an application for an order under Division 6A (Enforcement of orders of Adjudicators and Tribunal and certain notices).



### **70C Procedure after time for making submissions has expired**

- (1) This section operates after the time for making submissions on an application expires.
- (2) The Registrar must refer an application for an order referred to in Division 3 to an Adjudicator.
- (3) The Registrar must refer an application for an order referred to in Division 4 to the Tribunal.
- (4) If an application is referred to the Tribunal, whether by the Registrar under this Division or by an Adjudicator under Division 3, the Registrar must complete a notice containing the time and place at which, and the date on which, the Tribunal will determine the application.
- (5) The Registrar must send a copy of that notice to the following persons so that the copy would, in the ordinary course of post, be received by the addressee not less than 7 days before the day specified in the notice for the determination of the application:
  - (a) the applicant,
  - (b) the association or strata corporation to which the application relates (if the owners corporation is not the applicant),
  - (c) any person against whom the order is sought,
  - (d) any person who made a submission on the application.

### **70CA Procedure for orders under Division 6A**

- (1) The Registrar must refer to the Tribunal an application for an order under Division 6A (Enforcement of orders of Adjudicators and Tribunal and certain notices).
- (2) If such an application is referred to the Tribunal, the Registrar must complete a notice containing the time and place at which, and the date on which, the Tribunal will determine the application.
- (3) The Registrar must send a copy of that notice to the following persons or bodies so that the copy would, in the ordinary course of post, be received by the addressee not less than 7 days before the date specified in the notice for the determination of the application:
  - (a) the applicant,
  - (b) the association or strata corporation to which the application relates (if the association or strata corporation is not the applicant),
  - (c) any person against whom the order is sought.

## **Division 3 – Orders by Adjudicators**

### **71 Order by Adjudicator**

- (1) Except in relation to a dispute or complaint referred to the Tribunal or only within the jurisdiction of the Tribunal, an Adjudicator may make an order for the settlement of a dispute or complaint to which an application under Division 2 relates, whether or not the order made is the order sought.
- (2) (Repealed)
- (3) The order may require:
  - (a) any person entitled to apply under Division 2 for an order in relation to the same scheme, or
  - (b) the chairperson, secretary or treasurer of the same association or strata corporation within the same scheme,to do, or to refrain from doing, a specified act affecting the scheme.
- (4) (Repealed)
- (5) If the order so states, it operates as a resolution of a specified association or strata corporation.

### **71A Dismissal of application on certain grounds**

- (1) An Adjudicator must, by order, dismiss an application for an order under this Division if satisfied that mediation was appropriate and was not attempted.
- (2) If the ground for an application is:

(a) the absence of a quorum at a meeting, or  
(b) a defect, irregularity or deficiency of notice or time,  
an Adjudicator may, by order, dismiss the application if the Adjudicator believes that no substantial injustice has resulted.

(3) An Adjudicator may, by order, dismiss an application for an order under this Part on any other ground that the Adjudicator considers appropriate.

(4) Without limiting the generality of subsection (3), an Adjudicator may, by order, dismiss an application for an order under this Part if:

(a) the Adjudicator believes that the application is frivolous, vexatious, misconceived or lacking in substance, or

(b) the Adjudicator believes that a decision in favour of the applicant is not within the jurisdiction of the Adjudicator, or

(c) the Adjudicator believes that the applicant has unreasonably delayed the provision of information required by the Adjudicator, or

(d) in the case of an application made by a proprietor of a development lot or neighbourhood lot or by an association, the applicant has not paid all contributions levied and payable in relation to the lot under this Act.

(5) An Adjudicator may dismiss an application in accordance with this section even though the notice requirements of Division 2A have not been complied with and despite that a time, or extended time, specified for making written submissions on the application has not expired.

#### **71B Matters that may be referred to Tribunal**

(1) An Adjudicator may refer to the Tribunal an application for an order if the Adjudicator is of the opinion:

(a) that the application raises complex legal issues, or

(b) that it should be referred because of its importance or the possible frequency of like applications, or

(c) that there are other good reasons to refer the application.

(2) This section does not confer on any person a right to have referred to the Tribunal an application for an order that may be made by an Adjudicator.

#### **71C Investigations by Adjudicator**

(1) An Adjudicator may investigate an application for an order in any way the Adjudicator thinks fit and may refuse to proceed with an application until any further information required by the Adjudicator has been provided.

(2) For the purposes of the investigation, an Adjudicator may:

(a) enter association property or common property, or

(b) enter a development lot, or

(c) enter a neighbourhood lot or strata lot at a reasonable time on notice given to the occupier.

(3) The power conferred by this section does not include power to enter a dwelling-house or other residential premises unless the occupier consents.

(4) If an Adjudicator believes on reasonable grounds that there has been, or may be, a breach of a development contract, a management statement or the by-laws for a strata scheme, the Adjudicator may exercise the power conferred by this section to investigate the grounds for the belief.

(5) A person must not obstruct or hinder an Adjudicator, or a delegate of an Adjudicator, in the exercise of powers conferred by this section.

#### **72 Interim orders**

(1) If an applicant for an order under this Division or Division 4 requests the making of an interim order and an Adjudicator is satisfied that urgent considerations justify the making of such an order, the Adjudicator may:

(a) make any order that could otherwise be made by the Adjudicator or the

- Tribunal on such an application, and
- (b) renew the order if a request for its renewal is made not later than 3 months after the order was made.
- (2) An Adjudicator may revoke an order, or a renewal of an order, made under subsection (1).
  - (3) A person who in, or in connection with, a request for an interim order or its renewal makes a statement that the person knows is false or misleading in a material respect is guilty of an offence.
  - (4) An interim order may be made or renewed even if:
    - (a) an Adjudicator proposes to refer the application to the Tribunal, or
    - (b) since receipt of the application, a prescribed procedure has not been followed or a function of the Adjudicator has not been exercised, or
    - (c) the time, or extended time, for making written submissions on the application has not expired, or
    - (d) a right of appearance or representation has not been exercised.
  - (5) An interim order continues in force until:
    - (a) the expiration of the period of 3 months that commenced with the making of the order, or
    - (b) if application is duly made for its renewal--until the renewal is granted or refused, or
    - (c) if it is renewed--the expiration of the period of 6 months that commenced with the making of the order.
  - (6) Subsection (5) does not apply if:
    - (a) the order is revoked by an Adjudicator or, on appeal, by the Tribunal, or
    - (b) the application is determined in accordance with this Division (this section excepted) or Division 4 or 5.

### **73 Restrictions on orders**

- (1) An Adjudicator may not make an order (other than an interim order) until after the expiration of the time, or the extended time, allowed for making written submissions on the application for the order.
- (2) An Adjudicator may not make an order (other than an interim order) for the settlement of a dispute or complaint about a function that requires a special or unanimous resolution for its exercise.
- (3) An Adjudicator may not make an order of a kind that, under this Act, is within the original jurisdiction of the Supreme Court, the Land and Environment Court or, except for an interim order, the Tribunal.

### **74 Restriction on amendment or revocation of order**

- (1) An Adjudicator may amend an order under this Division:
  - (a) to correct or clarify it, or
  - (b) to extend a time that does not relate to the duration of an interim order, but not otherwise.
- (2) An Adjudicator may not revoke an order other than an interim order.
- (3) Subsections (1) and (2) do not prevent the making of a subsequent order.
- (4) An order made by an Adjudicator under this Division (other than an interim order or an order for damages) ceases to have effect:
  - (a) 2 years after it is made, or
  - (b) at some other time specified in the order.

### **75 Service of copy of order**

- (1) An order made by an Adjudicator under this Division must be in writing.
- (2) The Registrar must serve a copy of the order on:
  - (a) the applicant for the order, and
  - (b) all persons who made written submissions on the application for the order, and

- (c) the person against whom the order was sought, and
  - (d) the person against whom the order was made, and
  - (e) if not served under paragraphs (a)-(d)--the association or strata corporation for the scheme to which the order relates.
- (3) Subsection (2) applies to an order of the Tribunal sent to an Adjudicator under section 97 in the same way as it applies to an order of an Adjudicator.
- (4) Unless the order otherwise provides, the association or strata corporation must have the copy served on it under subsection (2) or (3) prominently displayed within the scheme:
- (a) not later than 72 hours after its service, and
  - (b) continuously during the 14 days next succeeding its first such display.
- (5) In this section: "**order**" includes an amendment of an order, an interim order, a renewal or revocation of an interim order and an order dismissing an application.

#### **Division 4 – Orders by Tribunal**

##### **75A Dismissal of application on certain grounds**

- (1) The Tribunal must, by order, dismiss an application for an order under this Division if satisfied that mediation was appropriate and was not attempted.
- (2) If the ground for an application is:
- (a) the absence of a quorum at a meeting, or
  - (b) a defect, irregularity or deficiency of notice or time,
- the Tribunal may, by order, dismiss the application if the Tribunal believes that no substantial injustice has resulted.
- (3) The Tribunal may, by order, dismiss an application for an order under this Division on any other ground that the Tribunal considers appropriate.
- (4) Without limiting the generality of subsection (3), the Tribunal may, by order, dismiss an application for an order under this Division if:
- (a) the application is frivolous, vexatious, misconceived or lacking in substance, or
  - (b) a decision in favour of the applicant is not within the jurisdiction of the Tribunal, or
  - (c) the applicant has unreasonably delayed the provision of information required by an Adjudicator, or
  - (d) the application is made by a proprietor of a development lot or neighbourhood lot or by an association and the applicant has not paid all contributions levied and payable in relation to the lot under this Act.
- (5) The Tribunal may, by order, dismiss an appeal.

##### **75B Investigations and proceedings before the Tribunal**

- (1) Before making an order (except an order for a stay of proceedings), the Tribunal must investigate the application for the order or, in the case of an appeal, the grounds for the appeal.
- (2) In any such investigation or in any proceedings before it for an order, the Tribunal:
- (a) is not bound by the rules of evidence and may inform itself on any matter in such manner as it thinks fit, and
  - (b) must act according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms.
- (3) The Tribunal need not hold a hearing in order to decide an application or appeal unless there is an appearance by a person entitled or required to appear before it.
- (4) A hearing need not be formal.

##### **76 Applications referred to Tribunal by Adjudicator**

- (1) If an Adjudicator refers to the Tribunal an application for an order that, but for the referral, could have been made by the Adjudicator, the Tribunal has the same powers as the Adjudicator:

- (a) to make an order under Division 3 other than an interim order, or
  - (b) to dismiss the application.
- (2) Except in relation to a right of appeal to the Tribunal, this Act has effect in relation to an order made under subsection (1) as if the order were an order of an Adjudicator.
- (3) Subsection (2) does not exclude an appeal from an order of the Tribunal made under subsection (1).

### **77 Order by Tribunal in relation to initial period**

- (1) The Tribunal may, by order, declare:
- (a) that the initial period for a scheme has not expired, or
  - (b) that the initial period for a scheme expires on the date of the order or on a later date specified in the order.
- (2) For the purposes of this section, the Tribunal is not bound by, but must have regard to, the intention of the definition of "**initial period**" in section 3.
- (3) If a declaration made by the Tribunal under this section in relation to a scheme is inconsistent with the definition of "**initial period**" in section 3:
- (a) the definition is to be disregarded to the extent of the inconsistency, and
  - (b) the declaration by the Tribunal has effect for the purposes of this Act.
- (4) Application for an order under this section in relation to a scheme may be made by:
- (a) the association or strata corporation constituted under the scheme, or
  - (b) the proprietor of a lot within the scheme.

### **78 Order by Tribunal substituting schedule of unit entitlements**

- (1) The Tribunal may make orders under subsection (3) if it considers that an initial or revised schedule of unit entitlements for a community scheme, precinct scheme or neighbourhood scheme is based on unreasonable valuations or should be reviewed or replaced.
- (2) The Tribunal may, in the case of an initial schedule of unit entitlements:
- (a) order that revaluations be made by a different registered valuer and that the schedule be replaced by a schedule based on the revaluations, and
  - (b) make such other orders as the Tribunal thinks fit.
- (3) The Tribunal may, in the case of a revised schedule of unit entitlements:
- (a) order that a further revised schedule be lodged with the Registrar-General under section 30 of the *Community Land Development Act 1989*, and
  - (b) make such other orders as the Tribunal thinks fit.
- (4) If of the opinion that the developer's or subdivider's estimate of proportionate values for a neighbourhood scheme is inaccurate, the Tribunal may order that the schedule of unit entitlements be replaced by a schedule based on valuations by a registered valuer.
- (5) Application for an order under this section may be made by:
- (a) an association, or
  - (b) a strata corporation, or
  - (c) the proprietor of a development lot, a neighbourhood lot, or a strata lot, within the scheme to which the application relates.
- (6) Application for an order under this section may be made by the Commissioner for Land Tax.

### **79 Order by Tribunal affecting restricted property**

- (1) If an association, or a strata corporation, decides to create, or to refuse to create, restricted property, or if a necessary consent to the creation, or to a refusal to create, restricted property has not been given, the Tribunal may, by order, amend:
- (a) the management statement for the association, or
  - (b) the by-laws for the strata scheme,
- in relation to the property.
- (2) Without limiting the operation of subsection (1), an amendment made under that subsection may have the effect of revoking so much of a management statement or by-

laws as creates restricted property.

(3) The order must be made on the basis of what the Tribunal considers to be the best interests of all the members of the association or strata corporation.

(4) Application for an order under this section may be made by:

- (a) the association or strata corporation, or
- (b) the proprietor of a lot within the scheme under which the association or strata corporation is constituted.

#### **80 Order by Tribunal relating to variation of management statement**

(1) The Tribunal may, by order, revoke or vary a provision of the management statement for an association if the Tribunal considers the provision not to be in the best interests of:

- (a) the members of the association, or
- (b) the proprietors of neighbourhood lots or strata lots within the scheme to which the management statement relates.

(2) Application for an order under this section may be made by:

- (a) a member of the association, or
- (b) the proprietor of a neighbourhood lot, or a strata lot, within the scheme, to which the management statement relates.

#### **81 Order by Tribunal revoking invalid part of management statement**

(1) The Tribunal may, by order, revoke so much of a management statement as the Tribunal considers to be invalid.

(2) Application for an order under this section may be made by any person (including a mortgagor as well as a first mortgagee or covenant chargee) entitled to vote at a meeting of the association to which the management statement relates.

#### **82 Order by Tribunal relating to invalid resolution or election**

(1) If this Act was not complied with in relation to a meeting of an association at which a resolution was passed or an election held, the Tribunal may:

- (a) by order invalidate the resolution or election, or
- (b) refuse an application for such an order.

(2) The Tribunal may not refuse to make an order under this section unless it considers:

- (a) that the failure to comply with this Act did not adversely affect any person, and
- (b) that compliance with this Act would not have resulted in a failure to pass the resolution, or would not have affected the result of the election.

(3) Application for an order under this section may be made by:

- (a) a person entitled to vote on the motion for the resolution or at the election, or
- (b) the first mortgagee or covenant chargee of a lot of which the proprietor is a person referred to in paragraph (a).

#### **83 Order by Tribunal relating to contributions**

(1) The Tribunal may make an order under subsection (2) if it considers:

- (a) that a contribution levied, or proposed to be levied, by an association is too much or too little, or
- (b) that the manner of payment of such a contribution is unreasonable.

(2) The Tribunal may, in relation to the contribution, or the proposed contribution:

- (a) order payment of a different amount, or
- (b) order a different manner of payment, or
- (c) make both orders.

(3) Application for an order under subsection (2) may be made by:

- (a) a member of the association, or
- (b) a mortgagee or covenant chargee in possession of a development lot, neighbourhood lot or strata lot within the scheme under which the association was constituted.

(4) If the contribution has been wholly or partly paid:

- (a) an order to pay more has effect as if the association had decided to make a levy equal to the difference, and
- (b) an order to pay less imposes a duty on the association to refund the difference.

#### **84 Order by Tribunal to vary amount of insurance**

- (1) If the Tribunal considers that the amount for which an association has effected insurance is unreasonable, the Tribunal may order the association to vary the amount to a specified amount.
- (2) Application for an order under this section may be made by:
  - (a) a member of the association, or
  - (b) an enrolled mortgagee of, or a person who has an interest in, a development lot, neighbourhood lot or strata lot within the scheme under which the association was constituted.

#### **85 Order by Tribunal appointing managing agent**

- (1) The Tribunal may, by order, appoint a managing agent:
  - (a) to perform all the functions, or
  - (b) to perform specified functions, or
  - (c) to perform all the functions, other than specified functions,of an association, or of a strata corporation.
- (2) Application for an order under subsection (1) may be made:
  - (a) by a person who obtained an order under this Part that imposed a duty on the association or the strata corporation, or on its executive committee or council, or on its chairperson, secretary or treasurer, or
  - (b) by a person who has an estate or interest in a development lot, neighbourhood lot or strata lot within the scheme under which the association or strata corporation was constituted, or
  - (c) if the object of the application is payment of a judgment debt--by the judgment creditor.
- (3) An order under subsection (1) may be made by the Tribunal to which an Adjudicator has referred a matter if the Adjudicator, whether or not on application, is satisfied that the management structure of the scheme that would be affected by the order is not functioning, or is not functioning satisfactorily.
- (4) An appointee:
  - (a) must hold any licence required by law to be held by a managing agent performing the functions to which the order relates, and
  - (b) must have consented to the appointment.
- (5) Unless sooner revoked, an order made under subsection (1) ceases to have effect at the expiration of such period after its making (not exceeding 12 months) as is stated in the order.
- (6) A managing agent may be appointed under this section:
  - (a) on such terms and conditions relating to remuneration of the managing agent by the association or the strata corporation, and
  - (b) on such other terms and conditions,as are stated in the order making the appointment.
- (7) In this section: "**functions**" includes:
  - (a) performance of a duty imposed by an order under this Part, and
  - (b) payment of a judgment debt.

#### **86 Functions of managing agent appointed by Tribunal**

- (1) If the Tribunal appoints a managing agent to exercise a function:
  - (a) the function may not, while the managing agent is in office, be exercised by any other person, and
  - (b) anything done or suffered by the managing agent in the exercise of the function has the same effect as it would have if the function were exercised by the

person who, but for paragraph (a), could have exercised it.

(2) A managing agent appointed by the Tribunal must, immediately after exercising a function of an association or strata corporation in accordance with the appointment:

(a) make a written record of the function and the manner in which it was exercised, and

(b) serve a copy of the record on the association or strata corporation.

### **87 Amendment or revocation of order of Tribunal**

(1) The Tribunal may, by order:

(a) amend an order made under this Part by it, or

(b) revoke an order so made, whether or not another order under this Part is made instead of the revoked order,

or may refuse to order such an amendment or revocation.

(2) Application for an order under subsection (1) may be made by:

(a) the association or strata corporation constituted under the scheme involved in the original order, or

(b) the applicant for the original order, or

(c) a person who made a written submission on the application for the original order, or

(d) a person bound by the original order.

(3) The application must:

(a) be made to the Registrar, and

(b) be in a form approved by the Director-General, and

(c) state the grounds on which it is based, and

(d) be accompanied by the prescribed fee and any prescribed deposit.

(4) The Registrar must deal with the application in the same way as the Registrar would deal with an application that must be referred by the Registrar to the Tribunal.

(5) If an order is amended, the amended order has effect as if it had been made under the same provision of this Act as the original order.

(6) On the final determination of the application, the applicant is entitled to a refund of the deposit paid under subsection (3) (d) unless, in making the determination, the Registrar, Tribunal or Supreme Court finds that the application was frivolous, vexatious, misconceived or lacking in substance.

### **Division 5 – Appeal to Tribunal**

#### **88 Appeal against order of Adjudicator**

(1) An appeal lies to the Tribunal against an order made by an Adjudicator under Division 3.

(2) The appellant may be:

(a) the applicant for the order appealed against, or

(b) a person who made a written submission on the application for the order, or

(c) a person bound by the order.

(3) The appellant must lodge with the Registrar a written notice of appeal that is accompanied by the prescribed fee and specifies:

(a) the name and address of the appellant, and

(b) the order appealed against, and

(c) the grounds for the appeal, and

(d) any other prescribed particulars.

(4) The only ground of appeal against the granting of an interim order is that the Adjudicator acted unreasonably.

(5) The notice of appeal against an order dismissing an application must be lodged not later than 21 days after the order takes effect.

(6) The notice of appeal against any other order must be lodged:

(a) not later than 21 days after the order takes effect, or



(b) by leave of the Tribunal (given on sufficient cause being shown why the notice was not lodged within the time limited by paragraph (a))--not later than 90 days after the order takes effect.

### **89 Procedure after appeal is lodged**

(1) The Registrar must send to the Tribunal the notice of appeal and the Adjudicator's records relating to the order appealed against.

(2) The Registrar must complete a notice containing the time and place at which, and the date on which, the Tribunal will determine the appeal.

(3) The Registrar must send a copy of that notice together with a copy of the notice of appeal to the following persons so that the notices would, in the ordinary course of post, be received by the addressee not less than 7 days before the day specified in them for the determination of the appeal:

(a) the appellant,

(b) the person against whom the order appealed against was sought and any other person entitled to appeal,

(c) the association or strata corporation for the scheme to which the order appealed against relates.

### **90 Stay of proceedings**

(1) If a notice of appeal to the Tribunal is accompanied by an application for a stay of proceedings under this section:

(a) an Adjudicator, before sending to the Tribunal the notice of appeal and other documents, or

(b) the Tribunal to which the notice of appeal and other documents have been sent,

may, by order, stay proceedings on the order appealed against.

(2) If an order is made under subsection (1), written notice of the order must be sent by the Registrar to the persons served, or the persons who but for the stay would be served, with notice of the time, date and place for determination of the appeal.

### **91 Determination of appeal to Tribunal**

(1) In determining an appeal, the Tribunal may admit new evidence.

(2) Unless the order appealed against is an interim order, the Tribunal may determine an appeal by an order:

(a) affirming, amending or revoking the order appealed against, or

(b) substituting its own order for the order appealed against, or

(c) dismissing the appeal.

(3) If the order appealed against is an interim order, the Tribunal may determine the appeal by an order:

(a) revoking the interim order, or

(b) dismissing the appeal.

(4) The Tribunal may not, in determining an appeal, make an order as to costs.

(5) An order made under subsection (2) has effect, and the provisions of this Act (other than provisions conferring a right of appeal to the Tribunal) apply to it, as if it were an order made under the same provision as the order appealed against.

