



New South Wales

Community Land Management Bill 2021

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2021



New South Wales

Community Land Management Bill 2021

Act No , 2021

An Act with respect to the management of community, precinct and neighbourhood subdivision schemes; and for other purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts—

Part 1 Preliminary

1 Name of Act

This Act is the *Community Land Management Act 2021*.

2 Commencement

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

3 Objects of Act

The objects of this Act are as follows—

- (a) to provide for the management of community, precinct and neighbourhood schemes,
- (b) to provide for the resolution of disputes arising from those schemes.

4 Interpretation

- (1) The Dictionary to this Act defines certain terms used in this Act.

Note. The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

- (2) Notes included in this Act do not form part of this Act.

5 Resolutions of associations

- (1) In this Act, a resolution of an association is a ***special resolution*** if—

- (a) it is passed at a properly convened meeting of the association, and
- (b) of the value of the votes cast—
 - (i) not more than 25% are against the resolution, or
 - (ii) if the resolution is a sustainability infrastructure resolution—less than 50% are against the resolution.

- (2) In this Act, a resolution of an association is a ***unanimous resolution*** if it is passed at a properly convened general meeting and no vote is cast against the resolution.

- (3) For the purposes of determining the ***value of a vote*** for a special resolution or a poll of a community association—

- (a) 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, and
- (b) the value of the vote of the owner of a community development lot is equal to the unit entitlement of the community development lot.

- (4) For the purposes of determining the ***value of a vote*** for a special resolution or a poll of a precinct association—

- (a) 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, and
- (b) the value of the vote of the owner of a precinct development lot is equal to the unit entitlement of the precinct development lot.

- (5) For the purposes of determining the ***value of a vote*** for a special resolution or a poll of a neighbourhood association, the value of the vote of the owner of a neighbourhood lot is equal to the unit entitlement of the neighbourhood lot.

- (6) However, if the total unit entitlement of lots for which the original owner is entitled to a vote is not less than half of the total unit entitlement for the association, the value of the vote in respect of those lots is taken to be reduced by two-thirds, ignoring any fraction.

Note. A motion or election that is not required to be approved by a special resolution or unanimous resolution is passed by a simple majority of votes, unless there is a poll (see Schedule 1, clause 13).

- (7) In this Act—
special resolution of a strata corporation has the same meaning as in the *Strata Schemes Management Act 2015*.

6 Connected persons

- (1) For the purposes of this Act, a person (the *principal person*) is *connected* with another person if the other person—
- (a) is a relative (within the meaning of the *Local Government Act 1993*) of the principal person or, if the principal person is a corporation, is a relative of the holder of an executive position in the corporation, or
 - (b) is employed or engaged by the principal person or is a business partner of the principal person, or
 - (c) if the principal person is a corporation—holds an executive position in the corporation, or
 - (d) is the employer of the principal person, or
 - (e) is employed or engaged by, or holds an executive position in, a corporation that also employs or engages the principal person or in which the principal person holds an executive position, or
 - (f) has another connection or association with the principal person of a kind prescribed by the regulations.
- (2) However, the principal person is not connected with a member of an association, or the committee of an association, merely because of any dealing, contact or arrangement the member has with the principal person in the capacity of a member of the association or committee.
- (3) In this section, *executive position* in a corporation means the position of director, manager or secretary of the corporation, or any other executive position of the corporation, however those positions are designated.

Part 2 Management of schemes

Division 1 Functions of associations

7 Association responsible for management of scheme

- (1) The association for a scheme has the principal authority for the management of the scheme.
- (2) An association has, for the benefit of members of, and owners of lots in, the scheme—
 - (a) the management and control of the use of the association property, and
 - (b) the administration of the scheme.
- (3) An association has responsibility for the following—
 - (a) managing the finances of the scheme (see Part 5),
 - (b) keeping accounts and records for the scheme (see Parts 5 and 10),
 - (c) maintaining and repairing its property (see Part 6),
 - (d) taking out insurance for the scheme (see Part 9).

8 Functions of associations generally

- (1) An association has the other functions that are conferred or imposed on it by or under this or any other Act.
- (2) An association must not delegate any of its functions to a person unless the delegation is specifically authorised by this Act.

9 Other management bodies and persons who assist the association

An association may be assisted in the carrying out of its management functions under this Act by 1 or more of the following—

- (a) the association committee of the association,
- (b) a managing agent for the scheme appointed in accordance with Part 4,
- (c) a facilities manager for the scheme appointed in accordance with Part 4.

10 Association may employ persons to assist in exercise of functions

- (1) An association may employ the persons it thinks fit to assist it in the exercise of any of its functions.
- (2) An association must ensure that a person employed to assist it in the exercise of a function has the qualifications, if any, required by this Act or any other law for the exercise of that function.

11 Functions that may only be delegated to member of association committee or managing agent

- (1) The following functions of an association, association committee or officer of an association may be delegated to or conferred only on a member of the association committee or a managing agent—
 - (a) the preparation of estimates for the purposes of section 83,
 - (b) the levying of contributions,
 - (c) the receiving of, acknowledgement of, banking of or accounting for money paid to the association,

- (d) having custody of any money paid to the association or making payments from money paid to the association,
 - (e) taking out insurance required or permitted by this Act,
 - (f) the conduct of meetings of the association and handling of correspondence,
 - (g) the maintenance of records required to be kept under this Act,
 - (h) other functions that are prescribed by the regulations.
- (2) This section is subject to sections 58 and 105.

Division 2 Meetings of associations

12 First AGM must be held within 2 months after initial period

- (1) The original owner of land subdivided by a community plan, precinct plan or neighbourhood plan must convene and hold a general meeting of the association, in accordance with this Act and the regulations, within 2 months of the expiration of the initial period.
- Maximum penalty—10 penalty units.
- (2) An original owner who fails to comply with this section remains liable to the penalty for the contravention even if the Tribunal makes an order under this Division or a meeting is convened or held in accordance with the order or otherwise.
- (3) An original owner required to convene the first annual general meeting of an association must give at least 14 days notice of the first annual general meeting to—
- (a) each member of the association, and
 - (b) each first mortgagee or covenant chargee of a development lot or neighbourhood lot who is shown on the association roll, and
 - (c) each tenant of a neighbourhood lot or strata lot who has been notified to the association in accordance with this Act as a tenant of the lot.

13 Matters to be determined at first AGM

The agenda for the first annual general meeting of an association must include the following items and may include other items—

- (a) to decide whether the amount of a contribution required to be made to the administrative fund or capital works fund should be confirmed or varied,
- (b) to determine the number of members of the association's committee and to elect the committee,
- (c) to decide whether insurances taken out by the association should be confirmed, varied or extended,
- (d) to decide if any matter or class of matter is to be determined by the association in general meeting,
- (e) to decide whether by-laws should be made or changed, 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,
- (f) to decide whether an agreement to which section 122 applies should be ratified,
- (g) to decide whether a managing agent should be appointed by the association and, if appointed, what functions of the association should be delegated to the managing agent,

- (h) if there is a managing agent—a form of motion to consider the report by the agent as to whether, and what, commissions have been paid or are likely to be payable to the agent for the following 12 months,
- (i) to decide whether a facilities manager should be appointed and, if appointed, what functions the facilities manager should exercise,
- (j) to receive the documents required to be provided under section 14,
- (k) to consider the accounting records and last financial statements prepared,
- (l) to consider the initial maintenance schedule,
- (m) to decide whether an auditor should be appointed and to appoint an auditor,
- (n) if the association is a community association or is a neighbourhood association that is not part of a community scheme—to consider whether a revised schedule of unit entitlements should be registered under the *Community Land Development Act 2021*,
- (o) any item prescribed by the regulations for the purposes of this section.

14 Documents and records to be provided to association at first AGM

- (1) An original owner required to convene a meeting under this Division must deliver to the association at its first annual general meeting, or not later than 3 years after the date of registration of the scheme, whichever occurs first, the following—
 - (a) all plans, specifications, occupation certificates or other certificates (other than certificates of title for lots) diagrams, depreciation schedules and other documents (including policies of insurance) relating to the scheme parcel,
 - (b) without limiting paragraph (a), all planning approvals, complying development certificates and related endorsed plans, approvals, “as built” drawings, compliance certificates (within the meaning of the *Environmental Planning and Assessment Act 1979*), fire safety certificates and warranties relating to the scheme parcel,
 - (c) the certificate of title for the association property, the association roll and any notices or other records relating to the scheme parcel,
 - (d) a copy of the diagram illustrating the situation of all service lines referred to in section 34 of the *Community Land Development Act 2021* that have been installed within the scheme under which the association is constituted,
 - (e) the initial maintenance schedule prepared by the original owner,
 - (f) any other document or item relating to the scheme parcel that is prescribed by the regulations for the purposes of this section.

Maximum penalty—100 penalty units.

- (2) An original owner is only required under this section to deliver to the association a thing if that thing is in the possession or control of the original owner or may be obtained by the original owner by taking reasonable steps to do so.
- (3) This section does not require an original owner to deliver to the association a document that exclusively evidences rights or obligations of the original owner and that is not capable of being used for the benefit of the association or any of the other owners.
- (4) In this section—
scheme parcel of an association that is—
 - (a) a community scheme—means the community parcel, or
 - (b) a precinct scheme—means the precinct parcel, or
 - (c) a neighbourhood scheme—means the neighbourhood parcel.

15 Tribunal may order initial documents to be provided

The Tribunal may, on application by an association, order an original owner required to convene a meeting under this Division to provide to the association a document that was required to be but was not delivered to the association at its first annual general meeting.

16 AGM must be held

An association must hold an annual general meeting once in each financial year of the association.

17 Other general meetings

- (1) The secretary of an association or an association committee may convene a general meeting (that is not an annual general meeting) of the association at any time.
- (2) The secretary of the association, or another officer if the secretary is absent, must convene a general meeting (that is not an annual general meeting) of the association as soon as practicable after receiving a qualified request.
- (3) A meeting may be convened on a qualified request even if the first annual general meeting has not been held.
- (4) A request is a *qualified request* for the purposes of a meeting of a community association or a precinct association if it is made by 1 or more owners of a development lot in the scheme or 1 or more subsidiary schemes and the total unit entitlements of the development lot or former development lot subject to the subsidiary scheme are at least one-quarter of the total unit entitlements of the community scheme or precinct scheme.
- (5) A request is a *qualified request* for the purposes of a meeting of a neighbourhood association if it is made by 1 or more owners of neighbourhood lots in the scheme and the total unit entitlements of those lots are at least one-quarter of the total unit entitlements in the neighbourhood scheme.
- (6) A request for a meeting may not be signed on behalf of a subsidiary body without the authority of a resolution of the body.

18 Tribunal may appoint person to hold first AGM and other meetings

- (1) The Tribunal may, on application by an association, a member of an association or a mortgagee or covenant chargee of a development lot, neighbourhood lot or strata lot within the scheme, order a person to convene and hold a meeting of the association within the time specified in the order if a meeting has not been convened and held in accordance with this Act.
- (2) The person who is to convene and hold the meeting is to be a person nominated by the applicant, or appointed by the Tribunal, who has consented to the nomination or appointment.

19 Unanimous or special resolutions to be amended or revoked in same way

- (1) A unanimous resolution or special resolution of an association about a matter that is required by or under this Act or the by-laws of a scheme to be determined by a resolution of that kind cannot be amended or revoked other than by a subsequent resolution of the same kind.
- (2) However, a unanimous resolution of an association dealing with association property may be amended by a special resolution.

20 Notice to be given of right to cast vote at meeting of association

(1) Person with right to vote at meetings must notify association

A person who has an interest in a development lot or neighbourhood lot that, subject to this Act, gives the person the right to vote either personally or by nominee at meetings of an association must give the association written notice of that interest (an *association interest notice*).

(2) Contents of association interest notice

The association interest notice must specify the following information and, if the interest is a mortgage, include confirmation by the mortgagor or be verified by statutory declaration of the mortgagee—

- (a) the person's full name and an address for service of notices,
- (b) the lot concerned and the exact nature of the person's interest,
- (c) the date on which the person acquired the interest,
- (d) in the case of a corporation, specify the full name and an address for service of notices of the nominee of the corporation who is to exercise the voting entitlement.

(3) Other matters to be specified in notice

The association interest notice must specify the manner in which the interest arose and be verified by statutory declaration if any of the following applies to the interest—

- (a) the interest is that of the executor or administrator of the estate of a deceased person,
- (b) the interest is that of the liquidator or receiver in bankruptcy of any person,
- (c) the interest has arisen by the operation of law or the order of any court,
- (d) the interest has arisen in any other manner otherwise than by transfer of the interest from some other person or the discharge of a mortgage.

(4) Association may require notice to be given

The secretary of an association may, if of the opinion that a person has failed to give notice as required under this section, by a written notice given to the person require the person—

- (a) to state, within 14 days, whether or not the person is a person required to give notice under this section, and
- (b) if the person is so required, to give that notice.

(5) Person prevented from voting if certain requirements not met

A person is not entitled to vote at a meeting of an association if the person has not complied with a notice given to the person under subsection (4) or, in the case of a vote to be tendered through a nominee, if the nominee's full name and address for service of notices have not been notified under this section.

(6) Changes in certain information to be notified

A person who has given notice under this section may by further notice advise a change of nominee or of the person's or nominee's address for service.

21 Meeting procedures and voting

Other procedures for general meetings of associations and voting at those meetings are set out in Schedule 1.

22 Order invalidating resolution of association

- (1) The Tribunal may, on application by a person entitled to vote on a motion at a meeting of an association or the first mortgagee or covenant chargee of a lot of which the owner is so entitled to vote, make an order invalidating a resolution of, or election held by, the persons present at a meeting of the association if the Tribunal considers that the provisions of this Act or the regulations have not been complied with in relation to the meeting.
- (2) The Tribunal may refuse to make an order under this section only if it considers—
 - (a) that the failure to comply with the provisions of this Act or the regulations did not adversely affect any person, and
 - (b) that compliance with the provisions would not have resulted in a failure to pass the resolution or affected the result of the election.

23 Order where voting rights denied or due notice of item of business not given

- (1) The Tribunal may, on application by a person entitled to vote on a motion for a resolution of an association at a general meeting, order that a resolution passed at the general meeting be treated as a nullity on and from the date of the order.
- (2) The Tribunal must not make the order unless the Tribunal is satisfied that the resolution would not have been passed but for the fact that the applicant for the order—
 - (a) was improperly denied a vote on the motion for the resolution, or
 - (b) was not given due notice of the item of business in relation to which the resolution was passed.
- (3) An application for an order may not be made unless—
 - (a) an application for mediation of the dispute was made not later than 28 days after the date of the meeting at which the resolution was passed, or
 - (b) if an application for mediation was not made, the application for the order was made not later than 28 days after the date of the meeting at which the resolution was passed.
- (4) If a resolution that is to be treated as a nullity by an order changes the by-laws and the order has been recorded in the Register under this Act, the by-laws have force and effect on and from the date the order is so recorded to the same extent as they would have had if the change had not been made.
- (5) Subsection (4) is subject to the by-laws having been or being changed in accordance with this Act and to any relevant order made by a superior court.

24 References to “first annual general meeting”

For the purposes of this Act, the *first annual general meeting* of an association is—

- (a) the meeting held under section 12, or
- (b) if the meeting is not held—the meeting held in accordance with an order under section 18, or
- (c) if the meeting is not held and an application for an order is not made—the first meeting of the association, however convened and whenever held, that has the agenda specified in section 13.

Division 3 Limitation on functions during initial period

25 Restriction on powers of associations during initial period

An association for a scheme must not, during the initial period for the scheme, do any of the following things unless the association is authorised to do so by an order of the Tribunal under this Division—

- (a) incur a debt of an amount in excess of the amount then available for repayment of the debt from the administrative fund or capital works fund,
- (b) borrow money or give security for the repayment of money,
- (c) make, amend or repeal an association property rights by-law,
- (d) add land to the scheme, whether as association property or as a development lot or neighbourhood lot, except in accordance with the development contract (if any) for the scheme.

26 Restriction on powers of neighbourhood associations

A neighbourhood association must not, during the initial period for the neighbourhood scheme, do any of the following things unless the neighbourhood association is authorised to do so by an order of the Tribunal under this Division—

- (a) grant a lease of neighbourhood property,
- (b) create an easement burdening land within the neighbourhood scheme or a restriction on the use of land within the scheme,
- (c) release an easement, or a restriction on the use of land, that benefits neighbourhood property,
- (d) dedicate association property,
- (e) transfer neighbourhood property except by way of sale to a resuming authority under Part 10, Division 6 of the *Community Land Development Act 2021*,
- (f) erect a structure on neighbourhood property,
- (g) subdivide or create neighbourhood property.

27 Restriction on powers of developers

A developer must not, during the initial period for a scheme, do any of the following things unless the developer is authorised to do so by an order of the Tribunal under this Division—

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

28 Order to authorise certain acts during initial period

- (1) The Tribunal may, on application, make an order—
 - (a) waiving, varying or extinguishing a restriction relating to the initial period for a scheme (whether or not imposed under this Act or the *Community Land Development Act 2021*), and
 - (b) authorising matters to be done in relation to the waiving, varying or extinguishing of the restriction.
- (2) The application may be made by the association or developer to which the restriction applies.
- (3) Written notice of an application must be given to—
 - (a) the association and each owner of a community development lot, precinct development lot or neighbourhood lot or proposed community development

- lot, precinct development lot or neighbourhood lot in the case of a community scheme, precinct scheme or neighbourhood scheme or proposed scheme to which the application relates, unless the association or the owner is the applicant, and
- (b) each registered mortgagee of a lot in the scheme and any mortgagee specified on the association roll for the lot and any covenant chargee having the benefit of a covenant charge affecting a lot, and
 - (c) any other persons that the Tribunal directs.
- (4) The Tribunal may order that notice of an application be dispensed with if the Tribunal considers it appropriate in the circumstances of the case.
 - (5) A person to whom notice is given is entitled to appear and be heard on the hearing of the application.
 - (6) Notice of an application is not required to be given to a mortgagee specified on the association roll for a lot if the rights of the person as a mortgagee—
 - (a) are suspended for the time being because of a sub-mortgage, particulars of which are specified on the association roll, or
 - (b) have been terminated because of an instrument, particulars of which are specified on the association roll.

29 Remedies for breach of restrictions

- (1) An association for a scheme may recover from the original owner under the scheme—
 - (a) as a debt—any liability incurred by the association because of a breach of this Division, or
 - (b) as damages for breach of statutory duty—any loss suffered by the association as a result of a breach of this Division.
- (2) A member of an association for a scheme other than the original owner under the scheme may recover from the original owner as damages for breach of statutory duty any loss suffered by the member because of a breach of this Division.
- (3) It is a defence to an action under this section for debt or damages if it is proved that the original owner—
 - (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) used due diligence to try to prevent the breach.
- (4) A remedy available under this section does not affect any other remedy.

Part 3 Association committees

Division 1 Constitution of committees

30 Association to appoint committee

- (1) An association must ensure that a committee of the association is constituted in accordance with this Act.
- (2) The association committee may take office before the first general meeting of the association.
- (3) If there is no committee of an association, the scheme must be administered by the association, but nothing in this subsection prevents a managing agent appointed under this Act from exercising any functions conferred on the agent.

31 Committee for association with 3 members or fewer

- (1) The association committee for an association with 3 members or fewer consists of the following—
 - (a) the nominee of each member that is a subsidiary body or other corporation,
 - (b) each other member or the nominee of the member.
- (2) A member cannot have more than 1 nominee and a nominee must not be a corporation.
- (3) The nominee of a subsidiary body must be a person who would be eligible under this Division to be an elected member of the association committee if the association had more than 3 members.
- (4) The association committee takes office at the first annual general meeting of the association or on an earlier day, if the members of the committee so decide.
- (5) The association committee ceases to hold office if a new committee is elected under this Division following an increase in membership of the association to more than 3 members.

32 Committee for association with more than 3 members

- (1) The association committee of an association with more than 3 members is to consist of the number of persons determined by the corporation, but the number of members must—
 - (a) not be more than the number of members of the association, and
 - (b) not exceed 9.
- (2) The members of an association committee for an association with more than 3 members must be elected at the first annual general meeting of the association or at an earlier special general meeting called for the purpose.
- (3) If the number of members of an association increases to more than 3 after the first annual general meeting of the association, the members of the association committee of the association must be elected at a special general meeting called for the purpose.
- (4) The elected members of an association committee must be elected at each annual general meeting of the association.
- (5) This Act, other than the agenda requirements, applies to a special general meeting held under this section as if the meeting were the first annual general meeting of the association.

33 Persons who are eligible to be members of community committee or precinct committee

- (1) The following persons are eligible for nomination, appointment or election to a community committee or a precinct committee—
 - (a) a member of the association (other than a subsidiary body or other corporation) who is the sole owner of a development lot in the scheme,
 - (b) a company nominee of a member of the community association or precinct association that is a corporation but is not a subsidiary body,
 - (c) the only nominee of a member of the community association or precinct association who is eligible to be, but is not, a candidate,
 - (d) a member of a subsidiary body, or a member of the committee of a subsidiary body, who is nominated by a resolution of the subsidiary body and is the only person nominated by it,
 - (e) an individual who is the co-owner of a development lot in the scheme or a company nominee of a corporation that is a co-owner of a development lot in the scheme, if the person is nominated for election by an owner who is not a co-owner of the lot or by a co-owner of the lot who is not a candidate for election as a member,
 - (f) an individual who is not an owner of a development lot in the scheme, if the person is nominated for election by an owner of a development lot who is not a member, or is not seeking election as a member, of the committee.
- (2) To avoid doubt, an individual who is a member of the community association or precinct association who is not a co-owner of a development lot in the scheme may nominate himself or herself for election as a member of the community committee or precinct committee.
- (3) Only 1 co-owner of the same development lot may be a member of a community committee or precinct committee at the same time.

34 Persons who are eligible to be members of neighbourhood committee

- (1) The following persons are eligible for nomination, appointment or election to a neighbourhood committee—
 - (a) a member of the association (other than a corporation) who is the sole owner of a development lot in the scheme,
 - (b) a company nominee of a member of the neighbourhood association that is a corporation,
 - (c) the only nominee of a member of the neighbourhood association who is eligible to be, but is not, a candidate,
 - (d) an individual who is the co-owner of a neighbourhood lot in the scheme or a company nominee of a corporation that is a co-owner of a neighbourhood lot in the scheme, if the person is nominated for election by an owner who is not a co-owner of the lot or by a co-owner of the lot who is not a candidate for election as a member,
 - (e) an individual who is not an owner of a neighbourhood lot, if the person is nominated for election by an owner of a neighbourhood lot who is not a member, or is not seeking election as a member, of the committee.
- (2) To avoid doubt, an individual who is a member of the neighbourhood association who is not a co-owner of a neighbourhood lot may nominate himself or herself for election as a member of the neighbourhood committee.

- (3) Only 1 co-owner of the same neighbourhood lot may be a member of a neighbourhood committee at the same time.

35 Persons who are not eligible to be elected to association committee

- (1) The following persons are not eligible for appointment, nomination or election as members of an association committee—
 - (a) the managing agent for the association or for a subsidiary body of the association,
 - (b) the facilities manager for the association or for a subsidiary body of the association,
 - (c) a person who acts as an agent for the leasing of lots in the association scheme or a subsidiary scheme,
 - (d) a person who is connected with the original owner, unless the person discloses that connection at the meeting at which the election is held and before the election is held or before the person is appointed or nominated as a member,
 - (e) other persons prescribed by the regulations for the purposes of this section.
- (2) An owner of a lot in a scheme who was an unfinancial owner at the date notice was given of the meeting at which the election of the association committee is to be held and who did not pay the amounts owing by the owner before the meeting is not eligible for appointment or election to the association committee.
- (3) A person who becomes ineligible to be a member after becoming a member of an association committee must disclose that fact to the secretary or chairperson of the association as soon as possible after becoming aware of that fact.
- (4) The disclosure is to be made by written notice given to the secretary or chairperson of the association, unless it is made at a meeting of the association or association committee.

36 Tenant representatives on neighbourhood committees

- (1) This section applies to a neighbourhood scheme if there are tenants (being tenants notified in tenancy notices given in accordance with this Act) for at least half of the neighbourhood lots.
- (2) The tenants of the neighbourhood lots (being tenants notified in tenancy notices given in accordance with this Act) may nominate a tenant representative for the neighbourhood committee.
- (3) The tenant representative on a neighbourhood committee is, in that capacity—
 - (a) not entitled to vote on decisions of the committee or to put a motion or nominate a person for office, and
 - (b) not entitled to act as an officer of the association for committee purposes, and
 - (c) cannot be counted in determining whether there is a quorum of the committee.
- (4) The neighbourhood committee, at any meeting or for the purpose of all meetings, may determine that a tenant representative is not entitled to be present when the following matters are being discussed or determined—
 - (a) financial statements and auditor's reports,
 - (b) levying of contributions,
 - (c) recovery of unpaid contributions,
 - (d) any other financial matter specified by the regulations.

- (5) The regulations may provide for the procedures for nomination of a tenant representative, including the term for which a tenant representative is appointed and the notification of an appointment.