(6) Subsection (5) does not exclude an appeal from an order of the Tribunal made under this section.

## **Division 6 – General provisions relating to Tribunal**

### **91A Proceedings before Tribunal**

(1) The provisions of the *Consumer, Trader and Tenancy Tribunal Act 2001*, and of the regulations made under that Act, apply in relation to proceedings before the Tribunal under this Act, subject to any modifications prescribed by the regulations.

(2) In this section, a reference to proceedings includes a reference to the whole of proceedings, from the time that an application is made to the Tribunal until the

application has been finally determined.

## **92 Tribunal may dispense with formalities**

- (1) Before it makes an order under Division 4 or 5 (except an order for a stay of proceedings) the Tribunal must investigate the application for the order or, in the case of an appeal, the grounds for the appeal.
- (2) The investigation must be made without regard for legal forms or technicalities.
- (3) The Tribunal is not bound to apply the rules of evidence and may inform itself in any way it pleases.
- (4) The Tribunal need not hold a hearing in order to decide an application or appeal unless there is an appearance by a person entitled or required to appear before it.
- (5) A hearing need not be formal.
- (6) Before deciding whether or not to make an order, the Tribunal must take into account the relative market position, economic resources and commercial sophistication of the parties.

## **93 Appearance before Tribunal**

- (1) A person who:
  - (a) applies for an order under Division 3 or 4, or
  - (b) makes a written submission on such an application, or
  - (c) is, or whose conduct is, the subject of an application,may appear, or be represented, before the Tribunal dealing with the application.
- (2) A person who:
  - (a) appeals to the Tribunal, or
  - (b) is entitled to be served with a notice of an appeal to the Tribunal, or
  - (c) is, or whose conduct is, the subject of an appeal to the Tribunal,may appear, or be represented, before the Tribunal dealing with the appeal.
- (3) Representation before the Tribunal may be by counsel or solicitor, or by an agent authorised in writing.
- (4) A representative may examine witnesses and address the Tribunal.

## **94 Summons to appear before Tribunal**

- (1) The member who constitutes the Tribunal, or the Registrar with the authority of the member, may summon a person to attend the Tribunal at the time and place stated in the summons and then and there:
  - (a) give evidence, and
  - (b) produce any documents specified in the summons that are in the custody, or under the control, of the person summoned.
- (2) A summons may be issued at the request of:
  - (a) a person whose application or appeal is to be, or is being, dealt with by the Tribunal, or
  - (b) a person given notice by the Registrar of such an application or appeal, or
  - (c) the agent of a person referred to in paragraph (a) or (b),on payment of the prescribed fee.
- (3) A person is not bound to produce any documents:
  - (a) that are not specified or sufficiently described in the summons, or
  - (b) that the person would not be bound to produce on a subpoena for production in the Supreme Court.
- (4) A summons need not be obeyed by a person whose reasonable expenses for attendance as required by the summons have not been tendered.
- (5) A person who disobeys a summons is guilty of an offence unless reasonable cause for the disobedience is proved.

## **95 Examination of witness on oath**

- (1) The Tribunal may administer an oath to a witness and may examine a witness on oath.
- (2) A witness in proceedings before the Tribunal:

(a) has the same protection, and  
(b) in addition to any liability under this Act is subject to the same liabilities, as a witness in proceedings before the Supreme Court.

(3) If a witness in proceedings before the Tribunal:

- (a) refuses to take an oath, or
- (b) refuses to answer a question that is relevant to the proceedings and is put to him or her by the Tribunal or a person entitled to appear in the proceedings, or
- (c) knowingly gives false evidence to the Tribunal,

the witness is guilty of an offence.

### **96 Contempt of Tribunal**

(1) A person who wilfully:

- (a) insults or disturbs the Tribunal, or
- (b) interrupts the proceedings of the Tribunal, or
- (c) speaks or writes words about the Tribunal that are false or defamatory, or
- (d) is in any other way in contempt of the Tribunal,

is guilty of an offence.

(2) If a person commits an offence under subsection (1) in the face of the Tribunal, the Magistrate who constitutes the Tribunal has the same powers as a Local Court has in relation to a contempt in the face of the Local Court.

### **97 Order and records to be sent to Registrar**

The Tribunal must, on making an order under Division 4 or 5, send it to the Registrar together with all the records of the Tribunal relating to the application for the order or to the appeal.

### **97A Intervention by Director-General**

(1) The Director-General may intervene in proceedings before the Tribunal if the Director-General is of the opinion that it would be in the public interest to do so.

(2) The Director-General must intervene in proceedings before the Tribunal if directed to do so by the Minister.

(3) The Director-General has a right to be heard personally or by a barrister, solicitor or agent in proceedings before the Tribunal.

(4) The Director-General, on intervening in any proceedings, becomes a party to the proceedings and has all the rights of such a party.

(5) The Director-General is to bear the Director-General's costs of intervening in proceedings before the Tribunal.

### **Division 6A – Enforcement of orders of Adjudicators and Tribunal and certain notices**

#### **97B Civil penalties for contravention of orders under this Part**

(1) The Tribunal may, by order, require a person to pay a pecuniary penalty of an amount of up to 50 penalty units for contravention of an order under this Part ("**the original order**").

(2) An application for an order under subsection (1) may be made by:

- (a) the applicant for the original order, or
- (b) an association or strata corporation involved in the order, or
- (c) in the case of an order that gives effect to any agreement or arrangement arising out of a mediation session--either party to the mediation.

#### **97C Civil penalties for contravention of notice of association**

(1) The Tribunal may, on application by an association, by order require a person to pay a pecuniary penalty of an amount of up to 5 penalty units if the Tribunal is satisfied that:

- (a) the association served a notice under section 13A on the person requiring the person to comply with a particular by-law, and
- (b) the person has since contravened the by-law.

(2) An application for an order under this section must be made by the association within 12 months after the notice under section 13A was served.

### **97D Order as to costs**

- (1) The Tribunal may also make an order for the payment of costs when making an order requiring the payment of a pecuniary penalty under this Division.
- (2) Any costs awarded against a person on an application for an order under section 97B include the amount of the fee paid when the application for the original order was made.
- (3) The making of an order as to costs operates as a judgment under the *Local Courts (Civil Claims) Act 1970* for the amount of the costs against the person required to pay it in favour of the applicant for the order.

### **97E Payment of civil penalties**

- (1) If the Tribunal makes an order under this Division requiring a person to pay a pecuniary penalty, the Tribunal may specify in the order that the penalty or a part of the penalty must be paid to the applicant for the order as damages for work carried out by the person in relation to the matter the subject of the proceedings.
- (2) The imposition of the pecuniary penalty operates as a judgment under the *Local Courts (Civil Claims) Act 1970* for the amount of the pecuniary penalty against the person required to pay it and in favour of:
  - (a) the applicant for the order, or
  - (b) the applicant for the order and the Director-General of the Department of Fair Trading, if the order requires part only of the penalty to be paid to the applicant, or
  - (c) the Director-General of the Department of Fair Trading only, if the order so requires.
- (3) Any pecuniary penalty or part of a pecuniary penalty recovered under this Part that the Tribunal has not ordered to be paid to an applicant for an order is to be paid to the Director-General for payment into the Department of Fair Trading Operating Account or an account prescribed by the regulations for the purposes of this subsection.

## **Division 7 – Miscellaneous**

### **98 Orders generally**

- (1) An order under this Part may include ancillary or consequential provisions.
- (2) In so far as an order (including an amended order) under this Part requires an association, or a strata corporation, to do, or refrain from doing, a specified act:
  - (a) the order operates as if it were a resolution of the association or strata corporation, and
  - (b) the association or strata corporation has a duty to comply with the order while it is in force.
- (3) A document that purports to be a copy of an order made by an Adjudicator or the Tribunal is evidence of the making of the order of which it purports to be a copy.

### **99 Time at which order takes effect**

- (1) An order made under this Part that affects:
  - (a) unit entitlements, or
  - (b) amendments to a management statement, or
  - (c) restricted property,is ineffective until recorded in the Register.
- (2) Any other order under this Part takes effect:
  - (a) when it is made, or
  - (b) if the order otherwise provides--in accordance with the order.

### **100 Resolution purporting to alter effect of order**

- (1) If an order under this Part has effect as if it were a resolution, the order may be amended or revoked only by a unanimous resolution or as provided by subsection (2).
- (2) If an order under this Part fixes a period during which a resolution of an association or strata corporation purporting to alter the effect of the order would be inoperative, such a resolution passed during that period has effect if:

- (a) it is a unanimous resolution, or
  - (b) it is passed on a motion submitted to a general meeting after being authorised by the Tribunal.
- (3) An application to the Tribunal for an order authorising a motion for submission to a general meeting:
- (a) may be made by any person who, at the time of the application, could have applied for the order to which the proposed motion relates, and
  - (b) must be made to the Registrar in writing, and
  - (c) must specify the order sought, and
  - (d) must state the grounds on which it is based, and
  - (e) must be accompanied by the prescribed fee and any prescribed deposit.
- (4) The application is to be dealt with as if it were an application required to be referred to the Tribunal for determination.
- (5) On the final determination of the application, the applicant is entitled to a refund of the deposit paid under subsection (3) (e) unless, in making the determination, the Registrar, Tribunal or Supreme Court finds that the application was frivolous, vexatious, misconceived or lacking in substance.

### **101 (Repealed)**

### **102 Protection of Director-General and Adjudicators**

In exercising a function under this Part, the Director-General and an Adjudicator have the same protection and immunities as a Magistrate.

### **103 Title to land**

- (1) An Adjudicator or the Tribunal may determine a question of title to land only for the purpose of deciding a matter under this Part.
- (2) A determination under subsection (1) has effect only for the purposes of the decision to which it relates.

### **104 Orders relating to costs**

An Adjudicator or the Tribunal may not make any order for the payment of costs except as specifically authorised by this Act or in relation to an order dismissing an application because:

- (a) the application is frivolous, vexatious, misconceived or lacking in substance, or
- (b) a decision in favour of the applicant is not within the jurisdiction of the Tribunal.

### **105 Expenses in proceedings under this Part**

- (1) A community association or precinct association may not, in respect of its costs and expenses in proceedings brought by or against it under this Part, make a levy on:
  - (a) another party who is successful in the proceedings, or
  - (b) a subsidiary body of which such a party is a member.
- (2) A neighbourhood association, or a strata corporation, may not, in respect of its costs and expenses in proceedings brought by or against it under this Part, make a levy on another party who is successful in the proceedings.
- (3) An association, or a strata corporation, that is unsuccessful in proceedings brought by or against it under this Part may not pay any part of its costs and expenses in the proceedings from its administrative fund or sinking fund but, except as provided by subsections (1) and (2), may make a levy for the purpose.
- (4) In this section, a reference to proceedings under this Part includes a reference to proceedings on appeal to the Tribunal or the Supreme Court in relation to a matter arising under this Part.

## **Part 5 – Proceedings in superior courts**

### **106 Breach of development contract**

- (1) In this section, a reference to proceedings is:

(a) in subsection (2)--a reference to proceedings brought in the Land and Environment Court by an association, or a member of an association, for a breach of a condition of a development consent constituted by a breach of a development contract, or

(b) in subsections (3) and (4)--a reference to proceedings brought in the Land and Environment Court for a breach of the agreement implied by section 15 in relation to a development contract.

(2) If proceedings are brought under section 123 of the *Environmental Planning and Assessment Act 1979*, the Court may:

(a) instead of making a restraining order under section 124 of that Act, or

(b) instead of, or in addition to, making an order under that section other than a restraining order,

make an award of damages under section 20 (2) (d) of the *Land and Environment Court Act 1979*.

(3) If proceedings are brought under section 20 (2) (d) of the *Land and Environment Court Act 1979*, the Court, instead of, or in addition to, making an award of damages may make an order under section 124 of the *Environmental Planning and Assessment Act 1979*.

(4) If proceedings are brought under section 20 (2) (d) of the *Land and Environment Court Act 1979*, the Court may, instead of making an award of damages, order specific performance of the development contract.

#### **107 Amendment of development contract with approval of Land and Environment Court**

(1) If an approval by an association or a strata corporation for amendment of a development contract is not available for the purposes of section 16 because:

(a) a motion for giving the approval has been defeated, or

(b) the notice relating to such a motion has been given but a meeting to consider the motion has not been held within a reasonable time after the giving of the notice, or

(c) the consent of a mortgagee or covenant chargee has been sought but has been refused,

the developer may apply to the Land and Environment Court for an order approving the amendment.

(2) A copy of the application must be served on:

(a) the consent authority, and

(b) the association and, in the case of a community association or precinct association, its subsidiary bodies, and

(c) each person other than the developer who is the proprietor of a development lot, and

(d) each mortgagee and covenant chargee of a development lot.

(3) The Land and Environment Court may:

(a) approve the amendment, or

(b) approve a different amendment, or

(c) refuse to approve the amendment.

#### **108 Appeal to Supreme Court**

(1) An appeal lies to the Supreme Court from any order made by the Tribunal under Part 4 (which relates to disputes).

(2) The appeal lies in the same cases, and in the same way, as it would lie under Part 5 of the *Crimes (Local Courts Appeal and Review) Act 2001* if the order were a determination that a justice or justices made, at the time the order took effect, in the exercise of summary jurisdiction on an information or complaint.

(3) The persons who may appeal against an order of the Tribunal (other than an order amending or revoking an order of the Tribunal or an order made on an appeal to the

Tribunal) are:

- (a) the person who applied for the order appealed against, and
  - (b) any person who made a written submission on the application for the order, and
  - (c) any person required by the order to do, or refrain from doing, a specified act, and
  - (d) if not included in paragraphs (a)-(c)--the association or strata corporation for the scheme affected by the order.
- (4) The persons who may appeal against an order of the Tribunal amending or revoking an order made by it are:
- (a) the person who applied for the amendment or revocation, and
  - (b) any person entitled under subsection (3) to appeal against the making of the order that was amended or revoked.
- (5) The persons who may appeal against an order of the Tribunal made on the determination of an appeal are:
- (a) the appellant to the Tribunal, and
  - (b) any applicant, other than the appellant to the Tribunal, for the original order made by an Adjudicator, and
  - (c) any person who made a written submission on the application to the Adjudicator for the original order, and
  - (d) any person required, by the order appealed against, to do, or refrain from doing, a specified act.
- (6) Except as provided by this section, an appeal does not lie from an order of the Tribunal.

### **109 Jurisdiction generally**

- (1) If the Supreme Court considers that any proceedings commenced, or purporting to have been commenced, in the Supreme Court in relation to anything arising under this Act or the *Community Land Development Act 1989* could, or should, have been commenced in the Land and Environment Court, the Supreme Court may, on the application of any party to the proceedings or of its own motion, order that the proceedings be transferred to the Land and Environment Court.
- (2) Section 73 of the *Land and Environment Court Act 1979* applies to an order made by the Supreme Court under subsection (1) in the same way as it applies to an order made by the Supreme Court under section 72 of that Act.
- (3) The Supreme Court may determine all matters arising in proceedings before it under this Act or the *Community Land Development Act 1989* including any matter within the jurisdiction of the Land and Environment Court.

## **Part 5A – Administration**

### **Division 1 – Functions of Director-General under this Act**

#### **109A (Repealed)**

#### **109B Functions of Director-General**

- (1) (Repealed)
- (2) The functions of the Director-General under this Act include the following:
- (a) attempting to resolve complaints and disputes relating to community schemes,
  - (b) investigating alleged breaches of the Act,
  - (c) taking such action, including prosecution, as the Director-General thinks appropriate,
  - (d) providing information to proprietors, occupiers, associations, managing agents and the public about this Act and the services provided by the Director-General, Adjudicators and the Tribunal,
  - (e) to investigate and report on any matters, or make inquiries in relation to any

matters, referred to the Director-General by the Minister in connection with this Act.

### **109C Advice and conciliation by the Director-General**

- (1) The Director-General may:
  - (a) give advice to a participant in a scheme (other than a developer) as to the rights and remedies available in relation to matters referred to in subsection (2), or
  - (b) endeavour to bring the interested parties to an agreement which will settle any question, dispute or difficulty that arises in relation to those matters, or
  - (c) inform the appropriate consent authority of any departure from the terms of a development contract or from the development consent for a staged scheme.
- (2) The matters referred to in this subsection are matters that relate to:
  - (a) a development contract, or
  - (b) a covenant implied by section 15 on registration of a development contract, or
  - (c) a development consent for a community scheme, precinct scheme or neighbourhood scheme, or
  - (d) an amendment or modification of such a contract, covenant or consent, or
  - (e) the operation, administration or management of a scheme.
- (3) In this section, the reference to a participant in a scheme is a reference to:
  - (a) the proprietor (other than a developer) of a lot within the scheme, or
  - (b) an association or strata corporation constituted under the scheme.

### **109D Staff of Director-General**

Such staff as may be necessary to enable the Director-General to exercise the Director-General's functions under this Act may be employed under and subject to Part 2 of the *Public Sector Management Act 1988*.

### **109E Delegation of functions**

The Director-General may, by instrument in writing, delegate to a person employed under and subject to the provisions of the *Public Sector Management Act 1988* the exercise of such of the functions (other than this power of delegation) conferred on the Director-General by or under this Act as may be specified in the instrument.

### **109F Investigations by Director-General**

- (1) If the Director-General believes on reasonable grounds that an offence under this Act has been, or may be committed, the Director-General may exercise the following powers to investigate the grounds for the belief:
  - (a) enter association property or common property,
  - (b) enter a development lot,
  - (c) enter a neighbourhood lot or a strata lot at a reasonable time on notice given to the occupier,
  - (d) request an association or strata corporation to provide information to the Director-General and allow the Director-General to inspect its records under section 26.
- (2) When exercising a power under this section, the Director-General may, if the Director-General thinks fit, be accompanied by:
  - (a) a member of the executive committee of an association or strata corporation, or
  - (b) the managing agent (if any) of the scheme concerned.
- (3) A person must not obstruct or hinder the Director-General, or a delegate of the Director-General, in the exercise of powers conferred by this section.
- (4) An association must not neglect or fail to comply with a request under subsection (1) (d).
- (5) No charge is payable by the Director-General in connection with a request made



under subsection (1) (d).

### **109G Annual report of Director-General**

(1) As soon as practicable after 30 June, but on or before 31 December, in each year, the Director-General is to prepare and forward to the Minister a report of the operations of the Director-General under this Part during that year.

(2) The Minister is to lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.

### **Division 2 – Community Schemes Adjudicators**

#### **109H Appointment of Community Schemes Adjudicators**

The Minister may appoint Community Schemes Adjudicators.

#### **109I Functions of Adjudicators**

An Adjudicator has the functions conferred or imposed on an Adjudicator by or under this or any other Act.

#### **109J Delegation of functions of Adjudicators**

An Adjudicator may delegate to the Registrar or Deputy Registrar the exercise of a function of the Adjudicator (other than this power of delegation).

### **Division 3 – (Repealed)**

### **Division 4 – Registrar**

#### **109N (Repealed)**

#### **109O Delegation**

The Registrar may delegate to any member of staff of the Tribunal any of the Registrar's functions (other than this power of delegation).

## **Part 6 – General**

### **110 Mutual duties owed by proprietor and others**

A proprietor, mortgagee or covenant chargee in possession, lessee or occupier of a development lot, neighbourhood lot, or strata lot, must not:

- (a) do anything, or allow anything to be done, on or in relation to the lot that interferes with any support or shelter provided by the lot for another lot, for association property or for common property, or
- (b) do anything, or allow anything to be done, on or in relation to the lot that interferes with, or with the use of, the statutory easement created by section 36 of the *Community Land Development Act 1989* or any service lines within the parcel, or
- (c) use or enjoy the lot, or allow it to be used or enjoyed, in a manner, or for a purpose, that causes a nuisance (by noise or otherwise) or hazard to any other person who is exercising a right to use and enjoy another lot, or
- (d) do anything, or allow anything to be done, on an open access way or a private access way that interferes with the use of the access way.

### **111 Company nominees**

(1) A corporation that is the proprietor, mortgagee or covenant chargee of a development lot, neighbourhood lot, or strata lot, may:

- (a) authorise a person who is not a corporation to exercise a function of the proprietor, mortgagee or covenant chargee of such a lot under this Act, or
- (b) revoke such an authorisation.

(2) A function exercised by the authorised person is to be taken to have been exercised by the proprietor, mortgagee or covenant chargee.

(3) A document that is under the seal of a corporation and purports to be an authorisation

or revocation under subsection (1) is evidence that it is such an authorisation or revocation.

### **111A Can a proprietor of a lot appoint an agent for dealings with the association?**

(1) A proprietor of a development lot, neighbourhood lot or strata lot may appoint an agent to receive notices and other documents under this Act if the proprietor is unable to deal with those notices because of intellectual impairment or physical impairment, illiteracy or an inability to read or write English sufficiently well or absence from the lot.

(2) A person must not be appointed as an agent unless the person is a resident of Australia.

(3) An appointment of an agent may be made at any time and may be revoked at any time.

(4) However, the appointment or revocation has no effect until communicated to the association and recorded in the relevant roll kept in accordance with Schedule 3.

(5) If an agent for a proprietor has been so appointed and the name and address for service of the agent recorded on the strata roll, notices or other documents required to be given to the proprietor under this Act are to be given to the agent.

### **112 Costs in proceedings between association and members**

(1) This section applies to legal proceedings brought:

(a) against an association by one or more of its members, or

(b) by an association against one or more of its members,

including any member joined in third party proceedings.

(2) In proceedings to which this section applies, the Court may order that any costs and expenses payable by the association under an order made in the proceedings must be paid from a levy made:

(a) only in respect of such lots, and

(b) in such proportions,

as are specified in the order.

### **113 Association may represent its members in certain proceedings**

(1) If the members of an association:

(a) are jointly entitled to take legal proceedings, or

(b) are liable to have legal proceedings taken against them jointly,

in relation to association property, the proceedings may be taken by or against the association instead.

(2) A judgment or order given or made in the proceedings:

(a) in favour of the association--has effect as if it had been given or made in favour of its members, or

(b) against the association--has effect as if it had been given or made against its members.

(3) If a member of an association is liable to make a contribution to another member in respect of a judgment debt arising out of the proceedings, the contribution must be the proportion of the judgment debt prescribed by subsection (4), (5) or (6), whichever is applicable.