37 Acting members of association committee

- (1) A member of an association committee may, with the consent of the committee, appoint a person who is eligible for election to the committee to act in the member's place at a meeting of the committee.
- (2) The person is, while so acting, taken to be a member.
- (3) A person may be appointed whether or not he or she is already a member of the committee.
- (4) A person who is appointed and who is already a member may, at any meeting of the committee, separately vote in the person's capacity as a member and on behalf of the member in whose place the person has been appointed to act.

38 Vacation of office of elected member of community committee or precinct committee

- (1) An elected member of a community committee or precinct committee vacates office as a member—
 - (a) if the person ceases to be a member of the association or was nominated by a person who ceases to be a member of the association, or
 - (b) if the person was eligible to be a member at the time of appointment or election and the person ceases to be so eligible, or
 - (c) if the person was nominated by a member of the association or was a company nominee and the individual who nominated the person for election or the corporation for which the person is a company nominee gives written notice to the association that the person's office is vacated, or
 - (d) if the person was nominated by a subsidiary body on the basis of being a member of the subsidiary body or of its committee or its council and ceases to be a member, or
 - (e) if the person was nominated by a subsidiary body and the body gives written notice to the association that the person's office is vacated after being authorised to do so by a resolution of the subsidiary body, or
 - (f) on receipt by the association from the person of notice in writing of the person's resignation as a member, or
 - (g) at the end of the next meeting at which a new association committee is elected by the association, or
 - (h) if the association, in accordance with a special resolution, determines that the person's office as a member is vacated.
- (2) A community committee or precinct committee may appoint a person eligible for election as a member to fill a vacancy in the office of a member of the committee, other than a vacancy arising under subsection (1)(g) or a vacancy in the office of an officer of the association.

Note. Section 49(2) provides for the filling of vacancies in the office of members who are officers of the association.
- (3) A person so appointed holds office, subject to this section, for the balance of the predecessor's term of office.
- (4) A special resolution that determines that the office of a member is vacated may relate to more than 1 member of a community committee or precinct committee or to all members of a committee.

39 Vacation of office of elected member of neighbourhood committee

- (1) An elected member of a neighbourhood committee vacates office as a member—
 - (a) if the person ceases to be a member of the association or was nominated by a person who ceases to be a member of the association, or
 - (b) if the person was eligible to be a member at the time of appointment or election and the person ceases to be so eligible, or
 - (c) if the person was nominated by a member of the association or was a company nominee and the individual who nominated the person for election or the corporation for which the person is a company nominee gives written notice to the association that the person's office is vacated, or
 - (d) on receipt by the association from the person of notice in writing of the person's resignation as a member, or
 - (e) at the end of the next meeting at which a new committee is elected by the association, or
 - (f) if the association, in accordance with a special resolution, determines that the person's office as a member is vacated.
- (2) A neighbourhood committee may appoint a person eligible for election as a member to fill a vacancy in the office of a member of the committee, other than a vacancy arising under subsection (1)(e) or a vacancy in the office of an officer of the association.

Note. Section 49(2) provides for the filling of vacancies in the office of members who are officers of the association.
- (3) A person so appointed holds office, subject to this section, for the balance of the predecessor's term of office.
- (4) A special resolution that determines that the office of a member is vacated may relate to more than 1 member of a neighbourhood committee or to all members of a neighbourhood committee.

Division 2 Functions of association committees

40 Functions of association committee

- (1) An association committee has the functions conferred on it by or under this or any other Act.
- (2) A decision of an association committee is taken to be the decision of the association.
- (3) However, in the event of a disagreement between the association and the committee, the decision of the association prevails.
- (4) The following decisions cannot be made by an association committee—
 - (a) a decision that is required by or under an Act to be made by the association by unanimous resolution or special resolution or in general meeting,
 - (b) a decision on a matter or type of matter that the association has determined in general meeting is to be decided only by the association in general meeting.
- (5) An association may in general meeting continue to exercise all or any of the functions conferred on it by this Act or the by-laws even though an association committee holds office.

41 Duty of members of association committee

It is the duty of each member of an association committee of an association to carry out the member's functions for the benefit, so far as practicable, of the association and with due care and diligence.

Note. Section 222 provides protection from personal liability for members of association committees who act in good faith.

42 Acts and proceedings of association committee valid despite vacancies or defects

- (1) This section applies if, when an act or proceeding of an association committee was done, taken or commenced there was—
 - (a) a vacancy in the office of an officer of the association or another member of the committee, or
 - (b) a defect in the appointment, or a disqualification, of an officer or member of the committee.
- (2) An act or proceeding of an association committee done in good faith is as valid as if the vacancy, defect or disqualification did not exist and the committee were fully and properly constituted.

Division 3 Meetings of association committee

43 Meetings must be convened on certain requests

- (1) The secretary of the association, or another member of the association committee, must convene a meeting of the committee if requested to do so by at least one-third of the members of the committee.
- (2) The meeting must be held within the period, if any, specified in the request, subject to the requirements for notice of meetings.
- (3) If meetings of 2 different association committees are held at the same time in 1 meeting, both meetings are invalid.

44 Meeting procedures and voting

Other procedures for meetings of an association committee and voting at those meetings are set out in Schedule 2.

Division 4 Office holders

45 Association committee to appoint officers

- (1) The members of an association committee must, at the first meeting of the committee after they assume office as members, appoint a chairperson, secretary and treasurer of the committee in accordance with this Act.
- (2) The chairperson, secretary and treasurer of the committee are also, respectively, the chairperson, secretary and treasurer of the association.
- (3) A person may be appointed to 1 or more of the offices of chairperson, secretary and treasurer.
- (4) Nomination for election as an officer of the committee may be made before or at the meeting at which the election is held.
- (5) The regulations may provide for the procedures for nomination of officers of the committee.

46 Functions of chairperson of association

The functions of the chairperson of an association include the following—

- (a) to preside at meetings of the association and the association committee,
- (b) to make determinations as to quorums and procedural matters at meetings of the association and the association committee.

47 Functions of secretary of association

The functions of a secretary of an association include the following—

- (a) to prepare and distribute minutes of meetings of the association and submit a motion for confirmation of the minutes of a meeting of the association at the next meeting,
- (b) to give on behalf of the association and the association committee of the association notices required to be given under this Act,
- (c) to maintain the association roll,
- (d) to enable the inspection of documents on behalf of the association in accordance with this Act,
- (e) to answer communications addressed to the association,
- (f) to convene meetings of the association committee and (apart from its first annual general meeting) of the association,
- (g) to attend to matters of an administrative or secretarial nature in connection with the exercise of functions by the association or the association committee,
- (h) any other functions conferred on the secretary under any other Act or law.

48 Functions of treasurer of association

(1) General functions

The functions of a treasurer of an association include the following—

- (a) to notify members of contributions levied in accordance with this Act,
- (b) to receive, acknowledge, bank and account for money paid to the association,
- (c) to prepare association information certificates,
- (d) to keep the accounting records and prepare the financial statements.

(2) Delegation by treasurer of functions

The treasurer of an association may delegate the exercise of any of the treasurer's functions (other than this power of delegation) to another member of the association committee of the association if—

- (a) the delegation is specifically approved by the committee, and
- (b) the committee specifically approves of the function being delegated to that member, and
- (c) the delegation is subject to the limitations as to time or otherwise that the committee requires.

- (3) While a delegate is acting in accordance with the terms of a delegation, the delegate is taken to be the treasurer of the association.

(4) Association committee may require treasurer to exercise functions jointly

The association committee of an association may, by a written notice given to the treasurer of the association, order the treasurer not to exercise any of the treasurer's functions that are specified in the notice unless the treasurer does so jointly with another person so specified.

49 Vacation of office by officer

- (1) An officer of an association vacates office as an officer—
 - (a) if the person ceases to be a member of the association committee, or
 - (b) on the receipt by the association from the person of written notice of the person's resignation as an officer, or
 - (c) if another person is appointed by the association committee to hold that office.
- (2) An association committee is to appoint a person who is a member of the committee, or who is eligible to be a member of the committee, to fill a vacancy in the office of an officer of an association, other than a vacancy referred to in section 38(1)(g) or 39(1)(e).
- (3) A person so appointed holds office, subject to this section, for the balance of the predecessor's term of office.

50 Payment of officers of association

An association may pay to a person who is an officer of the association or another member of the association committee of the association an amount determined by the association 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.

51 Original owner to exercise officers' functions before appointment of officers

The functions of the chairperson, secretary and treasurer of an association are to be exercised by the original owner, or an agent of the original owner authorised in writing, until the offices are filled or until the end of the first annual general meeting of the association, whichever first occurs.

52 Tribunal may order meeting if no officers or association committee

- (1) The Tribunal may, on application by a member or an owner, mortgagee or covenant chargee of a development lot in an association scheme, make an order appointing a person to convene and hold a meeting of the association if there is not a chairperson, secretary and treasurer of the association, or if no association committee exists, after the first annual general meeting of the association has been held.
- (2) The Tribunal may make other ancillary orders it thinks fit, including the following orders—
 - (a) orders relating to giving notice of the meeting,
 - (b) orders relating to the person who is to preside at the meeting.
- (3) The person who is to convene and hold the meeting is to be a person nominated by the applicant, or appointed by the Tribunal, who has consented to the nomination or appointment.
- (4) The meeting is to be convened and held within the time (if any) specified in the order.
- (5) A person appointed by an order under this section to preside at a meeting is taken, while so presiding, to be the chairperson of the association.

Part 4 Managing agents and facilities managers

Division 1 Appointment of managing agent

53 Appointment of managing agents

- (1) An association may appoint a person who is the holder of a strata managing agent's licence under the *Property and Stock Agents Act 2002* to be the managing agent of the scheme.
- (2) The appointment is to be made by instrument in writing authorised by a resolution at a general meeting of the association.
- (3) A reference in this section to a strata managing agent's licence under the *Property and Stock Agents Act 2002* includes a reference to a corporation licence under that Act that authorises the holder to act as, or carry on the business of, a managing agent.
- (4) An owner who is seeking appointment as a managing agent is not entitled to vote or cast a proxy vote on the appointment at a meeting of the association.

54 Term of appointment of managing agents

- (1) The term of appointment (including any additional term under an option to renew) of a managing agent for a scheme expires (if the term of the appointment does not end earlier or is not ended earlier for any other reason)—
 - (a) if the managing agent is appointed by the association at the first annual general meeting—at the end of the period of 12 months following that appointment, or
 - (b) in any other case—at the end of the period of 3 years following the appointment.
- (2) A person may be reappointed by the association by resolution at a general meeting as the managing agent for a scheme at the end of the person's term of appointment.
- (3) The appointment of a managing agent may be terminated in accordance with the instrument of appointment if authorised by a resolution at a general meeting of the association.
- (4) The term of appointment of a managing agent may be extended by the association committee for successive periods of up to 3 months after it would otherwise expire (but not for any period that would extend beyond the date of the next annual general meeting of the association) pending a decision as to the reappointment of the managing agent.
- (5) However, if an association committee has extended a term of appointment of a managing agent under this section, the association committee must give the managing agent at least 1 month's notice of a decision not to reappoint the managing agent or not to further extend the appointment.
- (6) A managing agent must give the association written notice of the end of a term of appointment—
 - (a) at least 3 months before the end of the term of appointment, and
 - (b) at least 1 month before the end of each extension of a term permitted by this section.
- (7) An instrument of appointment of a managing agent for a period of 3 years (as referred to in subsection (1)(b)) is taken to include an option for the agent to extend the term of the appointment for a maximum period of 3 months after the end of the term of 3 years, if the association decides not to reappoint the agent and does not extend the term of appointment under subsection (4).

- (8) The managing agent must give the association written notice of the exercise of the option.
- (9) A managing agent is not entitled to exercise an option under subsection (7) if the association gives the agent written notice that the agent will not be reappointed at least 3 months before the end of the term.
- (10) In this section, a reference to the *appointment* of a managing agent includes a reference to the reappointment of a managing agent.

55 Transfer of functions of managing agent

- (1) A managing agent of an association may transfer the managing agent's functions, but only if the transfer is authorised by a resolution at a general meeting of the association for the scheme.
- (2) A person to whom the functions are transferred is taken to be appointed under this Division as a managing agent for the scheme.
- (3) The term of appointment as a managing agent of the person to whom the functions are transferred ends on the same day as the term of the person by whom the functions were transferred would have ended if the transfer had not taken place.

Division 2 Functions of managing agent

56 Association may delegate functions to managing agent

- (1) An association may, by the instrument appointing a managing agent or some other instrument, delegate to the managing agent—
 - (a) all of its functions, or
 - (b) any 1 or more of its functions specified in the instrument, or
 - (c) all of its functions except those specified in the instrument.
- (2) An association must not delegate to a managing agent its power to make—
 - (a) a delegation under this section, or
 - (b) a decision on a matter that is required to be decided by the association, or
 - (c) a determination relating to the levying or payment of contributions.
- (3) A delegation may be made subject to the conditions or limitations as to the exercise of all or any of the functions, or as to time or circumstances, that may be specified in the instrument of delegation.
- (4) An association may delegate the functions only if authorised to do so by a resolution at a general meeting.
- (5) An association may, if authorised to do so by a resolution at a general meeting, revoke or vary a delegation under this section.

57 Exercise of delegated functions by managing agent

- (1) A function delegated under this Division may, while the delegation remains unrevoked, be exercised from time to time in accordance with the delegation.
- (2) Despite a delegation made under this Division, the association may continue to exercise all or any of the functions delegated.
- (3) An act or thing done or suffered by a managing agent while acting in the exercise of a delegation under this Division—
 - (a) has the same effect as if it had been done or suffered by the association, and
 - (b) is taken to have been done or suffered by the association.

- (4) This section is subject to section 60.

58 Functions of officers and association committee may be given to managing agent

- (1) The instrument of appointment of a managing agent may provide that the managing agent has and may exercise all the functions of the chairperson, secretary, treasurer or association committee of an association or the functions of those officers or the committee that are specified in the instrument.
- (2) However, the chairperson, secretary, treasurer and committee of an association may continue to exercise all or any of the functions that the managing agent is authorised to exercise.
- (3) An act or thing done or suffered by a managing agent in the exercise of a function of the chairperson, secretary, treasurer or committee conferred on the managing agent in accordance with this section—
- (a) has the same effect as if it had been done or suffered by the chairperson, secretary, treasurer or committee, and
 - (b) is taken to have been done or suffered by the chairperson, secretary, treasurer or committee.
- (4) This section is subject to section 60.

59 Managing agent to record exercise of functions

- (1) A managing agent who exercises a function of the association or of an officer of the association must, immediately after its exercise, make a record specifying the function and the manner in which it was exercised.
- (2) The managing agent must give a copy of the records kept for the preceding 12 months to the association at least once each year.

60 Exercise of functions of managing agent appointed by Tribunal

If a managing agent is appointed by the Tribunal, or by an association or strata corporation on an order of the Tribunal, to exercise a function—

- (a) the function cannot, while the managing agent holds office, be exercised by another 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 it had been done or suffered by the person who, but for paragraph (a), could have exercised it.

Note. The Tribunal may make an order appointing a managing agent under section 196.

61 Breaches by managing agent

- (1) If a managing agent has been delegated a duty by an association and a breach of the duty by the association would constitute an offence under a provision of this Act, the agent is guilty of an offence under that provision (instead of the association) for a breach of the duty by the agent occurring while the delegation remains in force.
- (2) A managing agent must not, in connection with the provision of services as a managing agent or the exercise of functions as a managing agent, request or accept a gift or other benefit from another person for himself or herself or for another person. Maximum penalty—20 penalty units.
- (3) Subsection (2) does not apply to—
- (a) remuneration paid to a managing agent or an employee or contractor of a managing agent by an association, or

- (b) a monetary commission paid to a managing agent, if the payment of the commission is in accordance with the terms of appointment of the managing agent by the association or has been otherwise approved by the association, or
 - (c) a gift or other benefit that has a value that is less than the amount prescribed by the regulations for the purposes of this subsection.
- (4) In this section—
gift has the same meaning as in the *Electoral Funding Act 2018*.

Division 3 Accountability of managing agent

62 Managing agent may be required to provide information about trust account and other accounts

- (1) An association may require a managing agent to provide the following information relating to the trust account that the agent is required to operate under the *Property and Stock Agents Act 2002*—
- (a) the name and number of the account,
 - (b) the name of the authorised deposit-taking institution in which the account is current,
 - (c) the balance in the account standing to the credit of the association on a specified date,
 - (d) particulars of all cheques drawn on the account on behalf of the association as at that date and not presented and duly paid.
- (2) An association may require a managing agent to provide the following information relating to other accounts on which the agent operates in the exercise of functions of the association—
- (a) the names and numbers of the accounts,
 - (b) the names of the authorised deposit-taking institutions in which the accounts are current,
 - (c) the balance in each of the accounts standing to the credit of the association on a specified date,
 - (d) particulars of all cheques drawn on each of the accounts as at that date and not presented and duly paid.

63 Provision of information about money received and other transactions

- (1) An association may require a managing agent to provide—
- (a) full particulars relating to the payment of money to, or the receipt of money by, the agent on behalf of the association, and
 - (b) if the money is not still held by the agent, the manner and time of disposal of the money.
- (2) An association may require a managing agent to provide full particulars of any specified transaction that has been entered into by the agent on behalf of the association.

64 Disclosure of commissions

- (1) A managing agent for a scheme must report the following at the annual general meeting of the association for the scheme—
- (a) whether commissions have been paid to the agent (other than by the association) in connection with the exercise by the agent of functions for the

scheme during the preceding 12 months and particulars of any such commissions,

- (b) any such commissions and the estimated amount of the commissions that the agent believes are likely to be received by the agent in the following 12 months.

Maximum penalty—20 penalty units.

Note. It is an offence for an agent to receive commissions that are not of a kind permitted by the agent's terms of appointment or approved by the association (see section 61).

- (2) A managing agent must, as soon as practicable after becoming aware that commissions paid to the agent (other than by the association) differ from the commissions or an estimate of commissions disclosed at the annual general meeting, disclose to the association committee the variation and give an explanation for the variation.

Maximum penalty—20 penalty units.

- (3) The Tribunal may, on application by an association, order a managing agent to pay to the association—
 - (a) the whole or part of the amount of commissions paid to the agent and not disclosed in accordance with this section, or
 - (b) the whole or part of the amount of commissions paid to the agent that are not of a kind or an amount disclosed by the agent under this section, if the Tribunal is satisfied that the disclosure of commissions at the previous annual general meeting was not made in good faith.

65 Procedure for requiring information from managing agent

- (1) An association is to require information from a managing agent under this Division by written notice given to the managing agent.
- (2) The notice must specify a member of the association committee to whom the information is to be delivered.

66 Offences

- (1) A managing agent must comply with a notice to provide information under this Division by giving a written statement, in accordance with the notice, within 14 days after the notice is given.
Maximum penalty—20 penalty units.
- (2) A person is not guilty of failing to comply with the notice if reasonable cause for the failure is shown.
- (3) A managing agent must not knowingly provide information that is false or misleading in a material particular in a statement given in response to a notice to provide information under this Division.
Maximum penalty—20 penalty units.

67 Responsibility for providing information if a managing agent ceases to hold a licence or dies

If a managing agent ceases to hold a licence under the *Property and Stock Agents Act 2002* to carry on business as a managing agent or dies—

- (a) this Division (except section 63) applies, as if the person were the managing agent, to any person who is required by that Act to maintain a trust account in connection with the business of the former licensee, and

- (b) this Division (except section 62(1)) applies, as if the person were the managing agent, to any person who is required by that Act to preserve records kept by the former licensee.

68 Exemption for information relating to certain transactions

A managing agent or other person is not required to provide information under this Division in relation to a transaction that took place more than 5 years before notice requiring the information was given.

69 Certain provisions of other Acts requiring agents to provide information not to apply to affairs of association

Section 101 of the *Property and Stock Agents Act 2002* does not apply to or in respect of a transaction if information about the transaction may be required to be provided to an association under this Division.

Note. Section 101 of the *Property and Stock Agents Act 2002* enables a person directly concerned in a transaction with a licensee under that Act to require an itemised account of the transaction from the licensee.

Division 4 Facilities managers

70 Facilities managers

- (1) A *facilities manager* is a person who assists in exercising 1 or more of the following functions of the association—
- (a) managing association property,
 - (b) controlling the use of association property by persons other than the owners and occupiers of lots,
 - (c) maintaining and repairing association property.
- (2) However, a person is not a facilities manager if the person exercises those functions only on a voluntary or casual basis or as a member of the association committee.
- (3) A person may be both a facilities manager and a person who exercises the functions of an on-site residential property manager (within the meaning of the *Property and Stock Agents Act 2002*).
- (4) A facilities manager may be a person who is entitled to exclusive possession (whether or not jointly with another person) of a lot or association property in a scheme.
- (5) For the purposes of this Act, a person is taken to be a facilities manager for a scheme if the person meets the description of a facilities manager set out in this section, regardless of whether the title given to the person's position is facilities manager, caretaker, resident manager or another title.

71 Appointment of facilities managers

- (1) A facilities manager may be appointed for a scheme.
- (2) The appointment is to be made by instrument in writing (a *facilities manager agreement*) executed before or after the scheme commenced by the facilities manager and—
- (a) by the original owner, if executed before the scheme commenced, or
 - (b) under the authority of a resolution passed at a general meeting of the association of the scheme, if executed after the scheme commenced.

72 Term of appointment of facilities managers

- (1) A facilities manager agreement (including an additional term under an option to renew it) expires (if the appointment is not ended for any other reason)—
 - (a) at the conclusion of the first annual general meeting of the association, if the agreement was executed before the meeting, or
 - (b) when 10 years have expired after it commenced to authorise the facilities manager to act under it, in any other case.
- (2) A person may be reappointed as facilities manager for a scheme at the end of the person's facilities manager agreement.
- (3) The appointment of a facilities manager may be terminated in accordance with the facilities manager agreement, if authorised by a resolution at a general meeting of the association.

73 Transfer of functions of facilities manager

- (1) A facilities manager may transfer the facilities manager's functions to another person, but only if the transfer is authorised by a resolution at a general meeting of the association.
- (2) A person to whom those functions are transferred is taken to be appointed as a facilities manager by the facilities manager agreement.
- (3) The term of appointment as a facilities manager of the person to whom the functions are transferred ends on the same day as the term of the person by whom the functions were transferred would have ended if the transfer had not taken place.

74 Functions of facilities manager

- (1) A facilities manager may, in accordance with the facilities manager agreement appointing the facilities manager, assist in exercising 1 or more of the functions of the association of managing and controlling the use of association property (otherwise than by the owners or occupiers of lots) and of maintaining and repairing association property.
- (2) However, the association may continue to exercise all or any of those functions, subject to the facilities manager agreement.
- (3) A person is not a managing agent for the purposes of this or another Act only because the person is a facilities manager acting in accordance with a facilities manager agreement.

Division 5 General

75 Interests must be disclosed by potential managing agents or facilities managers

- (1) A person appointed as the managing agent or facilities manager for a scheme who has an interest that must be disclosed under this section must disclose the interest to the association before the appointment of the person.
Maximum penalty—50 penalty units.
- (2) The following are interests that must be disclosed to the association by a person—
 - (a) that the person is connected with the original owner,
 - (b) any direct or indirect pecuniary interest in the scheme (other than an interest arising only from an existing or prospective appointment as the managing agent or facilities manager for the scheme).

76 Managing agent and facilities manager agreements may be terminated or varied by Tribunal

- (1) The Tribunal may, on application by an association for a scheme, make any of the following orders in respect of an agreement for the appointment of a managing agent or facilities manager for the scheme—
 - (a) an order terminating the agreement,
 - (b) an order requiring the payment of compensation to a party to the agreement,
 - (c) an order varying the term, or varying or declaring void any of the conditions, of the agreement,
 - (d) an order that a party to the agreement take an action or not take an action under the agreement,
 - (e) an order dismissing the application.
- (2) If the Tribunal makes an order terminating the agreement, the Tribunal may also order the managing agent or facilities manager to return to the association, within the period specified in the order, any documents or other records relating to the association scheme that are in the possession of the agent or manager.
- (3) The Tribunal may make an order under this section on any of the following grounds—
 - (a) that the managing agent or facilities manager has refused or failed to perform the agreement or has performed it unsatisfactorily,
 - (b) that charges payable by the association under the agreement are unfair,
 - (c) that the managing agent has contravened section 61(2),
 - (d) that the managing agent has failed to disclose commissions (including estimated commissions or variations and explanations for variations) in accordance with section 64 or has failed to make the disclosures in good faith,
 - (e) that the managing agent or facilities manager has failed to disclose an interest under section 75,
 - (f) that the agreement is, in the circumstances of the case, otherwise harsh, oppressive, unconscionable or unreasonable.

Part 5 Financial management

Division 1 Funds and accounts of associations

77 Administrative fund

(1) **Establishment of fund**

An association must establish an administrative fund.

(2) **Amounts payable to fund**

An association must pay the following amounts into the administrative fund—

- (a) the contributions levied on, and paid by, members for payment into the fund,
- (b) the proceeds of the disposal of any personal property of the association,
- (c) fees paid to the association for inspection of its records and the provision of information and certificates relating to its records,
- (d) monetary penalties payable to the association under this Act,
- (e) the proceeds of investment of the fund.

(3) An association may also pay the following amounts into the administrative fund—

- (a) amounts paid to the association by way of discharge of insurance claims,
- (b) income of the association, other than proceeds of investment of the capital works fund,
- (c) amounts that may be, but are not required to be, paid into the fund under this Act.

(4) **Amounts payable from fund**

An association may pay money from its administrative fund only for the following purposes—

- (a) payments of the kind for which estimates have been made under section 83(1),
- (b) payments made in accordance with this Division on a distribution of a surplus in the fund,
- (c) payments to a member of the association committee in accordance with this Act,
- (d) other payments in connection with exercising its functions under this Act or the by-laws, or the *Community Land Development Act 2021*, except payments that are permitted to be made from the capital works fund,
- (e) monetary penalties payable by the association under this Act,
- (f) the transfer of money to the capital works fund or to pay expenditure that should have been paid from the capital works fund.

78 Capital works fund

(1) **Establishment of fund**

An association must establish a capital works fund.

(2) **Amounts payable to fund**

An association must pay the following amounts into the capital works fund—

- (a) the contributions levied on, and paid by, members for payment into the fund,
- (b) amounts paid to the association by way of discharge of insurance claims, unless paid into the administrative fund,

- (c) an amount received by the association that is not required or permitted to be paid into the administrative fund,
 - (d) the proceeds of investment of the fund.
- (3) An association may also pay the following amounts into the capital works fund—
 - (a) any income of the association,
 - (b) any amount that may be, but is not required to be, paid into the fund under this Act.
- (4) **Amounts payable from fund**

An association may pay money from its capital works fund only for the following purposes—

 - (a) payments of the kind for which estimates have been made under section 83(2),
 - (b) payments made in accordance with this Division on a distribution of a surplus in the fund,
 - (c) the transfer of money to the administrative fund or to pay expenditure that should have been paid from the administrative fund.

79 Investment of money in administrative fund or capital works fund

- (1) An association may invest money in its administrative fund or capital works fund in a manner permitted by law for the investment of trust funds or in an investment prescribed by the regulations.
- (2) Interest received on an investment made under this section forms part of the fund to which the investment belongs.

80 Use of administrative fund or capital works fund for purposes of other fund

- (1) This section applies if an association—
 - (a) transfers money from the administrative fund to the capital works fund or uses the administrative fund to meet expenditure that should have been met from the capital works fund, or
 - (b) transfers money from the capital works fund to the administrative fund or uses the capital works fund to reimburse expenditure that should have been met from the administrative fund.
- (2) The association must, not later than 3 months after the transfer or expenditure, determine the amount to be levied as a contribution to the fund from which the transfer was made to reimburse the amounts paid from the fund.
- (3) Section 84(3) and (5) apply to a contribution determined under subsection (2).

81 Distribution of surplus money in administrative fund or capital works fund

- (1) An association may, in accordance with a unanimous resolution, distribute between its members money in its administrative fund or capital works 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 or precinct association must be made in the same proportion that the following unit entitlements for the community scheme or precinct scheme bear to the total unit entitlement for the scheme—
 - (a) the unit entitlement for the development lot, if the member is the owner of the development lot,
 - (b) the unit entitlement for the applicable former development lot, if the member is a subsidiary body of the association.

- (3) A distribution to a member of a neighbourhood association or strata scheme who is the owner of a lot in the scheme must be made in the same proportion that the unit entitlement of the lot bears to the total unit entitlement of the neighbourhood scheme or strata scheme.
- (4) Money distributed under this section in relation to a lot that is subject to a mortgage or covenant charge shown on the association roll is to be paid—
 - (a) in accordance with the joint directions of the owner of the lot and the mortgagee or covenant chargee, or
 - (b) if they cannot agree—in accordance with an order under this section.
- (5) The Tribunal may, on application by an association, an owner of a lot that is subject to a mortgage or covenant charge, or the mortgagee or covenant chargee concerned, make an order as to the payment of money under subsection (4).
- (6) An application under this section is to be made to, and determined by, the Supreme Court (and not the Tribunal) if—
 - (a) the title to land is in question otherwise than incidentally, or
 - (b) the matter is incidental to other proceedings being dealt with by the Court.

82 Accounts of association

- (1) An association must pay amounts that are received by it and are not otherwise invested in accordance with this Act into an account established in an authorised deposit-taking institution in the name of the association.
- (2) This section does not apply to an association that has appointed a managing agent to whom the duty of the association under this section is delegated in accordance with this Act.

Division 2 Contributions by members

83 Estimates to be prepared of contributions to administrative and capital works funds

- (1) An association must, not later than 1 month after the constitution of the association and at each annual general meeting after that, estimate how much money it will need to credit to its administrative fund for actual and expected expenditure—
 - (a) to maintain in good condition on a day-to-day basis the association property and any personal property vested in the association, and
 - (b) to provide for 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, not later than 1 month after the constitution of the association and at each annual general meeting after that, estimate how much money it will need to credit to its capital works fund for actual and expected expenditure—
 - (a) for painting or repainting any part of the association property that is a building or other structure, and
 - (b) to acquire personal property, and
 - (c) to renew or replace personal property, and
 - (d) to renew or replace fixtures and fittings that are part of the association property, and
 - (e) to replace or repair the common property, and

- (f) to meet other expenses of a capital nature.
- (3) When estimating amounts needed to be credited to the administrative fund or the capital works fund, the association must have before it, and take into account, a statement of the existing financial situation of the scheme and an estimate of receipts and payments.
- (4) An estimate prepared before the first annual general meeting of an association is to take into account the initial maintenance schedule provided by the original owner for that meeting.

84 Association to set contributions to administrative and capital works funds

- (1) The association must determine the amounts to be levied as a contribution to the administrative fund and the capital works fund to raise the amounts estimated as needing to be credited to those funds.
- (2) The determination must be made at the same meeting at which those estimated amounts are determined.
- (3) The association must levy on each member the contribution determined.
- (4) If the association is subsequently faced with other expenses it cannot at once meet from either fund, it must levy on each member a contribution to the administrative fund or capital works fund, determined at a meeting of the association, in order to meet the expenses.
- (5) A contribution is, if an association so determines, payable by the regular periodic instalments specified in the determination setting the amount of the contribution.

85 Contributions payable by members of community and precinct associations

The contribution to be paid to a community association or precinct association by each of its members is the amount that is in the same proportion to the total amount of contributions that the following unit entitlements for the community scheme or precinct scheme bear to the total unit entitlement for the scheme—

- (a) the unit entitlement for the development lot, if the member is the owner of the development lot,
- (b) the unit entitlement for the applicable former development lot, if the member is a subsidiary body of the association.

86 Contributions payable by members of neighbourhood schemes

The contribution to be paid to a neighbourhood association by the owner of a neighbourhood lot is the amount that is in the same proportion to the total amount of contributions that the unit entitlement of the lot bears to the total unit entitlement of the neighbourhood scheme.

87 Individual contributions may be larger if greater insurance costs

- (1) If the use to which a development lot, a former development lot or a neighbourhood lot is put by a member of the association causes an insurance premium for the scheme to be greater than it would be if it were not put to that use, so much of a contribution payable by the member as is attributable to insurance premiums may, with the consent of the member, be increased to reflect the extra amount of the premium.
- (2) The Tribunal may, on application, make an order for payment of contributions of a different amount to one or more contributions levied or proposed by an association on a member if the Tribunal is of the opinion that the owner's consent has been unreasonably refused under this section.

88 Levying of contributions

- (1) An association levies a contribution required to be paid to the administrative fund or capital works fund by a member by giving the member written notice of the contribution payable.
- (2) A contribution levied by an association becomes due and payable to the association on the date set out in the notice of the contribution.
- (3) The date must be at least 30 days after the notice is given.
- (4) A notice by a precinct association levying a contribution payable by a subsidiary body must include the following information—
 - (a) the amounts of any regular periodic contributions required to be made by the precinct association to the administrative fund, and the capital works fund, of the community association of which the precinct association is a member,
 - (b) the dates on which those contributions are required to be paid,
 - (c) the amount of any contributions of that kind that are unpaid when the notice is given.
- (5) Regular periodic contributions to the administrative fund and capital works fund of an association are taken to have been duly levied on a member even though notice levying the contributions was not given to the member.

89 Liability of persons other than members for contributions

- (1) If, at the time a person becomes the owner of a development lot or a neighbourhood lot, another person is liable to pay a contribution in respect of the lot, the owner is jointly and severally liable with the other person for the payment of the contribution and any interest on the contribution.
- (2) If, at the time a development lot becomes subject to a precinct scheme, a neighbourhood scheme or a strata scheme, the owner of the development lot was liable to pay a contribution in respect of the lot, the precinct association, neighbourhood association or strata corporation is jointly and severally liable with the other owner for the payment of the contribution and any interest on the contribution.
- (3) A mortgagee or covenant chargee in possession of a development lot or neighbourhood lot is jointly and severally liable with the owner of the lot—
 - (a) for any regular periodic contributions to the administrative fund or capital works fund together with any interest on those contributions, and
 - (b) for any other contribution together with interest on that contribution, taken to recover unpaid contributions, if the mortgagee or covenant chargee has been given written notice of the levy of the contribution, and
 - (c) for any costs payable as a debtor in respect of enforcement action to recover unpaid contributions.
- (4) Subsection (3) does not affect the liability under this section of an owner of a lot for a contribution.

90 Interest, discounts on contributions and payment plans

- (1) A contribution, if not paid when it becomes due and payable, bears until paid simple interest at an annual rate of 10% or, if the regulations provide for another rate, that other rate.
- (2) Interest is not payable if the contribution is paid not later than 1 month after it becomes due and payable.

- (3) However, an association may, by resolution at a general meeting, determine (either generally or in a particular case) that a contribution is to bear no interest.
- (4) An association may, by resolution at a general meeting, determine (either generally or in a particular case) that a person may pay 10% less of a contribution levied if the person pays the contribution before the date on which it becomes due and payable.
- (5) An association may, by resolution at a general meeting, agree to enter into payment plans, either generally or in particular cases, for the payment of overdue contributions.
- (6) A payment plan is to be limited to a period of 12 months but a further plan may be agreed to by the owners corporation by resolution.
- (7) The regulations may prescribe requirements for payment plans.
- (8) The existence of a payment plan does not limit any right of the association to take action to recover the amount of unpaid contributions.
- (9) The Tribunal or a court may, on application by a member, order that no interest is chargeable on a specified contribution if the Tribunal or the court is satisfied that the association should reasonably have made a determination not to charge interest for the late contribution.

91 Recovery of unpaid contributions and interest

- (1) The Tribunal may order a member of the association, or other person, to pay any of the following that are payable by the member or other person under this Act—
 - (a) a contribution not paid at the end of 1 month after it becomes due and payable,
 - (b) interest payable on an unpaid contribution,
 - (c) the expenses of the association incurred in recovering any such amounts.
- (2) The Tribunal may make an order under subsection (1) only—
 - (a) on the application of the association, and
 - (b) if proceedings between the association and the member or other person are pending before the Tribunal.
- (3) An association may, without obtaining an order under this section, recover as a debt in a court of competent jurisdiction the following—
 - (a) a contribution not paid at the end of 1 month after it becomes due and payable,
 - (b) interest payable on an unpaid contribution,
 - (c) the expenses of the association incurred in recovering those amounts.

Note. Schedule 4, clause 6 to the *Civil and Administrative Tribunal Act 2013* provides for the transfer of proceedings between the Tribunal and a court which has jurisdiction (and vice versa) if the parties to the proceedings agree or if the Tribunal or court of its own motion or on the application of a party so directs.
- (4) Interest paid or recovered forms part of the fund to which the relevant contribution belongs.
- (5) An association must not take action to recover an amount under this section unless it has given the person against whom the action is to be taken at least 21 days notice of the action.
- (6) The notice of the action must set out the following—
 - (a) the amount of the contribution, interest or expenses sought to be recovered,
 - (b) the recovery action proposed,

- (c) any other matter prescribed by the regulations for the purposes of this subsection.

92 Orders varying contributions or payment methods

- (1) The Tribunal may, on application, make either or both of the following orders if the Tribunal considers that an amount levied or proposed to be levied by way of contributions is inadequate or excessive or that the manner of payment of contributions is unreasonable—
 - (a) an order for payment of contributions of a different amount,
 - (b) an order for payment of contributions in a different manner.
- (2) An application for an order may be made by an association, a member of an association or a mortgagee or covenant chargee in possession.

93 Effect of order varying contributions where payments have been made

If a contribution that is the subject of an order by the Tribunal under this Division has been wholly or partly paid—

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

94 Order requiring original owner to pay compensation for inadequate estimates and levies

- (1) The Tribunal may, on application by the association or a member of a scheme, order the original owner to pay compensation to the association if the Tribunal determines that the estimates and levies determined during the initial period for the purposes of determining and meeting expenditures relating to the scheme were inadequate to meet the actual or expected expenditures of the association.
- (2) The Tribunal must not make an order under this section if the original owner satisfies the Tribunal that the original owner used due care and diligence in determining the estimates and levies.
- (3) An application under this section must be made not later than 3 years after the end of the initial period.

95 Contributions for legal costs awarded in proceedings between members and association

- (1) This section applies to proceedings brought by 1 or more members against an association or by an association against 1 or more members, including 1 or more members joined in third party proceedings.
- (2) The court may order in the proceedings that any money (including costs) payable by an association under an order made in the proceedings must be paid from contributions levied only in relation to the members and in the proportions that are specified in the order.
- (3) The association must, for the purpose of paying the money ordered to be paid by it, levy contributions in accordance with the terms of the order and must pay the money out of the contributions paid in accordance with that levy.
- (4) This Division (other than provisions relating to the amount of contributions) applies to and in respect of contributions levied under this section in the same way as it applies to other contributions levied under this Division.

Division 3 Financial statements

96 Association must prepare financial statements and statements of key financial information

- (1) An association must cause financial statements, and a statement of key financial information, to be prepared for each reporting period for the administrative fund, the capital works fund and any other fund kept by the associations.
- (2) The *reporting period* for financial statements or a statement of key financial information prepared under this Division is—
 - (a) the period that commences on the date of the constitution of the association and ends on a date that is not earlier than 2 months before the date of the first annual general meeting, and
 - (b) each period that commences on the date up to which those statements were last prepared under this Division and ends on a date that is not earlier than 2 months before the next succeeding annual general meeting.

97 Requirements for financial statements

- (1) The financial statements are to be prepared on a cash or accrual basis and 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 capital works fund,
 - (c) a statement of income and expenditure for any other fund that is the property of the association.
- (2) The financial statement for an administrative fund or capital works fund must specify the following—
 - (a) the fund, and the reporting period, for which it is prepared,
 - (b) the balance carried forward in the fund from the previous period,
 - (c) the particulars and amount of each item of income of the fund received during the current period,
 - (d) the particulars and amount of each item of expenditure from the fund during the current period,
 - (e) the amount of the contribution to the fund determined for each person liable to make a contribution,
 - (f) the balance outstanding for each contribution,
 - (g) the cash in the fund at the end of the current period,
 - (h) the balance of the fund,
 - (i) in respect of each liability to contribute to the fund—any unpaid arrears and any balance outstanding,
 - (j) the extent to which, at the end of the current period, the fund is in debit or credit.

Note. The financial statements of an association prepared under this section can deal only with income and expenditure from the administrative and capital works funds and any other fund authorised to be established under this Act and are therefore separate from any other financial statements that might be prepared in relation to the scheme (for example, financial statements in relation to the provision of services for a retirement village).

- (3) The financial statements for other funds must specify the following—
 - (a) the fund, and the reporting period, for which it is prepared,
 - (b) the balance carried forward in the fund from the previous period,

- (c) the particulars and amount of each item of income of the fund received during the current period,
- (d) the particulars and amount of each item of expenditure from the fund during the current period,
- (e) the cash in the fund at the end of the current period,
- (f) the balance of the fund,
- (g) the extent to which, at the end of the current period, the fund is in debit or credit.

98 Statement of key financial information

The statement of key financial information for an administrative or capital works fund or other fund must be in the form approved by the Secretary and specify the following matters—

- (a) the fund, and the reporting period, for which it is prepared,
- (b) the balance carried forward in the fund from the previous period,
- (c) the total income of the fund received during the period,
- (d) the total interest earned by the fund during the period,
- (e) the total contributions paid to the fund during the period and the total of all arrears in contributions payable to the fund,
- (f) the total expenditure for maintenance from the fund during the period,
- (g) the total expenditure for administration costs from the fund during the period,
- (h) the balance of the fund and the balance of the fund shown in the statement for the previous period,
- (i) the principal items of expenditure for maintenance proposed during the next year.

99 Auditing of accounts and financial statements

- (1) The association for a scheme for which the annual budget exceeds \$250,000 (or another amount prescribed for the purposes of this section by the regulations), must ensure that the accounts and financial statements of the association are audited before presentation to the annual general meeting.
- (2) The association for a scheme for which the annual budget does not exceed \$250,000 may determine that the accounts and financial statements of the association are to be audited.
- (3) An audit of the accounts and financial statements of an association under this section must be carried out in accordance with the Australian Auditing Standards.
- (4) The regulations may specify the manner in which the annual budget of an association scheme is to be determined for the purposes of this section.
- (5) In this section—
Australian Auditing Standards means the standards issued by the Australian Accounting Standards Board, as in force for the time being, and including any modifications prescribed by the regulations.

Division 4 Accounting records

100 Accounting records must be kept by association

- (1) An association must keep accounting records in accordance with this Division.

Maximum penalty—5 penalty units.

- (2) The accounting records may be made and stored in the form determined by the association.
- (3) Separate accounting records must be kept for the administrative fund and the capital works fund.
- (4) The regulations may prescribe accounting records that are required to be kept by an association.

101 Receipts

- (1) The treasurer of an association must, if requested to do so, issue a receipt for each payment received by the treasurer for the association and must cause a record to be kept of the details of the receipts.
- (2) Each receipt must contain the information prescribed by the regulations for the purposes of this section.

102 Transaction records

- (1) The treasurer of an association must record particulars of money received or money disbursed by the association as soon as practicable after each transaction occurs.
- (2) The treasurer must balance the records of transactions and carry the balance forward at the end of each prescribed period.
- (3) At the end of each prescribed period, the treasurer must compare the entries in the records of transactions with the banking records for the account of the association and enter in the records of transactions—
 - (a) the amounts credited to the account and appearing in the banking records for which no receipt had been given, and
 - (b) the amounts debited to the account and appearing in the banking records for which no cheque had been drawn.
- (4) Any necessary reconciliation (showing the balance in the account of the association as indicated in the banking records, and adding money received but not banked and deducting cheques drawn but not presented for payment) must be entered by the treasurer in the record of transactions at the end of the entries for the relevant prescribed period.
- (5) In this section—
prescribed period means 12 months or, if an annual general meeting of the association determines a shorter period, that shorter period.

103 Levy register

The treasurer of an association must keep a levy register that includes, for each member in the scheme, the following particulars in relation to contributions payable—

- (a) the date on which the contribution is due and payable,
- (b) the type of contribution and the period in respect of which it is to be made,
- (c) the amount of the contribution levied shown as a debit,
- (d) the amount of each payment shown as a credit,
- (e) the date on which each payment relating to the contribution is made,
- (f) whether a payment made was made in cash or in some other specified manner,
- (g) whether an amount paid comprised full payment or part payment,

- (h) details of any discount given for early payment,
- (i) the balance of the account.

Division 5 Financial functions generally

104 Power to borrow money

- (1) An association may borrow money and secure the repayment of money and of any interest in a manner agreed between the association and the lender, otherwise than by charging the repayment on the association property.
- (2) An association must not borrow money, or secure the payment of money and interest, unless a resolution approving the relevant loan has been passed at a general meeting of the association.

105 Persons who can exercise functions relating to the finances and accounts of the association

A person must not exercise the functions of an association or the treasurer of an association relating to the receipt or expenditure of, or accounting for, money of the association or the keeping of the books of account of the association unless the person is—

- (a) the treasurer of the association, or
- (b) a managing agent who is empowered to exercise that function, or
- (c) a person with whom the treasurer of the association is required by an order of the association committee to exercise that function jointly, and who is enabling the treasurer to comply with the order, or
- (d) a member of CPA Australia, or a member of the Institute of Chartered Accountants in Australia, authorised by the association to exercise the function, or
- (e) a member of the Institute of Public Accountants authorised by the association to exercise the function, or
- (f) during the initial period only—a person authorised by the association to exercise the function.

Maximum penalty—5 penalty units.

106 Legal services to be approved by general meeting

- (1) An association or association committee must not obtain legal services for which a payment may be required unless a resolution approving the obtaining of those services is passed at a general meeting of the association.
- (2) An association or association committee may obtain legal services without approval under subsection (1) if—
 - (a) it is of the opinion that urgent action is necessary to protect the interests of the association, and
 - (b) the cost of the legal services does not exceed \$10,000 or another amount prescribed by the regulations for the purposes of this subsection.
- (3) Approval under this section is not required for the following—
 - (a) to obtain legal advice before commencing legal action,
 - (b) to take legal action to recover unpaid contributions, interest on unpaid contributions or related expenses,
 - (c) to take other legal action prescribed by the regulations.

- (4) A failure by an association or the association committee to obtain an approval under this section does not affect the validity of any proceedings or other legal action taken by the association.
- (5) In this Division—
legal services includes obtaining legal advice and taking legal action.

107 Restrictions on payment of expenses incurred in Tribunal proceedings

- (1) A community association or precinct association cannot, in respect of its costs and expenses in proceedings brought by or against it for an order by the Tribunal, levy a contribution on—
 - (a) another party who is successful in the proceedings, or
 - (b) a subsidiary body of which the party is a member.
- (2) A neighbourhood association or a strata corporation cannot, in respect of its costs and expenses in proceedings brought by or against it for an order by the Tribunal, levy a contribution on another party who is successful in the proceedings.
- (3) A neighbourhood association or a strata corporation that is unsuccessful in proceedings brought by or against it for an order by the Tribunal cannot pay the whole or a part of its costs and expenses in the proceedings from its administrative fund or capital works fund, but may make a levy for the purpose (other than as provided by subsection (2)).
- (4) In this section, a reference to *proceedings* includes a reference to proceedings on appeal from the Tribunal.

108 Disclosure of matters relating to legal costs

If a disclosure under another Act is made to an association in respect of the costs of legal services to be provided to the association and the legal services are services for which approval is required under section 106, the association must give a copy of the disclosure to each member and association committee member within 7 days of the disclosure being made.

Part 6 Property management

Division 1 Association property

109 Duty of association to maintain and repair property

- (1) An association must properly maintain and keep in a state of good and serviceable repair the association property and personal property vested in the association, including any open access ways or private access ways.
- (2) An association must renew or replace fixtures or fittings comprised in the association property and personal property vested in the association.
- (3) This section does not apply to a particular item of property if the association determines by special resolution that—
 - (a) it is inappropriate to maintain, renew, replace or repair the property, and
 - (b) its decision will not affect the safety of a building, structure or common property in the scheme or detract from the appearance of property in the scheme.
- (4) If an association has taken action against a member or other person in respect of damage to the association property, it may defer compliance with this section until the completion of the action if the failure to comply will not affect the safety of a building, structure or property in the association scheme.
- (5) A member of an association may recover from the association, as damages for breach of statutory duty, any reasonably foreseeable loss suffered by the member as a result of a contravention of this section by the association.
- (6) A member of an association may not bring an action under this section for breach of a statutory duty more than 2 years after the member first becomes aware of the loss.
- (7) This section is subject to the provisions of any by-law made under this Act.
- (8) This section does not affect a duty or right of the association under another law.

110 Control and management of access ways and other property

- (1) An association must control and manage its open access ways and private access ways, and all other parts of the association property, and must do so for the benefit of its members.
- (2) This section does not authorise an action that would be inconsistent with the application of the provisions of an Act to an access way, or a function that may be exercised on or in relation to an access way, in accordance with section 112.

111 Use of association property for commercial purposes

An association must inform the local council if any part of the association property is to be, or is, used for commercial purposes, or a different commercial purpose.

112 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 2021* otherwise provides, the following provisions apply to an open access way as if it were a road or road related area—
 - (a) the road transport legislation within the meaning of the *Road Transport Act 2013*,

- (b) the *Motor Accidents Compensation Act 1999* or the *Motor Accident Injuries Act 2017*,
 - (c) Division 2 of Part 7 of the *Roads Act 1993*,
 - (d) the *Summary Offences Act 1988*.
- (2) 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.
- (3) A private access way is a road or road related area for the purposes of the *Motor Accidents Compensation Act 1999* and a road for the purposes of the *Motor Accident Injuries Act 2017*.
- (4) 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.
- (5) Except as provided by subsections (3) and (4), a private access way is not for any purpose a road or road related area, a public road or a public thoroughfare or way.
- (6) In this section—

authorised person means—

- (a) a police officer, or
- (b) an employee of Transport for NSW, or
- (c) a person authorised by Transport for NSW, 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 section 4(1) of the *Road Transport Act 2013* (other than a road or road related area that is the subject of a declaration made under section 18(1)(b) of that Act relating to all of the provisions of that Act).