(4) If the judgment relates to community property, the proportion prescribed by this subsection for a member of the community association is:

(a) if the member is the proprietor of a community development lot--the proportion borne to the total unit entitlement for the community scheme by the unit entitlement for the development lot, or

(b) if the member is a precinct association, neighbourhood association or strata corporation--the proportion borne to the total unit entitlement for the community scheme by the unit entitlement for the former development lot that became subject to the precinct scheme, neighbourhood scheme or strata scheme.

(5) If the judgment relates to precinct property, the proportion prescribed by this

subsection for a member of the precinct association is:

- (a) if the member is the proprietor of a precinct development lot--the proportion borne to the total unit entitlement for the precinct scheme by the unit entitlement for the development lot, or
- (b) if the member is a neighbourhood association or a strata corporation--the proportion borne to the total unit entitlement for the precinct scheme by the unit entitlement for the former development lot that became subject to the neighbourhood scheme or strata scheme.

(6) If the judgment relates to neighbourhood property, the proportion prescribed by this subsection for the proprietor of a neighbourhood lot is the proportion borne to the total unit entitlement for the neighbourhood scheme by the unit entitlement for the neighbourhood lot.

#### **114 Service of documents on association**

- (1) A summons or other legal process may be served on an association by leaving it with the chairperson or secretary, or with any other member of its executive committee.
- (2) A document other than a summons or other legal process may be served on an association as provided by its management statement or, if no such provision is made:
  - (a) by leaving it with a person referred to in subsection (1) or at the means provided by the association for the receipt of mail, or
  - (b) by serving it by post on the association at the address for the association recorded in the folio for its association property.
- (3) A document (including a summons or other legal process) may be served by a person on an association in any manner agreed on between the person and the association.

#### **115 Service of documents by certain persons**

- (1) This section applies to service of a notice or other document by the Director-General, an Adjudicator, the Tribunal, an association, the executive committee of an association or the secretary of such a committee:
  - (a) on a member of an association, or
  - (b) on the proprietor, lessee, mortgagee, covenant chargee or occupier of a lot.
- (2) A notice may be served on an occupier of a lot by leaving it at the address of the lot with someone who seems to be at least 16 years old.
- (3) If an address for service of notices on a person is recorded in the association roll or strata roll, a document may be served on the person:
  - (a) by post at that address, or
  - (b) by leaving it at that address with someone who seems to be at least 16 years old.
- (4) A document may be served on the proprietor of a lot:
  - (a) personally, or
  - (b) by post at the address of the lot, or
  - (c) by leaving it on a part of the lot that is the proprietor's place of residence or business, or
  - (d) by leaving it at a place provided at the parcel for receiving mail posted to the lot, or
  - (e) in any manner provided by the by-laws for the service of notices on the proprietor of a lot.
- (5) In this section: "**lot**" means a development lot, a neighbourhood lot or a strata lot. "**parcel**" means a community parcel, a precinct parcel or a neighbourhood parcel.

#### **116 Open and private access ways**

- (1) An open access way is not a road or road related area or a public place but, except to the extent that this Act or the *Community Land Development Act 1989* otherwise provides, the provisions of:
  - (a) the road transport legislation within the meaning of the *Road Transport*

- (General) Act 2005, and
- (b) the *Motor Accidents Compensation Act 1999*, and
- (c) Division 2 of Part 7 of the *Roads Act 1993*, and
- (d) the *Summary Offences Act 1988*,

apply to an open access way as if it were a road or road related area.

(2) (Repealed)

(3) An open access way is a private road for the purposes of the *Roads Act 1993* and is not a public road for the purposes of that Act.

(4) A private access way is a road or road related area for the purposes of the *Motor Accidents Compensation Act 1999*.

(5) An authorised person may enter an open access way or a private access way and there exercise a function that the person could have exercised if the access way had been a road or road related area.

(6) Except as provided by subsections (4) and (5), a private access way is not for any purpose a road or road related area, a public road or a public thoroughfare or way.

(7) In this section: "**authorised person**" means:

- (a) a member of the Police Force, or
- (b) an employee of the Roads and Traffic Authority, or
- (c) a person authorised by the Roads and Traffic Authority, or
- (d) a person prescribed by the regulations as an authorised person for the purposes of this section.

"**road**" or "**road related area**" means a road or road related area within the meaning of the *Road Transport (General) Act 2005* (other than a road or road related area that is the subject of a declaration made under section 15 (1) (b) of that Act relating to all of the provisions of that Act).

### **117 Dividing Fences Act 1951**

The *Dividing Fences Act 1951* has effect:

- (a) in relation to a community scheme and an owner of land outside the community parcel--as if the community association were the owner of the community parcel, and
- (b) in relation to a subsidiary scheme within a community scheme and an owner of land outside the subsidiary parcel--as if the community association were the owner of the subsidiary parcel, and
- (c) in relation to a neighbourhood scheme that is not part of a community scheme--as if the neighbourhood association were the owner of the neighbourhood parcel.

### **118 Power of entry for public authority**

If an Act authorises a public authority (including a consent authority) to enter a part of a community parcel, precinct parcel or neighbourhood parcel for the purpose of exercising any of its functions, it may also enter any other part of the parcel for that purpose.

### **119 Effect of notice under the Real Property Act 1900**

A notice given under the *Real Property Act 1900* to an association also has effect as if it had been given to each member of the association unless, in a particular case, it is proved that the association did not inform the member of its effect.

### **120 Other rights and remedies not affected**

(1) Nothing in this Act detracts from any rights or remedies that:

- (a) an association, or
- (b) a strata corporation, or
- (c) the proprietor, mortgagee or covenant chargee of a development lot or a neighbourhood lot, or
- (d) the proprietor, mortgagee or covenant chargee of a strata lot,

may have in relation to any such lot, or any association property or common property, apart from this Act and the *Strata Schemes (Freehold Development) Act 1973* and the *Strata Schemes Management Act 1996*.

(2) In any proceedings to enforce a right or remedy preserved by subsection (1), the Court must, if of the opinion referred to in subsection (3), order the plaintiff to pay the costs of the defendant as determined by the Court.

(3) Subsection (2) applies only if the Court is of the opinion that, having regard to the subject-matter of the proceedings and the circumstances of the case, the taking of the proceedings was not justified because this Act, or Chapter 5 of the *Strata Schemes Management Act 1996*, makes adequate provision for enforcement of the rights and remedies.

### **121 Proceedings for offences**

Proceedings for an offence under this Act may be taken only before a Magistrate sitting as a Local Court.

### **122 Regulations**

(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

### **123 Savings, transitional and other provisions**

Schedule 7 has effect.

## **Schedule 1 Functions of associations**

(Sections 5, 6, 7)

### **Part 1 – Preliminary**

#### **1 Definition**

In this Schedule:

"**property**" means, in relation to an association, its association property and personal property.

### **Part 2 – Property**

#### **2 Management and maintenance of property**

(1) An association must control and manage its open access ways and private access ways, and all other parts of its association property, and must do so for the benefit of its members.

(2) Subclause (1) does not authorise any action that would be inconsistent with:

- (a) an Act in so far as, under section 116, it applies to an access way, or
- (b) a function in so far as, under that section, it may be exercised on, or in relation to, an access way.

(3) An association must properly maintain, and keep in a good and serviceable state of repair, any part of its association property that is an access way.

(4) An association must inform the consent authority if any part of the association property is to be, or is, used for commercial purposes.

(5) In this clause: "**access way**" means an open access way or a private access way.

### **3 Mail**

- (1) An association must provide proper means for the receipt of its mail.
- (2) The means provided:
  - (a) must be clearly identified as a receptacle for the receipt of mail addressed to the association, and
  - (b) may be provided in more than one position.

#### **4 Maintenance and replacement of property**

- (1) An association must maintain its property in good condition.
- (2) An association must, when necessary, replace fixtures or fittings that are part of its property.
- (3) An association must, when necessary, replace its personal property.

#### **5 Insurance**

An association must effect and maintain such insurance as is necessary to avoid committing an offence under section 39 or 40.

### **Part 3 – Records**

#### **6 Record of proceedings**

An association is guilty of an offence if it does not record minutes of its proceedings or if it does not include in the record details of motions passed.

#### **7 Notices and orders served on association**

- (1) An association is guilty of an offence if it does not record a summary of each notice or order served on it.
- (2) An association is guilty of an offence unless it also records:
  - (a) the date and manner of service of the notice, and
  - (b) the part of the parcel affected, and
  - (c) the date for compliance, and
  - (d) the date of compliance.
- (3) An association or strata corporation is guilty of an offence if, on receipt of a notice served on it under Division 2 of Part 4 (which relates to applications for orders on disputes) it does not at once serve a copy on each person whose name appears on the association roll or strata roll.

#### **8 Correspondence sent and notices given**

An association must keep copies of:

- (a) all correspondence sent by it, and
- (b) all notices of meetings of the association and its executive committee, and
- (c) all other notices given by it.

#### **9 Retention of records**

An association must retain for the prescribed period:

- (a) the records of the proceedings at its meetings, and
- (b) the accounting records it is required to keep, and
- (c) the summary and other particulars required to be recorded in relation to notices and orders served on it, and
- (d) the financial statements prepared by it, and
- (e) correspondence received by it and copies of correspondence sent by it, and
- (f) copies of notices of its meetings and of meetings of its executive committee, and
- (g) proxies delivered to it, and
- (h) voting papers for resolutions at its meetings, and
- (i) voting papers for election of its executive committee and officers, and
- (j) records served on it by its managing agent, and

- (k) notices specifying an address for service, and
- (l) any other prescribed document.

## **Part 4 – Finance**

### **10 Accounts to be kept**

An association is guilty of an offence if it does not keep the prescribed accounting records.

### **11 Financial statements**

- (1) An association must prepare financial statements in accordance with this clause and present them at each annual general meeting.
- (2) The first financial statement must be for the period that:
  - (a) begins on the date of incorporation of the association, and
  - (b) ends not earlier than 2 months before the first annual general meeting.
- (3) Succeeding financial statements must be for each period that:
  - (a) begins at the end of the period covered by the last preceding financial statement, and
  - (b) ends not earlier than 2 months before the annual general meeting at which it is to be presented.
- (4) The financial statements are to comprise only the following matters:
  - (a) a statement of income and expenditure for the administrative fund,
  - (b) a statement of income and expenditure for the sinking fund,
  - (c) a statement of income and expenditure for any other fund that is the property of the association.
- (5) Each financial statement must specify the fund, and the period, for which it is prepared.
- (6) If the period is a period referred to in subclause (3), the financial statement for a fund must also specify the following:
  - (a) the balance carried forward in the fund from the previous period,
  - (b) the particulars and amount of each item of income of the fund received during the current period,
  - (c) the particulars and amount of each item of expenditure from the fund during the current period,
  - (d) the amount of the contribution to the fund determined for each association or person liable to make such a contribution,
  - (e) the balance outstanding for each such contribution,
  - (f) the cash in the fund at the end of the current period,
  - (g) the balance of the fund,
  - (h) in respect of each liability to contribute to the fund--any unpaid arrears and any balance outstanding,
  - (i) the extent to which, at the end of the current period, the fund is in debit or credit.

### **11A Auditing of accounts and financial statements**

If an association determines that the accounting records and financial statements of the association are to be audited, the audit must be carried out in accordance with Australian Auditing Standards.

### **12 Administrative and sinking funds**

- (1) An association must establish an administrative fund and a sinking fund.
- (2) An association must pay into its administrative fund:
  - (a) the contributions levied on, and paid by, members for payment into the fund, and
  - (b) the proceeds from disposal of personal property, and

- (c) fees paid to it for inspection of its records and the provision of information and certificates relating to the records.
- (3) An association must pay into its sinking fund:
  - (a) the contributions levied on, and paid by, members for payment into the fund, and
  - (b) any other money received by it that is not payable into the administrative fund.
- (4) Money received by an association in settlement of an insurance claim must be paid into either the administrative fund or the sinking fund.
- (5) A subsidiary body must:
  - (a) pay into its administrative fund or sinking fund, or
  - (b) distribute between its administrative fund and sinking fund,any payment made to it by the community association or precinct association on a distribution of surplus funds under clause 17.
- (6) Money received by an association for payment into a fund must be paid into an account with a bank, building society or credit union in the name of the association unless the performance of this duty has been delegated to a managing agent.

### **13 Contributions to administrative fund and sinking fund**

- (1) An association must estimate how much money it will need to credit to its administrative fund:
  - (a) to maintain its association property in good condition, and
  - (b) to provide for payment of insurance premiums, and
  - (c) if the association is a subsidiary body--to pay contributions levied on it by the community association or precinct association, or both, and
  - (d) to meet other recurrent expenses.
- (2) An association must estimate how much money it will need to credit to its sinking fund:
  - (a) for painting or re-painting structures that are part of its association property, and
  - (b) to acquire personal property, and
  - (c) to replace personal property, and
  - (d) to replace fixtures or fittings that are part of its association property, and
  - (e) to meet other expenses of a capital nature.
- (3) Estimates under subclauses (1) and (2):
  - (a) must be made not later than 1 month after incorporation of the association, and
  - (b) after that, as occasion requires,at a meeting of the association that has before it a statement of the existing financial situation and an estimate of receipts and payments.
- (4) The association must impose a levy on each member for a contribution to provide the amount estimated under subclauses (1) and (2).
- (5) If an insurance premium is increased because of the use to which a development lot, a former development lot or a neighbourhood lot is put by a member of an association, so much of a levy payable by the member as is attributable to insurance premiums may be calculated to reflect the increase.
- (6) If the association is subsequently faced with other expenses it cannot at once meet from either fund, it must impose a levy on each member for a contribution to a fund in order to meet the expenses.
- (7) If an association:
  - (a) transfers money between its funds, or
  - (b) makes a payment from one fund that should have been made from the other,it must, within 3 months after the transfer or payment, make an estimate under subclause (1) if the depleted fund is the administrative fund or under subclause (2) if the depleted fund is the sinking fund.



(8) A contribution is payable by periodic instalments if the association so decides.

#### **14 Investment of funds**

- (1) An association may invest money held by it in its administrative fund or sinking fund:
  - (a) in any way in which the law allows trust funds to be invested, or
  - (b) in accordance with the regulations.
- (2) Income from an investment must be paid into the fund from which the money invested was derived.

#### **15 Borrowing**

An association may borrow money and may give such security for its repayment with interest as does not charge its association property.

#### **16 Payments from administrative and sinking funds**

An association must not make payments from its administrative fund or sinking fund other than:

- (a) payments of the kind in respect of which estimates have been made under clause 13 (1) or (2), and
- (b) payments made under clause 17 on a distribution of a surplus in the fund.

#### **17 Distribution of surplus funds**

- (1) An association may, by unanimous resolution, distribute between its members any money in its administrative fund or sinking fund that is not, in the opinion of the association, required for the purposes of either fund.
- (2) A distribution to a member by a community association must be made in the same proportion as is borne to the total unit entitlement for the community scheme:
  - (a) if the member is the proprietor of a development lot--by the unit entitlement for the development lot, or
  - (b) if the member is a precinct association--by the unit entitlement for the former community development lot, or
  - (c) if the member is a neighbourhood association or strata corporation--by the unit entitlement for the former community development lot.
- (3) A distribution to a member by a precinct association must be made in the same proportion as is borne to the total unit entitlement for the precinct scheme:
  - (a) if the member is the proprietor of a precinct development lot--by the unit entitlement for the precinct development lot, or
  - (b) if the member is a neighbourhood association or a strata corporation--by the unit entitlement for the former precinct development lot.
- (4) A distribution to a member of a neighbourhood association or a strata corporation must be made in the same proportion as is borne to the total unit entitlement for the neighbourhood scheme or strata scheme by the unit entitlement for the neighbourhood lot or strata lot of which the member is the proprietor.
- (5) If:
  - (a) a community association is to make a distribution and there is an enrolled mortgagee of a community development lot, or
  - (b) a precinct association is to make a distribution and there is an enrolled mortgagee of a precinct development lot, or
  - (c) a neighbourhood association is to make a distribution and there is an enrolled mortgagee of a neighbourhood lot,the distribution must be made as provided by subclause (6).
- (6) A distribution referred to in subclause (5) must be made:
  - (a) in accordance with the joint directions of the proprietor of the lot and the mortgagee, or
  - (b) if they cannot agree--in accordance with an order of the court that, under subclause (7), has jurisdiction in the matter.

- (7) An order to resolve a disagreement under subclause (6) may be made:
- (a) if a question of title to land is involved and the question is not merely incidental--by the Supreme Court, or
  - (b) in any other case--by a court that has jurisdiction to give judgment for a debt equal to the amount in dispute.

## **Part 5 – General**

### **18 Management statement**

An association must keep up-to-date the registered copy of the management statement and the copy included in the association roll kept under Schedule 3.

### **19 Decisions**

- (1) A decision by an association must be implemented by it.
- (2) Subclause (1) does not prevent amendment or revocation of a decision.

## **Schedule 2 Development covenants**

(Section 15)

### **Part 1 – Community schemes**

#### **1 Covenant by original proprietor--community scheme**

Under the agreement included by section 15 in a development contract lodged with a community plan, the original proprietor of the land the subject of the community scheme covenants:

- (a) with the subsidiary bodies jointly and with each of them severally, and
  - (b) with the subsequent proprietors jointly and with each of them severally,
- that the land will be developed in accordance with the development contract and the development consent.

#### **2 Covenants by subsidiary bodies and subsequent proprietors--community scheme**

The:

- (a) subsidiary bodies, and
  - (b) subsequent proprietors,
- under a community scheme covenant jointly, and each of them covenants severally, with the original proprietor of the land the subject of the community scheme that the original proprietor will be permitted to develop the land in accordance with the development contract and the development consent.

### **Part 2 – Precinct schemes**

#### **3 Covenants under precinct schemes**

Part 1 applies in relation to a precinct scheme in the same way as it applies in relation to a community scheme and so applies as if the word "community" wherever occurring in that Part were the word "precinct".

### **Part 3 – Neighbourhood schemes**

#### **4 Covenant by original proprietor--neighbourhood scheme**

Under the agreement included by section 15 in the development contract lodged with a neighbourhood plan, the original proprietor of the land the subject of the neighbourhood scheme

covenants:

(a) with the neighbourhood association, and  
(b) with the subsequent proprietors jointly and with each of them severally,  
that the land will be developed in accordance with the development contract and the development consent.

## **5 Covenants by neighbourhood associations and subsequent proprietors**

The:

(a) neighbourhood association, and  
(b) subsequent proprietors,  
under a neighbourhood scheme covenant jointly, and each of them covenants severally, with the original proprietor of the land the subject of the neighbourhood scheme that the original proprietor will be permitted to develop the land in accordance with the development contract and the development consent.

## **Part 4 – Definition**

### **6 Definition**

In this Schedule:

"**subsequent proprietor**", in relation to a scheme, means a person (other than the original proprietor) who is for the time being the proprietor of a development lot, neighbourhood lot or strata lot within the scheme.

## **Schedule 3 Association rolls**

(Section 25)

### **Part 1 – Community associations**

#### **1 Separate records to be kept by community association**

A community association must keep in the community roll separate entries for:

- (a) each community development lot, and
- (b) each subsidiary scheme within the community scheme, and
- (c) its community property and the community scheme in general.

#### **2 Entries for community development lot**

In a community roll, the entries for a community development lot must include:

- (a) the full name of, and an Australian address for service of notices on, the proprietor, and
- (b) information provided under sections 45-49, or the same kind of information obtained from the Register, in relation to the lot.

#### **3 Entries for community property and community scheme in general**

(1) In a community roll, the entries for the community property and the community scheme in general must include:

- (a) the number of the community plan, and
- (b) the names of the original proprietor and of any managing agent for the community association and their respective Australian addresses for the service of

notices, and

(c) the number of the precinct plan, neighbourhood plan or strata plan for each subsidiary body within the scheme, and

(d) the total unit entitlement for the scheme, and

(e) the unit entitlement for each community development lot and former community development lot, and

(f) the particulars required by subclause (2) in relation to each policy of insurance effected by the community association, and

(g) information provided under sections 45-49 or the same kind of information obtained from the Register.

(2) The particulars required by this subclause in relation to a policy of insurance are:

(a) the name of the insurance company, and

(b) the number of the insurance policy, and

(c) the nature of the risk insured against, and

(d) the amount of the insurance, and

(e) the due date for payment of the premium, and

(f) the date on which the premium was last paid.

## **Part 2 – Precinct associations**

### **4 Separate records to be kept by precinct association**

A precinct association must keep in the precinct roll separate entries for:

(a) each precinct development lot, and

(b) each subsidiary scheme within the precinct scheme, and

(c) its precinct property and the precinct scheme in general.

### **5 Entries for precinct development lot**

In a precinct roll, the entries for the precinct development lot must include:

(a) the full name of, and an Australian address for service of notices on, the proprietor, and

(b) information provided under sections 45-49, or the same kind of information obtained from the Register, in relation to the lot.

### **6 Entries for precinct property and precinct scheme in general**

(1) In a precinct roll, the entries for the precinct property and the precinct scheme in general must include:

(a) the number of the precinct plan, and

(b) the names of the original proprietor and of any managing agent for the precinct association, and their respective Australian addresses for the service of notices, and

(c) the number of the neighbourhood plan or strata plan for each subsidiary body within the scheme, and

(d) the total unit entitlement for the scheme, and

(e) the unit entitlement for each precinct development lot and former precinct development lot, and

(f) the particulars required by subclause (2) in relation to each policy of insurance effected by the precinct association, and

(g) information provided under sections 45-49 or the same kind of information obtained from the Register.

(2) The particulars required by this subclause in relation to a policy of insurance are:

(a) the name of the insurance company, and

(b) the number of the insurance policy, and

(c) the nature of the risk insured against, and

- (d) the amount of the insurance, and
- (e) the due date for payment of the premium, and
- (f) the date on which the premium was last paid.

### **Part 3 – Neighbourhood associations**

#### **7 Separate records to be kept by neighbourhood association**

A neighbourhood association must keep in the neighbourhood roll separate entries for:

- (a) each neighbourhood lot, and
- (b) its neighbourhood property and the neighbourhood scheme in general.

#### **8 Entries for neighbourhood lot**

In a neighbourhood roll, the entries for a neighbourhood lot must include:

- (a) the full name of, and an Australian address for service of notices on, the proprietor, and
- (b) information provided under sections 45-49, or the same kind of information obtained from the Register, in relation to the lot.