113 Payments to or by association in relation to association property

An association may, in accordance with a special 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.

114 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 of a scheme 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 on whose association property 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.

115 Initial maintenance schedule must be prepared

- (1) The original owner must prepare an initial maintenance schedule for the maintenance of the association property setting out the matters prescribed by the regulations for the purposes of this section.
- Note.** The purpose of the initial maintenance schedule is to provide information to the association about obligations and costs relating to the maintenance of the association property.
- (2) An association is not required by this Act to comply with the initial maintenance schedule for the association property vested in it.
- (3) The initial maintenance schedule may be considered in proceedings for the purpose of determining whether or not a defect in or damage to a building could have been avoided by the taking of specific action.

116 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 1 position.

117 Powers to deal with property

- (1) An association may dispose of or otherwise deal with a lot vested in the association as a result of a subdivision effected under the *Community Land Development Act 2021*.
- (2) An association may acquire or dispose of personal property or otherwise deal with personal property of the association.
- (3) Section 50(1)(d) of the *Interpretation Act 1987* does not apply to an association.
- Note.** Section 50(1)(d) of the *Interpretation Act 1987* provides that a statutory corporation may, for the purpose of enabling it to exercise its functions, purchase, exchange, take on lease, hold, dispose of and otherwise deal with property.

Division 2 Powers of associations

118 Association may carry out work required to be carried out by others

(1) **Application of section**

For the purposes of this section, the *association* that may carry out work on a lot is as follows—

- (a) for a community development lot—the community association,
- (b) for a precinct development lot—the precinct association,

(c) for a neighbourhood lot—the neighbourhood association.

(2) Work required by public authority

If the owner of a community development lot, precinct development lot or neighbourhood lot does not do work on or in relation to the lot in accordance with a notice given to the owner by a public authority, the association may carry out the work after giving the owner notice that it proposes to do so.

(3) Work required to be carried out under term or condition of by-law

If the owner, mortgagee or covenant chargee in possession, lessee or occupier of a community development lot, precinct development lot or neighbourhood lot is required to do work under a by-law relating to restricted property of the association and fails to carry out the work, the association may carry out the work.

(4) Work that is duty of owner or occupier to carry out

If the owner, mortgagee or covenant chargee in possession, lessee or occupier of a community development lot, precinct development lot or neighbourhood lot is in breach of a duty imposed by Part 8 and does not carry out the work required to remedy the breach, the association may carry out the work.

(5) Work resulting from breach of duty not to interfere with services

If the owner, mortgagee or covenant chargee in possession, lessee or occupier of a community development lot, precinct development lot or neighbourhood lot is in breach of the duty not to interfere with the passage or provision of services and does not carry out the work required to remedy the breach, the association may carry out the work.

(6) Work required to be carried out under order

If the owner, mortgagee or covenant chargee in possession, lessee or occupier of a community development lot, precinct development lot or neighbourhood lot fails to comply with an order to carry out work in relation to a lot, the association may carry out the work.

(7) Recovery of costs as a debt

The costs incurred by an association in carrying out work referred to in this section may be recovered by the association as a debt from the person who failed to carry out the work or from a subsequent owner of the lot.

119 Powers of entry of association

- (1) An association may, by its agents, employees or contractors, enter any part of the community, precinct or neighbourhood parcel to do any of the following—
 - (a) to exercise its powers under this Part,
 - (b) to carry out work ordered by the Tribunal,
 - (c) to carry out work required to be carried out by the association by a notice given to it by a public authority,
 - (d) to renew or replace its personal property or any fixtures that are part of its association property.
- (2) An association may, by its agents, employees or contractors, enter on any part of the parcel for the purpose of determining whether work is required to be carried out by the association in accordance with this Act.
- (3) In an emergency, the association may enter any part of the parcel for those purposes at any time.

- (4) 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 the Tribunal under this Division.
- (5) A person must not obstruct or hinder an association in the exercise of its powers under this section.
Maximum penalty—2 penalty units.
- (6) An association is liable for any damage to a development lot, neighbourhood lot or strata lot, or its contents, caused by, or arising from the carrying out of work, or the exercise of powers referred to in this section, unless the damage arose because the association was obstructed or hindered.

120 Orders by Tribunal relating to entry to carry out work

- (1) The Tribunal may, on application by an association, make an order requiring the occupier of a lot or part of a lot in the association scheme to allow access to the lot for the following purposes—
 - (a) to enable the association to carry out work referred to in section 118 or to determine whether the work needs to be carried out,
 - (b) to enable an entry referred to in section 119 to be carried out.
- (2) This section does not limit the power of an association to enter a lot under this Division in an emergency without applying for an order.

Division 3 Amenities or services

121 Provision of amenities or services

- (1) A community association may agree with the owner 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 owner or occupier.
- (2) A precinct association may agree with the owner 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 owner or occupier.
- (3) A neighbourhood association may agree with the owner or occupier of a neighbourhood lot to provide amenities or services to the lot or to the owner or occupier.

122 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 an association enters into an agreement to which this section applies during the initial period for a scheme, 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.
- Maximum penalty—5 penalty units.
- (4) In this section—
services does not include the services of a managing agent.

Division 4 Orders about property

123 Rectification where work done by owner or occupier

- (1) The Tribunal may, on application by an association, make either of the following orders if the Tribunal is satisfied that work carried out by or for an owner or occupier of a development lot or neighbourhood lot in the scheme has caused damage to association property or another lot in the scheme—
- (a) an order that the owner or occupier performs the work or takes other steps specified in the order to repair the damage,
 - (b) an order that the owner or occupier pay to the association or the owner of the lot a specified amount for the cost of repairs of the damage and any associated costs, including insurance and legal costs.
- (2) An amount payable by an owner or occupier to an association under this section is payable, and may be recovered, under this Act as if it were an amount of unpaid contributions.

Division 5 Service agreements and sustainability infrastructure

124 Agreements for supply of electricity, gas or other utilities

- (1) An agreement (including any additional term under an option to renew) for the supply of electricity, gas or any other utility with a neighbourhood association expires (if the term of the agreement does not end earlier or is not ended earlier for any other reason)—
- (a) at the conclusion of the first annual general meeting of the association if the agreement was executed before the meeting, or
 - (b) in any other case—3 years after the date on which the agreement commenced.
- (2) Nothing in subsection (1) prevents the association from renewing an agreement for the supply of electricity, gas or any other utility by resolution at a general meeting on or after the expiry of the agreement.
- (3) An agreement for the supply of electricity, gas or any other utility in relation to a neighbourhood scheme that commenced before the commencement of this section expires 10 years after the date on which the agreement commenced (unless the term of the agreement ends earlier or is ended earlier for any other reason).
- (4) This section does not affect any agreement to supply electricity to residents in a neighbourhood scheme through an embedded network.

125 Financing and installation of sustainability infrastructure

- (1) Before approving a sustainability infrastructure resolution, an association must consider the following—
- (a) the cost of the sustainability infrastructure and works including any expected running and maintenance costs,

- (b) who will own, install and maintain the sustainability infrastructure,
 - (c) the extent to which the use of the sustainability infrastructure will be available to all or some of the members of the association,
 - (d) any matter prescribed by the regulations.
- (2) In this Act—
- sustainability infrastructure*** means changes to part of the association property (which includes the installation, removal, modification or replacement of anything on or forming part of that property) for any one or more of the following purposes—
- (a) to reduce the consumption of energy or water or to increase the efficiency of its consumption,
 - (b) to reduce or prevent pollution,
 - (c) to reduce the amount of waste sent to landfill,
 - (d) to increase the recovery or recycling of materials,
 - (e) to reduce greenhouse gas emissions,
 - (f) to facilitate the use of sustainable forms of transport,
Note. For example, installing electric vehicle charging stations.
 - (g) a purpose prescribed by the regulations.
- sustainability infrastructure resolution*** means a resolution to do any one or more of the following that is specified to be a sustainability infrastructure resolution—
- (a) to finance sustainability infrastructure,
 - (b) to add to the association property, alter the association property or erect a new structure on association property for the purpose of installing sustainability infrastructure,
 - (c) to amend the management statement of the association to change the by-laws of the scheme for the purposes of the installation or use (or both) of sustainability infrastructure.

Part 7 Management statements and by-laws for associations

Division 1 Interpretation

126 Definitions

In this Part—

change a by-law means amend or repeal a by-law contained in a management statement.

make a by-law means amend a management statement to include a new by-law.

Division 2 Management statements

127 Binding effect of management statement

- (1) A management statement for a scheme applies to the scheme and each subsidiary scheme and is binding on—
 - (a) the association for the scheme, and
 - (b) each subsidiary body for the scheme, and
 - (c) each person who is the owner, lessee or occupier, or the mortgagee or covenant chargee in possession, of a development lot, neighbourhood lot or strata lot within the scheme or a subsidiary scheme.
- (2) A management statement has effect as if—
 - (a) it includes mutual covenants by each person on whom it is binding to observe and perform its provisions, and
 - (b) the persons so bound had signed and sealed the management statement.

128 By-laws that may be included in management statements

- (1) By-laws may relate to the management, administration, control, use or enjoyment of the lots in an association scheme or the association property.
- (2) 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.
- (3) A management statement has no force or effect to the extent that it is inconsistent with this or any other Act or law.

129 Occupancy limits

- (1) A by-law for an association scheme may limit the number of adults who may reside in a lot by reference to the number of bedrooms of the residence.
- (2) The limit may not be fewer than 2 adults per bedroom.
- (3) The by-law has no effect—
 - (a) to the extent to which it is inconsistent with a planning approval or other law applicable to the lot, or

- (b) in other circumstances that are prescribed by the regulations for the purposes of this section.
- (4) To avoid doubt, the Tribunal may make an order under Division 5 about a by-law made under this section.
- (5) The regulations may provide for the circumstances when a person is a resident of a lot for the purposes of a by-law made under this section.
- (6) For the purposes of this section, a **bedroom** is a room approved for use as a bedroom under, or indicated as a bedroom in plans the subject of, a planning approval and includes any other room prescribed by the regulations as a bedroom for the purposes of this section.

130 Restrictions on by-laws for association schemes

- (1) **By-law cannot be unjust**

A by-law for an association scheme must not be harsh, unconscionable or oppressive.
Note. The by-law may be invalidated by the Tribunal (see section 140).
- (2) **By-law cannot prevent dealing relating to lot**

No by-law of an association scheme is capable of operating to prohibit or restrict the devolution of a lot or a transfer, lease, mortgage or other dealing relating to a lot.
- (3) **By-law resulting from order cannot be changed**

If an order made by the Tribunal under this Act has effect as if its terms were a by-law of an association scheme, that by-law is not capable of being amended or repealed except by a by-law made in accordance with a unanimous resolution.
- (4) **By-law cannot restrict children**

A by-law of an association scheme has no force or effect to the extent to which it purports to prohibit or restrict persons under 18 years of age occupying a residential lot.
- (5) Subsection (4) does not apply to a by-law for a scheme for a retirement village (within the meaning of the *Retirement Villages Act 1999*) or housing exclusively for aged persons.
- (6) **By-law cannot prevent keeping of assistance animal**

A by-law of an association has no force or effect to the extent to which it purports to prohibit or restrict the keeping on a lot of an assistance animal (as referred to in section 9 of the *Disability Discrimination Act 1992* of the Commonwealth) used by an owner or occupier of the lot as an assistance animal or the use of an assistance animal for that purpose by a person on a lot or association property.
- (7) A by-law of an association may require a person who keeps an assistance animal on a lot to produce evidence to the association that the animal is an assistance animal as referred to in section 9 of the *Disability Discrimination Act 1992* of the Commonwealth.

131 Procedure for amending management statement

- (1) An association may, in accordance with a special resolution, amend the management statement of the association to change the by-laws of the scheme.
Note. If the special resolution is a sustainability infrastructure resolution fewer votes may be needed to pass it (see section 5(1)(b)).
- (2) A management statement must not be amended—

- (a) in a manner inconsistent with a 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 2021*.
- (3) A change to a management statement has no effect until—
- (a) the association has lodged a notification with the Registrar-General in the manner approved by the Registrar-General, and
 - (b) the Registrar-General has made an appropriate recording of the notification in the folio of the Register for the common property.
- (4) A notification cannot be lodged with the Registrar-General more than 6 months after the passing of the resolution to make the by-law.

132 Lessee to comply with management statement

- (1) There is an implied term in a lease of the following land that the lessee will comply with each management statement that applies to the land—
- (a) association property,
 - (b) a development lot,
 - (c) a neighbourhood lot,
 - (d) common property,
 - (e) a strata lot.
- (2) This section applies to a sublease in the same way as it applies to a lease.

133 Lessor to provide copy of management statement

- (1) This section applies to a lease of the following land—
- (a) association property,
 - (b) a development lot,
 - (c) a neighbourhood lot,
 - (d) common property,
 - (e) a strata lot.
- (2) A lessor of land must ensure the copy of the lease submitted for execution by the lessor is accompanied by a copy of all relevant documents that apply to the land.
Maximum penalty—5 penalty units.
- (3) If a relevant document that applies to leased land is changed, the lessor must give the lessee a copy of the changed document within 14 days after the change takes effect.
Maximum penalty—5 penalty units.
- (4) This section does not apply to the following leases—
- (a) a lease of association property to a member of the association,
 - (b) a lease of a development lot to a member of the community association or precinct association for which the lot is a development lot,
 - (c) a lease of a neighbourhood lot to a member of the neighbourhood association,
 - (d) a lease of a common property to a member of the strata corporation,
 - (e) a lease of a strata lot to a member of the strata corporation.
- (5) This section applies to a sublease in the same way as it applies to a lease.
- (6) In this section—

relevant document means the following—

- (a) a management statement,
- (b) the by-laws of a strata scheme,
- (c) a strata management statement within the meaning of the *Strata Schemes Development Act 2015*.

Division 3 By-laws conferring rights over association property

134 Association property rights by-laws

(1) **Definition**

In this Act, an *association property rights by-law* is a by-law referred to in this section or a by-law that revokes or changes a by-law referred to in this section.

(2) **Use of community property**

A by-law in a community management statement may—

- (a) confer a right of exclusive use and enjoyment of the whole or a specified part of the community property on the owner or owners of 1 or more development lots, neighbourhood lots or strata lots within the community scheme or on 1 or more precinct associations, neighbourhood associations or strata corporations within the scheme, or
- (b) confer special privileges in respect of the whole or a specified part of the community property on the owner or owners of 1 or more development lots, neighbourhood lots or strata lots within the community scheme or on 1 or more precinct associations, neighbourhood associations or strata corporations within the scheme.

Note. An example of a special privilege might be a licence to use the whole or any specified part of the association property in a particular manner or for particular purposes.

(3) **Use of precinct property**

A by-law in a precinct management statement may—

- (a) confer a right of exclusive use and enjoyment of the whole or a specified part of the precinct property on the owner or owners of 1 or more development lots, neighbourhood lots or strata lots within the precinct scheme or on 1 or more precinct associations, neighbourhood associations or strata corporations within the scheme, or
- (b) confer special privileges in respect of the whole or a specified part of the precinct property on the owner or owners of 1 or more development lots, neighbourhood lots or strata lots within the precinct scheme or on 1 or more neighbourhood associations or strata corporations within the scheme.

Note. An example of a special privilege might be a licence to use the whole or any specified part of the association property in a particular manner or for particular purposes.

(4) **Use of neighbourhood property**

A by-law in a neighbourhood management statement may—

- (a) confer a right of exclusive use and enjoyment of the whole or a specified part of the neighbourhood property on the owner or owners of the neighbourhood lots within the neighbourhood scheme, or
- (b) confer special privileges in respect of the whole or a specified part of the neighbourhood property on the owner or owners of 1 or more neighbourhood lots within the neighbourhood scheme.

Note. An example of a special privilege might be a licence to use the whole or any specified part of the association property in a particular manner or for particular purposes.

(5) Use of subsidiary scheme property

A by-law for a subsidiary scheme within a community scheme or a precinct scheme may confer a right of exclusive use and enjoyment of, or special privileges in respect of, association property or common property on 1 or more of the following—

- (a) the owner or owners of 1 or more development lots within the community scheme or precinct scheme,
- (b) the owner or owners of 1 or more precinct development lots, neighbourhood lots or strata lots within another subsidiary scheme,
- (c) the community association,
- (d) if the subsidiary scheme is part of a precinct scheme—the precinct association,
- (e) a precinct association, neighbourhood association or strata corporation within another subsidiary scheme.

135 Requirements for association property rights by-laws

- (1) An association property rights by-law must not be made or changed—
 - (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.
- (2) The consent under subsection (1)(b) of an association or a strata corporation must be given by special resolution.
- (3) An association property rights by-law may confer rights or special privileges subject to conditions specified in the by-law (such as a condition requiring the payment of money by the owner or owners or association or associations concerned, at specified times or as determined by the association).
- (4) An association property rights by-law may be made even though the person on whom the right of exclusive use and enjoyment or the special privileges are to be conferred had that exclusive use or enjoyment or enjoyed those special privileges before the making of the by-law.
- (5) An association property rights by-law must include the following—
 - (a) a description of the property to which it applies,
 - (b) details of the persons entitled to use the property,
 - (c) the terms and conditions on which those persons may use the property,
 - (d) particulars relating to access to the property and the provision and keeping of any key necessary,
 - (e) particulars of the hours during which the property may be used,
 - (f) provisions relating to the maintenance of the property,
 - (g) matters relating to the determination, imposition and collection of levies on those entitled to use the property.
- (6) After 2 years from the making, or purported making, of an association property rights by-law, it is conclusively presumed that all conditions and preliminary steps precedent to the making of the by-law were complied with and performed.

136 Effect of association property rights by-laws

- (1) An association property rights by-law, while it is in force, continues to operate for the benefit of, and is binding on, the following—
 - (a) the owner or occupier of a development lot, former development lot, neighbourhood lot or strata lot specified in the by-law,
 - (b) an association or strata corporation to which the use of the property is restricted or on which a privilege is conferred,
 - (c) the owner or occupier of a development lot, neighbourhood lot or strata lot to which the use of the property is restricted.
- (2) An association property rights by-law must—
 - (a) provide that the association is to continue to be responsible for the proper maintenance of, and keeping in a state of good and serviceable repair, the association property or the relevant part of it, or
 - (b) impose on the owner or owners or associations or strata corporations to whom the use of the property or the relevant part of the property is restricted the responsibility for that maintenance and upkeep.
- (3) To the extent to which an association property rights by-law makes a person directly responsible for the proper maintenance of, and keeping in a state of good and serviceable repair, any association property, it discharges the association from its obligations to maintain and repair the property under this Act.
- (4) If an owner, association or strata corporation is required at any time under an association property rights by-law to pay an amount to an association or strata corporation, the person required to make the payment owes the amount to the association or strata corporation in which the restricted property is vested.
- (5) If a person becomes the owner of a development lot, neighbourhood lot or strata lot when, under an association property rights by-law or this section another person owes money in respect of the lot, the new owner is jointly and severally liable with the other person for payment of the money.
- (6) Any money payable by an owner to the association or a strata corporation under a common property rights by-law or under subsection (5) may be recovered, as a debt in a court of competent jurisdiction, by the association or strata corporation.

Division 4 Enforcement of by-laws

137 Notice by association to owner or occupier

- (1) An association may give a notice, in a form approved by the Secretary, to the owner or occupier of a lot in the scheme requiring the owner or occupier to comply with a specified by-law if the association is satisfied that the owner or occupier has contravened the by-law.
- (2) The notice must contain a copy of the specified by-law.
- (3) If a notice given to a person relates to a breach by the person of a condition of an association property rights by-law or a failure to pay an amount under an association property rights by-law—
 - (a) the person ceases to be entitled to use the restricted property until the notice is complied with or, whether the notice is complied with or not, if the management statement is amended to remove the person's right to use the property, and
 - (b) the person is not entitled to vote on a motion to amend the management statement in so far as it relates to the restricted property.

138 Civil penalty for breach of by-laws

- (1) The Tribunal may, on application by an association, order a person to pay a monetary penalty of up to 10 penalty units if the Tribunal is satisfied that—
 - (a) the association gave a notice under this Division to the person requiring the person to comply with a by-law, and
 - (b) the person has since contravened the by-law.
- (2) The Tribunal may, on application by an association, order a person to pay a monetary penalty of up to 20 penalty units if the Tribunal is satisfied that the person has contravened a by-law within 12 months after the Tribunal had imposed a monetary penalty on the person for a previous breach of the by-law.
- (3) Despite subsections (1) and (2), the Tribunal may, in dealing with a contravention of a by-law, impose a penalty of up to 50 penalty units under subsection (1) and a monetary penalty of up to 100 penalty units under subsection (2).
- (4) An application for an order under subsection (1) must be made not later than 12 months after the notice was given.
- (5) An association is not required to give notice under this Division before applying for an order under subsection (2).
- (6) A monetary penalty is payable to the association, unless the Tribunal otherwise orders.

Note. The penalty may be registered as a judgment debt and will be enforceable accordingly (see section 78 of the *Civil and Administrative Tribunal Act 2013*).

Division 5 Orders about management statements

139 Order by Tribunal relating to variation of management statement

- (1) The Tribunal may, on application by a person entitled to vote on the amendment or repeal of a management statement or a provision of a management statement, by order make 1 of the following orders—
 - (a) an order that the amendment be revoked,
 - (b) an order that the repealed statement or provision be revived,
 - (c) an order that a new statement or provision be repealed.
- (2) The Tribunal may make an order only if the Tribunal considers that, having regard to the interests of the members of the association or the owners of neighbourhood lots or strata lots within the scheme to which the management statement relates, the change to the management statement should not have been made by the association.
- (3) When making an order under this section in relation to an association property rights by-law, the Tribunal may direct the payment by the association of compensation to the owner or owners or strata associations referred to in the by-law.
- (4) An order under this Division, when recorded under section 205, has effect as if its terms were a provision of a management statement (but subject to any relevant order made by a superior court).

140 Order by Tribunal revoking invalid part of management statement

- (1) The Tribunal may, on application by a person entitled to vote at a meeting of the association (including a mortgagor as well as a first mortgagee or covenant chargee), by order, revoke so much of a management statement as the Tribunal considers to be invalid.

- (2) Without limiting subsection (1), the Tribunal may revoke part of a management statement if the Tribunal is of the opinion that it contains a by-law that is harsh, unconscionable or oppressive.
- (3) An order under this section, when recorded under section 205, has effect as if its terms were a provision of a management statement repealing the part of the management statement declared invalid by the order (but subject to any relevant order made by a superior court).

141 Order affecting association property

- (1) The Tribunal may, on application by a person entitled to vote at a meeting of an association or a strata corporation, make an order amending the management statement of the association or the by-laws of the strata corporation if—
 - (a) the association or corporation decides to make or refuses to make an association property rights by-law or if a necessary consent by the association or corporation or an owner or lessor of a lot to the creation of an association property rights by-law has been refused or failed to be given, and
 - (b) the Tribunal is satisfied that the order is in the best interests of all the members of the association or corporation.
- (2) Without limiting the orders that the Tribunal may make under this section, an order may revoke an association property rights by-law.

142 Effect of orders

An order under this Division operates on and from the date on which it is so recorded or from an earlier date specified in the order.

Part 8 Obligations of owners, occupiers and others relating to lots

Division 1 Obligations relating to lots

143 Owners, occupiers and other persons not to interfere with support or shelter provided by lot, services or access ways

An owner, mortgagee or covenant chargee in possession, tenant or occupier of a development lot, neighbourhood lot or strata lot, must not—

- (a) do anything, or permit anything to be done, on or in relation to the lot that interferes with support or shelter provided by the lot for another lot, for association property or for common property, or
- (b) do anything, or permit anything to be done, on or in relation to the lot so that the passage or provision of water, sewage, drainage, gas, electricity, garbage, artificially heated or cooled air, heating oil and other services (including telephone, internet, radio and television services) through or by means of any pipes, wires, cables or ducts for the time being in the parcel is interfered with, 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.

144 Owners, occupiers and other persons not to create nuisance

An owner, 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 or for a purpose that interferes unreasonably with the right of another 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 their 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 passage or provision of water, sewage, drainage, gas, electricity, garbage, artificially heated or cooled air, heating oil and other services (including telephone, internet, radio and television services) through or by means of any pipes, wires, cables or ducts for the time being in the parcel.

Division 2 Agents for owners

145 Definition

In this Division—

lot means a development lot, neighbourhood lot or strata lot.

146 Appointment of agents by corporations to exercise functions in relation to lots

- (1) A corporation may authorise an individual (a *company nominee*) to exercise on its behalf any function conferred by or under this Act on the corporation as owner or mortgagee of a lot or as a covenant chargee having the benefit of a covenant charge affecting a lot.
- (2) The corporation may revoke the authority of an individual so authorised.
- (3) A function exercised with respect to a lot by a company nominee of an owner, mortgagee or covenant chargee is taken to have been exercised with respect to the lot by the owner, mortgagee or covenant chargee.
- (4) This section does not affect a liability or obligation imposed by or under this Act on a corporation that is an owner or mortgagee of a lot or a covenant chargee.
- (5) A document under the seal of a corporation purporting to be an authorisation under this section or to be a revocation of an authorisation is admissible in evidence and is, unless the contrary is proved, taken to be an authorisation or revocation.