#### **9 Entries for neighbourhood property and neighbourhood scheme in general**

(1) In a neighbourhood roll, the entries for the neighbourhood property and the neighbourhood scheme in general must include:

- (a) the number of the neighbourhood plan, and
- (b) the names of the original proprietor and of any managing agent for the neighbourhood association and their respective Australian addresses for the service of notices, and
- (c) the total unit entitlement for the scheme, and
- (d) the unit entitlement for each neighbourhood lot, and
- (e) the particulars required by subclause (2) in relation to each policy of insurance effected by the neighbourhood association, and
- (f) information provided under sections 45-49 or the same kind of information obtained from the Register.

(2) The particulars required by this subclause in relation to a policy of insurance are:

- (a) the name of the insurance company, and
- (b) the number of the insurance policy, and
- (c) the nature of the risk insured against, and
- (d) the amount of the insurance, and
- (e) the due date for payment of the premium, and
- (f) the date on which the premium was last paid.

## **Schedule 4 Inspection of records and provision of certificates**

(Section 26)

### **1 Inspection of records**

(1) An association must make available for inspection by an applicant under section 26 such of its records as comprise:

- (a) the community roll, precinct roll or neighbourhood roll kept by the association, and
- (b) the management statement for the association, and
- (c) any applicable development contract, and
- (d) the plans, specifications, certificates, diagrams, policies of insurance and other documents delivered to the association by the original proprietor at the first annual general meeting, and

- (e) if it is under the control of the association--the certificate of title for the association property, and
- (f) each current policy of insurance taken out by the association and the receipt for the premium last paid, and
- (g) any records retained by the association for the prescribed period under clause 9 of Schedule 1, and
- (h) in the case of a precinct association or a neighbourhood association--any records provided by the association of which it is a member, and
- (i) any other records under the control of the association, and
- (j) if the duties of the association under this clause have been delegated to a managing agent--such other records relating to the community scheme, precinct scheme or neighbourhood scheme (including records of the managing agent) as may be prescribed.

(2) The association:

- (a) must permit the applicant to make copies of, or to take extracts from, the records without removing them from the custody of the association, or
- (b) may permit the records to be removed from the custody of the association for the purpose of inspecting them and making copies of them or taking extracts from them.

(3) The association must comply with the requirements of this clause:

- (a) at a time and place agreed to by the association and the applicant, or
- (b) in the absence of any such agreement within 3 days after receipt of the application by the association--at the parcel at a time, and on a date, fixed by subclause (4).

(4) The time and date fixed by this subclause are:

- (a) a time between 9 am and 8 pm, and
- (b) a date that is not later than 10 days after receipt of the application, specified in a notice posted to the applicant by the association immediately after the failure to reach agreement.

## **2 Matters to be certified**

An association must supply an applicant under section 26 with a certificate in the approved form stating, as at the date of the certificate and in relation to the lot or scheme to which the application relates:

- (a) the name and address of each member of the executive committee of the association and the name and address of any managing agent appointed under this Act for the scheme, and
- (b) the amount of any regular periodic contributions required to be made to the administrative fund, and the sinking fund, of the association and the respective periods to which they relate, and
- (c) the amount of any such contribution that has not been paid, and
- (d) the date on which any regular periodic contribution to the administrative fund, and the sinking fund, of the association was levied, and
- (e) in the case of a precinct association or a neighbourhood association within a community scheme--the particulars referred to in paragraphs (b), (c) and (d) in relation to contributions to the community association and to any precinct association of which it is a member, and
- (f) any unpaid amount levied to meet expenses the association could not at once meet from its administrative fund or its sinking fund and the date on which it was levied, and
- (g) if the application relates to a development lot, neighbourhood lot or strata lot to which is attached the use of restricted property--any amount unpaid by the proprietor in relation to that use, and

- (h) any unpaid amount levied as provided by the order of a court for payment of costs by the association and the date on which it was levied, and
- (i) if the application relates to a development lot or a neighbourhood lot--the amount of any debt recoverable from the proprietor of the lot in respect of work done by the association on, or in relation to, the lot, and
- (j) the rate and amount of any interest payable on an unpaid contribution, and
- (k) any other information required to complete the approved form.

## **Schedule 5 First annual general meeting of association**

(Sections 10, 11)

### **Part 1 – Community associations**

#### **1 Definitions**

In this Part:

**"meeting"** means the first annual general meeting of a community association.

**"priority vote"**, in relation to a community development lot, means a vote by:

- (a) the mortgagee of the lot under a mortgage shown on the community roll as having priority over any other mortgage, and over any covenant charge, shown on the roll in relation to the lot, or
- (b) the covenant chargee of the lot under a covenant charge shown on the community roll as having a priority over any mortgage shown on the roll in relation to the lot, or
- (c) the covenant chargee of the lot under a covenant charge shown on the community roll without any mortgage being shown on the roll in relation to the lot.

#### **2 Notice of first annual general meeting of community association**

- (1) For the purpose of preparing notice of the first annual general meeting, the community roll may, without payment or written application, be inspected by:
  - (a) the original proprietor, or
  - (b) an agent authorised in writing by the original proprietor.
- (2) Notice of the meeting must be in writing, must set out as the business of the meeting the agenda specified in clause 3 and must be given to:
  - (a) the members of the community association shown on the community roll, and
  - (b) each person shown on the community roll as first mortgagee, or as a covenant chargee, of a community development lot.
- (3) Unless a shorter period of notice is fixed by amendment of the community management statement, the notice must be given:
  - (a) at least 21 days before the meeting if the community scheme includes a precinct scheme, or
  - (b) at least 14 days before the meeting if the community scheme does not include a precinct scheme.
- (4) The notice must state that a vote at the meeting by the proprietor of a community development lot does not count if a priority vote in respect of the lot is cast in relation to the same matter.
- (5) The notice must state that a member or, if a member is the proprietor of a community development lot, a person with a priority vote in relation to the lot may not vote at the meeting on a motion for an ordinary or special resolution unless payment has been made before the meeting of:
  - (a) all contributions that have been levied under the community scheme on the

member and are payable as at the date of the notice, and

(b) any other money that is recoverable by the association from the member as at the date of the notice.

(6) The notice must state that:

(a) if the addressee is not a subsidiary body or other corporation--voting and other rights may be exercised in person or by proxy, or

(b) if the addressee is a corporation other than a subsidiary body--voting and other rights may be exercised only by the company nominee in person or by proxy, or

(c) if the addressee is a subsidiary body--voting and other rights may be exercised only by proxy.

(7) If the addressee of a notice is the first mortgagee, or a covenant chargee, of a community development lot, the notice must state:

(a) the name of the proprietor of the lot, and

(b) the address of the lot, and

(c) the place at which the meeting is to be held.

(7A) The notice must set out the provisions of this Act for determining the quorum at a general meeting.

(8) Notice to the person giving it is not required.

### **3 Agenda**

The agenda for the meeting is:

(a) to decide whether insurances effected by the community association should be confirmed, varied or extended, and

(b) to decide whether amounts determined as contributions to the administrative fund and sinking fund should be confirmed or varied, and

(c) to elect the executive committee after determining its size, and

(d) to decide whether an agreement to which section 24 applies should be ratified, and

(e) if a managing agent has been appointed and action to terminate or notify the appointment under section 50 may be taken--to decide whether the action should be taken, and

(f) if a managing agent has not been appointed--to decide whether an appointment should be made and, if so, which functions should be delegated, and

(g) to decide which matters, if any, may be determined only at a general meeting of the association, and

(h) to decide whether any by-laws should be made, amended or revoked, including by-laws controlling, prohibiting or otherwise regulating the passage of persons through, and the activities of persons on, private access ways and, to an extent not inconsistent with this or any other Act or law, open access ways, and

(i) to consider the accounting records kept, and the latest financial statements prepared, as required by this Act, and

(j) to consider whether a revised schedule of unit entitlements should be registered under section 30 of the *Community Land Development Act 1989*.

### **4 Restrictions on submitting motions and nominating candidates**

(1) A motion that does not relate to the business set out in the notice of the meeting is out of order.

(2) If a person not entitled to vote at the meeting:

(a) moves a motion for consideration at the meeting, or

(b) nominates a candidate for election to the executive committee,

the motion or nomination is out of order.

(3) Subclause (2) does not prevent the proprietor of a community development lot from moving a motion or nominating a candidate even if the lot is subject to a mortgage or covenant charge.



## **5 Voting rights**

- (1) Each member of the community association, and each person entitled to a priority vote, has voting rights at the meeting which may be exercised:
  - (a) only if the member or person is shown on the community roll, and
  - (b) if the member (other than a subsidiary body) or person is a corporation--only if the company nominee is shown on the community roll.
- (2) Voting rights may be exercised at the meeting:
  - (a) by a subsidiary body--only by proxy, and
  - (b) by joint first mortgagees or joint covenant chargees--only by proxy (who may be one of them) appointed by all of them jointly.
- (3) The voting rights of a proprietor, first mortgagee or covenant chargee of a community development lot (other than a joint proprietor, mortgagee or covenant chargee) may be exercised:
  - (a) unless the proprietor, mortgagee or covenant chargee is a corporation--in person or by proxy, or
  - (b) if the proprietor, mortgagee or covenant chargee is a corporation--by the company nominee in person or by proxy.
- (4) The voting rights of joint proprietors of a community development lot may not be exercised by them individually but may be exercised:
  - (a) by a proxy (who may be one of them) appointed by all of them jointly, or
  - (b) as provided by subclause (5).
- (5) If, on a vote at the meeting, the rights of joint proprietors of a community development lot are not exercised by a proxy appointed under subclause (4), one of them may act as such a proxy:
  - (a) if the other joint proprietors are absent or such of them as are present give their consent, or
  - (b) if paragraph (a) does not apply--if he or she is the proprietor first named on the community roll as one of the joint proprietors.
- (6) If there are proprietors of successive estates in a community development lot, only the proprietor of the first estate may vote at the meeting.
- (7) If the proprietor of a community development lot holds it as trustee, a person beneficially entitled may not vote at the meeting.
- (8) A vote at the meeting by a member of the community association on a motion for an ordinary or special resolution does not count if payment has not been made before the meeting of:
  - (a) all contributions that have been levied under the community scheme and are payable by the member as at the date of the notice of the meeting, and
  - (b) any other money that is recoverable by the association from the member as at the date of the notice of the meeting.
- (9) A vote by a first mortgagee or by a covenant chargee of a community development lot does not count if subclause (8) would nullify any vote on the same matter by the proprietor of the lot.
- (10) If a priority vote is cast in relation to a community development lot, a vote on the same matter by the proprietor of the lot does not count.
- (11) This clause does not confer a right to vote on a person deprived of the right by failing to comply with the requirements of a notice under section 49.

## **6 Proxies**

- (1) A proxy must be appointed by instrument in the approved form.
- (2) If the instrument appointing a proxy limits the manner in which the proxy may vote at the meeting, a vote by the proxy that does not observe the limitation is invalid.
- (3) A proxy may demand a poll.
- (4) A proxy:

- (a) if entitled to vote otherwise than as a proxy--may also vote in his or her own right, and
  - (b) if appointed as proxy for more than one member of the community association--may vote separately as a proxy in each case.
- (5) An instrument appointing a proxy is ineffective unless it is given to the secretary before or at the meeting and it contains the date on which it was made.
- (5A) An instrument appointing a proxy has effect for the period specified in the instrument (being a period of not more than 12 months) or for 2 consecutive annual general meetings, whichever is the greater, unless sooner revoked.
- (5B) A proxy cannot exercise a vote in relation to a matter if the person who appointed the proxy is exercising personally a power to vote on that matter.
- (5C) An instrument made by a person appointing a proxy has no effect if the person makes a later instrument appointing a proxy and delivers it to the secretary in accordance with subclause (5).
- (6) A subsidiary body may, in the instrument by which it appoints a proxy, state the manner in which the proxy is to vote on each item of business to be considered at the meeting.
- (7) A vote by the proxy for a subsidiary body on an item of business at the meeting is invalid:
- (a) if subclause (6) is not complied with in relation to the item, or
  - (b) if the proxy votes otherwise than as required by the instrument of his or her appointment.

## **7 Quorum**

- (1) There is a quorum for considering and voting on a matter at the meeting only if:
- (a) the number of persons present and entitled to vote on the matter is more than one-quarter the number of members of the community association, or
  - (b) the persons present and entitled to vote on the matter represent more than one-quarter the total unit entitlement for the community scheme.
- (1A) However, if there is more than one member of the community association and the quorum calculated in accordance with subclause (1) is less than 2 persons, the quorum is 2 persons entitled to vote on the matter.
- (2) If a quorum under subclause (1) is not present within the next half-hour after the matter arises for consideration, the meeting stands adjourned for at least 7 days.
- (3) If a quorum under subclause (1) is not present within the next half-hour after the time fixed for the adjourned meeting, the persons present and entitled to vote on the matter constitute a quorum for considering and voting on the matter.
- (4) In determining whether there is a quorum under subsection (1) for a matter:
- (a) a person who has given a proxy entitling another person who is present to vote on the matter, and
  - (b) a member of the executive committee who has appointed a substitute under section 31 who is present, and
  - (c) a proprietor or first mortgagee of a community development lot who has submitted a written vote on the matter,
- must be counted as if present.
- (5) For the purposes of subclause (4), joint mortgagees or joint proprietors who have given a proxy or have submitted a written vote are to be counted as 1 person present.

## **7A Adjournments**

- (1) A general meeting of a community association may be adjourned for any reason if a motion is passed at the meeting for the adjournment.
- (2) If a general meeting of the community association is adjourned (including where the meeting is adjourned because of clause 7 (2)):
- (a) the time and place at which the adjourned meeting is to be resumed must be

fixed by the person who was presiding at the meeting or, in the case of a meeting that is adjourned because of clause 7 (2), by the person who would have presided at the meeting but for the lack of a quorum, and

(b) notice of that time and place must be served by the secretary on the members of the association at least 1 day prior to the meeting.

(3) The notice is to set out the provisions of this Act for determining the quorum at a general meeting.

### **8 Conduct of meeting**

(1) The chairperson of the community association, if present, is to preside at the meeting.

(2) If the chairperson is not present at the meeting, the persons who are present and entitled to vote on a motion at the meeting must elect one of their number to preside at the meeting.

(3) The person elected has, while presiding at the meeting, all the functions of the chairperson.

### **9 Motions out of order**

The chairperson at the meeting may rule a motion out of order if he or she considers that the motion, if carried:

(a) would be inconsistent with this Act, an applicable management statement or the by-laws under a strata scheme, or

(b) would be otherwise unenforceable or unlawful.

### **10 Chairperson to announce names of persons entitled to vote**

Before submitting a matter to a vote at the meeting, the chairperson must announce the names of the persons entitled to vote on the matter if a request for the announcement is made by a person present and entitled to vote at the meeting.

### **11 Counting of votes for election of executive committee**

(1) Except as provided by subclause (2), in an election of the executive committee of the community association:

(a) each subsidiary body entitled to vote has 1 vote, and

(b) the persons entitled to vote in respect of community development lots have 1 vote for each community development lot, even if this results in the same person having more than 1 vote in the election.

(2) An original proprietor who, at the time of an election, is the proprietor of at least the prescribed number of community development lots is entitled only to one-third of the number of votes the original proprietor would have had but for this subclause, any fractions being ignored.

(3) In subclause (2): "**prescribed number**" means the number equal to one-half of the total number of community development lots and former community development lots in the community scheme, any fraction being ignored.

### **12 Counting of votes on a motion**

(1) A motion put to the meeting is decided according to a majority in number of votes on the motion unless:

(a) a poll is required, or

(b) the motion is for a resolution that, to be effective, must be a special resolution.

(2) Except on a poll, or on a motion for a resolution that, to be effective, must be a special resolution:

(a) each subsidiary body has 1 vote, and

(b) the proprietors of community development lots have 1 vote for each community development lot even if this results in the same person having more than 1 vote on the motion.

(3) If:

(a) a poll is demanded by someone present and entitled to vote at the meeting, or  
(b) the motion is for a resolution that, to be effective, must be a special resolution, the motion is decided according to the value of the votes cast personally or by proxy for or against the motion.

(4) The value of the vote of a subsidiary body is equal to the unit entitlement of the former community development lot that was subdivided to constitute the subsidiary body.

(5) Except as provided by subclause (6), the value of the vote of the proprietor of a community development lot, or of a person having a priority vote in relation to the lot, is equal to the unit entitlement of the community development lot.

(6) If the original proprietor is the proprietor of community development lots in the community scheme of which the sum of the unit entitlements is at least one-half of the total unit entitlement for the community scheme, the value of the vote of the original proprietor, or of a person having a priority vote in relation to any of those lots, is one-third of the value it would have had but for this subclause, any fraction being ignored.

(7) A demand for a poll:

(a) must be given effect even if the motion has been decided on the numbers, and  
(b) may be withdrawn by the person who made it.

(8) A poll must be conducted as directed by the chairperson.

### **13 Declaration of voting**

Except in relation to voting on a poll, the declaration by the chairperson of the result of a vote on a motion at the meeting is conclusive without proof of the votes recorded for or against the motion.

### **14 Amendment or revocation of unanimous or special resolution**

(1) A unanimous resolution of the community association may be amended or revoked at the meeting only by a unanimous resolution.

(2) A special resolution of the community association may be amended or revoked at the meeting only by a special resolution.

### **14A Electronic transmission of documents**

(1) Documents relating to a meeting of a community association (such as proxies) may be transmitted to the secretary of the association by facsimile.

(2) In this clause, facsimile includes any electronic communication device that transmits information in a form from which written material is capable of being reproduced with or without the aid of any other device or article.

## **Part 2 – Precinct associations**

### **15 Definitions**

In this Part:

**"meeting"** means the first annual general meeting of a precinct association.

**"priority vote"**, in relation to a precinct development lot, means a vote by:

(a) the mortgagee of the lot under a mortgage shown on the precinct roll as having priority over any other mortgage, and over any covenant charge, shown on the roll in relation to the lot, or

(b) the covenant chargee of the lot under a covenant charge shown on the precinct roll as having a priority over any mortgage shown on the roll in relation to the lot, or

(c) the covenant chargee of the lot under a covenant charge shown on the precinct roll without any mortgage being shown on the roll in relation to the lot.

### **16 Notice of first annual general meeting of precinct association**

(1) For the purpose of preparing notice of the first annual general meeting, the precinct

- roll may, without payment or written application, be inspected by:
- (a) the original proprietor, or
  - (b) an agent authorised in writing by the original proprietor.
- (2) Notice of the meeting must be in writing, must set out as the business of the meeting the agenda specified in clause 17 and must be given to:
- (a) the members of the precinct association shown on the precinct roll, and
  - (b) each person shown on the precinct roll as first mortgagee, or as a covenant chargee, of a precinct development lot.
- (3) Unless a shorter period of notice is fixed by amendment of the precinct management statement, the notice must be given at least 14 days before the meeting.
- (4) The notice must state that a vote at the meeting by the proprietor of a precinct development lot does not count if a priority vote in respect of the lot is cast in relation to the same matter.
- (5) The notice must state that a member or, if a member is the proprietor of a precinct development lot, a person with a priority vote in relation to the lot, may not vote at the meeting on a motion for an ordinary or special resolution unless payment has been made before the meeting of:
- (a) all contributions that have been levied under the precinct scheme on the member and are payable as at the date of the notice, and
  - (b) any other money that is recoverable by the association from the member as at the date of the notice.
- (6) The notice must state that:
- (a) if the addressee is not a subsidiary body or other corporation--voting and other rights may be exercised in person or by proxy, or
  - (b) if the addressee is a corporation other than a subsidiary body--voting and other rights may be exercised only by the company nominee in person or by proxy, or
  - (c) if the addressee is a subsidiary body--voting and other rights may be exercised only by proxy.
- (7) If the addressee of a notice is the first mortgagee, or a covenant chargee, of a precinct development lot, the notice must state:
- (a) the name of the proprietor of the lot, and
  - (b) the address of the lot, and
  - (c) the place at which the meeting is to be held.
- (7A) The notice must set out the provisions of this Act for determining the quorum at a general meeting.
- (8) Notice to the person giving it is not required.

## **17 Agenda**

The agenda for the meeting is:

- (a) to decide whether insurances effected by the precinct association should be confirmed, varied or extended, and
- (b) to decide whether amounts determined as contributions to the administrative fund and sinking fund should be confirmed or varied, and
- (c) to elect the executive committee after determining its size, and
- (d) to decide whether an agreement to which section 24 applies should be ratified, and
- (e) if a managing agent has been appointed and action to terminate the appointment under section 50 may be taken--to decide whether the action should be taken, and
- (f) if a managing agent has not been appointed--to decide whether an appointment should be made and, if so, which functions should be delegated, and
- (g) to decide which matters, if any, may be determined only at a general meeting of the precinct association, and
- (h) to decide whether any by-laws should be made, amended or revoked, including by-

laws controlling, prohibiting or otherwise regulating the passage of persons through, and the activities of persons on, private access ways and, to an extent not inconsistent with this or any other Act or law, open access ways, and

(i) to consider the accounting records kept, and the latest financial statements prepared, as required by this Act.

### **18 Restrictions on submitting motions and nominating candidates**

(1) A motion that does not relate to the business set out in the notice of the meeting is out of order.

(2) If a person not entitled to vote at the meeting:

(a) moves a motion for consideration at the meeting, or

(b) nominates a candidate for election to the executive committee,

the motion or nomination is out of order.

(3) Subclause (2) does not prevent the proprietor of a precinct development lot from moving a motion or nominating a candidate even if the lot is subject to a mortgage or covenant charge.

### **19 Voting rights**

(1) Each member of the precinct association, and each person entitled to a priority vote, has voting rights at the meeting which may be exercised:

(a) only if the member or person is shown on the precinct roll, and

(b) if the member (other than a subsidiary body) or person is a corporation--only if the company nominee is shown on the precinct roll.

(2) Voting rights may be exercised at the meeting:

(a) by a subsidiary body--only by proxy, and

(b) by joint first mortgagees or joint covenant chargees--only by proxy (who may be one of them) appointed by all of them jointly.

(3) The voting rights of a proprietor, first mortgagee or covenant chargee of a precinct development lot (other than a joint proprietor, mortgagee or covenant chargee) may be exercised:

(a) unless the proprietor, mortgagee or covenant chargee is a corporation--in person or by proxy, or

(b) if the proprietor, mortgagee or covenant chargee is a corporation--by the company nominee in person or by proxy.

(4) The voting rights of joint proprietors of a precinct development lot may not be exercised by them individually but may be exercised:

(a) by a proxy (who may be one of them) appointed by all of them jointly, or

(b) as provided by subclause (5).

(5) If, on a vote at the meeting, the rights of joint proprietors of a precinct development lot are not exercised by a proxy appointed under subclause (4), one of them may act as such a proxy:

(a) if the other joint proprietors are absent or such of them as are present give their consent, or

(b) if paragraph (a) does not apply--if he or she is the proprietor first named on the precinct roll as one of the joint proprietors.

(6) If there are proprietors of successive estates in a precinct development lot, only the proprietor of the first estate may vote at the meeting.

(7) If the proprietor of a precinct development lot holds it as trustee, a person beneficially entitled may not vote at the meeting.

(8) A vote at the meeting by a member of the precinct association on a motion for an ordinary or special resolution does not count if payment has not been made before the meeting of:

(a) all contributions that have been levied under the precinct scheme and are payable by the member as at the date of the notice of the meeting, and

- (b) any other money that is recoverable by the precinct association from the member as at the date of the notice of the meeting.
- (9) A vote by a first mortgagee or by a covenant chargee of a precinct development lot does not count if subclause (8) would nullify any vote on the same matter by the proprietor of the lot.
- (10) If a priority vote is cast in relation to a precinct development lot, a vote on the same matter by the proprietor of the lot does not count.
- (11) This clause does not confer a right to vote on a person deprived of the right by failing to comply with the requirements of a notice under section 49.

## **20 Proxies**

- (1) A proxy must be appointed by instrument in the approved form.
- (2) If the instrument appointing a proxy limits the manner in which the proxy may vote at the meeting, a vote by the proxy that does not observe the limitation is invalid.
- (3) A proxy may demand a poll.
- (4) A proxy:
  - (a) if entitled to vote otherwise than as a proxy--may also vote in his or her own right, and
  - (b) if appointed as proxy for more than one member of the precinct association--may vote separately as a proxy in each case.
- (5) An instrument appointing a proxy is ineffective unless it is given to the secretary before or at the meeting and it contains the date on which it was made.
- (5A) An instrument appointing a proxy has effect for the period specified in the instrument (being a period of not more than 12 months) or for 2 consecutive annual general meetings, whichever is the greater, unless sooner revoked.
- (5B) A proxy cannot exercise a vote in relation to a matter if the person who appointed the proxy is exercising personally a power to vote on that matter.
- (5C) An instrument made by a person appointing a proxy has no effect if the person makes a later instrument appointing a proxy and delivers it to the secretary in accordance with subclause (5).
- (6) A subsidiary body may, in the instrument by which it appoints a proxy, state the manner in which the proxy is to vote on each item of business to be considered at the meeting.
- (7) A vote by the proxy for a subsidiary body on an item of business at the meeting is invalid:
  - (a) if subclause (6) is not complied with in relation to the item, or
  - (b) if the proxy votes otherwise than as required by the instrument of his or her appointment.

## **21 Quorum**

- (1) There is a quorum for considering and voting on a matter at the meeting only if:
  - (a) the number of persons present and entitled to vote on the matter is more than one-quarter the number of members of the precinct association, or
  - (b) the persons present and entitled to vote on the matter represent more than one-quarter the total unit entitlement for the precinct scheme.
- (1A) However, if there is more than one member of the precinct association and the quorum calculated in accordance with subclause (1) is less than 2 persons, the quorum is 2 persons entitled to vote on the matter.
- (2) If a quorum under subclause (1) is not present within the next half-hour after the matter arises for consideration, the meeting stands adjourned for at least 7 days.
- (3) If a quorum under subclause (1) is not present within the next half-hour after the time fixed for the adjourned meeting, the persons present and entitled to vote on the matter constitute a quorum for considering and voting on the matter.
- (4) In determining whether there is a quorum under subsection (1) for a matter:

- (a) a person who has given a proxy entitling another person who is present to vote on the matter, and
- (b) a member of the executive committee who has appointed a substitute under section 31 who is present, and
- (c) a proprietor or first mortgagee of a precinct development lot who has submitted a written vote on the matter,

must be counted as if present.

(5) For the purposes of subclause (4), joint mortgagees or joint proprietors who have given a proxy or have submitted a written vote are to be counted as 1 person present.

### **21A Adjournments**

(1) A general meeting of a precinct association may be adjourned for any reason if a motion is passed at the meeting for the adjournment.

(2) If a general meeting of the precinct association is adjourned (including where the meeting is adjourned because of clause 21 (2)):

(a) the time and place at which the adjourned meeting is to be resumed must be fixed by the person who was presiding at the meeting or, in the case of a meeting that is adjourned because of clause 21 (2), by the person who would have presided at the meeting but for the lack of a quorum, and

(b) notice of that time and place must be served by the secretary on the members of the association at least 1 day prior to the meeting.

(3) The notice is to set out the provisions of this Act for determining the quorum at a general meeting.

### **22 Conduct of meeting**

(1) The chairperson of the precinct association, if present, is to preside at the meeting.

(2) If the chairperson is not present at the meeting, the persons who are present and entitled to vote on a motion at the meeting must elect one of their number to preside at the meeting.

(3) The person elected has, while presiding at the meeting, all the functions of the chairperson.

### **23 Motions out of order**

The chairperson at the meeting may rule a motion out of order if he or she considers that the motion, if carried:

(a) would be inconsistent with this Act, an applicable management statement or the by-laws under a strata scheme, or

(b) would be otherwise unenforceable or unlawful.

### **24 Chairperson to announce names of persons entitled to vote**

Before submitting a matter to a vote at the meeting, the chairperson must announce the names of the persons entitled to vote on the matter if a request for the announcement is made by a person present and entitled to vote at the meeting.

### **25 Counting of votes for election of executive committee**

(1) Except as provided by subclause (2), in an election of the executive committee of the precinct association:

(a) each subsidiary body entitled to vote has 1 vote, and

(b) the persons entitled to vote in respect of precinct development lots have 1 vote for each precinct development lot, even if this results in the same person having more than 1 vote in the election.

(2) An original proprietor who, at the time of an election, is the proprietor of at least the prescribed number of precinct development lots is entitled only to one-third of the number of votes the original proprietor would have had but for this subclause, any fractions being ignored.



(3) In subclause (2): "**prescribed number**" means the number equal to one-half of the total number of precinct development lots and former precinct development lots in the precinct scheme, any fraction being ignored.

## **26 Counting of votes on a motion**

(1) A motion put to the meeting is decided according to a majority in number of votes on the motion unless:

- (a) a poll is required, or
- (b) the motion is for a resolution that, to be effective, must be a special resolution.

(2) Except on a poll, or on a motion for a resolution that, to be effective, must be a special resolution:

- (a) each subsidiary body has 1 vote, and
- (b) the proprietors of precinct development lots have 1 vote for each precinct development lot even if this results in the same person having more than 1 vote on the motion.

(3) If:

- (a) a poll is demanded by someone present and entitled to vote at the meeting, or
- (b) the motion is for a resolution that, to be effective, must be a special resolution,

the motion is decided according to the value of the votes cast personally or by proxy for and against the motion.

(4) The value of the vote of a subsidiary body is equal to the unit entitlement of the former precinct development lot that was subdivided to constitute the subsidiary body.

(5) Except as provided by subclause (6), the value of the vote of the proprietor of a precinct development lot, or of a person having a priority vote in relation to the lot, is equal to the unit entitlement of the precinct development lot.

(6) If the original proprietor is the proprietor of precinct development lots in the precinct scheme of which the sum of the unit entitlements is at least one-half of the total unit entitlement for the precinct scheme, the value of the vote of the original proprietor, or of a person having a priority vote in relation to any of those lots, is one-third of the value it would have had but for this subclause, any fraction being ignored.

(7) A demand for a poll:

- (a) must be given effect even if the motion has been decided on the numbers, and
- (b) may be withdrawn by the person who made it.

(8) A poll must be conducted as directed by the chairperson.

## **27 Declaration of voting**

Except in relation to voting on a poll, the declaration by the chairperson of the result of a vote on a motion at the meeting is conclusive without proof of the votes recorded for or against the motion.

## **28 Amendment or revocation of unanimous or special resolution**

(1) A unanimous resolution of the precinct association may be amended or revoked at the meeting only by a unanimous resolution.

(2) A special resolution of the precinct association may be amended or revoked at the meeting only by a special resolution.

## **28A Electronic transmission of documents**

(1) Documents relating to a meeting of a precinct association (such as proxies) may be transmitted to the secretary of the association by facsimile.

(2) In this clause, facsimile includes any electronic communication device that transmits information in a form from which written material is capable of being reproduced with or without the aid of any other device or article.

## **Part 3 – Neighbourhood associations**

### **29 Definitions**

In this Part:

**"meeting"** means the first annual general meeting of a neighbourhood association.

**"priority vote"**, in relation to a neighbourhood lot, means a vote by:

- (a) the mortgagee of the lot under a mortgage shown on the neighbourhood roll as having priority over any other mortgage, and over any covenant charge, shown on the roll in relation to the lot, or
- (b) the covenant chargee of the lot under a covenant charge shown on the neighbourhood roll as having priority over any mortgage shown on the roll in relation to the lot, or
- (c) the covenant chargee of the lot under a covenant charge shown on the neighbourhood roll without any mortgage being shown on the roll in relation to the lot.

### **30 Notice of first annual general meeting of neighbourhood association**

- (1) For the purpose of preparing notice of the first annual general meeting, the neighbourhood roll may, without payment or written application, be inspected by:
  - (a) the original proprietor, or
  - (b) an agent authorised in writing by the original proprietor.
- (2) Notice of the meeting must be in writing, must set out as the business of the meeting the agenda specified in clause 31 and must be given to:
  - (a) the members of the neighbourhood association shown on the neighbourhood roll, and
  - (b) each person shown on the neighbourhood roll as first mortgagee, or as a covenant chargee, of a neighbourhood lot.
- (3) Unless a shorter period of notice is fixed by amendment of the neighbourhood management statement, the notice must be given at least 7 days before the meeting.
- (4) The notice must state that a vote at the meeting by the proprietor of a neighbourhood lot does not count if a priority vote in respect of the lot is cast in relation to the same matter.
- (5) The notice must state that the proprietor of a neighbourhood lot, or a person with a priority vote in relation to the lot, may not vote at the meeting on a motion for an ordinary or special resolution unless payment has been made before the meeting of:
  - (a) all contributions that have been levied under the neighbourhood scheme on the proprietor and are payable by the proprietor as at the date of the notice, and
  - (b) any other money that is recoverable by the neighbourhood association from the proprietor as at the date of the notice.
- (6) The notice must state that:
  - (a) if the addressee is not a corporation--voting and other rights may be exercised in person or by proxy, or
  - (b) if the addressee is a corporation--voting and other rights may be exercised only by the company nominee in person or by proxy.
- (7) If the addressee of a notice is the first mortgagee, or a covenant chargee, of a neighbourhood lot, it must state:
  - (a) the name of the proprietor of the lot, and
  - (b) the address of the lot, and
  - (c) the place at which the meeting is to be held.
- (7A) The notice must set out the provisions of this Act for determining the quorum at a general meeting.
- (8) Notice to the person giving it is not required.

### **31 Agenda**

The agenda for the meeting is:

- (a) to decide whether insurances effected by the neighbourhood association should be confirmed, varied or extended, and
- (b) to decide whether amounts determined as contributions to the administrative fund and sinking fund should be confirmed or varied, and
- (c) to elect the executive committee after determining its size, and
- (d) to decide whether an agreement to which section 24 applies should be ratified, and
- (e) if a managing agent has been appointed and action to terminate or ratify the appointment under section 50 may be taken--to decide whether the action should be taken, and
- (f) if a managing agent has not been appointed--to decide whether an appointment should be made and, if so, which functions should be delegated, and
- (g) to decide which matters, if any, may be determined only at a general meeting of the association, and
- (h) to decide whether any by-laws should be made, amended or revoked, including by-laws controlling, prohibiting or otherwise regulating the passage of persons through, and the activities of persons on, private access ways and, to an extent not inconsistent with this or any other Act or law, open access ways, and
- (i) to consider the accounting records kept, and the latest financial statements prepared, as required by this Act, and
- (j) if the neighbourhood scheme is not part of a community scheme--to consider whether a revised schedule of unit entitlements should be registered under section 30 of the *Community Land Development Act 1989*.

### **32 Restrictions on submitting motions and nominating candidates**

- (1) A motion that does not relate to the business set out in the notice of the meeting is out of order.
- (2) If a person not entitled to vote at the meeting:
  - (a) moves a motion for consideration at the meeting, or
  - (b) nominates a candidate for election to the executive committee,
 the motion or nomination is out of order.
- (3) Subclause (2) does not prevent the proprietor of a neighbourhood lot from moving a motion or nominating a candidate even if the lot is subject to a mortgage or covenant charge.

### **33 Voting rights**

- (1) Each member of the neighbourhood association, and each person entitled to a priority vote, has voting rights at the meeting which may be exercised:
  - (a) only if the member or person is shown on the neighbourhood roll, and
  - (b) if the member or person is a corporation--only if the company nominee is shown on the neighbourhood roll.
- (2) The voting rights of a proprietor or first mortgagee or covenant chargee of a neighbourhood lot (other than a joint proprietor, mortgagee or covenant chargee) may be exercised at the meeting:
  - (a) unless the proprietor, mortgagee or covenant chargee is a corporation--in person or by proxy, or
  - (b) if the proprietor, mortgagee or covenant chargee is a corporation--only by the company nominee in person or by proxy.
- (3) The voting rights of joint first mortgagees or joint covenant chargees of a neighbourhood lot may be exercised at the meeting only by a proxy (who may be one of them) appointed by all of them jointly.
- (4) The voting rights of joint proprietors of a neighbourhood lot may not be exercised at the meeting by them individually but may be exercised:
  - (a) by a proxy (who may be one of them) appointed by all of them jointly, or
  - (b) as provided by subclause (5).

- (5) If, on a vote at the meeting, the rights of joint proprietors of a neighbourhood lot are not exercised by a proxy appointed under subclause (4), one of them may act as such a proxy:
- (a) if the other joint proprietors are absent or such of them as are present give their consent, or
  - (b) if paragraph (a) does not apply--if he or she is the proprietor first named on the neighbourhood roll as one of the joint proprietors.
- (6) If there are proprietors of successive estates in a neighbourhood lot, only the proprietor of the first estate may vote at the meeting.
- (7) If the proprietor of a neighbourhood lot holds it as trustee, a person beneficially entitled may not vote at the meeting.
- (8) A vote at the meeting by a member of the neighbourhood association on a motion for an ordinary or special resolution does not count if payment has not been made before the meeting of:
- (a) all contributions that have been levied under the neighbourhood scheme and are payable by the member as at the date of the notice of the meeting, and
  - (b) any other money that is recoverable by the association from the member as at the date of the meeting.
- (9) A vote by a first mortgagee, or by a covenant chargee, of a neighbourhood lot does not count if subclause (8) would nullify any vote on the same matter by the proprietor of the lot.
- (10) If a priority vote is cast in relation to a neighbourhood lot, a vote on the same matter by the proprietor of the lot does not count.
- (11) This clause does not confer a right to vote on a person deprived of the right by failing to comply with the requirements of a notice under section 49.

### **34 Proxies**

- (1) A proxy must be appointed by instrument in the approved form.
- (2) If the instrument appointing a proxy limits the manner in which the proxy may vote at the meeting, a vote by the proxy that does not observe the limitation is invalid.
- (3) A proxy may vote on a show of hands or demand a poll.
- (4) A proxy:
- (a) if entitled to vote otherwise than as a proxy--may also vote in his or her own right, and
  - (b) if appointed as a proxy for more than one member of the neighbourhood association--may vote separately as a proxy in each case.
- (5) An instrument appointing a proxy is ineffective unless it is given to the secretary before or at the meeting and it contains the date on which it was made.
- (6) An instrument appointing a proxy has effect for the period specified in the instrument (being a period of not more than 12 months) or for 2 consecutive annual general meetings, whichever is the greater, unless sooner revoked.
- (7) A proxy cannot exercise a vote in relation to a matter if the person who appointed the proxy is exercising personally a power to vote on that matter.
- (8) An instrument made by a person appointing a proxy has no effect if the person makes a later instrument appointing a proxy and delivers it to the secretary in accordance with subclause (5).

### **35 Quorum**

- (1) There is a quorum for considering and voting on a matter at the meeting only if:
- (a) the number of persons present and entitled to vote on the matter is more than one-quarter the number of members of the neighbourhood association, or
  - (b) the persons present and entitled to vote on the matter represent more than one-quarter the total unit entitlement for the neighbourhood scheme.
- (1A) However, if there is more than one member of the neighbourhood association and

the quorum calculated in accordance with subclause (1) is less than 2 persons, the quorum is 2 persons entitled to vote on the matter.

(2) If a quorum under subclause (1) is not present within the next half-hour after the matter arises for consideration, the meeting stands adjourned for at least 7 days.

(3) If a quorum under subclause (1) is not present within the next half-hour after the time fixed for the adjourned meeting, the persons present and entitled to vote on the matter constitute a quorum for considering and voting on the matter.

(4) In determining whether there is a quorum under subsection (1) for a matter:

(a) a person who has given a proxy entitling another person who is present to vote on the matter, and

(b) a member of the executive committee who has appointed a substitute under section 31 who is present, and

(c) a proprietor or first mortgagee of a neighbourhood lot who has submitted a written vote on the matter,

must be counted as if present.

(5) For the purposes of subclause (4), joint mortgagees or joint proprietors who have given a proxy or have submitted a written vote are to be counted as 1 person present.

### **35A Adjournments**

(1) A general meeting of a neighbourhood association may be adjourned for any reason if a motion is passed at the meeting for the adjournment.

(2) If a general meeting of the neighbourhood association is adjourned (including where the meeting is adjourned because of clause 35 (2)):

(a) the time and place at which the adjourned meeting is to be resumed must be fixed by the person who was presiding at the meeting or, in the case of a meeting that is adjourned because of clause 35 (2), by the person who would have presided at the meeting but for the lack of a quorum, and

(b) notice of that time and place must be served by the secretary on the members of the association at least 1 day prior to the meeting.

(3) The notice is to set out the provisions of this Act for determining the quorum at a general meeting.

### **36 Conduct of meeting**

(1) The chairperson of the neighbourhood association, if present, is to preside at the meeting.

(2) If the chairperson is not present at the meeting, the persons who are present and entitled to vote on a motion at the meeting must elect one of their number to preside at the meeting.

(3) The person elected has, while presiding at the meeting, all the functions of the chairperson.

### **37 Motions out of order**

The chairperson at the meeting may rule a motion out of order if he or she considers that the motion, if carried:

(a) would be inconsistent with this Act or an applicable management statement, or

(b) would be otherwise unenforceable or unlawful.

### **38 Chairperson to announce names of persons entitled to vote**

Before submitting a matter to a vote at the meeting, the chairperson must announce the names of the persons entitled to vote on the matter if a request for the announcement is made by a person present and entitled to vote at the meeting.

### **39 Counting of votes for election of executive committee**

(1) Except as provided by subclause (2), each person entitled to vote in an election of the executive committee of a neighbourhood association has 1 vote for each neighbourhood

lot of which the person is proprietor or in respect of which the person has a priority vote.  
(2) An original proprietor who, at the time of an election, is the proprietor of at least half the neighbourhood lots in the neighbourhood scheme, is entitled only to one-third of the number of votes the original proprietor would have had but for this subclause, any fractions being ignored.

#### **40 Counting of votes on a motion**

(1) A motion put to the meeting is decided according to a majority in number of the votes on the motion unless:

- (a) a poll is required, or
- (b) the motion is for a resolution that, to be effective, must be a special resolution.

(2) If:

- (a) a poll is demanded by someone present and entitled to vote at the meeting, or
- (b) the motion is for a resolution that, to be effective, must be a special resolution,

the motion is decided according to the value of the votes cast personally or by proxy for and against the motion.

(3) Except as provided by subclause (4), the value of the vote of the proprietor of a neighbourhood lot, or of a person having a priority vote in relation to the lot, is equal to the unit entitlement of the neighbourhood lot.

(4) If the original proprietor is the proprietor of neighbourhood lots of which the sum of the unit entitlements is at least half the total unit entitlement for the neighbourhood scheme, the value of the vote of the original proprietor, or a person having a priority vote in relation to any of those lots, is one-third of the value it would have had but for this subclause, any fraction being ignored.

(5) A demand for a poll:

- (a) must be given effect even if the matter has been decided on the numbers, and
- (b) may be withdrawn by the person who made it.

(6) A poll must be conducted as directed by the chairperson.

#### **41 Declaration of voting**

Except in relation to voting on a poll, the declaration by the chairperson of the result of a vote on a motion at the meeting is conclusive without proof of the votes recorded for or against the motion.

#### **42 Amendment or revocation of unanimous or special resolution**

(1) A unanimous resolution of the neighbourhood association may be amended or revoked at the meeting only by a unanimous resolution.

(2) A special resolution of the neighbourhood association may be amended or revoked at the meeting only by a special resolution.

#### **43 Electronic transmission of documents**

(1) Documents relating to a meeting of a neighbourhood association (such as proxies) may be transmitted to the secretary of the association by facsimile.

(2) In this clause, facsimile includes any electronic communication device that transmits information in a form from which written material is capable of being reproduced with or without the aid of any other device or article.

## **Schedule 6 Meetings of association other than the first annual general meeting**

(Section 11)

### **Part 1 – Community associations**

#### **1 Definitions**

In this Part:

**"general meeting"**, in relation to a community association, means:

- (a) an annual general meeting of the association other than the first annual general meeting, or
- (b) a special general meeting of the association.

**"priority vote"**, in relation to a community development lot, means a vote by:

- (a) the mortgagee of the lot under a mortgage shown on the community roll as having priority over any other mortgage, and over any covenant charge, shown on the roll in relation to the lot, or
- (b) the covenant chargee of the lot under a covenant charge shown on the community roll as having a priority over any mortgage shown on the roll in relation to the lot, or
- (c) the covenant chargee of the lot under a covenant charge shown on the community roll without any mortgage being shown on the roll in relation to the lot.

**"special general meeting"**, in relation to a community association, means a meeting of the association that is not an annual general meeting.

## **2 Annual general meeting of community association**

A community association must hold an annual general meeting not earlier than 1 month before, and not later than 1 month after, each anniversary of the first annual general meeting.