147 Owner may appoint agent if not able to deal with notices

- (1) An owner of a lot may appoint an agent to receive notices and other documents under this Act if the owner 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 association roll.
- (5) If an agent for an owner has been so appointed and the name and address for service of the agent is recorded on the association roll, notices or other documents required to be given to the owner under this Act are to be given to the agent.

Part 9 Insurance

Division 1 Association insurance obligations

148 Association to insure buildings and structures on association property

An association must insure a building or structure on the association property and keep the building insured under a contract of insurance, in accordance with this Division, that insures the building or structure if it is destroyed or damaged by fire, lightning, explosion or other occurrence specified in the policy or prescribed by the regulations (a *damage policy*).

Maximum penalty—5 penalty units.

149 Requirements for damage policy

The damage policy for a building or structure must be with an approved insurer, be in the name of the association and provide for the following—

- (a) the building or structure is to be insured for at least the amount determined in accordance with the regulations,
- (b) if the building or structure is destroyed, the building or structure is to be rebuilt or replaced so that the condition of every part of the rebuilt or replacement building is not worse or less extensive than that part when new,
- (c) if the building or structure is damaged but not destroyed, the damaged part of the building or structure is to be repaired or restored so that the condition of the repaired or restored part is not worse or less extensive than that part when new,
- (d) expenses incurred in removing debris are payable,
- (e) the remuneration of architects and other persons whose services are necessary as an incident to the rebuilding, replacement, repair or restoration is payable.

150 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.

151 Use of insurance money by association

- (1) An association that receives money from an insurer for the destruction of or damage to a building on association property must immediately apply that money in rebuilding, replacing, repairing or restoring the building.
- (2) This section does not apply to an association if the association determines, by unanimous resolution, that the money is not to be so applied.
- (3) This section is subject to any order made under the *Community Land Development Act 2021*.

152 Other mandatory insurance requirements for association

- (1) An association must take out the following insurance with an approved insurer, in addition to any other requirements of this Part—
 - (a) insurance in respect of any occurrence against which it is required by law to insure, including any insurance required by the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998* to be taken out,

- (b) insurance in respect of damage to property, death or 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,
- (c) insurance against the possibility of members of the association becoming jointly liable because of a claim arising in respect of any other occurrence against which the association, in accordance with a special resolution, decides to insure,
- (d) insurance against damages for which the association could become liable because, without fee or reward or any expectation of fee or reward, a person acting on behalf of the association does work in a building or on the association property,
- (e) insurance against accidental injury to, or accidental death of, a person who, without fee or reward or expectation of fee or reward, on behalf of the association does work in a building or structure or on the association property,
- (f) insurance of other classes prescribed by the regulations for the purposes of this subsection.

Maximum penalty—5 penalty units.

- (2) Insurance taken out in accordance with subsection (1) must be for an amount calculated or determined in the manner prescribed by the regulations.

153 Association may take out other insurance

- (1) An association may insure property that it is not required to insure by this Part and in which it has an insurable interest.
- (2) An association may take out insurance, at its own expense, in respect of any of the following—
 - (a) damage to property, death or bodily injury for which a person holding the office of chairperson, secretary or treasurer of the association or of a member of the association committee 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.
- (3) Insurance taken out under this section must be taken out with an approved insurer.

154 Managing agent to obtain insurance quotations

A managing agent must provide the association with not less than 3 quotations from different providers for each type of insurance proposed by the agent to the association or provide written reasons to the association if fewer than 3 quotations are provided.

Division 2 Insurance claims and other matters affecting insurance

155 Part does not limit owner's insurance rights

- (1) This Part does not limit a right of an owner of a development lot, neighbourhood lot or strata lot to take out insurance.
- (2) Insurance taken out by an owner of a lot does not affect, and is not to be taken into consideration in determining, the amount payable to an association under a contract of insurance entered into between it and an insurer in accordance with this Part.
- (3) Subsection (2) has effect despite anything contained in the relevant contract of insurance.

156 Insurable interests

- (1) A person (including an association) is taken to have an insurable interest in the subject-matter of a contract of insurance entered into by the person in accordance with this Part.
- (2) This section applies despite the provisions of section 23 of the *Imperial Acts Application Act 1969* or any other law relating to insurance.

157 Insurance claim where owner at fault

If an insurer of an association accepts a claim by the association based on an act or omission by a member of the association scheme, the insurer has no right of subrogation in relation to the member based on that act or omission unless it is proved that the act or omission was wilful.

158 Action against association by member

A member of an association may bring any action against the association that the member might have brought against the association had the member not been a member.

Division 3 Orders about insurance

159 Exemption by Tribunal from building insurance requirements

- (1) The Tribunal may, on application by an association required by this Part to insure a building or structure, by order exempt the association—
 - (a) from compliance with the requirements to insure unconditionally, or
 - (b) with the written consent of the association, from compliance with those requirements subject to a condition that the association takes out insurance for the building or structure that is specified in the order.
- (2) The Tribunal must not make an order unless—
 - (a) it is of the opinion that compliance with the requirements to insure is unnecessary or impracticable, and
 - (b) each other person required to insure the building or structure has consented in writing to the making of the order or has, before the making of the order, been given an opportunity to make representations to the Tribunal with respect to the application for the order.
- (3) An association may apply for an order, or give a consent for the purposes of this section, only in accordance with a unanimous resolution.

160 Effect of exemption from building insurance requirements

- (1) An association exempted by the Tribunal from the requirement to insure a building is not under a duty to comply with the requirement or any corresponding requirement of a positive covenant.
- (2) However, if the exemption was granted subject to a condition, the person is under the duty, if in breach of that condition.

161 Order to make or pursue insurance claim

- (1) The Tribunal may, on application, order a person who is entitled to the benefit of insurance taken out under this Act to make or pursue an insurance claim in relation to damage to the building or structure or any other property to which the insurance relates, if the Tribunal considers the person has unreasonably refused to make or pursue the claim.

- (2) An application for an order may be made by an owner or tenant of a development lot or neighbourhood lot within the scheme for the building or structure or part of the building or structure or the land on which the building or structure was situated.

162 Orders requiring damage policy

- (1) The Tribunal may, on application, order that the amount of insurance taken out for a damage policy or other policy must be varied to a specified amount, if the Tribunal considers that the amount of the current insurance is unreasonable.
- (2) An application for an order under this section may be made by any of the following—
- (a) a member of the association,
 - (b) an owner or a mortgagee of a development lot, neighbourhood lot or strata lot within the scheme under which the association was constituted or a person having an interest in any such lot,
 - (c) an authority having the benefit of a positive covenant affecting the building or its site.

Part 10 Records and information about association schemes

Division 1 Association roll and other records

163 Definition

In this Division and Division 3—

lot, in relation to an association, means—

- (a) a community development lot, if the association is a community association, or
- (b) a precinct development lot, if the association is a precinct association, or
- (c) a neighbourhood lot, if the association is a neighbourhood association.

164 Form of records

An association roll or other record required to be made or stored by an association may be made or stored in the form determined by the association.

165 Association must prepare association roll

An association must prepare and maintain an association roll in accordance with this Division.

Maximum penalty—5 penalty units.

166 Association rolls for community associations and precinct associations

- (1) An association must keep in the association roll separate entries for—
 - (a) each lot, and
 - (b) in the case of a community association or precinct association—each subsidiary scheme within the scheme, and
 - (c) its association property and the scheme in general.
- (2) The entries for a lot in the association roll must include the following—
 - (a) the name of, and an Australian address for service of notices on, the owner,
 - (b) an Australian postal address, and an email address if the holder has one, if not provided as the address for service,
 - (c) the name of, and an Australian address for service of notices on, the owner's agent (if any) appointed in accordance with this Act,
 - (d) information provided under a tenancy notice,
 - (e) information provided under an association interest notice,
 - (f) information provided under section 221(1) or the same kind of information obtained from the Register.
- (3) The entries for the association property and the scheme in general must include the following—
 - (a) the number of the plan for the association,
 - (b) the names of the original owner and of any managing agent for the association and their respective Australian addresses for the service of notices,
 - (c) in the case of a community association or precinct association—the number of the precinct plan, neighbourhood plan or strata plan for each subsidiary body within the scheme,
 - (d) the total unit entitlement for the scheme,

- (e) the unit entitlement for each lot and former lot,
 - (f) the particulars of insurance taken out by the association, including the following—
 - (i) the name of the insurance company,
 - (ii) the number of the insurance policy,
 - (iii) the nature of the risk insured against,
 - (iv) the amount of the insurance,
 - (v) the due date for payment of the premium,
 - (vi) the date on which the premium was last paid,
 - (g) information provided under section 221(1) or the same kind of information obtained from the Register.
- (4) An association must keep in the association roll an up to date copy of each management statement for the association and any subsidiary body of the association.

167 Sources of information for association roll

- (1) An association may make or amend entries in the association roll on the basis of information contained in the Register or provided under a notice given under this Act (to the extent that the information so provided is not inconsistent with information contained in the Register).
- (2) Information provided under a notice may be presumed to be consistent with information contained in the Register until the contrary is evident.

168 Notices and orders served on association

An association must cause the following to be recorded—

- (a) particulars of a notice given to the association under this or another Act, any order under this Act given to the association and an order made by a court or tribunal and given to the association,
- (b) the date on which it was given and the manner in which it was given,
- (c) the part of the parcel to which it relates,
- (d) the date by which compliance is required,
- (e) the date on which it is complied with.

Maximum penalty—5 penalty units.

169 Retention of records for prescribed period

An association must cause the following to be retained for 7 years or another period prescribed by the regulations—

- (a) the records of the proceedings at its meetings,
- (b) its financial statements and accounting records,
- (c) the records required to be recorded in relation to notices and orders served on it,
- (d) copies of correspondence received and sent by it,
- (e) notices of its meetings and of meetings of its association committee,
- (f) proxies delivered to the association,
- (g) voting papers relating to motions for resolutions by the association and to the election of officers or its association committee,

- (h) records given to the association by its managing agent relating to the exercise of functions by the managing agent,
 - (i) notices specifying an address for service,
 - (j) other documents prescribed by the regulations for the purposes of this section.
- Maximum penalty—5 penalty units.

170 Association may require certain persons to produce records, accounts and property of association

- (1) If the association committee of an association gives a written notice to a person who has possession or control of property (including records) of the association requiring the person to deliver the property to the committee, the person must, within 14 days after the notice is given, deliver that property to a member of the committee specified in the notice.
Maximum penalty—20 penalty units.
- (2) If the association committee of an association gives a written notice to a person who has possession or control of property (including records) of the association advising of the decision of the association to terminate the person's appointment as the managing agent, the person must, within 14 days after the notice is given, deliver that property to a member of the committee specified in the notice.
Maximum penalty—20 penalty units.
- (3) This section does not take away or affect a just claim or lien that a person may have against or on records or other property of an association.
- (4) This section does not affect the operation of the *Property and Stock Agents Act 2002*.

Division 2 Provision of information about schemes

171 Requests of inspection of records and certificates about associations

- (1) The following persons may request an association to allow an inspection or provide a certificate (an *association information certificate*) under this Division—
 - (a) in relation to a development lot—the owner or mortgagee of the lot or another person authorised in writing by the owner or mortgagee,
 - (b) in relation to a subsidiary scheme—an owner or mortgagee of a neighbourhood lot or strata lot within the scheme or another person authorised in writing by the owner or mortgagee,
 - (c) in relation to a subsidiary scheme—the association or strata corporation constituted under the subsidiary scheme or another person authorised in writing by the association or strata corporation.
- (2) The request must be made by written notice given to the association and be accompanied by the fee (if any) prescribed by the regulations.
- (3) The requirements of subsection (2) do not apply to a request made by the original owner (whether or not having ceased to be an owner), or the agent of the original owner, to inspect the association roll for the purpose of complying with requirements for giving notice of an annual general meeting of an association.
- (4) If a request is made in accordance with this section and the prescribed fee (if any) is paid, an association must—
 - (a) make records available for inspection in accordance with this Division, or
 - (b) supply a certificate in accordance with this Division not later than 14 days after receipt by it of the request for the certificate.

Maximum penalty—5 penalty units.

- (5) If a request is made to an association by the Secretary that records be made available for inspection or for an association certificate in order to assist the Secretary in the exercise of the Secretary's functions, the association must, without charge—
- (a) make records available for inspection by the Secretary in accordance with this Division, or
 - (b) supply the Secretary with a certificate in accordance with this Division.

Maximum penalty—5 penalty units.

- (6) Despite any other provision of this section, a neighbourhood association must not make available for inspection any record that would disclose how an owner of a neighbourhood lot voted in a secret ballot unless the neighbourhood association is directed to do so by the Tribunal or a court.

172 Inspection of records

An association must make the following items available for inspection by a person who makes a request in accordance with this Division—

- (a) the association roll kept by the association,
- (b) the management statement for the association,
- (c) an applicable development contract,
- (d) any other records or documents required to be kept under this Part,
- (e) the plans, specifications, certificates, diagrams, policies of insurance and other documents required to be delivered to the association by the original owner at the first annual general meeting,
- (f) if it is in its custody or under its control—the certificate of title for the association property,
- (g) the last financial statements prepared,
- (h) every current policy of insurance taken out by the association and the receipt for the premium last paid for each policy,
- (i) in the case of a precinct association or a neighbourhood association— records provided by the association of which it is a member,
- (j) if a managing agent has been appointed, a copy of the instrument of appointment,
- (k) any other record or document in the custody or under the control of the association,
- (l) if the duties of the association under this subsection have been delegated to a managing agent—any other records (including records of the managing agent) relating to the scheme that are prescribed by the regulations,
- (m) if a facilities manager agreement is in force or has been entered into but has not yet commenced—a copy of the facilities manager agreement,
- (n) if the request is made within 5 years after the end of the initial period— particulars of any orders made under section 28 and copies of related contracts or other documents.

173 Inspection of association documents

- (1) An inspection under this Division is to take place at the time and place, or by the means, agreed on and, failing agreement, at the parcel at a time, and on a date, or by the means, fixed by the association under this section.

- (2) If an applicant and the association fail to reach an agreement within 3 days after the association receives the application, the association must immediately give the applicant a written notice fixing a specified time (between 9 am and 8 pm) on a specified date (not later than 10 days after the association receives the application), or a specified means, for the inspection to take place.
- (3) The means for inspecting documents may be in person or through electronic access to the documents or other means agreed on or fixed under this section.
- (4) A person entitled to inspect a document may take extracts from, or make a copy of, the document but must not, without the consent of the association, remove the document from the custody of the association.

174 Certificate by association as to financial and other matters relating to lot

(1) Contents of association information certificate

An association information certificate must specify the following information in relation to the lot or scheme to which the application for the certificate relates—

- (a) the amount of any regular periodic contributions required to be made to the administrative fund, and the capital works fund, of the association and the periods for which those contributions are payable and any discounts for early payment,
- (b) whether there is an amount unpaid of the contributions and, if so, the amount unpaid,
- (c) the date on which a regular periodic contribution to the administrative fund, and the capital works fund, of the association was levied,
- (d) in the case of a precinct association or a neighbourhood association within a community scheme—the particulars referred to in paragraphs (a), (b) and (c) in relation to contributions to the community association and to a precinct association of which it is a member,
- (e) any unpaid amount levied to meet expenses the association could not at once meet from its administrative fund or its capital works fund and the date on which it was levied,
- (f) 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 owner in relation to that use,
- (g) 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,
- (h) if the application relates to a development lot or a neighbourhood lot—the amount of any debt recoverable from the owner of the lot in respect of work done by the association on, or in relation to, the lot,
- (i) the amount and rate of interest payable in relation to an unpaid contribution referred to in this section,
- (j) other information required to complete the form of the certificate.

(2) Information relating to management of association to be included in association information certificate

The association information certificate must state, as at the date of the certificate, the name and address of each member of the association committee and the name and address of any managing agent appointed under this Act for the scheme.

(3) Form of association information certificate

The association information certificate must be in the form approved by the Secretary.

175 Association information certificate is evidence of matters stated in it

An association information certificate is conclusive evidence, as at the date of the certificate, of the matters stated in it in favour of a person (whether or not the applicant for the certificate or a person referred to in the certificate) taking for valuable consideration an estate or interest in a lot to which the certificate relates.

Division 3 Orders about association roll and records

176 Order confirming information for association roll

- (1) The Tribunal may, on application by an association, owner or other person having or acquiring an estate or interest in a lot, order an association to enter information contained in an association interest notice in the association roll if a person fails to provide the required written confirmation of the notice.
- (2) In making the order, the Tribunal may amend the information in the association interest notice to which the order relates in any manner the Tribunal thinks fit.
- (3) The Tribunal must dismiss an application for an order if the Tribunal considers that the rights of a person would be prejudiced if the order were made.
- (4) A copy of an order under this section given to an association is taken to be an association interest notice given to the association and information entered on an association roll in accordance with the order is taken to have been entered from a notice with any written confirmation required.

177 Order to supply information or documents

- (1) The Tribunal may, on application by a person, order an association, managing agent, officer or former managing agent of an association to supply to the applicant information that the Tribunal considers that the association, managing agent, officer or former managing agent has wrongfully withheld from the applicant and to which the applicant is entitled under this Act.
- (2) The Tribunal may, on application by a person, order an association, managing agent, officer or former managing agent of an association to supply or make available to the applicant a record or document if—
 - (a) the Tribunal considers that the association, managing agent, officer or former managing agent has wrongfully failed to make the record or document available for inspection by the applicant or the applicant's agent, and
 - (b) the applicant is entitled under this Act to inspect the record or document.
- (3) The order may specify the manner in which information is to be supplied or made available.

Part 11 Disputes and Tribunal powers

Division 1 Internal dispute resolution

178 Internal dispute resolution procedures for schemes

- (1) An association may establish, by a means it thinks fit, a voluntary process for resolving disputes between any 1 or more owners of lots in, or members of, the scheme, other interested persons, the association, the association committee, the managing agent and the facilities manager.
- (2) The fact that a person has or has not participated in a voluntary process established by an association, or the fact that a person has done or omitted to do anything in the course of or as a result of a voluntary process established by an association, is not to be considered for the purposes of mediation or other proceedings under this Act and does not prevent mediation occurring, or proceedings being taken, in that case.

Division 2 Alternative dispute resolution by Secretary

179 Definitions

In this Part—

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 Part and, for the purposes of the provisions of this Division relating to privilege, disclosure and admissibility, includes steps taken in the course of arranging or following-up a session.

mediator means the Secretary or a person approved by the Secretary in writing to be a mediator for the purposes of this Division.

180 Matters that may be subject to mediation

- (1) A person may apply to the Secretary for mediation of a matter for which an order may be sought from the Tribunal under this Act.
- (2) On receipt of an application for mediation, the Secretary must, if the Secretary thinks the circumstances of the case are appropriate, arrange for mediation in accordance with the regulations.
- (3) The Secretary may dismiss an application for mediation if the Secretary believes that the application is frivolous, vexatious, misconceived or lacking in substance.

181 Representation of parties

A party to a dispute is not entitled to be represented by another person at a mediation session under this Division unless all the other parties consent to the representation.

182 Privilege

- (1) 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 Secretary for the purpose of enabling a mediation session to be arranged.
- (2) The privilege conferred only extends to a publication made—

- (a) at a mediation session, or
- (b) as provided by subsection (1)(b), or
- (c) as a disclosure permitted by this Division.

183 Evidence of mediation sessions not admissible

- (1) Evidence of anything said or of an admission made in a mediation session is not admissible in proceedings before a court, tribunal or body.
- (2) A document prepared for the purposes of, or in the course of, or as a result of, a mediation session, or a copy of the document, is not admissible in evidence in proceedings before a court, tribunal or body.
- (3) This section does not apply to evidence or a 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 an act or omission in connection with which a disclosure has been made under this Division on the ground specified in section 184(c).

184 Confidentiality

A mediator may disclose information obtained in connection with the administration or execution of this Division only in 1 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 Division,
- (c) if there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to a person or damage to property,
- (d) if the disclosure is reasonably required for the purpose of referring a party or parties to a mediation session to a 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.

185 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 or omitted to be done in good faith for the purposes of a mediation session under this Division.

186 Effect of Division on other agreements or arrangements

This Division does not affect the enforceability of other agreements or arrangements that may be made, whether or not arising out of a mediation session, in relation to the matters the subject of a mediation session.

Division 3 Procedures for applications to Tribunal

187 Interested persons

The following persons are *interested persons* for the purpose of making an application to the Tribunal under this Act—

- (a) an association or a strata corporation,
- (b) an officer of an association or strata corporation,
- (c) a managing agent,
- (d) an owner of a development lot, neighbourhood lot or strata lot, a person having an estate or interest in a development lot, neighbourhood lot or strata lot or an occupier of a development lot, neighbourhood lot or strata lot.

188 Certain applications cannot be accepted without prior mediation

- (1) A registrar must not accept an application made to the Tribunal under this Act unless—
 - (a) mediation by the Secretary under Division 2 or otherwise has been attempted but was not successful, or
 - (b) a party refused to participate in the mediation, or
 - (c) the registrar considers that mediation is unnecessary or inappropriate in the circumstances.
- (2) The registrar must inform an applicant that the applicant should arrange for mediation if the registrar rejects an application under this section.
- (3) The applicant may arrange for mediation under Division 2 or otherwise.
- (4) This section does not apply to applications for the following orders—
 - (a) an order to appoint, or requiring the appointment of, a managing agent,
 - (b) an order varying or revoking an order that varies or revokes another order by the Tribunal,
 - (c) an order with respect to waiving, varying or extinguishing a restriction relating to the initial period,
 - (d) an order allocating unit entitlements,
 - (e) an order with respect to access to a lot by the association to inspect or repair association property,
 - (f) an order seeking provision of records to an association by a former managing agent,
 - (g) an order with respect to the inspection of records of an association,
 - (h) an order imposing a monetary penalty and any associated order as to the payment of costs.

189 Notice of applications to Tribunal

- (1) The registrar must give the named parties to the application and the relevant association a copy of an application for an order, but not if the application is for an order imposing a monetary penalty.
- (2) The association must immediately serve a copy of the application on each member of the association other than a member who is a named party to the application.

Division 4 Orders that may be made by Tribunal

190 General order-making power of Tribunal

The Tribunal may, in proceedings before it under this Act, make 1 or more of the following orders or other decisions—

- (a) an order or decision that provides for any ancillary or consequential matter the Tribunal thinks appropriate,

- (b) an interlocutory decision within the meaning of the *Civil and Administrative Tribunal Act 2013*.

191 Agreements and arrangements arising from mediation sessions

- (1) The Tribunal may make orders to give effect to an agreement or arrangement arising out of a mediation session.
- (2) An order may be made whether or not the mediation was carried out in accordance with this Part or by a mediator within the meaning of this Part.
- (3) Without limiting subsection (1), the Tribunal may make an order that gives effect to the terms of a written agreement signed during a mediation session by persons who were parties to the mediation.
- (4) A mediator may request the registrar to refer a matter to the Tribunal for the making of an order under this section, but only with the consent of the parties to the mediation.
- (5) This Part does not affect the enforceability of other agreements or arrangements that may be made, whether or not arising out of a mediation session, in relation to the matters the subject of a mediation session.

192 Interim orders

- (1) If an applicant for an order by the Tribunal under this Act requests the making of an interim order and the Tribunal is satisfied on reasonable grounds that urgent considerations justify the making of the order, the Tribunal may—
 - (a) make an interim order in the form of any order that could otherwise be made by the Tribunal, and
 - (b) renew the interim order by giving notice that the order is renewed if a request for its renewal is made not later than 3 months after the order was made.
- (2) The Tribunal may revoke an interim order, or a renewal of an order.
- (3) The Tribunal must give notice that the order has been revoked.
- (4) A person must not in, or in connection with, a request for an interim order or for the renewal of an interim order make a statement that the person knows is false or misleading in a material respect.
Maximum penalty—5 penalty units.
- (5) An interim order may be made or renewed even if—
 - (a) since receipt of the application, any procedure under this Act has not been followed or a function of the Tribunal has not been exercised in relation to the application, or
 - (b) the time, or extended time, for making written submissions on the application has not expired, or
 - (c) a right of appearance or representation has not been exercised.
- (6) An interim order continues in force until—
 - (a) the end of the period of 3 months that commenced with the making of the order or an earlier date specified in 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 end of the period of 6 months that commenced with the making of the order or any earlier date specified in the order.

- (7) Subsection (6) does not apply if the order is revoked by the Tribunal or the application is determined in accordance with another provision of this Act.

193 Orders to settle disputes or rectify complaints

(1) Orders relating to complaints and disputes

The Tribunal may, on application by an interested person, make an order to settle a complaint or dispute about any of the following—

- (a) the operation, administration or management of a scheme under this Act,
- (b) an agreement authorised or required to be entered into under this Act,
- (c) an agreement appointing a managing agent or a facilities manager,
- (d) an agreement between the association or strata corporation and an owner, mortgagee or covenant chargee of a lot in a scheme that relates to the scheme or a matter arising under the scheme,
- (e) an exercise of, or failure to exercise, a function conferred or imposed by or under this Act or the by-laws of a scheme,
- (f) an exercise of, or failure to exercise, a function conferred or imposed on an association or strata corporation under another Act.