## **3 Special general meeting of community association**

- (1) The executive committee of a community association may convene a special general meeting of the association at any time.
- (2) The secretary of a community association may convene a special general meeting of the association at any time before the first annual general meeting.
- (3) One or more persons entitled to vote at a general meeting of a community association may, by notice in writing signed by or on behalf of each person and served on the secretary or another member of the executive committee, require the holding of a special general meeting of the association.
- (4) A requisition under subclause (3) is ineffective unless at least one-quarter of the total unit entitlement for the community scheme is attributable to the total of the unit entitlements of:
  - (a) each community development lot of which a signatory to the notice is proprietor or a person entitled to a priority vote in relation to the lot, and
  - (b) each former community development lot subject to a subsidiary scheme under which a signatory to the notice is the subsidiary body.
- (5) A requisition may not be signed on behalf of a subsidiary body without the authority of an ordinary resolution.
- (6) The secretary of the community association or, in the absence of the secretary, a member of the executive committee, must convene a special general meeting of the association by giving notice in accordance with this Part as soon as practicable after service of the requisition.

## **4 Notice of general meeting of community association**

- (1) The notice of a general meeting of a community association must be given in writing to the members of the association shown on the community roll.
- (1A) The notice must also be given to each person shown on the community roll as first mortgagee, or as a covenant chargee, of a community development lot if an item on the agenda for the meeting requires a special or unanimous resolution of the community association.

- (2) Unless a shorter period of notice is fixed by amendment of the community management statement, the notice must be given:
- (a) at least 21 days before the meeting if the community scheme includes a precinct scheme, or
  - (b) at least 14 days before the meeting if the community scheme does not include a precinct scheme.
- (3) The notice must state that a vote at the meeting by the proprietor of a community development lot does not count if a priority vote in respect of the lot is cast in relation to the same matter.
- (4) The notice must state that a member or, if a member is the proprietor of a community development lot, a person with a priority vote in relation to the lot, may not vote at the meeting on a motion for an ordinary or special resolution unless payment has been made before the meeting of:
- (a) all contributions that have been levied under the community scheme on the member and are payable as at the date of the notice, and
  - (b) any other money that is recoverable by the association from the member as at the date of the notice.
- (5) The notice must state that:
- (a) if the addressee is not a subsidiary body or other corporation--voting and other rights may be exercised in person or by proxy, or
  - (b) if the addressee is a corporation other than a subsidiary body--voting and other rights may be exercised only by the company nominee in person or by proxy, or
  - (c) if the addressee is a subsidiary body--voting and other rights may be exercised only by proxy.
- (6) If the addressee of a notice is the first mortgagee, or a covenant chargee, of a community development lot, the notice must state:
- (a) the name of the proprietor of the lot, and
  - (b) the address of the lot, and
  - (c) the place at which the meeting is to be held.
- (7) If a member of the community association:
- (a) has not been provided with a copy of the minutes of the latest general meeting (including the first annual general meeting if it was the latest), and
  - (b) before the giving of the notice, made a request for a copy of those minutes that has not been complied with,
- the notice must be accompanied by a copy of those minutes.
- (7A) The notice must set out the provisions of this Act for determining the quorum at a general meeting.
- (8) Notice to the person giving it is not required.

### **5 Special requirements for notice of annual general meeting other than the first**

Notice of an annual general meeting of a community association other than the first such meeting:

- (a) must be accompanied by a copy of the financial statements last prepared by the community association in accordance with clause 11 of Schedule 1, and
- (b) must include, or be accompanied by, a form of motion for adoption of the financial statements, and
- (c) may include, or be accompanied by, a form of motion to consider whether a revised schedule of unit entitlements should be registered under section 30 of the *Community Land Development Act 1989*, and
- (d) must include the information relating to insurance included in the community roll under clause 3 of Schedule 3, and
- (e) include a form of motion to consider the appointment of an auditor and the taking out



of insurance of the kind referred to in section 41 (3) if insurance of that kind has not already been taken out.

## **6 Forms for motions**

(1) Notice of a general meeting of a community association must include, or be accompanied by:

(a) a form of motion to confirm the minutes of the last general meeting of any kind, and

(b) if the meeting has been convened to elect the executive committee--a form of motion for election of the executive committee, and

(c) except in the case of a meeting referred to in paragraph (b)--a form of motion for each other item of the business of the meeting together with an explanation of the reasons for the motion and, if it involves spending money, an estimate of the cost.

(2) If a motion:

(a) requires a special or unanimous resolution for its passage, or

(b) involves an amendment of the community management statement or a development contract,

a note to the form of motion must say so.

(3) A motion may not be moved at a general meeting of a community association unless:

(a) this clause has been complied with in relation to the motion, or

(b) the motion is to amend a motion in relation to which this clause has been complied with.

## **7 Restriction on submitting motions and nominating candidates**

(1) If a person not entitled to vote at the meeting:

(a) moves a motion at a general meeting, or

(b) nominates a candidate for election to the executive committee,

the motion or nomination is out of order.

(2) Subclause (1) does not prevent the proprietor of a community development lot from moving a motion or nominating a candidate even if the lot is subject to a mortgage or covenant charge.

## **8 Voting rights**

(1) Each member of a community association, and each person entitled to a priority vote, has voting rights which may be exercised at a general meeting of the community association:

(a) only if the member or person is shown on the community roll, and

(b) if the member (other than a subsidiary body) or person is a corporation--only if the company nominee is shown on the community roll.

(2) Voting rights may be exercised at the meeting:

(a) by a subsidiary body--only by proxy, and

(b) by joint first mortgagees or joint covenant chargees--only by proxy (who may be one of them) appointed by all of them jointly.

(3) The voting rights of a proprietor, first mortgagee or covenant chargee of a community development lot (other than a joint proprietor, mortgagee or covenant chargee) may be exercised:

(a) unless the proprietor, mortgagee or covenant chargee is a corporation--in person or by proxy, or

(b) if the proprietor, mortgagee or covenant chargee is a corporation--by the company nominee in person or by proxy.

(4) The voting rights of joint proprietors of a community development lot may not be exercised by them individually but may be exercised:

(a) by a proxy (who may be one of them) appointed by all of them jointly, or

(b) as provided by subclause (5).

- (5) If, on a vote at a general meeting of a community association, the rights of joint proprietors of a community development lot are not exercised by a proxy appointed under subclause (4), one of them may act as such a proxy:
- (a) if the other joint proprietors are absent or such of them as are present give their consent, or
  - (b) if paragraph (a) does not apply--if he or she is the proprietor first named on the community roll as one of the joint proprietors.
- (6) If there are proprietors of successive estates in a community development lot, only the proprietor of the first estate may vote at a general meeting of the community association.
- (7) If the proprietor of a community development lot holds it as trustee, a person beneficially entitled may not vote at a general meeting.
- (8) A vote at a general meeting by a member of a community association on a motion for an ordinary or special resolution does not count if payment has not been made before the meeting of:
- (a) all contributions that have been levied under the community scheme and are payable by the member at the date of the notice of the meeting, and
  - (b) any other money that is recoverable by the association from the member as at the date of the notice.
- (9) A vote by a first mortgagee, or by a covenant chargee, of a community development lot does not count if subclause (8) would nullify any vote on the same matter by the proprietor of the lot.
- (10) If a priority vote is cast in relation to a community development lot, a vote on the same matter by the proprietor of the lot does not count.
- (11) This clause does not confer a right to vote on a person deprived of the right by failing to comply with the requirements of a notice under section 49.

## **9 Proxies**

- (1) A proxy must be appointed by instrument in the approved form.
- (2) If the instrument appointing a proxy limits the manner in which the proxy may vote at the meeting, a vote by the proxy that does not observe the limitation is invalid.
- (3) A proxy may demand a poll.
- (4) A proxy:
- (a) if entitled to vote otherwise than as a proxy--may also vote in his or her own right, and
  - (b) if appointed as proxy for more than one member of the community association--may vote separately as a proxy in each case.
- (5) An instrument appointing a proxy is ineffective unless it is given to the secretary before or at the first meeting in relation to which the instrument is to operate and it contains the date on which it was made.
- (5A) An instrument appointing a proxy has effect for the period specified in the instrument (being a period of not more than 12 months) or for 2 consecutive annual general meetings, whichever is the greater, unless sooner revoked.
- (5B) A proxy cannot exercise a vote in relation to a matter if the person who appointed the proxy is exercising personally a power to vote on that matter.
- (5C) An instrument made by a person appointing a proxy has no effect if the person makes a later instrument appointing a proxy and delivers it to the secretary in accordance with subclause (5).
- (6) A subsidiary body may, in the instrument by which it appoints a proxy, state the manner in which the proxy is to vote on each item of business to be considered at the meeting.
- (7) A vote by the proxy for a subsidiary body on an item of business at the meeting is invalid:
- (a) if subclause (6) is not complied with in relation to the item, or

(b) if the proxy votes otherwise than as required by the instrument of his or her appointment.

## **10 Quorum**

(1) There is a quorum for considering and voting on a matter at a general meeting of a community association only if:

(a) the number of persons present and entitled to vote on the matter is more than one-quarter the number of members of the association, or

(b) the persons present and entitled to vote on the matter represent more than one-quarter the total unit entitlement for the community scheme.

(1A) However, if there is more than one member of the community association and the quorum calculated in accordance with subclause (1) is less than 2 persons, the quorum is 2 persons entitled to vote on the matter.

(2) If a quorum under subclause (1) is not present within the next half-hour after the matter arises for consideration, the meeting stands adjourned for at least 7 days.

(3) If a quorum under subclause (1) is not present within the next half-hour after the time fixed for the adjourned meeting, the persons present and entitled to vote on the matter constitute a quorum for considering and voting on the matter.

(4) In determining whether there is a quorum under subclause (1) for a matter:

(a) a person who has given a proxy entitling another person who is present to vote on the matter, and

(b) a member of the executive committee who has appointed a substitute under section 31 who is present, and

(c) a proprietor or first mortgagee of a community development lot who has submitted a written vote on the matter,

must be counted as if present.

(5) For the purposes of subclause (4), joint mortgagees or joint proprietors who have given a proxy or have submitted a written vote are to be counted as 1 person present.

## **10A Adjournments**

(1) A general meeting of a community association may be adjourned for any reason if a motion is passed at the meeting for the adjournment.

(2) If a general meeting of the community association is adjourned (including where the meeting is adjourned because of clause 10 (2)):

(a) the time and place at which the adjourned meeting is to be resumed must be fixed by the person who was presiding at the meeting or, in the case of a meeting that is adjourned because of clause 10 (2), by the person who would have presided at the meeting but for the lack of a quorum, and

(b) notice of that time and place must be served by the secretary on the members of the association at least 1 day prior to the meeting.

(3) The notice is to set out the provisions of this Act for determining the quorum at a general meeting.

## **11 Conduct of general meeting of community association**

(1) The chairperson of a community association, if present, is to preside at a general meeting of the association.

(2) If the chairperson is not present at a general meeting of a community association, the persons who are present and entitled to vote at the meeting must elect one of their number to preside at the meeting.

(3) The person elected has, while presiding at the meeting, all the functions of the chairperson.

## **12 Motions out of order**

The chairperson at a general meeting of a community association may rule a motion out of order if he or she considers that the motion, if carried:

- (a) would be inconsistent with this Act, an applicable management statement or the by-laws under a strata scheme, or
- (b) would be otherwise unenforceable or unlawful.

### **13 Chairperson to announce names of persons entitled to vote**

Before submitting a matter to a vote at a general meeting of a community association, the chairperson must announce the names of the persons entitled to vote on the matter if a request for the announcement is made by a person present and entitled to vote at the meeting.

### **14 Counting of votes for election of executive committee**

- (1) Except as provided by subclause (2), in an election of the executive committee of a community association:
  - (a) each subsidiary body entitled to vote has 1 vote, and
  - (b) the persons entitled to vote in respect of community development lots have 1 vote for each community development lot even if this results in the same person having more than 1 vote in the election.
- (2) An original proprietor who, at the time of an election, is the proprietor of at least the prescribed number of community development lots, is entitled only to one-third the number of votes the original proprietor would have had but for this subclause, any fraction being ignored.
- (3) In subclause (2): "**prescribed number**" means the number equal to one-half of the total number of community development lots and former community development lots in the community scheme, any fraction being ignored.

### **15 Counting of votes on a motion**

- (1) A motion put to a general meeting of a community association is decided according to a majority in number of votes on the motion unless:
  - (a) a poll is required, or
  - (b) the motion is for a resolution that, to be effective, must be a special resolution.
- (2) Except on a poll, or on a motion for a resolution that, to be effective, must be a special resolution:
  - (a) each subsidiary body has 1 vote, and
  - (b) the proprietors of community development lots have 1 vote for each community development lot even if this results in the same person having more than 1 vote on the motion.
- (3) If:
  - (a) a poll is demanded by someone present and entitled to vote at the meeting, or
  - (b) the motion is for a resolution that, to be effective, must be a special resolution,the motion is decided according to the value of votes cast personally or by proxy for and against the motion.
- (4) The value of the vote of a subsidiary body is equal to the unit entitlement of the former community development lot that was subdivided to constitute the subsidiary body.
- (5) Except as provided by subclause (6), the value of the vote of the proprietor of a community development lot, or of a person having a priority vote in relation to a community development lot, is equal to the unit entitlement of the community development lot.
- (6) If the original proprietor is the proprietor of community development lots in the community scheme of which the sum of the unit entitlements is at least one-half of the total unit entitlements for the community scheme, the value of the vote of the original proprietor, or of a person having a priority vote in relation to any of those lots, is one-third of the value it would have had but for this subclause, any fraction being ignored.
- (7) A demand for a poll:
  - (a) must be given effect even if the matter has been decided on the numbers, and
  - (b) may be withdrawn by the person who made it.

(8) A poll must be conducted as directed by the chairperson.

### **16 Declaration of voting**

Except in relation to voting on a poll, the declaration by the chairperson of the result of a vote on a motion at a general meeting of a community association is conclusive without proof of the votes recorded for or against the motion.

### **17 General meeting valid if attended only by chairperson**

Subject to clause 10 in relation to a quorum, a general meeting of a community association is validly held even if it is attended only by the chairperson.

### **18 Requisition for inclusion of motion in agenda**

(1) A member of a community association or, if the member is the proprietor of a community development lot, a person with a priority vote in relation to the lot, may serve on the secretary of the association a written notice requiring the secretary to include a specified motion in the agenda for the next general meeting of the association of which notice had not already been given.

(2) The secretary must give effect to the requirement of the notice.

### **19 Amendment or revocation of unanimous or special resolution**

(1) A unanimous resolution of a community association may be amended or revoked by the association only by a unanimous resolution.

(2) A special resolution of a community association may be amended or revoked by the association only by a special resolution.

### **20 Duties of original proprietor pending election of officers**

The original proprietor, or an agent authorised in writing by the original proprietor, must exercise the functions of chairperson, secretary and treasurer of a community association until:

(a) those officers are elected, or

(b) the first annual general meeting of the association ends,

whichever first occurs.

### **20A Electronic transmission of documents**

(1) Documents relating to a meeting of a community association (such as proxies) may be transmitted to the secretary of the association by facsimile.

(2) In this clause, facsimile includes any electronic communication device that transmits information in a form from which written material is capable of being reproduced with or without the aid of any other device or article.

## **Part 2 – Precinct associations**

### **21 Definitions**

In this Part:

**"general meeting"**, in relation to a precinct association, means:

(a) an annual general meeting of the association other than the first annual general meeting, or

(b) a special general meeting of the association.

**"priority vote"**, in relation to a precinct development lot, means a vote by:

(a) the mortgagee of the lot under a mortgage shown on the precinct roll as having priority over any other mortgage, and over any covenant charge, shown on the roll in relation to the lot, or

(b) the covenant chargee of the lot under a covenant charge shown on the precinct roll as

having a priority over any mortgage shown on the roll in relation to the lot, or  
(c) the covenant chargee of the lot under a covenant charge shown on the precinct roll without any mortgage being shown on the roll in relation to the lot.

**"special general meeting"**, in relation to a precinct association, means a meeting of the association that is not an annual general meeting.

## **22 Annual general meeting of precinct association**

A precinct association must hold an annual general meeting not earlier than 1 month before, and not later than 1 month after, each anniversary of the first annual general meeting.

## **23 Special general meeting of precinct association**

- (1) The executive committee of a precinct association may convene a special general meeting of the association at any time.
- (2) The secretary of a precinct association may convene a special general meeting of the association at any time before the first annual general meeting.
- (3) One or more persons entitled to vote at a general meeting of a precinct association may, by notice in writing signed by or on behalf of each person and served on the secretary or another member of the executive committee, require the holding of a special general meeting of the association.
- (4) A requisition under subclause (3) is ineffective unless at least one-quarter of the total unit entitlement for the precinct scheme is attributable to the total of the unit entitlements of:
  - (a) each precinct development lot of which a signatory to the notice is the proprietor or a person entitled to a priority vote in relation to the lot, and
  - (b) each former precinct development lot subject to a subsidiary scheme under which a signatory to the notice is the subsidiary body.
- (5) A requisition may not be signed on behalf of a subsidiary body without the authority of an ordinary resolution.
- (6) The secretary of the precinct association or, in the absence of the secretary, a member of the executive committee, shall convene a special general meeting of the association by giving notice in accordance with this Part as soon as practicable after service of the requisition.

## **24 Notice of general meeting of precinct association**

- (1) The notice for a general meeting of a precinct association must be given in writing to:
  - (a) the members of the association shown on the precinct roll, and
  - (b) each person shown on the precinct roll as first mortgagee, or as a covenant chargee, of a precinct development lot.
- (2) Unless a shorter period of notice is fixed by amendment of the precinct management statement, the notice must be given at least 14 days before the meeting.
- (3) The notice must state that a vote at the meeting by the proprietor of a precinct development lot does not count if a priority vote in respect of the lot is cast in relation to the same matter.
- (4) The notice must state that a member or, if a member is the proprietor of a precinct development lot, a person with a priority vote in relation to the lot, may not vote at the meeting on a motion for an ordinary or special resolution unless payment has been made before the meeting of:
  - (a) all contributions that have been levied under the precinct scheme on the member and are payable as at the date of the notice, and
  - (b) any other money that is recoverable by the precinct association from the member as at the date of the notice.
- (5) The notice must state that:
  - (a) if the addressee is not a subsidiary body or other corporation--voting and other

rights may be exercised in person or by proxy, or

(b) if the addressee is a corporation other than a subsidiary body--voting and other rights may be exercised only by the company nominee in person or by proxy, or

(c) if the addressee is a subsidiary body--voting and other rights may be exercised only by proxy.

(6) If the addressee of a notice is the first mortgagee, or a covenant chargee, of a precinct development lot, the notice must state:

(a) the name of the proprietor of the lot, and

(b) the address of the lot, and

(c) the place at which the meeting is to be held.

(7) If a member of the precinct association:

(a) has not been provided with a copy of the minutes of the latest general meeting (including the first annual general meeting if it was the latest), and

(b) before the giving of the notice, made a request for a copy of those minutes that has not been complied with,

the notice must be accompanied by a copy of those minutes.

(7A) The notice must set out the provisions of this Act for determining the quorum at a general meeting.

(8) Notice to the person giving it is not required.

## **25 Special requirements for notice of annual general meeting other than the first**

Notice of an annual general meeting of a precinct association other than the first such meeting:

(a) must be accompanied by a copy of the financial statements last prepared by the precinct association in accordance with clause 11 of Schedule 1, and

(b) must include, or be accompanied by, a form of motion for adoption of the financial statements, and

(c) must include the information relating to insurance included in the precinct roll under clause 6 of Schedule 3.

## **26 Forms for motions**

(1) Notice of a general meeting of a precinct association must include, or be accompanied by:

(a) a form of motion to confirm the minutes of the last general meeting of any kind, and

(b) if the meeting has been convened to elect the executive committee--a form of motion for election of the executive committee, and

(c) except in the case of a meeting referred to in paragraph (b)--a form of motion for each other item of the business of the meeting together with an explanation of the reasons for the motion and, if it involves spending money, an estimate of the cost.

(2) If a motion:

(a) requires a special or unanimous resolution for its passage, or

(b) involves an amendment of the precinct management statement or a development contract,

a note to the form of motion must say so.

(3) A motion may not be moved at a general meeting unless:

(a) this clause has been complied with in relation to the motion, or

(b) the motion is to amend a motion in relation to which this clause has been complied with.

## **27 Restriction on submitting motions and nominating candidates**

(1) If a person not entitled to vote at the meeting:

(a) moves a motion at a general meeting, or

(b) nominates a candidate for election to the executive committee,

the motion or nomination is out of order.

(2) Subclause (1) does not prevent the proprietor of a precinct development lot from moving a motion or nominating a candidate even if the lot is subject to a mortgage or covenant charge.

## **28 Voting rights**

(1) Each member of a precinct association, and each person entitled to a priority vote, has voting rights which may be exercised at a general meeting of the precinct association:

- (a) only if the member or person is shown on the precinct roll, and
- (b) if the member (other than a subsidiary body) or person is a corporation--only if the company nominee is shown on the precinct roll.

(2) Voting rights may be exercised at the meeting:

- (a) by a subsidiary body--only by proxy, and
- (b) by joint first mortgagees or joint covenant chargees--only by proxy (who may be one of them) appointed by all of them jointly.

(3) The voting rights of a proprietor, first mortgagee or covenant chargee of a precinct development lot (other than a joint proprietor, mortgagee or covenant chargee) may be exercised:

- (a) unless the proprietor, mortgagee or covenant chargee is a corporation--in person or by proxy, or
- (b) if the proprietor, mortgagee or covenant chargee is a corporation--by the company nominee in person or by proxy.

(4) The voting rights of joint proprietors of a precinct development lot may not be exercised by them individually but may be exercised:

- (a) by a proxy (who may be one of them) appointed by all of them jointly, or
- (b) as provided by subclause (5).

(5) If, on a vote at a general meeting of a precinct association, the rights of joint proprietors of a precinct development lot are not exercised by a proxy appointed under subclause (4), one of them may act as such a proxy:

- (a) if the other joint proprietors are absent or such of them as are present give their consent, or
- (b) if paragraph (a) does not apply--if he or she is the proprietor first named on the precinct roll as one of the joint proprietors.

(6) If there are proprietors of successive estates in a precinct development lot, only the proprietor of the first estate may vote at a general meeting of the precinct association.