(2) Failure to exercise a function

For the purposes of this section, an association, strata corporation or association committee is taken not to have exercised a function if—

- (a) it decides not to exercise the function, or
- (b) application is made to it to exercise the function and it fails for 2 months after the making of the application to exercise the function in accordance with the application or to inform the applicant that it has decided not to exercise the function in accordance with the application.

(3) Other proceedings and remedies

A person is not entitled—

- (a) to commence other proceedings in connection with the settlement of a dispute or complaint the subject of a current application by the person for an order under this section, or
- (b) to make an application for an order under this section if the person has commenced, and not discontinued, proceedings in connection with the settlement of a dispute or complaint the subject of the application.

(4) Disputes relating to consent to development applications

The Tribunal must consider the interests of all the owners of lots in a scheme in the use and enjoyment of their lots and the association property or common property in determining whether to make an order relating to a dispute concerning the failure of an association or strata corporation to consent to the making of a development application under the *Environmental Planning and Assessment Act 1979* relating to association property or common property.

(5) Excluded complaints and disputes

This section does not apply to a complaint or dispute relating to an agreement that is not an agreement entered into under this Act, or the exercise of, or failure to exercise, a function conferred or imposed by or under any other Act, if another Act confers jurisdiction on another court or tribunal with respect to the subject-matter of the complaint or dispute and the Tribunal has no jurisdiction under a law (other than this Act) with respect to that subject-matter.

- (6) This section does not apply to a complaint or dispute relating to a function of, or a failure to exercise a function by, an association or strata corporation if the function may be exercised only in accordance with a unanimous resolution or a special resolution (other than a special resolution relating to association property or common property).

194 Order substituting schedule of unit entitlements

- (1) The Tribunal may, on application, make an order that the schedule of unit entitlements for a community scheme, precinct scheme or neighbourhood scheme be replaced by a schedule based on revaluations made by a qualified valuer if the Tribunal considers that—
- (a) the initial schedule is based on unreasonable valuations, or
 - (b) the schedule should be reviewed or replaced.
- (2) The Tribunal may, on application, make an order that the schedule of unit entitlements for a neighbourhood scheme be replaced by a schedule based on valuations made by a different qualified valuer if the Tribunal considers that the developer's or subdivider's estimate of proportionate values for a neighbourhood scheme is inaccurate.
- (3) An application for an order under this section may be made by any of the following—
- (a) an association or a strata corporation within the scheme,
 - (b) the owner of a development lot, a neighbourhood lot or a strata lot within the scheme.
- (4) In this section—
qualified valuer has the same meaning as in the *Community Land Development Act 2021*.

195 Order with respect to restricted property

- (1) The Tribunal may, on application, make an order prescribing a change to an association property rights by-law or amending the management statement for an association in relation to restricted property if—
- (a) an association or a strata corporation decides to create, or refuses to create, restricted property, or
 - (b) a consent that is required to the creation of, or a refusal to create, restricted property is not given.
- (2) In determining an application, the Tribunal is to make an order on the basis of what it considers to be the best interests of all the members of the association or strata corporation.
- (3) Without limiting subsection (1), an order may have the effect of revoking so much of a management statement or by-laws as creates restricted property.
- (4) An application for an order under this section may be made by any of the following—
- (a) the association or strata corporation,
 - (b) the owner of a lot within the scheme under which the association or strata corporation is constituted.

196 Orders for appointment of managing agent

(1) Order appointing or requiring the appointment of managing agent to exercise functions of association or strata corporation

The Tribunal may, on its own motion or on application, make an order appointing a person as a managing agent or requiring an association or strata corporation to appoint a person as a managing agent—

- (a) to exercise all the functions of an association or strata corporation, or
- (b) to exercise specified functions of an association or strata corporation, or
- (c) to exercise all the functions other than specified functions of an association or strata corporation.

(2) Order may confer other functions on managing agent

The Tribunal may also order, when making an order under this section, that the managing agent is to have and may exercise—

- (a) all the functions of the chairperson, secretary, treasurer or committee of the association or strata corporation, or
- (b) specified functions of the chairperson, secretary, treasurer or committee of the association or strata corporation, or
- (c) all the functions of the chairperson, secretary, treasurer or committee of the association or strata corporation other than specified functions.

(3) Circumstances in which order may be made

The Tribunal may make an order only if satisfied that—

- (a) the management of a scheme the subject of an application for an order under this Act or an appeal to the Tribunal is not functioning or is not functioning satisfactorily, or
- (b) an association or strata corporation has failed to comply with a requirement imposed on the association or strata corporation by an order made under this Act, or
- (c) an association or strata corporation has failed to perform 1 or more of its duties, or
- (d) an association or strata corporation owes a judgment debt.

(4) Qualifications of person appointed

A person appointed as a managing agent as a consequence of an order made by the Tribunal must—

- (a) hold any licence issued under the *Property and Stock Agents Act 2002* required to be held by a person exercising the functions of a managing agent, and
- (b) have consented in writing to the appointment, which consent, in the case of a strata managing agent that is a corporation, may be given by the Secretary, an officer of the corporation or another person authorised by the corporation to do so.

(5) Terms and conditions of appointment

A managing agent may be appointed as a consequence of an order under this section on the terms and conditions (including terms and conditions relating to remuneration by the association or strata corporation and the duration of appointment) specified in the order making or directing the appointment.

(6) Return of documents and other records

A strata managing agent appointed as a consequence of an order under this section must cause a general meeting of the association to be held not later than 14 days before the end of the agent's appointment and must on or before that meeting make arrangements to return to the association all documents and other records of the association held by the agent.

(7) Revocation of certain appointments

An order may be revoked or varied on application to the Tribunal and, unless sooner revoked, ceases to have effect at the expiration of the period after its making (not exceeding 2 years) that is specified in the order.

(8) Persons who may make an application

An application for an order under this section may be made by—

- (a) a person who obtained an order under this Act that imposed a duty on the association or strata corporation or on the committee or an officer of the association or strata corporation and that has not been complied with, or
- (b) a person having an estate or interest in a development lot, neighbourhood lot or strata lot in the scheme concerned, or
- (c) the authority having the benefit of a positive covenant that imposes a duty on the association or strata corporation, or
- (d) a judgment creditor to whom the association or strata corporation owes a judgment debt.

197 Orders relating to association committee and officers

- (1) The Tribunal may, on its own motion or on application by an interested person, make any of the following orders—
 - (a) an order removing a person from an association committee,
 - (b) an order prohibiting an association committee from determining a specified matter and requiring the matter to be determined by resolution of the association,
 - (c) an order removing 1 or more of the officers of an association from office and from the association committee.
- (2) Without limiting the grounds on which the Tribunal may order the removal from office of a person, the Tribunal may remove a person if it is satisfied that the person has—
 - (a) failed to comply with this Act or the regulations, or the by-laws or management statement of the association scheme, or
 - (b) failed to exercise due care and diligence, or engaged in serious misconduct, while holding the office.

Division 5 General provisions relating to Tribunal powers and orders

198 Title to land

- (1) The Tribunal may determine a question of title to land only for the purpose of deciding a matter under this Act.
- (2) A determination under this section does not have any force or effect except as provided by this Act.

199 Tribunal may make order of another kind

The Tribunal may deal with an application for an order under a specified provision of this Act by making an order under a different provision of this Act if it considers it appropriate to do so.

200 Other matters for which Tribunal may provide

- (1) The Tribunal may order a person the subject of an application for an order to do or refrain from doing a specified act in relation to a scheme.
- (2) The Tribunal may in proceedings for an order under this Act order a party who, without reasonable excuse, failed (after previously agreeing to mediation) to attend a mediation session relating to the subject-matter of the proceedings to pay the whole or any part of the costs of mediation.

201 Dismissal of application on certain grounds

The Tribunal may dismiss an application for an order if—

- (a) the ground for the application is the absence of a quorum at a meeting or a defect, irregularity or deficiency of notice or time, and
- (b) the Tribunal believes no substantial injustice has resulted.

202 Copies of orders

- (1) The Tribunal is to cause a copy of an order under this Act to be given to the association or strata corporation for the scheme to which the order relates (whether or not the association or strata corporation is a party to the proceedings).
- (2) The association or strata corporation must—
 - (a) display the copy of the order in a prominent position on the notice board of the association or strata corporation within 3 days after receiving it, and for 14 days after that, or
 - (b) if the association or strata corporation does not have a notice board, cause a further copy of the order to be given to each person whose name appears on the association or strata roll.

203 Tribunal to be provided with association report and inspections

- (1) An association must, if required to do so by the Tribunal for the purposes of its functions under this Act, provide to the Tribunal—
 - (a) information under Division 2 of Part 10, or
 - (b) an opportunity to inspect items under that Division.Maximum penalty—5 penalty units.
- (2) The Tribunal is not liable to pay a fee for any information provided for inspection under this section.

204 Resolution purporting to alter effect of order

- (1) If an order by the Tribunal under this Act 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 (3).
- (2) The association must cause the terms of the order to be recorded in its minute book when it is given a copy of the order by the registrar.
- (3) If an order fixes a period during which a resolution of an association or strata corporation purporting to alter the effect of the order would be inoperative, a resolution passed during that period has effect only if—

- (a) it is a unanimous resolution, or
 - (b) it is passed on a motion submitted to a general meeting after being authorised, by order, by the Tribunal.
- (4) A resolution that is so authorised and passed may amend or revoke an order before the end of the period.
- (5) An application to the Tribunal for an order authorising a motion for submission to a general meeting 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.

205 Recording in Register of effect of certain orders

- (1) The Registrar-General is to make any recordings in the Register with respect to an order under this Act that appear to the Registrar-General to be necessary or proper to give effect to the order if—
- (a) a copy of the order, certified by the Tribunal as a true copy, has been lodged with the Registrar-General, and
 - (b) the copy is accompanied by the certificate of title comprising the common property in the strata scheme, and
 - (c) any fee payable for the recordings has been paid.
- (2) The Registrar-General may waive the requirement for the certificate of title under subsection (1)(b) if—
- (a) the certificate of title has not been lodged within 21 days after written notice is given by the person lodging the copy of the order to the association requesting the lodging of the certificate of title, or
 - (b) an application under section 111 of the *Real Property Act 1900* for the issue of a new certificate of title has not been made within that period.

206 Changes to Register after orders allocating unit entitlements

- (1) This section applies if—
- (a) a copy of an order allocating unit entitlements among lots in a neighbourhood scheme is lodged with the Registrar-General in accordance with this Act, or
 - (b) a copy of an order made by a superior court with respect to any such order is lodged with the Registrar-General and is certified by the appropriate officer of that court to be a true copy.
- (2) The Registrar-General must amend the schedule of unit entitlement recorded in the folio of the Register comprising the common property to which the order relates, to the extent necessary to give effect to the order.

207 Civil penalties for contravention of orders

- (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 Act (*the original order*).
- (2) An application for the order may be made—
- (a) by the applicant for the original order, or
 - (b) by the association or strata corporation for the scheme to which the order relates, or
 - (c) in the case of an order that gives effect to any agreement or arrangement arising out of a mediation session, by either party to the mediation.

- (3) A person is not liable to be punished twice if the person's act or omission constitutes both a contravention for the purposes of this section and—
- (a) a contravention for the purposes of a civil penalty provision of the *Civil and Administrative Tribunal Act 2013*, or
 - (b) a contempt of the Tribunal.

208 Recovery of unpaid civil penalty

A civil penalty imposed by the Tribunal as a result of a contravention of an order under this Act that is to be paid by an owner of a lot to the association may be recovered under this Act as if it were an amount of unpaid contributions.

Note 1. Section 72(3) of the *Civil and Administrative Tribunal Act 2013* provides for a civil penalty for a contravention of an order of the Tribunal. A monetary penalty of up to \$11,000 for an individual and \$22,000 for a corporation may be imposed for the contravention and may be recovered as a debt due to the Crown in a court of competent jurisdiction (see section 77 of that Act). Other penalties ordered to be paid by the Tribunal may also be recovered as debts under that Act (see section 78 of that Act).

Note 2. Section 91 of this Act provides for the recovery of unpaid contributions.

Part 12 Offences and penalties

Division 1 Offences and enforcement

209 Investigations by Secretary

- (1) If the Secretary believes on reasonable grounds that an offence under this Act has been or may be committed, the Secretary 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 Secretary and allow the Secretary to inspect its records under Division 2 of Part 10.
- (2) When exercising a power under this section, the Secretary may, if the Secretary thinks fit, be accompanied by—
 - (a) a member of the 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 Secretary, or a delegate of the Secretary, in the exercise of powers conferred by this section.
Maximum penalty—5 penalty units.
- (4) An association or strata corporation must not neglect or fail to comply with a request under subsection (1)(d).
Maximum penalty—5 penalty units.
- (5) No charge is payable by the Secretary in connection with a request made under subsection (1)(d).
Note. The Secretary may delegate the Secretary's functions under this Act (see section 218).

210 Penalty notices

- (1) An authorised officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.
- (3) The *Fines Act 1996* applies to a penalty notice issued under this section.
Note. The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.
- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).
- (5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (6) In this section, **authorised officer** means a member of staff of the Department of Customer Service designated by the Secretary of the Department as an authorised officer for the purposes of this section.

211 Nature of proceedings

Proceedings for an offence under this Act or the regulations may be dealt with summarily before the Local Court.

212 Proof of reasonable excuse

In any proceedings for an offence against a provision of this Act or the regulations, the onus of proving that a person had a reasonable excuse (as referred to in the provision) lies with the defendant and must be proved on the balance of probabilities.

Division 2 Other proceedings

213 Other rights and remedies not affected by this Act

- (1) Nothing in this Act derogates from any rights or remedies that any of the following persons may have in relation to a lot, association property or common property apart from this Act, the *Strata Schemes Management Act 2015* or the *Strata Schemes Development Act 2015*—
 - (a) an association or a strata corporation,
 - (b) the owner, mortgagee or covenant chargee of a development lot, a neighbourhood lot or a strata lot.
- (2) In proceedings to enforce any such right or remedy, the court in which the proceedings are taken must order the plaintiff to pay the defendant's costs if the court is of the opinion that, having regard to the subject-matter of the proceedings, the taking of the proceedings was not justified because this Act or the *Strata Schemes Management Act 2015* makes adequate provision for the enforcement of those rights or remedies.
- (3) The defendant's costs are to be as determined by the court.

214 Costs in proceedings between association and members

- (1) This section applies to legal proceedings brought—
 - (a) against an association by 1 or more of its members, or
 - (b) by an association against 1 or more of its members,including legal proceedings involving a 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 only in respect of the lots, and in the proportions, specified in the order.

215 Association may represent members in certain proceedings

- (1) This section applies to proceedings in relation to association property.
- (2) If the members of an association are jointly entitled to take proceedings against a person or are liable to have proceedings taken against them jointly, the proceedings may be taken by or against the association.
- (3) A judgment or order given or made in favour of or against the association in those proceedings has effect as if it were a judgment or order given or made in favour of or against its members.
- (4) A contribution required to be made by a member of an association to another member in relation to the judgment debt is to be the proportion of the judgment debt specified in subsection (5), (6) or (7), as applicable.

- (5) The proportion for a member of a community association for a judgment debt relating to community property is—
 - (a) if the member is the owner of a community development lot—the proportion that the unit entitlement of the development lot bears to the total unit entitlement of the community scheme, or
 - (b) if the member is a precinct association, neighbourhood association or strata corporation—the proportion that the unit entitlement for the former development lot that became subject to the precinct scheme, neighbourhood scheme or strata scheme bears to the total unit entitlement of the community scheme.
- (6) The proportion for a member of a precinct association for a judgment debt relating to precinct property is—
 - (a) if the member is the owner of a precinct development lot—the proportion that the unit entitlement of the precinct development lot bears to the total unit entitlement of the precinct scheme, or
 - (b) if the member is a neighbourhood association or strata corporation—the proportion that the unit entitlement for the former development lot that became subject to the neighbourhood scheme or strata scheme bears to the total unit entitlement of the precinct scheme.
- (7) The proportion for an owner of a neighbourhood lot for a judgment debt relating to neighbourhood property is the proportion that the unit entitlement for the neighbourhood lot bears to the total unit entitlement of the neighbourhood scheme.

216 Structural defects—proceedings as agent

- (1) An interested person may take proceedings for the rectification of the condition of a part of a building, or a part of the site of a building, if that condition affects or is likely to affect the support or shelter provided by that part to any other part of the building or its site.
- (2) The proceedings may be taken only if—
 - (a) they could have been taken by an owner of a lot or by another person in whom is vested an estate in fee simple in a part of the building or its site, and
 - (b) they have not been taken by the owner or other person within a reasonable time.
- (3) The proceedings are taken by an interested person as agent for the person who might have taken the proceedings and at the cost of the interested person.
- (4) In this section, *interested person* means—
 - (a) the association or the strata corporation for the scheme for the building or, if part of the building is included in a part strata parcel, for a strata scheme for part of the building, or
 - (b) a person in whom is vested an estate in fee simple or, in the case of a leasehold strata scheme, a leasehold estate, registered under the *Real Property Act 1900* in any part of the building or its site that is not included in a part strata parcel.

Part 13 Miscellaneous

217 Functions of Secretary

The functions of the Secretary under this Act include the following—

- (a) investigating and carrying out research into matters relating to or affecting schemes,
- (b) investigating and attempting to resolve complaints and disputes relating to schemes and taking any action that the Secretary thinks appropriate,
- (c) prosecuting an offence under this Act or the regulations,
- (d) providing information to owners, occupiers, associations, managing agents and the public about this Act and the services provided by the Secretary and the Tribunal,
- (e) investigating and reporting on matters, or making inquiries in relation to matters, referred to the Secretary by the Minister in connection with this Act.

218 Delegation by Secretary

The Secretary may delegate the exercise of any function of the Secretary under this Act (other than this power of delegation) to—

- (a) any member of staff of the Department of Customer Service, or
- (b) any person, or any class of persons, authorised for the purposes of this section by the regulations.

219 Tenancy notice to be given

- (1) If a development lot or neighbourhood lot is leased, the lessor must give notice of the lease, in accordance with this section, to the association of the scheme within which the lot is situated within 14 days after the commencement of the lease.

Maximum penalty—5 penalty units.

- (2) If a development lot or neighbourhood lot is subleased, the sublessor must give notice of the sublease, in accordance with this section, to the association of the scheme within which the lot is situated within 14 days after the commencement of the sublease.

Maximum penalty—5 penalty units.

- (3) If a lease or sublease of a development lot or neighbourhood lot is assigned, the assignor must give notice of the assignment, in accordance with this section, to the association of the scheme within which the lot is situated within 14 days after the execution of the assignment.

Maximum penalty—5 penalty units.

- (4) The notice must be in writing and specify—

- (a) the name of the tenant and an address for service of the tenant, and
- (b) the date of commencement or assignment of the lease or sublease, as the case requires, and
- (c) the name of any agent acting for the owner in respect of the lease or sublease.

Note. An address for service of notices may be an Australian postal address or other electronic address, including an email address (see section 224).

- (5) A notice under this section is to be given to the original owner if it is given during the initial period of the scheme.

220 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.

Maximum penalty—5 penalty units.

221 Notices relating to subsidiary body

- (1) A person who was the owner of a development lot immediately before it became subject to a subsidiary scheme must, not later than 14 days after registration of a precinct plan, or the neighbourhood plan or strata plan for the subsidiary scheme, give the community association and, if there is a precinct association, the precinct association, written 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.

Maximum penalty—1 penalty unit.

- (2) A subsidiary body must, not later than 14 days after the registration of the plan by which it is constituted, give written notice of the address for service of notices on the subsidiary body that is recorded in the Register—

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

Maximum penalty—1 penalty unit.

222 Personal liability of officers and association committee members

- (1) A protected person of an association is not personally subject to any liability for anything done—

- (a) in good faith, and
- (b) for the purpose of executing functions under this or any other Act.

- (2) The liability instead attaches to the association.

- (3) In this section—

done includes omitted to be done.

liability means civil liability and includes action, claim or demand.

protected person of an association means—

- (a) an officer of the association, or
- (b) a member of an association committee, or
- (c) a person acting under the direction of a person referred to in paragraph (a) or (b).

223 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 the owner 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.

224 Address for service

- (1) A postal address for service given under this Act must be an Australian postal address.
- (2) An address for service given under this Act may be an email address.

225 Service of documents on association

- (1) A summons or other legal process may be given to an association—
 - (a) by leaving it with the chairperson or secretary, or with any other member of its committee or the managing agent, or
 - (b) by posting it, by prepaid mail, to the association at its address recorded in the folio of the Register comprising the association property.
- (2) A document other than a summons or other legal process may be given to an association as provided by its management statement or, if the management statement does not so provide—
 - (a) by leaving it with the chairperson or secretary or at the location and by the means provided by the association for the receipt of mail, or
 - (b) by posting it by prepaid mail to the association at its address recorded in the folio of the Register comprising the association property, or
 - (c) by sending it by electronic transmission to an address or location nominated (in correspondence or otherwise) by the chairperson or secretary of the association or a member of the association committee as an address or location to which correspondence can be sent.
- (3) A document (including a summons or other legal process) may be given by a person to an association in any manner agreed on between the person and the association.

226 Service of documents by certain persons

(1) Application of section

This section applies to a notice or other document required or authorised to be given by or under this Act or the by-laws by the Secretary, the Tribunal, an association, a strata corporation, an association committee, a strata committee, the secretary of an

association or strata committee or a managing agent and is subject to the other provisions of this Act.

(2) **Service on occupier of lot**

A notice or other document may be given to the occupier of a lot—

- (a) by post at the address of the lot, or
- (b) by leaving it at the address of the lot with someone apparently of or above the age of 16 years old.

(3) **Service where address included in association or strata roll**

If an address for service of notices on a person is recorded in the association roll or strata roll or has been notified in a tenancy notice, a document may be served on the person—

- (a) in the case of a postal address, by post at that address or by leaving it at that address with someone who seems to be at least 16 years old, or
- (b) by sending it by electronic transmission to an address or location nominated (in correspondence or otherwise) by the person as an address or location to which correspondence can be sent.

(4) **Service on owner of lot**

A document may be served on the owner of a lot in accordance with subsection (3) or if no address for service is recorded on the association or strata roll—

- (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 owner's place of residence or business (otherwise than on a part of the lot provided for the accommodation of a vehicle or as a storeroom), 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 owners.

(5) **Service of notice to produce certain records and property**

Notice under section 170 may be given to a person—

- (a) personally or by post, or
- (b) by leaving it with a person apparently of or above the age of 16 years at the place of residence or place of business of the person who is to be given the notice.

(6) 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.

227 Service of documents

(1) A document that is authorised or required by this Act or the regulations to be given to any person (other than as required by section 225 or 226) may be given by—

- (a) in the case of an individual—
 - (i) delivering it to the person personally, or
 - (ii) sending it by post to the address specified by the person for the giving of documents or, if no such address is specified, the residential or business address of the person last known to the person giving the document, or

- (iii) sending it by electronic transmission to an address or location nominated (in correspondence or otherwise) by the person as an address or location to which correspondence can be sent, or
 - (b) in the case of a body corporate—
 - (i) leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or
 - (ii) sending it by electronic transmission to an address or location nominated (in correspondence or otherwise) by the body corporate as an address or location to which correspondence can be sent.
- (2) Nothing in this section affects the operation of a provision of a law or of the rules of a court authorising a document to be given to a person in any other manner.

228 Change of association's address for service

- (1) An association may change its address for the service of notices by deciding in general meeting to make the change and lodging with the Registrar-General a notice in the form approved under the *Real Property Act 1900* of the change of address.
- (2) Notice of a change of address for the service of notices must also be given—
 - (a) by a precinct association to the community association of which it is a member, and
 - (b) by a neighbourhood association within a community scheme to the community association and, if it is a member of the precinct association, to the precinct association.
- (3) On receiving the notice, the Registrar-General is to make the recordings that the Registrar-General considers appropriate in the folio of the Register comprising the common property for the scheme.
- (4) A change of address does not take effect until it is recorded in the Register in accordance with this section.

229 Dividing fences

The following are taken to be the owners of land for the purposes of the *Dividing Fences Act 1991*—

- (a) for land comprising a community parcel—the community association,
- (b) for land comprising a precinct parcel, neighbourhood parcel or strata parcel within a community scheme—the community association,
- (c) for land comprising a neighbourhood parcel that is not part of a community scheme—the neighbourhood association.

230 Powers of entry by public authority

A public authority that is authorised by an Act to enter on part of a community parcel, precinct parcel or neighbourhood parcel for the purpose of exercising a power conferred on it may enter on any other part of that parcel if it is necessary to do so in order to exercise the power.

231 Notices under Real Property Act 1900 to association taken to be notices to owners

A notice given to an association under Part 2, 4 or 15 of the *Real Property Act 1900* is taken to have been given to each member of the association in the absence of evidence that the contents of the notice were not communicated by the association to any member of the association.