(7) If the proprietor of a precinct development lot holds it as trustee, a person beneficially entitled may not vote at a general meeting.

(8) A vote at a general meeting by a member of a precinct association on a motion for an ordinary or special resolution does not count if payment has not been made before the meeting of:

- (a) all contributions that have been levied under the precinct scheme and are payable by the member at the date of the notice of the meeting, and
- (b) any other money that is recoverable by the association from the member as at the date of the notice.

(9) A vote by a first mortgagee, or by a covenant chargee, of a precinct development lot does not count if subclause (8) would nullify any vote on the same matter by the proprietor of the lot.

(10) If a priority vote is cast in relation to a precinct development lot, a vote on the same matter by the proprietor of the lot does not count.

(11) This clause does not confer a right to vote on a person deprived of the right by failing to comply with the requirements of a notice under section 49.

## **29 Proxies**

(1) A proxy must be appointed by instrument in the approved form.



- (2) If the instrument appointing a proxy limits the manner in which the proxy may vote at the meeting, a vote by the proxy that does not observe the limitation is invalid.
- (3) A proxy may demand a poll.
- (4) A proxy:
  - (a) if entitled to vote otherwise than as a proxy--may also vote in his or her own right, and
  - (b) if appointed as proxy for more than one member of the precinct association--may vote separately as a proxy in each case.
- (5) An instrument appointing a proxy is ineffective unless it is given to the secretary before or at the first meeting in relation to which the instrument is to operate and it contains the date on which it was made.
- (5A) An instrument appointing a proxy has effect for the period specified in the instrument (being a period of not more than 12 months) or for 2 consecutive annual general meetings, whichever is the greater, unless sooner revoked.
- (5B) A proxy cannot exercise a vote in relation to a matter if the person who appointed the proxy is exercising personally a power to vote on that matter.
- (5C) An instrument made by a person appointing a proxy has no effect if the person makes a later instrument appointing a proxy and delivers it to the secretary in accordance with subclause (5).
- (6) A subsidiary body may, in the instrument by which it appoints a proxy, state the manner in which the proxy is to vote on each item of business to be considered at the meeting.
- (7) A vote by the proxy for a subsidiary body on an item of business at the meeting is invalid:
  - (a) if subclause (6) is not complied with in relation to the item, or
  - (b) if the proxy votes otherwise than as required by the instrument of his or her appointment.

### **30 Quorum**

- (1) There is a quorum for considering and voting on a matter at a general meeting of a precinct association only if:
  - (a) the number of persons present and entitled to vote on the matter is more than one-quarter the number of members of the association, or
  - (b) the persons present and entitled to vote on the matter represent more than one-quarter the total unit entitlement for the precinct scheme.
- (1A) However, if there is more than one member of the precinct association and the quorum calculated in accordance with subclause (1) is less than 2 persons, the quorum is 2 persons entitled to vote on the matter.
- (2) If a quorum under subclause (1) is not present within the next half-hour after the matter arises for consideration, the meeting stands adjourned for at least 7 days.
- (3) If a quorum under subclause (1) is not present within the next half-hour after the time fixed for the adjourned meeting, the persons present and entitled to vote on the matter constitute a quorum for considering and voting on the matter.
- (4) In determining whether there is a quorum under subsection (1) for a matter:
  - (a) a person who has given a proxy entitling another person who is present to vote on the matter, and
  - (b) a member of the executive committee who has appointed a substitute under section 31 who is present, and
  - (c) a proprietor or first mortgagee of a precinct development lot who has submitted a written vote on the matter,must be counted as if present.
- (5) For the purposes of subclause (4), joint mortgagees or joint proprietors who have given a proxy or have submitted a written vote are to be counted as 1 person present.

### **30A Adjournments**

- (1) A general meeting of a precinct association may be adjourned for any reason if a motion is passed at the meeting for the adjournment.
- (2) If a general meeting of the precinct association is adjourned (including where the meeting is adjourned because of clause 30 (2)):
  - (a) the time and place at which the adjourned meeting is to be resumed must be fixed by the person who was presiding at the meeting or, in the case of a meeting that is adjourned because of clause 30 (2), by the person who would have presided at the meeting but for the lack of a quorum, and
  - (b) notice of that time and place must be served by the secretary on the members of the association at least 1 day prior to the meeting.
- (3) The notice is to set out the provisions of this Act for determining the quorum at a general meeting.

### **31 Conduct of general meeting of precinct association**

- (1) The chairperson of a precinct association, if present, is to preside at a general meeting of the association.
- (2) If the chairperson is not present at a general meeting of a precinct association, the persons who are present and entitled to vote at the meeting must elect one of their number to preside at the meeting.
- (3) The person elected has, while presiding at the meeting, all the functions of the chairperson.

### **32 Motions out of order**

The chairperson at a general meeting of a precinct association may rule a motion out of order if he or she considers that the motion, if carried:

- (a) would be inconsistent with this Act, an applicable management statement or the by-laws under a strata scheme, or
- (b) would be otherwise unenforceable or unlawful.

### **33 Chairperson to announce names of persons entitled to vote**

Before submitting a matter to a vote at a general meeting of a precinct association, the chairperson must announce the names of the persons entitled to vote on the matter if a request for the announcement is made by a person present and entitled to vote at the meeting.

### **34 Counting of votes for election of executive committee**

- (1) Except as provided by subclause (2), in an election of the executive committee of a precinct association:
  - (a) each subsidiary body entitled to vote has 1 vote, and
  - (b) the persons entitled to vote in respect of precinct development lots have 1 vote for each precinct development lot even if this results in the same person having more than 1 vote in the election.
- (2) An original proprietor who, at the time of an election, is the proprietor of at least the prescribed number of precinct development lots, is entitled only to one-third the number of votes the original proprietor would have had but for this subclause, any fraction being ignored.
- (3) In subclause (2): "**prescribed number**" means the number equal to one-half of the total number of precinct development lots and former precinct development lots in the precinct scheme, any fraction being ignored.

### **35 Counting of votes on a motion**

- (1) A motion put to a general meeting of a precinct association is decided according to a majority in number of votes on the motion unless:
  - (a) a poll is required, or
  - (b) the motion is for a resolution that, to be effective, must be a special resolution.

(2) Except on a poll, or on a motion for a resolution that, to be effective, must be a special resolution:

- (a) each subsidiary body vote has 1 vote, and
- (b) the proprietors of precinct development lots have 1 vote for each precinct development lot even if this results in the same person having more than 1 vote on the motion.

(3) If:

- (a) a poll is demanded by someone present and entitled to vote at the meeting, or
- (b) the motion is for a resolution that, to be effective, must be a special resolution,

the motion is decided according to the value of votes cast personally or by proxy for and against the motion.

(4) The value of the vote of a subsidiary body is equal to the unit entitlement of the former precinct development lot that was subdivided to constitute the subsidiary body.

(5) Except as provided by subclause (6), the value of the vote of the proprietor of a precinct development lot, or of a person having a priority vote in relation to a precinct development lot, is equal to the unit entitlement of the precinct development lot.

(6) If the original proprietor is the proprietor of precinct development lots in the precinct scheme of which the sum of the unit entitlements is at least one-half of the total unit entitlements for the precinct scheme, the value of the vote of the original proprietor, or of a person having a priority vote in relation to any of those lots, is one-third of the value it would have had but for this subclause, any fraction being ignored.

(7) A demand for a poll:

- (a) must be given effect even if the matter has been decided on the numbers, and
- (b) may be withdrawn by the person who made it.

(8) A poll must be conducted as directed by the chairperson.

### **36 Declaration of voting**

Except in relation to voting on a poll, the declaration by the chairperson of the result of a vote on a motion at a general meeting of a precinct association is conclusive without proof of the votes recorded for or against the motion.

### **37 General meeting valid if attended only by chairperson**

Subject to clause 30 in relation to a quorum, a general meeting of a precinct association is validly held even if it is attended only by the chairperson.

### **38 Requisition for inclusion of motion in agenda**

(1) A member of a precinct association or, if the member is the proprietor of a precinct development lot, a person with a priority vote in relation to the lot, may serve on the secretary of the association a written notice requiring the secretary to include a specified motion in the agenda for the next general meeting of the precinct association of which notice had not already been given.

(2) The secretary must give effect to the requirement of the notice.

### **39 Amendment or revocation of unanimous or special resolution**

(1) A unanimous resolution of a precinct association may be amended or revoked by the association only by a unanimous resolution.

(2) A special resolution of a precinct association may be amended or revoked by the association only by a special resolution.

### **40 Duties of original proprietor pending election of officers**

The original proprietor, or an agent authorised in writing by the original proprietor, must exercise the functions of chairperson, secretary and treasurer of a precinct association until:

- (a) those officers are elected, or
- (b) the first annual general meeting of the association ends,

whichever first occurs.

#### **40A Electronic transmission of documents**

- (1) Documents relating to a meeting of a precinct association (such as proxies) may be transmitted to the secretary of the association by facsimile.
- (2) In this clause, facsimile includes any electronic communication device that transmits information in a form from which written material is capable of being reproduced with or without the aid of any other device or article.

### **Part 3 – Neighbourhood associations**

#### **41 Definitions**

In this Part:

**"general meeting"**, in relation to a neighbourhood association, means:

- (a) an annual general meeting of the association other than the first annual general meeting, or
- (b) a special general meeting of the association.

**"priority vote"**, in relation to a neighbourhood lot, means a vote by:

- (a) the mortgagee of the lot under a mortgage shown in the neighbourhood roll as having priority over any other mortgage, and over any covenant charge, shown on the roll in relation to the lot, or
- (b) the covenant chargee of the lot under a covenant charge shown on the neighbourhood roll as having priority over any mortgage shown on the roll in relation to the lot, or
- (c) the covenant chargee of the lot under a covenant charge shown on the neighbourhood roll without any mortgage being shown on the roll in relation to the lot.

**"special general meeting"**, in relation to a neighbourhood association, means a meeting of the association that is not an annual general meeting.

#### **42 Annual general meeting of neighbourhood association**

A neighbourhood association must hold an annual general meeting not earlier than 1 month before, and not later than 1 month after, each anniversary of the first annual general meeting.

#### **43 Special general meeting of neighbourhood association**

- (1) The executive committee of a neighbourhood association may convene a special general meeting of the association at any time.
- (2) The secretary of a neighbourhood association may convene a special general meeting of the association at any time before the first annual general meeting.
- (3) One or more persons entitled to vote at a general meeting of a neighbourhood association may, by notice in writing signed by or on behalf of each person and served on the secretary or another member of the executive committee, require the holding of a special general meeting of the association.
- (4) A requisition under subclause (3) is ineffective unless at least one-quarter of the total unit entitlement for the neighbourhood scheme is attributable to the total of the unit entitlements of all the neighbourhood lots of which each person who signed the notice is proprietor or a person entitled to a priority vote in relation to the lot.
- (5) The secretary of the association or, in the absence of the secretary, a member of the executive committee, shall convene a special general meeting of the association by giving notice in accordance with this Part as soon as practicable after service of the requisition.

#### **44 Notice of general meeting of neighbourhood association**

- (1) The notice for a general meeting of a neighbourhood association must be given in

writing to:

- (a) the members of the association shown on the neighbourhood roll, and
  - (b) each person shown on the neighbourhood roll as first mortgagee, or as a covenant chargee, of a neighbourhood lot.
- (2) Unless a shorter period of notice is fixed by the neighbourhood management statement, the notice must be given at least 7 days before the meeting.
- (3) The notice must state that a vote at the meeting by the proprietor of a neighbourhood lot does not count if a priority vote in respect of the lot is cast in respect of the same matter.
- (4) The notice must state that the proprietor of a neighbourhood lot, or a person with a priority vote in relation to the lot, may not vote at the meeting on a motion for an ordinary or special resolution unless payment has been made before the meeting of:
- (a) all contributions that have been levied under the neighbourhood scheme on the proprietor and are payable as at the date of the notice, and
  - (b) any other money that is recoverable by the neighbourhood association from the proprietor as at the date of the notice.
- (5) The notice must state that:
- (a) if the addressee is not a corporation--voting and other rights may be exercised in person or by proxy, or
  - (b) if the addressee is a corporation--voting and other rights may be exercised only by the company nominee personally or by proxy.
- (6) If the addressee of a notice is the first mortgagee or a covenant chargee of a neighbourhood lot, the notice must state:
- (a) the name of the proprietor of the lot,
  - (b) the address of the lot, and
  - (c) the place at which the meeting is to be held.
- (7) If a member of the neighbourhood association:
- (a) has not been provided with a copy of the minutes of the latest general meeting (including the first annual general meeting if it was the latest), or
  - (b) before the giving of the notice, made a request for a copy of those minutes that has not been complied with,
- the notice must be accompanied by a copy of those minutes.
- (7A) The notice must set out the provisions of this Act for determining the quorum at a general meeting.
- (8) Notice to the person giving it is not required.

#### **45 Special requirements for notice of annual general meeting other than the first**

Notice of an annual general meeting of a neighbourhood association other than the first such meeting:

- (a) must be accompanied by a copy of the financial statements last prepared by the neighbourhood association in accordance with clause 11 of Schedule 1, and
- (b) must include, or be accompanied by, a form of motion for adoption of the financial statements, and
- (c) if the neighbourhood scheme is not part of a community scheme--must include, or be accompanied by, a form of motion to consider whether a revised schedule of unit entitlements should be registered under section 30 of the *Community Land Development Act 1989*,
- (d) must include the information relating to insurance included in the neighbourhood roll under clause 9 of Schedule 3.

#### **46 Forms for motions**

- (1) Notice of a general meeting of a neighbourhood association must include, or be accompanied by:

- (a) a form of motion to confirm the minutes of the last general meeting of any kind, and
  - (b) if the meeting has been convened to elect the executive committee--a form of motion for election of the executive committee, and
  - (c) except in the case of a meeting referred to in paragraph (b)--a form of motion for each other item of business of the meeting together with an explanation of the reasons for the motion and, if it involves spending money, an estimate of the cost.
- (2) If a motion:
- (a) requires a special or unanimous resolution for its passage, or
  - (b) involves an amendment of the neighbourhood management statement or a development contract,
- a note to the form of motion must say so.
- (3) A motion may not be moved at a general meeting unless:
- (a) this clause has been complied with in relation to the motion, or
  - (b) the motion is to amend a motion in relation to which this clause has been complied with.

#### **47 Restriction on submitting motions and nominating candidates**

- (1) If a person not entitled to vote at the meeting:
- (a) moves a motion at a general meeting, or
  - (b) nominates a candidate for election to the executive committee,
- the motion or nomination is out of order.
- (2) Subclause (1) does not prevent the proprietor of a neighbourhood lot from moving a motion or nominating a candidate even if the lot is subject to a mortgage or covenant charge.

#### **48 Voting rights**

- (1) Each member of a neighbourhood association, and each person entitled to a priority vote, has voting rights which may be exercised at a general meeting of the neighbourhood association:
- (a) only if the member or person is shown on the neighbourhood roll, and
  - (b) if the member or person is a corporation--only if the company nominee is shown on the neighbourhood roll.
- (2) The voting rights of a proprietor, first mortgagee or covenant chargee of a neighbourhood lot (other than a joint proprietor, mortgagee or covenant chargee) may be exercised:
- (a) unless the proprietor, mortgagee or covenant chargee is a corporation--in person or by proxy, or
  - (b) if the proprietor, mortgagee or covenant chargee is a corporation--by the company nominee in person or by proxy.
- (3) The voting rights of joint first mortgagees, or joint covenant chargees, of a neighbourhood lot may be exercised at the meeting only by a proxy (who may be one of them) appointed by all of them jointly.
- (4) The voting rights of joint proprietors of a neighbourhood lot may not be exercised by them individually but may be exercised:
- (a) by a proxy (who may be one of them) appointed by all of them jointly, or
  - (b) as provided by subclause (5).
- (5) If, on a vote at a general meeting of a neighbourhood association, the rights of joint proprietors are not exercised by a proxy appointed under subclause (4), one of them may act as such a proxy:
- (a) if the other joint proprietors are absent or such of them as are present give their consent, or
  - (b) if paragraph (a) does not apply--if he or she is the proprietor first named on the neighbourhood roll as one of the joint proprietors.

- (6) If there are proprietors of successive estates in a neighbourhood lot, only the proprietor of the first estate may vote at a general meeting of the neighbourhood association.
- (7) If the proprietor of a neighbourhood lot holds it as trustee, a person beneficially entitled may not vote at a general meeting of the neighbourhood association.
- (8) A vote at a general meeting by a member of a neighbourhood association on a motion for an ordinary or special resolution does not count if payment has not been made before the meeting of:
- (a) all contributions that have been levied under the neighbourhood scheme and are payable by the member as at the date of the notice of the meeting, and
  - (b) any other money that is recoverable by the association from the member as at the date of the notice of the meeting.
- (9) A vote by a first mortgagee, or by a covenant chargee, of a neighbourhood lot does not count if subclause (8) would nullify any vote on the same matter by the proprietor of the lot.
- (10) If a priority vote is cast in relation to a neighbourhood lot, a vote on the same matter by the proprietor of the lot does not count.
- (11) This clause does not confer a right to vote on a person deprived of the right by failing to comply with the requirements of a notice under section 49.

#### **49 Proxies**

- (1) A proxy must be appointed by instrument in the approved form.
- (2) If the instrument appointing a proxy limits the manner in which the proxy may vote at the meeting, a vote by the proxy that does not observe the limitation is invalid.
- (3) A proxy may vote on a show of hands or demand a poll.
- (4) A proxy:
- (a) if entitled to vote otherwise than as a proxy--may also vote in his or her own right, and
  - (b) if appointed as a proxy for more than one member of the neighbourhood association--may vote separately as a proxy in each case.
- (5) An instrument appointing a proxy is ineffective unless it is given to the secretary before or at the first meeting in relation to which the instrument is to operate and it contains the date on which it was made.
- (6) An instrument appointing a proxy has effect for the period specified in the instrument (being a period of not more than 12 months) or for 2 consecutive annual general meetings, whichever is the greater, unless sooner revoked.
- (7) A proxy cannot exercise a vote in relation to a matter if the person who appointed the proxy is exercising personally a power to vote on that matter.
- (8) An instrument made by a person appointing a proxy has no effect if the person makes a later instrument appointing a proxy and delivers it to the secretary in accordance with subclause (5).

#### **50 Quorum**

- (1) There is a quorum for considering and voting on a matter at a general meeting of a neighbourhood association only if:
- (a) the number of persons present and entitled to vote on the matter is more than one-quarter the number of members of the neighbourhood association, or
  - (b) the persons present and entitled to vote on the matter represent more than one-quarter the total unit entitlement for the neighbourhood scheme.
- (1A) However, if there is more than one member of the neighbourhood association and the quorum calculated in accordance with subclause (1) is less than 2 persons, the quorum is 2 persons entitled to vote on the matter.
- (2) If a quorum under subclause (1) is not present within the next half-hour after the matter arises for consideration, the meeting stands adjourned for at least 7 days.

(3) If a quorum under subclause (1) is not present within the next half-hour after the time fixed for the adjourned meeting, the persons present and entitled to vote on the matter constitute a quorum for considering and voting on the matter.

(4) In determining whether there is a quorum under subsection (1) for a matter:

(a) a person who has given a proxy entitling another person who is present to vote on the matter, and

(b) a member of the executive committee who has appointed a substitute under section 31 who is present, and

(c) a proprietor or first mortgagee of a neighbourhood lot who has submitted a written vote on the matter,

must be counted as if present.

(5) For the purposes of subclause (4), joint mortgagees or joint proprietors who have given a proxy or have submitted a written vote are to be counted as 1 person present.

### **50A Adjournments**

(1) A general meeting of a neighbourhood association may be adjourned for any reason if a motion is passed at the meeting for the adjournment.

(2) If a general meeting of the neighbourhood association is adjourned (including where the meeting is adjourned because of clause 50 (2)):

(a) the time and place at which the adjourned meeting is to be resumed must be fixed by the person who was presiding at the meeting or, in the case of a meeting that is adjourned because of clause 50 (2), by the person who would have presided at the meeting but for the lack of a quorum, and

(b) notice of that time and place must be served by the secretary on the members of the association at least 1 day prior to the meeting.

(3) The notice is to set out the provisions of this Act for determining the quorum at a general meeting.

### **51 Conduct of general meeting of neighbourhood association**

(1) The chairperson of a neighbourhood association, if present, is to preside at a general meeting of the association.

(2) If the chairperson is not present at a general meeting of a neighbourhood association the persons who are present and entitled to vote at the meeting must elect one of their number to preside at the meeting.

(3) The person elected has, while presiding at the meeting, all the functions of the chairperson.

### **52 Motions out of order**

The chairperson at a general meeting of a neighbourhood association may rule a motion out of order if he or she considers that the motion, if carried:

(a) would be inconsistent with this Act, an applicable management statement or the by-laws under a strata scheme, or

(b) would be otherwise unenforceable or unlawful.

### **53 Chairperson to announce names of persons entitled to vote**

Before submitting a matter to a vote at a general meeting of a neighbourhood association, the chairperson must announce the names of the persons entitled to vote on the matter if a request for the announcement is made by a person present and entitled to vote on the matter.

### **54 Counting of votes for election of executive committee**

(1) Except as provided by subclause (2), each person entitled to vote in an election of the executive committee of a neighbourhood association has 1 vote for each neighbourhood lot of which the person is proprietor or in respect of which the person has a priority vote.

(2) An original proprietor who, at the time of an election, is the proprietor of at least half the neighbourhood lots in the neighbourhood scheme, is entitled only to one-third of the



number of votes the original proprietor would have had but for this subclause, any fractions being ignored.

### **55 Counting of votes on a motion**

(1) A motion put to a general meeting of a neighbourhood association is decided according to a majority in number of the votes on the motion unless:

- (a) a poll is required, or
- (b) the motion is for a resolution that, to be effective, must be a special resolution.

(2) If:

(a) a poll is demanded by someone present and entitled to vote at the meeting, or  
(b) the motion is for a resolution that, to be effective, must be a special resolution,  
the motion is decided according to the value of votes cast personally or by proxy for and against the motion.

(3) Except as provided by subclause (4), the value of the vote of the proprietor of a neighbourhood lot, or of a person having a priority vote in relation to the lot, is equal to the unit entitlement of the neighbourhood lot.