232 Contracting out prohibited

- (1) The provisions of this Act and the regulations have effect despite any stipulation to the contrary in any agreement, contract or arrangement entered into after the commencement of this section.
- (2) No agreement, contract or arrangement, whether oral or wholly or partly in writing, entered into after the commencement of this section operates to annul, vary or exclude any of the provisions of this Act or the regulations.

233 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) In particular, the regulations may make provision for or with respect to the following—
 - (a) the forms to be used for the purposes of this Act,
 - (b) the fees to be paid for applications made to the Secretary under this Act and the waiver or refund of fees,
 - (c) the nomination and election of members of association committees,
 - (d) alternative dispute resolution under this Act,
 - (e) the exclusion of a particular class or classes of schemes from any or all of the provisions of Part 11,
 - (f) requiring information and other matters to be brought to the attention of owners and association or strata committee members in respect of the provision of legal services to an association or strata corporation,
 - (g) requirements for agreements between associations and councils relating to association parking areas under section 650A of the *Local Government Act 1993*,
 - (h) the service of documents by electronic means under this Act,
 - (i) the form in which documents required to be provided or delivered under this Act may be so provided or delivered,
 - (j) requiring persons to provide information about schemes to the Secretary, including for the purposes of the Secretary making that information publicly available on the internet or in any other way.
- (3) Regulations under subsection (2)(j) may, without limitation, prescribe the following—
 - (a) the types of information that must be provided whether by reference to classes of scheme or otherwise,
 - (b) the way in which the information must be provided, including the form in which it must be provided,
 - (c) the persons who must provide the information,
 - (d) the time in which the information must be provided,
 - (e) any restrictions on the use or disclosure of the information,
 - (f) the procedures for correcting the information,
 - (g) the payment by an association, on a periodic basis, of amounts to the Secretary for administration relating to the information,
 - (h) the fees, if any, for accessing the information,

- (i) offences, with a penalty not exceeding 50 penalty units, for failing to comply with the regulations made under subsection (2)(j).

234 Persons who may keep seals of associations

- (1) If an association has only 1 owner, the seal of the association must be kept by the owner or by the managing agent of the association.
- (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 that purpose, or
 - (b) by the managing agent of the association.
- (3) A managing agent is entitled to custody of the seal of an association only to permit the exercise of the managing agent's functions.
- (4) Section 50(2) and (3) of the *Interpretation Act 1987* do not apply to an association.
Note. Section 50(1)(b) of the *Interpretation Act 1987* provides that statutory corporations are to have a seal. Section 50(2) and (3) of the *Interpretation Act 1987* contain provisions relating to the keeping of the seal of a statutory corporation and the authentication of documents by a statutory corporation.

235 Affixing of seal of association

- (1) The seal of an association that has only 1 member or 2 members must not be affixed to an instrument or document except in the presence of the member or members or the managing agent of the association.
- (2) The seal of an association that has more than 2 members must not be affixed to an instrument or document except in the presence of—
 - (a) 2 persons nominated by the association or, in the absence of a nomination, the secretary of the association's committee and any other member of the committee, or
 - (b) the managing agent of the association.
- (3) The managing agent must attest the fact and date of the affixing of the seal—
 - (a) by the managing agent's signature, or
 - (b) if the managing agent is a corporation, by the signature of the president, chairperson or other principal officer of the corporation or by any member of staff of the corporation authorised to do so by the president, chairperson or other principal officer.
- (4) A managing agent who has affixed the seal of the association to an instrument or document is taken to have done so under the authority of a delegation from the association.
- (5) Subsection (4) does not operate to enable a person to fraudulently obtain a benefit.
- (6) A person is taken not to have fraudulently obtained a benefit from the operation of subsection (4) if the benefit was, without any fraud by the person, obtained before the seal was affixed.

236 Act to bind Crown

- (1) This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.
- (2) However—

- (a) nothing in the Act requires the Crown to obtain an approval, consent or certificate from a planning authority in respect of an association in respect of which the Crown is a member or the owner of a lot, and
- (b) Parts 3, 4, 5, 6 (except sections 118 and 119), 8, 9 and 10 do not apply to or in respect of an association scheme if the Crown is the owner of all lots in the scheme.

Note. The reference to the Crown covers statutory bodies representing the Crown and NSW Government agencies.

237 Repeals

The following are repealed—

Community Land Management Act 1989 No 202

Community Land Management Regulation 2018

Schedule 1 Meeting procedures of associations

Section 21

Part 1 Preliminary

1 Meetings to which Schedule applies

This Schedule applies to annual general meetings and other general meetings of an association.

2 Interpretation

(1) In this Schedule—

member means a member of the association for which a meeting is held or proposed to be held.

owner means an owner of a development lot or neighbourhood lot in the scheme for which a meeting of the association is held or proposed to be held.

priority vote—see clause 23(1).

relevant lot for a scheme means—

- (a) a community development lot, in the case of a community scheme, or
- (b) a precinct development lot, in the case of a precinct scheme, or
- (c) a neighbourhood lot, in the case of a neighbourhood scheme.

(2) In this Schedule, a reference to a **person entitled to vote** at a meeting is a reference to a person entitled to vote on a motion other than a motion requiring a unanimous resolution.

Part 2 Agendas, nominations and notices

3 Inclusion of matters on agenda

- (1) Any member of an association, or any person entitled to vote at a general meeting of an association, may require a motion to be included in the agenda of the next general meeting of the association.
- (2) The requirement is to be made by written notice given to the secretary of the association that—
 - (a) sets out the required motion, and
 - (b) states the name of the person making the requirement, and
 - (c) includes an explanation of the motion of not more than 300 words in length.
- (3) The secretary must give effect to the requirement.
- (4) However, if the requirement is made after notice has been given of the meeting, the secretary must include the motion in the agenda for the next subsequent meeting.
- (5) An owner or a person may make a requirement even if the owner or person cannot vote because the owner is an unfinancial member.

4 Nomination of candidates for election prior to meeting

- (1) The written notice of an annual general meeting is to include a call for nominations for members of the association committee at least 7 days before the general meeting of an association.

- (2) Any member, or any person entitled to vote at a general meeting of an association, may nominate a person for election as a member of the association committee.
- (3) The nomination is to be made by written notice given to the secretary of the association or, in the case of the first annual general meeting, to the convenor of the meeting, that states the name of—
 - (a) the person nominated, and
 - (b) the person making the nomination and that the person nominated consents to the nomination.
- (4) The secretary must include the nomination in the notice of the meeting at which the election is to take place.
- (5) Notice of any subsequent nomination is to be given by the secretary at the meeting.
- (6) A nomination may be made at any time before the election is held and may be made at the meeting.
- (7) A member or a person may make a nomination even if the member or person cannot vote because the member or another member is an unfinancial member.

5 Required items of agenda for AGM

The agenda for each annual general meeting must include the following items—

- (a) an item to decide if a matter or type of matter is to be determined only by the association in general meeting,
- (b) in the case of a neighbourhood scheme—an item to consider any agreements for the supply of electricity, gas or any other utility relevant to the scheme.

6 Notice of general meetings

- (1) Notice of a general meeting of an association must be given in writing to the members of the association shown on the community roll.
- (2) Written notice of a general meeting must also be given to each first mortgagee or covenant chargee of a development lot or neighbourhood lot who is shown on the association roll if an item on the agenda is one in which the mortgagee or covenant chargee may cast a priority vote.

Note. A priority vote may be cast in the circumstances set out in clause 23.
- (3) The notice of a general meeting of an association must be given—
 - (a) at least 21 days before the meeting, in the case of a community association if the scheme includes a precinct scheme, or
 - (b) at least 14 days before the meeting, in the case of a community association that does not include a precinct scheme or a precinct association, or
 - (c) at least 7 days before the meeting, in the case of a neighbourhood association.
- (4) A period of notice specified by this clause may be reduced to a shorter period specified in the management statement for the scheme concerned.
- (5) Nothing in this Part requires a person to give notice of a meeting to the person.

7 Matters that must be included in notice of general meetings

- (1) The following matters must be included in, or accompany, the notice given of all general meetings—
 - (a) a form of motion to confirm the minutes of the last general meeting of any kind,

- (b) a form of motion for the election of the association committee, if the meeting is for that purpose,
 - (c) a form of motion for each other motion to be considered at the meeting,
 - (d) whether a motion requires a special resolution or a unanimous resolution to be passed,
 - (e) a statement that a vote by an owner of a relevant lot does not count if a priority vote is cast for the lot in relation to the same matter,
 - (f) a statement that an unfinancial member, mortgagee or covenant chargee cannot vote at a meeting on a motion (other than a motion requiring a unanimous resolution) unless payment has been made before the meeting of all contributions levied on the member, and any other amounts recoverable from the member,
 - (g) a statement that voting or other rights may be exercised in person (if the addressee is an individual) or by a company nominee (if the addressee is a corporation), or by a proxy appointed by the addressee,
 - (h) the provisions of this Act for determining a quorum at meetings,
 - (i) if the notice is given to a mortgagee or covenant chargee of a lot, the name of the owner of the lot, the address of the lot and the place at which the meeting is to be held.
- (2) A copy of the minutes of the previous general meeting (if any) must be given to a member with notice of a meeting if the member has not previously been given a copy of the minutes or has requested but not received a copy before the notice is given.

8 Additional matters to be included in notice of AGM

The following matters must also be included in, or accompany, the notice given of annual general meetings—

- (a) a copy of the last statements of key financial information for the administrative fund and the capital works fund prepared by the association and any relevant auditor's report,
- (b) a form of motion for adoption of the financial statements,
- (c) a form of motion to consider the appointment of an auditor and the taking out of insurance of the kind referred to in section 148, if insurance of that kind has not already been taken out,
- (d) particulars of each insurance policy taken out by the association (as required to be specified in the association roll),
- (e) a form of motion to decide the number of members of the association committee,
- (f) a form of motion for the election of the association committee, including the names of any persons nominated for election,
- (g) if there is a managing agent, a form of motion to consider the report by the agent as to whether, and what, commissions have been paid or are likely to be payable to the agent for the following 12 months,
- (h) a form of motion to decide how to deal with any overdue contributions payable to the association,
- (i) a form of motion to decide if any matter or type of matter is to be determined by the association in general meeting.

9 Financial statements to be provided on request

- (1) The association must, at the request of a member or a mortgagee or covenant chargee of a relevant lot within the scheme, give to the member, mortgagee or covenant chargee a copy of the last financial statements prepared for the administrative fund and the capital works fund by the association at least 2 days before the meeting at which the statements are to be presented.
- (2) This Schedule does not prevent the association from determining that a copy of the last financial statements prepared for the administrative fund and the capital works fund is to be included in, or to accompany, the notice of an annual general meeting.

10 Notice to be given to tenants

- (1) A copy of the agenda for a meeting must be given to each tenant of a relevant lot, who has been notified to the association in accordance with this Act as a tenant of the lot, at least 7 days before the meeting is held.
- (2) Copies of other documents relating to a meeting may be given to each tenant of a relevant lot if the association so decides.

Part 3 General meeting procedure

11 Chairperson to preside

- (1) **Chairperson to preside**

The chairperson of the association is to preside at a meeting at which the chairperson is present.

- (2) **Presiding member where chairperson absent**

In the chairperson's absence from a meeting, the persons present at that meeting and entitled to vote on motions submitted at that meeting may elect 1 of their number to preside at that meeting and the person so elected is, while so presiding, taken to be the chairperson of the association.

- (3) **Chairperson does not have casting vote**

The chairperson does not have a casting vote in relation to any motion but may vote in the chairperson's own right if otherwise entitled.

- (4) **Chairperson may be only person present**

A meeting is, subject to the provisions of this Schedule relating to the quorum, validly held even though the only person present at the meeting is the chairperson of the association.

12 Chairperson to announce names of persons entitled to vote

If requested to do so by a person present and entitled to vote at a meeting, the chairperson must, before submitting a motion to the meeting or the holding of the election of members of the association committee, announce the names of the persons who are entitled to vote on that motion or at that election.

13 Decisions at meetings—counting votes

- (1) **Simple majority vote to generally apply**

A motion put to a meeting, or an election of officers of the association or members of the association committee, is to be decided according to a majority in number of the votes cast for and against the motion, unless this Act requires it be determined by a poll, a special resolution or a unanimous resolution.

(2) **Allocation of votes**

Each subsidiary body has 1 vote and the owners of each relevant lot have 1 vote for each relevant lot even if this results in the same person having more than 1 vote on the motion.

(3) **Vote of original owner who owns more than half of lots to be reduced**

For the purposes of determining an election for officers of the association or members of the association committee or appointing a managing agent (other than in the case of a poll), the total value of the vote in respect of the lots held by the original owner is taken to be the same as that for a special resolution.

(4) **Value of votes to apply for poll**

If a poll is demanded by a person present and entitled to vote on a motion or for the election of officers of the association or members of the association committee at the meeting, the motion is to be decided according to the value of the votes cast for and against the motion and the value of a vote cast by a person entitled to vote in respect of a lot is equal to the unit entitlement of that lot.

(5) However, the value of the vote of an original owner is to be calculated in the same way as for a special resolution.

(6) **Polls**

A poll may be demanded before or after a vote decided by a majority in number has been taken and is to be conducted as directed by the chairperson. The demand for a poll may be withdrawn by the person who made it.

Note. Section 5 sets out the manner in which the value of a vote for a special resolution or a poll is to be determined.

14 Developer excluded from votes relating to building defects

(1) The developer of a scheme is not entitled to vote, or exercise a proxy vote, on a matter concerning building defects in, or the rectification of building defects in, building work to which this clause applies.

(2) This clause applies to building work that—

- (a) is residential building work (within the meaning of the *Home Building Act 1989*) or carried out on a building, or a part of a building, used or proposed to be used for mixed use purposes that include residential purposes, and
- (b) was carried out by or on behalf of the developer of the scheme.

15 Chairperson's declaration of vote

(1) The chairperson must declare the result of the voting on a motion at a meeting or an election at a meeting at the meeting if it is possible to do so.

(2) The declaration of the chairperson of the result of the voting on a motion at a meeting, otherwise than on a poll, is conclusive without proof of the votes recorded for and against the motion.

16 Quorum

(1) **Quorum required for motion or election**

A motion submitted at a meeting must not be considered, and an election must not be held at a meeting, unless there is a quorum present to consider and vote on the motion or on the election.

(2) **When quorum exists**

A quorum is present at a meeting only in the following circumstances—

- (a) if not less than one-quarter of the members of the association entitled to vote on the motion or election are present either personally or by duly appointed proxy,
 - (b) if not less than one-quarter of the total unit entitlement of the scheme is represented by the persons who are present either personally or by duly appointed proxy and who are entitled to vote on the motion or election,
 - (c) if there are 2 persons who are present either personally or by duly appointed proxy and who are entitled to vote on the motion or election, in a case where there is more than 1 member of the association and the quorum otherwise calculated under this subclause would be fewer than 2 persons.
- (3) A person who has voted, or intends to vote, on a motion or at an election at a meeting by a permitted means other than a vote in person is taken to be present for the purposes of determining whether there is a quorum.

(4) **Procedure if no quorum**

If no quorum is present within the next half-hour after the relevant motion or business arises for consideration at the meeting, the chairperson must—

- (a) adjourn the meeting for at least 7 days, or
- (b) declare that the persons present either personally or by duly appointed proxy and who are entitled to vote on the motion or election constitute a quorum for considering that motion or business and any subsequent motion or business at the meeting.

(5) **Quorum for adjourned meeting**

If a quorum is not present within the next half-hour after the time fixed for the adjourned meeting, the persons who are present either personally or by duly appointed proxy and who are entitled to vote on the motion or election constitute a quorum for considering that motion or business and any subsequent motion or business at the meeting.

17 Motions require notice

- (1) A motion must not be submitted at a general meeting if any requirement of this Act to include the form of the motion in the notice of the meeting has not been complied with, unless the motion is a motion to amend a motion of which notice has been so given.
- (2) A person who is not entitled to vote at a meeting cannot move a motion for consideration at a meeting or nominate a candidate for election to the association committee.
- (3) This clause does not prevent the owner of a relevant lot from moving a motion or nominating a candidate even if the lot is subject to a mortgage or covenant charge.

18 Chairperson may rule certain motions out of order

The chairperson at a meeting may rule a motion out of order if—

- (a) the chairperson considers that the motion, if carried, would conflict with this Act, an applicable management statement or the by-laws or would otherwise be unlawful or unenforceable, or
- (b) a requirement of this Act to include the form of the motion in the notice of the meeting has not been complied with.

19 Adjournments

- (1) A meeting may be adjourned for any reason if a motion is passed at the meeting for the adjournment.
- (2) The time and place at which a meeting adjourned under this Part is to be resumed must be fixed by the person who was presiding at the meeting or, if the meeting was adjourned because of a lack of a quorum, by the person who would have presided at the meeting but for the lack of the quorum.
- (3) The secretary of the association must give to the members of the association, at least 1 day before the resumed meeting, a written notice specifying—
 - (a) the time and place of the meeting, and
 - (b) the provisions of this Act for determining the quorum at a meeting.

20 Tenants at meetings of neighbourhood associations

- (1) A tenant who has been notified in accordance with this Act to a neighbourhood association as a tenant of a neighbourhood lot in the neighbourhood scheme is entitled to attend a meeting but is not entitled to vote at a meeting unless the tenant is the holder of a duly appointed proxy.
- (2) A tenant is not entitled to address a meeting unless authorised to do so by a resolution of the neighbourhood association.
- (3) The neighbourhood association may, at any meeting or for the purpose of all meetings, determine that tenants (other than tenants who hold duly appointed proxies) are not entitled to be present when the following matters are being discussed or determined—
 - (a) financial statements and auditor's reports,
 - (b) levying of contributions,
 - (c) recovery of unpaid contributions,
 - (d) any other financial matter specified by the association committee.

21 Minutes

- (1) **Records to be kept**

An association must keep full and accurate minutes of its meetings that include minutes of all motions passed at its meetings.
- (2) **Distribution of minutes and records of motions**

Within 14 days after a meeting, the association must provide copies of the minutes of the meeting by giving each member of the association and each owner of a relevant lot a copy.

Maximum penalty—5 penalty units.

Part 4 Voting rights and voting procedures

Division 1 General rights to vote

22 Persons entitled to vote at general meetings

- (1) **Persons who have right to vote**

Each member of the association, and each person entitled to a priority vote, has voting rights that may be exercised at a general meeting of the association, but only

if the member or person is shown on the association roll and, in the case of a corporation, the company nominee is shown on the association roll.

(2) **Exercise of voting rights by subsidiary bodies**

Voting rights may be exercised at the meeting by a subsidiary body only by proxy.

(3) **Exercise of voting rights by joint first mortgagees or joint covenant chargees**

Voting rights may be exercised at the meeting by joint first mortgagees or joint covenant chargees only by proxy (who may be one of them) duly appointed by all of them jointly.

(4) **Exercise of voting rights by owner, first mortgagee or covenant chargee**

The voting rights of an owner or first mortgagee or covenant chargee of a relevant lot (other than a co-owner, mortgagee or covenant chargee) may be exercised—

- (a) unless the owner, mortgagee or covenant chargee is a corporation—in person or by proxy, or
- (b) if the owner, mortgagee or covenant chargee is a corporation—by the company nominee in person, or by proxy appointed by the corporation.

(5) **Exercise of voting rights by co-owners to be by proxy**

The voting rights of co-owners of a relevant lot may not be exercised by them individually but may be exercised—

- (a) by a proxy (who may be one of them), or
- (b) as provided by subclause (6).

(6) **Other circumstances in which co-owners may exercise voting rights**

If, on a vote at a general meeting, the rights of co-owners of a relevant lot are not exercised by a proxy as referred to in subclause (5), 1 of them may act as such a proxy—

- (a) if the other co-owners are absent or those who are present give their consent, or
- (b) if paragraph (a) does not apply—if he or she is the owner first named on the association roll as 1 of the co-owners.

(7) **Exercise of voting rights by owners of successive estates in lot**

If there are owners of successive estates in a relevant lot, only the owner of the first estate may vote at a general meeting.

(8) **Exercise of voting rights where owner holds lot as trustee**

If the owner of a relevant lot holds it as trustee, a person beneficially entitled may not vote at a general meeting.

(9) **Voting rights cannot be exercised if contributions not paid**

A vote at a general meeting (other than a vote on a motion requiring a unanimous resolution) by a member of the association or a person with a priority vote in respect of a member does not count if the member was an unfinancial member at the date notice of the meeting was given and did not pay the amounts owing before the meeting.

(10) **Effect of failure to give association interest notice**

This clause does not confer a right to vote on a person deprived of the right by failing to comply with the requirement to give an association interest notice.

23 Priority votes

- (1) A *priority vote* is a vote cast on a motion by a person whose vote has priority under this clause.
- (2) A priority vote may be cast on the following motions—
 - (a) a motion that relates to insurance, budgeting or the fixing of a levy,
 - (b) a motion that will require expenditure by the association of an amount that exceeds the amount prescribed by the regulations for the purposes of this clause,
 - (c) a motion that requires a special resolution or unanimous resolution.
- (3) If a priority vote is cast in relation to a relevant lot, a vote on the same matter by the owner of the lot does not count.
- (4) However, a priority vote has no effect unless at least 2 days written notice of intention to exercise the priority vote at the particular meeting has been given to the owner of the lot.
- (5) A priority vote may be cast in respect of a relevant lot by—
 - (a) the mortgagee of the lot under a mortgage shown on the association roll as having priority over any other mortgage, and over any covenant charge, shown on the association roll in relation to the lot, or
 - (b) the covenant chargee of the lot under a covenant charge shown on the association 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 association roll without any mortgage being shown on the roll in relation to the lot.

24 Rights of proxies and limits on votes by proxies

- (1) **Proxy may demand poll**
A duly appointed proxy may vote on a show of hands or demand a poll.
- (2) **Powers of proxies**
A person duly appointed as a proxy—
 - (a) if entitled to vote otherwise than as a proxy—may also vote in the person's own right, and
 - (b) if appointed as proxy for more than 1 person—may vote separately as a proxy in each case.
- (3) **Proxy cannot vote if person appointing proxy votes**
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.
- (4) **Proxy limited by instrument of appointment**
If the instrument appointing a proxy limits the manner in which the proxy may vote at a meeting, a vote by the proxy that does not observe the limitation is invalid.
- (5) **No proxy vote pursuant to contract for sale by original owner**
An original owner or a person connected with the original owner cannot cast a vote by means of a proxy or power of attorney given by another owner of a relevant lot in the scheme if the proxy or power of attorney was given pursuant to a term of the sale contract for the lot or pursuant to another contract or arrangement that is ancillary or related to the sale contract.

- (6) Subclause (5) does not apply to a proxy or power of attorney given by a person to another person connected with him or her.
- (7) **Limits on exercise of proxy by facilities manager, on-site residential property manager or managing agent**
A vote by a proxy who is a facilities manager, a person who exercises the functions of an on-site residential property manager (within the meaning of the *Property and Stock Agents Act 2002*) or a managing agent is invalid if it would obtain or assist in obtaining a pecuniary interest for, or confer or assist in conferring any other material benefit on, the proxy.
- (8) For the purposes of subclause (7), **material benefits** include, but are not limited to, the following—
- (a) an extension of the term or an additional term of appointment of the proxy as facilities manager, a person who exercises the functions of an on-site residential property manager or a managing agent,
 - (b) an increase in the remuneration of the proxy,
 - (c) a decision of the association not to proceed with, to withdraw, to delay, to compromise or to settle litigation or other legal proceedings relating to the proxy,
 - (d) any other decision of the association that affects litigation or other legal proceedings relating to the proxy.

Division 2 Appointment of proxies

25 Appointment of proxies

- (1) **Duly appointed proxy**
A person is a **duly appointed proxy** for the purposes of this Part if the person is appointed as a proxy by an instrument in the approved form.
- (2) **Form of proxy**
The form of proxy is to make provision for the giving of instructions on—
- (a) whether the person appointing the proxy intends the proxy to be able to vote on all matters and, if not, the matters on which the proxy will be able to vote, and
 - (b) how the person appointing the proxy wants the proxy's vote to be exercised on a motion for the appointment or continuation in office of a managing agent.
- (3) **Proxy to be given to secretary of association**
The instrument is ineffective unless it contains the date on which it was made and it is given to the secretary of the association at or before the first meeting in relation to which the instrument is to operate.
- (4) **Period for which proxy effective**
An instrument appointing a proxy has effect for the period commencing with the day on which it takes effect and ending with the later of the first anniversary of that day and the conclusion of the second annual general meeting held after that day, unless it is sooner revoked or a shorter period is provided by the instrument.
- (5) **Proxy cannot vote if person appointing proxy votes**
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.

(6) Effect of subsequent proxy

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 of the association in accordance with subclause (3).

(7) Limit on number of proxies that may be held

The total number of proxies that may be held by a person (other than proxies held by the person as co-owner of a development lot or neighbourhood lot) voting on a resolution at a meeting of an association are as follows—

- (a) if the scheme has 20 development lots or neighbourhood lots or fewer—1,
- (b) if the scheme has more than 20 development lots or neighbourhood lots—a number that is not more than 5% of the total number of development lots or neighbourhood lots.