(4) If the original proprietor is the proprietor of neighbourhood lots of which the sum of the unit entitlements is at least one-half of the total unit entitlement for the neighbourhood scheme, the value of the vote of the original proprietor, or of a person having a priority vote in relation to any of those lots, is one-third of the value it would have had but for this subclause, any fraction being ignored.

(5) A demand for a poll:

- (a) must be given effect even if the matter has been decided on the numbers, and
- (b) may be withdrawn by the person who made it.

(6) A poll must be conducted as directed by the chairperson.

### **56 Declaration of voting**

Except in relation to voting on a poll, the declaration of the chairperson of the result of a vote on a motion at a general meeting of a neighbourhood association is conclusive without proof of the votes recorded for or against the motion.

### **57 General meeting valid if attended only by chairperson**

Subject to clause 50 in relation to a quorum, a general meeting of a neighbourhood association is validly held even if it is attended only by the chairperson.

### **58 Requisition for inclusion of motion in agenda**

(1) A member of a neighbourhood association or a person with a priority vote in relation to the lot may serve on the secretary of the association a written notice requiring the secretary to include a specified motion in the agenda for the next general meeting of the association of which notice had not already been given.

(2) The secretary must give effect to the requirement of the notice.

### **59 Amendment or revocation of unanimous or special resolution**

(1) A unanimous resolution of a neighbourhood association may be amended or revoked by the association only by a unanimous resolution.

(2) A special resolution of a neighbourhood association may be amended or revoked by the association only by a special resolution.

### **60 Duties of original proprietor pending election of officers**

The original proprietor, or an agent authorised in writing by the original proprietor, must exercise the functions of chairperson, secretary and treasurer of a neighbourhood association until:

- (a) those officers are elected, or
- (b) the first annual general meeting of the association ends,  
whichever first occurs.

## **61 Electronic transmission of documents**

- (1) Documents relating to a meeting of a neighbourhood association (such as proxies) may be transmitted to the secretary of the association by facsimile.
- (2) In this clause, facsimile includes any electronic communication device that transmits information in a form from which written material is capable of being reproduced with or without the aid of any other device or article.

# **Schedule 7 Savings, transitional and other provisions**

(Section 123)

## **Part 1 – General**

### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
  - Strata Schemes Management (Miscellaneous Amendments) Act 1996*
  - Traffic Legislation Amendment Act 1997*, but only in relation to the amendments made to this Act
  - Statute Law (Miscellaneous Provisions) Act (No 2) 2000*, but only in relation to the amendments made to this Act
- (2) Such a provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or on a later date.
- (3) To the extent to which such a provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done before the date of that publication.

## **Part 2 – Provisions consequent on the amendment of this Act**

### **2 Pending proceedings and applications**

Any proceedings commenced but not determined or finalised under provisions of this Act amended by the *Strata Schemes Management (Miscellaneous Amendments) Act 1996* may be dealt with and determined as if this Act had not been amended by that Act.

### **3 Previous orders made by Commissioner or a Board**

- (1) An order made by the Commissioner or a Community Schemes Board under a provision of this Act as in force before its amendment by the *Strata Schemes Management (Miscellaneous Amendments) Act 1996* is taken to have been made under that provision as amended by that Act.
- (2) Despite subclause (1):
  - (a) Division 6A of Part 4 does not apply to such an order, and
  - (b) the provisions of this Act relating to the contravention of orders as in force immediately before the commencement of that Division continue to apply to such an order.

### **4 Abolition of Community Schemes Boards**

A Community Schemes Board in existence immediately before the commencement of section 109K is abolished on the completion of any proceedings being heard by it.

### **5 Construction of references**

In any other Act or instrument:

- (a) a reference to the Community Schemes Board is taken to be a reference to the Residential Tribunal, and
- (b) a reference to an order or declaration of the Residential Tribunal made in the exercise of jurisdiction conferred by this Act or the *Community Land Development Act 1989* includes a reference to an order or declaration made by the Community Schemes Board under either of those Acts and in force immediately before the commencement of the *Residential Tribunal Act 1998*, and
- (c) a reference to the Registrar of the Community Schemes Board is taken to be a reference to the Registrar of the Residential Tribunal.

### Historical notes

The following abbreviations are used in the Historical notes:

Am	amended	No	number	Schs	Schedules
Cl	clause	p	page	Sec	section
Cll	clauses	pp	pages	Secs	sections
Div	Division	Reg	Regulation	Subdiv	Subdivision
Divs	Divisions	Regs	Regulations	Subdivs	Subdivisions
GG	Government Gazette	Rep	repealed	Subst	substituted
Ins	inserted	Sch	Schedule		

Table of amending instruments *Community Land Management Act 1989 No 202*. Assented to 21.12.1989. Date of commencement, 1.8.1990, sec 2 and GG No 82 of 29.6.1990, p 5383. This Act has been amended as follows:

1990	No 108	<i>Statute Law (Miscellaneous Provisions) Act (No 2) 1990</i> . Assented to 13.12.1990. Date of commencement of the provision of Sch 2 relating to the <i>Community Land Management Act 1989</i> , assent, sec 2.
1991	No 94	<i>Statute Law (Miscellaneous Provisions) Act (No 2) 1991</i> . Assented to 17.12.1991. Date of commencement of the provision of Sch 1 relating to the <i>Community Land Management Act 1989</i> , assent, Sch 1.
1993	No 33	<i>Roads Act 1993</i> . Assented to 8.6.1993. Date of commencement, 1.7.1993, sec 2 and GG No 73 of 1.7.1993, p 3343.
1994	No 44	<i>Local Government Legislation (Miscellaneous Amendments) Act 1994</i> . Assented to 2.6.1994. Date of commencement of Sch 19, 1.7.1994, sec 2 and GG No 80 of 17.6.1994, p 2915.
1995	No 11	<i>Statute Law Revision (Local Government) Act 1995</i> . Assented to 9.6.1995. Date of commencement of Sch 1.24, 23.6.1995, sec 2 (1) and GG No 77 of 23.6.1995, p 3279.
1996	No 24	<i>Financial Institutions (Miscellaneous Amendments) Act 1996</i> . Assented to 21.6.1996. Date of commencement, 12.7.1996, sec 2 and GG No 84 of 12.7.1996, p 3984.
	No 9	<i>Strata Schemes Management (Miscellaneous Amendments) Act 1996</i> . Assented to 16.12.1996. Date of commencement, 1.7.1997, sec 2 and GG No 68 of 27.6.1997, p 4770. Amended by <i>Statute Law (Miscellaneous Provisions) Act 1997 No 55</i> . Assented to 2.7.1997. Date of commencement of Sch 2.18, assent, sec 2 (2). Amended by <i>Statute Law (Miscellaneous Provisions) Act (No 2) 1997 No 147</i> . Assented to 17.12.1997. Date of commencement of Sch 2.27, assent, sec 2 (2).
1997	No 11	<i>Traffic Legislation Amendment Act 1997</i> . Assented to 9.12.1997. Date of commencement, 29.6.1998, sec 2 and GG No 97 of 26.6.1998, p 4431.

	5	
	No 152	<i>Environmental Planning and Assessment Amendment Act 1997</i> . Assented to 19.12.1997. Date of commencement, 1.7.1998, sec 2 and GG No 101 of 1.7.1998, p 5119.
1998	No 54	<i>Statute Law (Miscellaneous Provisions) Act 1998</i> . Assented to 30.6.1998. Date of commencement of Sch 1.4, assent, sec 2 (2).
	No 85	<i>Workers Compensation Legislation Amendment Act 1998</i> . Assented to 14.7.1998. Date of commencement of Sch 2, 1.8.1998, sec 2 and GG No 115 of 31.7.1998, p 5747.
	No 120	<i>Statute Law (Miscellaneous Provisions) Act (No 2) 1998</i> . Assented to 26.11.1998. Date of commencement of Sch 1.6, assent, sec 2 (2).
	No 137	<i>Justices Legislation Amendment (Appeals) Act 1998</i> . Assented to 8.12.1998. Date of commencement of Sch 2.4, 1.3.1999, sec 2 and GG No 25 of 26.2.1999, p 973.
	No 168	<i>Residential Tribunal Act 1998</i> . Assented to 14.12.1998. Date of commencement of Sch 4.1, 1.3.1999, sec 2 and GG No 25 of 26.2.1999, p 977.
1999	No 19	<i>Road Transport Legislation Amendment Act 1999</i> . Assented to 1.7.1999. Date of commencement of Sch 2, 1.12.1999, sec 2 (1) and GG No 133 of 26.11.1999, p 10863.
	No 31	<i>Statute Law (Miscellaneous Provisions) Act 1999</i> . Assented to 7.7.1999. Date of commencement of Sch 1.6, assent, sec 2 (2).
	No 41	<i>Motor Accidents Compensation Act 1999</i> . Assented to 8.7.1999. Date of commencement of Sch 4.1, 5.10.1999, sec 2 and GG No 104 of 10.9.1999, p 8699.
2000	No 93	<i>Statute Law (Miscellaneous Provisions) Act (No 2) 2000</i> . Assented to 8.12.2000. Date of commencement of Sch 1.4, 1.9.2001, Sch 1.4 and GG No 132 of 31.8.2001, p 6565.
2001	No 34	<i>Corporations (Consequential Amendments) Act 2001</i> . Assented to 28.6.2001. Date of commencement of Sch 4.6, 15.7.2001, sec 2 (1) and Commonwealth Gazette No S 285 of 13.7.2001.
	No 56	<i>Statute Law (Miscellaneous Provisions) Act 2001</i> . Assented to 17.7.2001. Date of commencement of Sch 2.6, assent, sec 2 (2).
	No 82	<i>Consumer, Trader and Tenancy Tribunal Act 2001</i> . Assented to 21.11.2001. Date of commencement of Sch 7.1 [1] [2] and [4], 25.2.2002, sec 2 (1) and GG No 48 of 22.2.2002, p 901; Sch 7.1 [3] was without effect as the section being amended was amended by the <i>Statute Law (Miscellaneous Provisions) Act (No 2) 2001 No 112</i> .
	No 112	<i>Statute Law (Miscellaneous Provisions) Act (No 2) 2001</i> . Assented to 14.12.2001. Date of commencement of Sch 1.6, assent, sec 2 (2).
	No 121	<i>Justices Legislation Repeal and Amendment Act 2001</i> . Assented to 19.12.2001. Date of commencement of Sch 2, 7.7.2003, sec 2 and GG No 104 of 27.6.2003, p 5978.
2002	No 66	<i>Property, Stock and Business Agents Act 2002</i> . Assented to 10.7.2002. Date of commencement, 1.9.2003, sec 2 and GG No 116 of 25.7.2003, p 7445.
2003	No 4	<i>Valuers Act 2003</i> . Assented to 28.5.2003. Date of commencement of Sch 1.3, 31.3.2005, sec 2 (1) and GG No 37 of 29.3.2005, p 929.
2005	No 11	<i>Road Transport (General) Act 2005</i> . Assented to 14.4.2005. Date of commencement of Sch 3.3, 30.9.2005, sec 2 (1) and GG No 120 of 30.9.2005, p 7674.

#### Table of amendments

Sec 3	Am 1991 No 94, Sch 1; 1993 No 33, Sch 1; 1995 No 11, Sch 1.24; 1996 No 139, Sch 1 [1]-[9] (am 1997 No 55, Sch 2.18 [1]); 1997 No 152, Sch 4.7 [1]-[4]; 1998 No 54, Sch 1.4 [1] [2]; 1998 No 168, Sch 4.1 [1]; 2000
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	No 93, Sch 1.4 [1]-[3]; 2001 No 56, Sch 2.6 [2] [3]; 2001 No 82, Sch 7.1 [1]; 2002 No 66, Sch 2.1; 2003 No 4, Sch 1.3.
Sec 3A	Ins 1996 No 139, Sch 1 [10].
Sec 5	Am 1998 No 54, Sch 1.4 [3]; 2001 No 34, Sch 4.6 [1].
Sec 6	Am 1998 No 54, Sch 1.4 [3]; 2001 No 34, Sch 4.6 [2].
Sec 7	Am 1998 No 54, Sch 1.4 [3]; 2001 No 34, Sch 4.6 [3].
Secs 10, 11	Am 1996 No 139, Sch 1 [11].
Sec 13A	Ins 1996 No 139, Sch 1 [12]. Am 1998 No 54, Sch 1.4 [4]; 2000 No 93, Sch 1.4 [4].
Sec 13A, note	Ins 1996 No 139, Sch 1 [12]. Am 2001 No 82, Sch 7.1 [2].
Sec 14	Am 1996 No 139, Sch 1 [13]; 1999 No 31, Sch 1.6 [1].
Sec 20	Am 1996 No 139, Sch 1 [11] [14].
Sec 20A	Ins 1996 No 139, Sch 1 [15].
Sec 23	Am 1996 No 139, Sch 1 [16].
Sec 29	Am 1998 No 54, Sch 1.4 [5].
Sec 38	Am 1996 No 139, Sch 1 [17] [18].
Sec 38A	Ins 1996 No 139, Sch 1 [19].
Sec 39	Am 1996 No 139, Sch 1 [11] [20]; 1998 No 54, Sch 1.4 [6].
Sec 39A	Ins 1996 No 139, Sch 1 [21].
Sec 40	Am 1998 No 85, Sch 2.1.
Sec 41	Am 1996 No 139, Sch 1 [22].
Sec 46A	Ins 1996 No 139, Sch 1 [23].
Sec 51	Am 1996 No 24, Sch 1.22 [1] [2].
Sec 58	Am 1996 No 139, Sch 1 [11] [13].
Sec 60	Am 1996 No 139, Sch 1 [11] [13] [24] [25].
Part 4, Div 1	Subst 1996 No 139, Sch 1 [26].
Sec 62	Subst 1996 No 139, Sch 1 [26].
Sec 63	Am 1990 No 108, Sch 2. Subst 1996 No 139, Sch 1 [26] (am 1997 No 55, Sch 2.18 [3]).
Sec 64	Subst 1996 No 139, Sch 1 [26]. Am 1998 No 120, Sch 1.6 [1]; 1999 No 31, Sch 1.6 [2].
Part 4, Div 2	Subst 1996 No 139, Sch 1 [26].
Secs 65-70	Subst 1996 No 139, Sch 1 [26].
Sec 70A	Ins 1996 No 139, Sch 1 [26].
Part 4, Div 2A	Ins 1996 No 139, Sch 1 [26].
Sec 70B	Ins 1996 No 139, Sch 1 [26]. Am 1998 No 120, Sch 1.6 [2].
Sec 70C	Ins 1996 No 139, Sch 1 [26]. Am 1998 No 120, Sch 1.6 [3] [4].
Sec 70CA	Ins 1998 No 120, Sch 1.6 [5].
Part 4, Div 3, heading	Am 1996 No 139, Sch 1 [27].
Sec 71	Am 1996 No 139, Sch 1 [11] [13] [28].
Secs 71A-71C	Ins 1996 No 139, Sch 1 [29].
Sec 72	Am 1996 No 139, Sch 1 [11] [13] [30]-[33]; 2000 No 93, Sch 1.4 [6].
Sec 73	Am 1996 No 139, Sch 1 [13] [32].
Sec 74	Am 1996 No 139, Sch 1 [11] [32].
Sec 75	Am 1996 No 139, Sch 1 [11] [13] [34]; 2001 No 112, Sch 1.6.
Part 4, Div 4, heading	Am 1996 No 139, Sch 1 [35].
Secs 75A, 75B	Ins 1996 No 139, Sch 1 [36].
Sec 76	Am 1996 No 139, Sch 1 [11] [13] [37] [38]; 2000 No 93, Sch 1.4 [6] [7].
Secs 77, 78	Am 1996 No 139, Sch 1 [13] [39].
Sec 79	Am 1996 No 139, Sch 1 [13].
Secs 80, 81	Am 1996 No 139, Sch 1 [39].

Sec 82	Am 1996 No 139, Sch 1 [13] [39].
Sec 83	Am 1996 No 139, Sch 1 [39].
Sec 84	Am 1996 No 139, Sch 1 [13].
Sec 85	Am 1996 No 139, Sch 1 [13] [37] [39] [40].
Sec 86	Am 1996 No 139, Sch 1 [13].
Sec 87	Am 1996 No 139, Sch 1 [13] [39] [41] [42].
Part 4, Div 5, heading	Am 1996 No 139, Sch 1 [43].
Sec 88	Am 1996 No 139, Sch 1 [11] [13] [33] [42].
Sec 89	Subst 1996 No 139, Sch 1 [44].
Sec 90	Am 1996 No 139, Sch 1 [11] [13] [45].
Sec 91	Am 1996 No 139, Sch 1 [13] [39].
Part 4, Div 6, heading	Subst 1996 No 139, Sch 1 [46].
Sec 91A	Ins 2000 No 93, Sch 1.4 [8]. Am 2001 No 82, Sch 7.1 [4].
Sec 92	Am 1996 No 139, Sch 1 [13] [39].
Sec 93	Am 1996 No 139, Sch 1 [13]; 1998 No 120, Sch 1.6 [6] [7].
Sec 94	Am 1996 No 139, Sch 1 [13] [42] [47].
Sec 95	Am 1996 No 139, Sch 1 [13] [39].
Sec 96	Am 1996 No 139, Sch 1 [13].
Sec 97	Am 1996 No 139, Sch 1 [39] [42].
Sec 97A	Ins 1996 No 139, Sch 1 [48].
Part 4, Div 6A	Ins 1996 No 139, Sch 1 [48].
Sec 97B	Ins 1996 No 139, Sch 1 [48]. Am 2000 No 93, Sch 1.4 [9].
Sec 97C	Ins 1996 No 139, Sch 1 [48].
Sec 97D	Ins 1996 No 139, Sch 1 [48]. Am 1998 No 120, Sch 1.6 [8].
Sec 97E	Ins 1996 No 139, Sch 1 [48]. Am 1998 No 120, Sch 1.6 [9].
Sec 98	Am 1996 No 139, Sch 1 [11] [13].
Sec 100	Am 1996 No 139, Sch 1 [13] [42].
Sec 101	Rep 1996 No 139, Sch 1 [49].
Sec 102	Am 1996 No 139, Sch 1 [50]; 2000 No 93, Sch 1.4 [10]; 2001 No 121, Sch 2.52 [1].
Sec 103	Am 1996 No 139, Sch 1 [13] [32].
Sec 104	Am 1996 No 139, Sch 1 [13] [32]. Subst 1996 No 139, Sch 1 [51].
Sec 105	Am 1996 No 139, Sch 1 [13].
Sec 108	Am 1996 No 139, Sch 1 [11] [13] [33] [52]; 1998 No 137, Sch 2.4; 2000 No 93, Sch 1.4 [11]; 2001 No 121, Sch 2.52 [2].
Part 5A	Ins 1996 No 139, Sch 1 [53].
Part 5A, Div 1, heading	Ins 1996 No 139, Sch 1 [53]. Subst 2001 No 56, Sch 2.6 [4].
Part 5A, Div 1	Ins 1996 No 139, Sch 1 [53].
Sec 109A	Ins 1996 No 139, Sch 1 [53]. Rep 2001 No 56, Sch 2.6 [5].
Sec 109B	Ins 1996 No 139, Sch 1 [53]. Am 2001 No 56, Sch 2.6 [6] [7].
Sec 109C	Ins 1996 No 139, Sch 1 [53].
Sec 109D	Ins 1996 No 139, Sch 1 [53]. Am 2001 No 56, Sch 2.6 [8].
Sec 109E	Ins 1996 No 139, Sch 1 [53]. Am 2001 No 56, Sch 2.6 [9].
Sec 109F	Ins 1996 No 139, Sch 1 [53].
Sec 109G	Ins 1996 No 139, Sch 1 [53]. Am 2001 No 56, Sch 2.6 [10].
Part 5A, Div 2 (secs 109H-109J)	Ins 1996 No 139, Sch 1 [53].
Part 5A, Div 3 (secs 109K-109M)	Ins 1996 No 139, Sch 1 [53]. Subst 1998 No 168, Sch 4.1 [2]. Rep 2000 No 93, Sch 1.4 [12].
Part 5A, Div 4,	Ins 1996 No 139, Sch 1 [53]. Subst 1998 No 168, Sch 4.1 [2]. Am 2000

heading	No 93, Sch 1.4 [13].
Part 5A, Div 4	Ins 1996 No 139, Sch 1 [53]. Subst 1998 No 168, Sch 4.1 [2].
Sec 109N	Ins 1996 No 139, Sch 1 [53]. Subst 1998 No 168, Sch 4.1 [2]. Rep 2000 No 93, Sch 1.4 [14].
Sec 109O	Ins 1996 No 139, Sch 1 [53]. Subst 1998 No 168, Sch 4.1 [2]. Am 2000 No 93, Sch 1.4 [15] [16].
Sec 111A	Ins 1996 No 139, Sch 1 [54].
Sec 115	Am 1996 No 139, Sch 1 [55].
Sec 116	Am 1993 No 33, Sch 1; 1994 No 44, Sch 19; 1997 No 115, Sch 4.1 [1] [2]; 1999 No 19, Sch 2.4 [1] [2]; 1999 No 41, Sch 4.1; 2005 No 11, Sch 3.3 [1] [2].
Sec 120	Am 1996 No 139, Sch 1 [56] (am 1997 No 55, Sch 2.18 [1]; 1997 No 147, Sch 2.27 [1]) [57].
Sec 123	Ins 1996 No 139, Sch 1 [58].
Sch 1	Am 1996 No 24, Sch 1.22 [3]; 1996 No 139, Sch 1 [59]-[61].
Sch 3	Am 1996 No 139, Sch 1 [62]-[67].
Sch 5	Am 1996 No 139, Sch 1 [68]-[91].
Sch 6	Am 1996 No 139, Sch 1 [92]-[117].
Sch 7	Ins 1996 No 139, Sch 1 [118]. Am 1997 No 115, Sch 4.1 [3]; 2000 No 93, Sch 1.4 [17]-[19].
The whole Act (except secs 3 (1), 13A, 72 (1) (a), 76 (1) and 102, Divs 3 and 4 of Part 5A and Sch 7)	Am 2000 No 93, Sch 1.4 [5] ("Board" omitted wherever occurring, "Tribunal" inserted instead).
The whole Act (except secs 3 and 78 and Sch 7)	Am 2001 No 56, Sch 2.6 [1] ("Commissioner" and "Commissioner's" omitted wherever occurring, "Director-General" and "Director-General's" inserted instead respectively).