(8) Despite subclause (7), a person who owns more than 1 development lot or neighbourhood lot in a scheme may appoint a single proxy in respect of all the lots.

(9) Adjourned meetings

An instrument appointing a proxy for a meeting is not rendered invalid merely because the meeting is adjourned to a later date.

26 Certain provisions unenforceable

A provision of a contract for the sale of a relevant lot in a scheme, or of any ancillary or related contract or arrangement, is void and unenforceable to the extent that it—

- (a) requires the purchaser of a lot, or any other person, to cast a vote at a meeting of the association at the direction of another person, or
- (b) requires the purchaser to give a proxy at the direction of another person for the purpose of voting at a meeting of the association.

Division 3 Manner of voting

27 Manner of voting

- (1) A vote at a meeting by a person entitled to vote or by a proxy must be cast in person unless the association, by resolution, determines that a vote may be cast by some other specified means.
- (2) The regulations may make provision for or with respect to the following—
 - (a) the means of voting (other than in person) that may be adopted by an association,
 - (b) without limiting paragraph (a), procedures for voting by those means,
 - (c) prohibiting the use of specified means of voting.

28 Secret ballots—neighbourhood associations

- (1) A neighbourhood association may, with the agreement of at least one-quarter of the persons entitled to vote on a motion or for an election at a meeting, determine that voting on the motion or election is to be carried out by a secret ballot.
- (2) The regulations may make provision for or with respect to the procedures for a secret ballot.

Schedule 2 Meeting procedures of association committees

Section 44

Part 1 Preliminary

1 Meetings to which Schedule applies

This Schedule applies to meetings of the association committee of an association.

2 Definitions

In this Schedule—

owner means an owner of a relevant lot in the scheme for which a meeting is held or proposed to be held.

relevant lot for a scheme means—

- (a) a community development lot, in the case of a community scheme, or
- (b) a precinct development lot, in the case of a precinct scheme, or
- (c) a neighbourhood lot, in the case of a neighbourhood scheme.

tenant member means a tenant representative appointed to a neighbourhood committee under section 36.

Part 2 Notices of meetings

3 Notice of meetings

- (1) The secretary of the association of a scheme must give notice of a meeting to each other member of the association committee at least 3 days before the meeting and to each owner.
- (2) Notice is to be given in accordance with section 225.

4 Owner not required to serve notice on self

Nothing in this Part requires an owner to give notice of a meeting to the owner.

5 Matters that must be included in notice of meetings

The notice of a meeting must include a detailed agenda for the meeting.

Part 3 Meeting procedure

6 Chairperson to preside

(1) Chairperson to preside

The chairperson of the association is to preside at a meeting at which the chairperson is present.

(2) Presiding member where chairperson absent

In the chairperson's absence from a meeting, the members of the association committee present at that meeting may elect 1 of the members to preside at that meeting and the person so elected is, while so presiding, taken to be the chairperson.

(3) Chairperson does not have casting vote

The chairperson does not have a casting vote in relation to any motion but may vote in the chairperson's own right if otherwise entitled.

(4) **Chairperson may be only person present**

A meeting is, subject to the provisions of this Act relating to the quorum, validly held even though the only person present at the meeting is the chairperson.

7 Decisions at meetings

(1) **Voting at meetings**

A motion put to a meeting is to be decided according to a majority of the number of the votes cast for and against the motion by the members present (other than any tenant member, in the case of a neighbourhood committee) or in the manner set out in subclause (3).

(2) If there is only 1 member of the association committee, the decision of the committee is the decision of that member.

(3) **Voting in writing**

A motion proposed to be put to a meeting is taken to have been validly passed even if the meeting was not held if—

- (a) notice was given of the meeting in accordance with this Schedule, and
- (b) a copy of the motion was given to each member of the committee, and
- (c) the motion was approved in writing by a majority of the members of the committee (other than any tenant member, in the case of a neighbourhood committee).

(4) **Decisions to have no effect if opposed by more than specified owners**

A decision of an association committee has no force or effect if, before the decision is made, notice is given to the secretary of the association by 1 or more owners of relevant lots, the sum of whose unit entitlements exceeds one-third of the total unit entitlements, that the making of the decision is opposed by those owners.

(5) **Voting rights cannot be exercised if contributions not paid**

A member of the association committee is not entitled to vote on any motion put or proposed to be put to the committee if the member was, or was nominated as a member by a member who was, an unfinancial member of the scheme at the date notice of the meeting was given and the amounts owed by the unfinancial member were not paid before the meeting.

(6) **Tenant member not entitled to vote**

A tenant member of a neighbourhood committee is not entitled to vote on any motion put or proposed to be put to the committee.

8 Manner of voting

(1) A vote at a meeting by a person entitled to vote must be cast in person unless the association committee, by resolution, determines that a vote may be cast by some other specified means.

Note. A person may be present at a meeting even if not actually at the meeting (see the Dictionary definition of *person present*).

(2) The regulations may make provision for or with respect to the following—

- (a) the means of voting (other than in person) that may be adopted by an association committee,
- (b) without limiting paragraph (a), procedures for voting by those means,
- (c) prohibiting the use of specified means of voting.

9 Chairperson's declaration of vote

The declaration of the chairperson of the result of the voting on any motion at a meeting is conclusive without proof of the votes recorded for and against the motion.

10 Quorum

(1) Quorum required for motion

A motion submitted at a meeting of an association must not be considered unless there is a quorum present to consider and vote on the motion.

(2) When quorum exists

A quorum is present at a meeting only in the following circumstances—

- (a)** in the case of an association which has only 1 member—if the member is present,
 - (b)** in any other case—if not less than one-half of the persons entitled to vote on the motion are present.
- (3)** A person who has voted, or intends to vote, on a motion or at an election at a meeting by a permitted means other than a vote in person is taken to be present for the purposes of determining whether there is a quorum.
- (4)** The quorum for meetings of an association committee is to be calculated on the basis of the number of members last determined by the association for the committee.

11 Non-member owner may attend

An owner or member or, if the owner of a relevant lot is a corporation, any company nominee of that corporation is entitled to attend a meeting but is not entitled to address the meeting unless authorised to do so by the resolution of the association committee.

12 Only person who may vote can move motion

A person is not entitled to move a motion at a meeting unless the person is entitled to vote on the motion.

13 Chairperson may rule certain motions out of order

The chairperson at a meeting may rule a motion out of order if the chairperson considers that the motion, if carried, would conflict with this Act, the management statement, or the by-laws of a strata scheme that is part of the association scheme, or would otherwise be unlawful or unenforceable.

14 Adjournments

- (1)** A meeting may be adjourned for any reason if a motion is passed at the meeting for the adjournment.
- (2)** The time and place at which a meeting adjourned under this Part is to be resumed must be fixed by the person who was presiding at the meeting.
- (3)** The secretary of the association must give to the members of the association, at least 1 day before the resumed meeting, a notice specifying the time and place of the meeting.
- (4)** Notice is to be given in writing (including by email or other electronic means).

15 Minutes and other records

(1) Records to be kept

An association committee must cause to be kept a record of its decisions, any notices given under this Schedule and full and accurate minutes of its meetings.

(2) The minutes must include minutes of all resolutions passed in accordance with this Schedule.

(3) Distribution of minutes and records of motions

Within 14 days after a meeting of an association committee or the passing of a resolution by the committee, the committee must provide copies of the minutes of the meeting or of the resolution in the following manner—

- (a) by giving each member of the committee a copy,
- (b) by giving an owner of a relevant lot or a member of the scheme a copy, if the owner or member requests a copy within the period of 7 days after the meeting.

16 Disclosure of pecuniary interests

(1) If—

- (a) a member of an association committee has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting, and

- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the association committee.

Maximum penalty—10 penalty units.

(2) A disclosure by a member at a meeting of the association committee that the member—

- (a) is a member, or is in the employment, of a specified corporation or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified corporation or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that corporation or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause must be recorded by the association committee in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the committee.

(4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the association committee otherwise determines—

- (a) be present during any deliberation of the committee with respect to the matter, or
- (b) take part in any decision of the committee with respect to the matter.

(5) For the purposes of the making of a determination by the association committee under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not—

- (a) be present during any deliberation of the committee for the purpose of making the determination, or
 - (b) take part in the making by the committee of the determination.
- (6) A contravention of this clause does not invalidate any decision of the association committee.
- (7) Without limiting subclause (1), a person has an indirect pecuniary interest in a matter if a person connected with the person has a direct interest in the matter.

Schedule 3 Savings, transitional and other provisions

Part 1 Regulations

1 Savings or transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the commencement of—
 - (a) a provision of this Act, or
 - (b) a provision that amends this Act.
- (2) A savings or transitional provision consequent on the commencement of a provision must not be made more than 2 years after that commencement.
- (3) A savings or transitional provision made consequent on the commencement of a provision is repealed 2 years after that commencement.
- (4) A savings or transitional provision made consequent on the commencement of a provision may take effect before that commencement but not before—
 - (a) for a provision of this Act—the date of assent to this Act, or
 - (b) for a provision that amends this Act—the date of assent to the amending Act.
- (5) A savings or transitional provision that takes effect before its publication on the NSW legislation website does not, before its publication—
 - (a) affect the rights of a person in a way that is prejudicial to the person, or
 - (b) impose liabilities on a person in respect of anything done or omitted to be done.
- (6) In this clause—

person does not include the State or an authority of the State.

Part 2 Provisions consequent on enactment of this Act

2 Definitions

In this Part—

existing scheme means a scheme in existence immediately before the commencement of this clause.

former Act means the *Community Land Management Act 1989*.

3 General savings

- (1) Any act, matter or thing done or omitted to be done under a provision of the former Act and having any force or effect immediately before the commencement of a provision of this Act that replaces that provision is, on that commencement, taken to have been done or omitted to be done under the provision of this Act.
- (2) This clause does not apply—
 - (a) to the extent that its application is inconsistent with any other provision of this Schedule or a provision of a regulation made under this Schedule, or
 - (b) to the extent that its application would be inappropriate in a particular case.

4 Existing management statements and by-laws

- (1) The management statement of an existing scheme, as in force immediately before the commencement of section 127, continues in force and is taken to have been made in accordance with this Act.
- (2) Despite any other provision of this Act, a by-law continued in force by this Act is taken to be a valid by-law if it was a valid by-law immediately before the commencement of section 128.

5 Existing executive committees

- (1) A person who, immediately before the commencement of this clause, was a member of an executive committee of an association is, on that commencement, taken to have been appointed as a member of the association committee of the association for the balance of the person's term as a member of the executive committee.
- (2) A person who, immediately before the commencement of this clause, was an officer of an executive committee of an association is, on that commencement, taken to have been appointed as an officer of the same kind of the association for the balance of the person's term as an officer.

6 Existing proceedings

Any proceedings commenced but not determined or finalised under a provision of the former Act are to be dealt with and determined as if the former Act had not been repealed.

7 Adjudicators

- (1) A person who held office as an Adjudicator under the former Act immediately before the commencement of this clause ceases to hold the office on a day appointed by the Secretary, being a day not earlier than the determination or finalisation of all proceedings referred to in clause 6.
- (2) An Adjudicator who ceases to be an Adjudicator under this clause is not entitled to any compensation for loss of office.

8 Existing orders under former Act

An order made by an Adjudicator or the Tribunal under the former Act, and in force immediately before the commencement of this clause, is taken to have been made by the Tribunal under the corresponding provision of this Act.

9 Contributions

Any contributions levied under the former Act are taken to have been levied under this Act and this Act applies to the recovery and payment of any unpaid contributions.

10 Approved insurers

An insurer that was an approved insurer for the purposes of section 39 of the former Act immediately before the commencement of section 149 of this Act is taken to be an approved insurer under this Act.

11 Previous decisions by associations and executive committees

- (1) A decision, consent or approval of an association under the former Act, or that is taken to have been made under the former Act, is taken to have been made by the association under this Act.

- (2) A decision, consent or approval of the executive committee of an association under the former Act, or that is taken to have been made under the former Act, is taken to have been made by the association committee of the association under this Act.

12 Terms of appointment of managing agents

- (1) The term of appointment (including any reappointment) of a managing agent appointed before the commencement of section 54 of this Act ends on the day that is 3 years after the term commenced or that is 6 months after the commencement of this Act, whichever is the later.
- (2) This Act applies to the term of any reappointment of the managing agent after that commencement.

13 Caretakers and facilities managers

- (1) An agreement in force immediately before the commencement of this clause is taken to be a facilities manager agreement for the purposes of this Act, despite any of the provisions of the agreement, if—
 - (a) the agreement provides for the appointment of a person to carry out any of the functions specified in section 70(1) in relation to the association for a scheme, and
 - (b) the primary purpose of the agreement is to provide for that appointment and related matters, and
 - (c) the person is not entitled to exclusive possession of a lot or association property in the scheme.
- (2) Any such facilities manager agreement expires 10 years after the commencement of this clause unless the terms of the agreement provide that it expires on an earlier day or the agreement is terminated on an earlier day.
- (3) A reference in any instrument to a caretaker in relation to an existing scheme is taken to be a reference to a facilities manager in relation to that scheme.

Schedule 4 Amendment of Acts and instruments

4.1 Civil and Administrative Tribunal Act 2013 No 2

Schedule 4 Consumer and Commercial Division

Omit “*Community Land Management Act 1989*” from clause 3(1).

Insert instead “*Community Land Management Act 2021*”.

4.2 Civil and Administrative Tribunal Regulation 2013

[1] Clause 4 Definitions

Omit paragraph (a) of the definition of strata proceedings. Insert instead—

- (a) *Community Land Management Act 2021*,
- (a1) the former *Community Land Management Act 1989*,

[2] Schedule 2 Fees

Omit item 13. Insert instead—

- | | | | |
|-----|--|-------|-------|
| 13 | Lodgment of a general application under the <i>Community Land Management Act 2021</i> for an order under Part 11, Division 4 of that Act for settlement of a dispute or complaint— | | |
| (a) | if the application includes an application for an interim order under section 192 of that Act, or | \$180 | \$360 |
| (b) | if the application does not include an application referred to in paragraph (a) | \$90 | \$180 |

4.3 Civil Procedure Act 2005 No 28

Section 122A Definitions

Omit “*Community Land Management Act 1989*” wherever occurring in the definitions of *owners corporation* and *unpaid contribution*.

Insert instead “*Community Land Management Act 2021*”.

4.4 Contracts Review Act 1980 No 16

Section 4 Definitions

Omit “*Community Land Management Act 1989*” from section 4(2)(a1).

Insert instead “*Community Land Management Act 2021*”.

4.5 Criminal Procedure Regulation 2017

Schedule 3 NSW Government agencies and statutory bodies required to pay court fees

Omit “*Community Land Management Act 1989*”.

Insert instead “*Community Land Management Act 2021*”.

4.6 Design and Building Practitioners Act 2020 No 7

Sections 36(1), definitions of “association” and “owner” and (3)(b) and 81(2)

Omit “*Community Land Management Act 1989*” wherever occurring.

Insert instead “*Community Land Management Act 2021*”.

4.7 Home Building Act 1989 No 147

[1] Section 48C Notification of building dispute

Omit “a proprietor of a lot in a scheme (within the meaning of the *Community Land Management Act 1989*)” from section 48C(2)(b).

Insert instead “an owner of a lot in a scheme (within the meaning of the *Community Land Management Act 2021*)”.

[2] Section 48D Investigation of dispute

Omit “*Community Land Management Act 1989*” from section 48D(5).

Insert instead “*Community Land Management Act 2021*”.

[3] Section 48D(5) and (6)

Omit “proprietor” wherever occurring. Insert instead “owner”.

[4] Section 48D(6)

Omit “proprietors”. Insert instead “owners”.

4.8 Home Building Regulation 2014

Clause 57 Exemption from insurance in relation to retirement villages

Omit “*Community Land Management Act 1989*” from the definition of *community land scheme* in clause 57(4).

Insert instead “*Community Land Management Act 2021*”.

4.9 Land and Environment Court Act 1979 No 204

[1] Sections 18 Class 2—local government and miscellaneous appeals and applications

Omit “section 107 of the *Community Land Management Act 1989*” from section 18(f).

Insert instead “section 52 of the *Community Land Development Act 2021*”.

[2] Section 20 Class 4—environmental planning and protection, development contract and strata renewal plan civil enforcement

Omit “an agreement implied by section 15 of the *Community Land Management Act 1989* or” from the definition of development contract in section 20(5).

Insert instead “a development contract within the meaning of the *Community Land Development Act 2021* or an agreement implied by”

4.10 Local Court Act 2007 No 93

Section 34A Jurisdiction in company title home unit disputes

Omit “*Community Land Management Act 1989*” from section 34A(4).

Insert instead "*Community Land Management Act 2021*".

4.11 Local Government Act 1993 No 30

Section 650A Strata and other scheme parking areas

Omit "*Community Land Management Act 1989*" wherever occurring in section 650A(7) and (10).

Insert instead "*Community Land Management Act 2021*".

4.12 Property and Stock Agents Act 2002 No 66

Section 190 Application of money for purposes of certain Acts

Omit "*Community Land Management Act 1989*" wherever occurring in section 190(1)(a) and (3).

Insert instead "*Community Land Management Act 2021*".

4.13 Property and Stock Agents Regulation 2014

[1] Clause 23 Receipts for trust money

Omit "clause 11 of Schedule 1 to the *Community Land Management Act 1989*" from clause 23(9)(c).

Insert instead "Part 5, Division 2 of the *Community Land Management Act 2021*".

[2] Clause 33A Records of property reports to be kept by real estate agents

Omit "section 26 of the *Community Land Management Act 1989*" from clause 33A(1)(e).

Insert instead "Part 10, Division 2 of the *Community Land Management Act 2021*".

[3] Clause 36 Copy of accounts of owners corporation to be kept as record

Omit "section 51 of the *Community Land Management Act 1989*".

Insert instead "section 65 of the *Community Land Management Act 2021*".

[4] Clause 37 Report to be prepared by strata managing agent

Omit "Schedule 1 to the *Community Land Management Act 1989*" from clause 37(1).

Insert instead "Division 1 of Part 5 of the *Community Land Management Act 2021*".

[5] Clause 42(2) and Schedule 14, clause 2(a) and (b)

Omit "section 85 of the *Community Land Management Act 1989*" wherever occurring.

Insert instead "section 196 of the *Community Land Management Act 2021*".

4.14 Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020 No 9

Section 21 Entry into residential premises only with permission or warrant

Omit "*Community Land Management Act 1989*" from section 21(2).

Insert instead "*Community Land Management Act 2021*".

4.15 Residential (Land Lease) Communities Act 2013 No 97

Section 8 Places to which this Act does not apply

Omit “*Community Land Management Act 1989*” from the definition of *community scheme* in section 8(2).

Insert instead “*Community Land Management Act 2021*”.

4.16 Residential Tenancies Regulation 2019

Schedule 1 Standard Form Agreement

Omit “*Community Land Management Act 1989*” from clause 39.

Insert instead “*Community Land Management Act 2021*”.

4.17 Retirement Villages Act 1999 No 81

[1] Section 4 Definitions

Omit “*Community Land Management Act 1989*” wherever occurring in the definitions of *association*, *association property* and *community land scheme* in section 4(1).

Insert instead “*Community Land Management Act 2021*”.

[2] Section 45 Application of Division

Omit “*Community Land Management Act 1989*” from the note.

Insert instead “*Community Land Management Act 2021*”.

[3] Section 79 Effect of certain votes

Omit “*Community Land Management Act 1989*” wherever occurring in the note.

Insert instead “*Community Land Management Act 2021*”.

[4] Section 108 Determination by Tribunal

Omit “*Community Land Management Act 1989*” from section 108(4)(f).

Insert instead “*Community Land Management Act 2021*”.

[5] Section 128 Order of Tribunal

Omit “*Community Land Management Act 1989*” from section 128(1)(k).

Insert instead “*Community Land Management Act 2021*”.

4.18 Retirement Villages Regulation 2017

Clause 26 Matters not to be financed by way of recurrent charges

Omit “*Community Land Management Act 1989*” from clause 26(j)(ii).

Insert instead “*Community Land Management Act 2021*”.

4.19 State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

Clause 4A.2 Development standards

Omit “*Community Land Management Act 1989*” from clause 4A.2(g).

Insert instead “*Community Land Management Act 2021*”.

4.20 Strata Schemes Development Act 2015 No 51

Section 99 Requirement to register strata management statement

Omit “*Community Land Management Act 1989*” from section 99(2)(a)(iii).

Insert instead “*Community Land Management Act 2021*”.

4.21 Strata Schemes Management Act 2015 No 50

[1] Section 253 Other rights and remedies not affected by this Act

Omit “Part 4 of the *Community Land Management Act 1989*” from section 253(2).

Insert instead “the *Community Land Management Act 2021*”.

[2] Section 271 Regulations

Insert after section 271(2)(n)—

- (o) requiring persons to provide information about strata schemes to the Secretary, including for the purposes of the Secretary making that information publicly available on the internet or in any other way.

[3] Section 271(2A)

Insert after section 271(2)—

- (2A) Regulations under subsection (2)(o) may, without limitation, prescribe the following—
 - (a) the types of information that must be provided whether by reference to classes of strata scheme or otherwise,
 - (b) the way in which the information must be provided, including the form in which it must be provided,
 - (c) the persons who must provide the information,
 - (d) the time in which the information must be provided,
 - (e) any restrictions on the use or disclosure of the information,
 - (f) the procedures for correcting the information,
 - (g) the payment by an owners corporation, on a periodic basis, of amounts to the Secretary for administration relating to the information,
 - (h) the fees, if any, for accessing the information,
 - (i) offences, with a penalty not exceeding 50 penalty units, for failing to comply with the regulations made under subsection (2)(o).

4.22 Surveying and Spatial Information Regulation 2017

Clause 5 Definitions

Omit paragraph (b) of the definition of *road* in clause 5(1). Insert instead—

- (b) an open access way, or a private access way, within the meaning of the *Community Land Development Act 2021*,

4.23 Uncollected Goods Regulation 2020

Clause 4 When goods uncollected for purposes of Act

Omit “*Community Land Management Act 1989*” from clause 4(b).

Insert instead “*Community Land Management Act 2021*”.

4.24 Uniform Civil Procedure Rules 2005

Schedule 8 Assignment of business in the Supreme Court

Omit “*Community Land Management Act 1989*” from Part 1.

Insert instead “*Community Land Management Act 2021*”.

Dictionary

approved form means a form approved by the Secretary.

approved insurer means—

- (a) a general insurer within the meaning of the *Insurance Act 1973* of the Commonwealth, or
- (b) any other person prescribed by the regulations for the purposes of this definition.

association means a community association, precinct association or neighbourhood association.

association committee means the association committee constituted for an association under this Act.

association information certificate—see section 171.

association interest notice—see section 20(1).

association property—

- (a) in a community scheme—means the community property in the scheme, or
- (b) in a precinct scheme—means the precinct property in the scheme, or
- (c) in a neighbourhood scheme—means the neighbourhood property in the scheme.

association property rights by-law—see section 134.

association roll means the association roll for the scheme established under Part 10, Division 1.

association scheme means a community scheme, a precinct scheme or a neighbourhood scheme.

by-laws—

- (a) of a scheme other than a strata scheme—means the by-laws included in a management statement in force for the scheme, or
- (b) of a strata scheme—means the by-laws in force for the scheme.

capital works fund of an association means the fund established by the association under section 78.

change a by-law—see section 126.

common property, in relation to a strata scheme or a proposed strata scheme, has the same meaning as in the *Strata Schemes Development Act 2015*.

community association has the same meaning as in the *Community Land Development Act 2021*.

community committee means the committee for a community association constituted under Part 3, Division 1.

community development lot means a lot in a community plan that is not any of the following—

- (a) community property,
- (b) a public reserve or a drainage reserve,
- (c) subject to a subsidiary scheme,
- (d) 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 property means the lot shown in a community plan as community property.

community scheme has the same meaning as in the *Community Land Development Act 2021*.

company nominee of a corporation means an individual for the time being authorised under section 146 by the corporation.

connected person—see section 6.

co-owners means persons who own land jointly or in common whether as joint tenants or tenants in common.

damage policy—see section 148.

developer of—

- (a) a community scheme—means the owner of a community development lot in the community plan, or
- (b) a precinct scheme—means the owner of a precinct development lot in the precinct plan, or
- (c) a neighbourhood scheme—means the original owner of the neighbourhood parcel.

development has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

development contract has the same meaning as in the *Community Land Development Act 2021*.

development lot means a community development lot or a precinct development lot that has not been severed under section 19 of the *Community Land Development Act 2021* from the applicable scheme.

drainage reserve means land that is set aside as a drainage reserve under section 49 of the *Local Government Act 1993*.

facilities manager—see section 70.

financial statements means the financial statements prepared by an association in accordance with Part 5, Division 3.

first annual general meeting of an association—see section 24.

folio means a folio of the Register.

function includes a power, authority or duty, and **exercise** a function includes perform a duty.

initial maintenance schedule means the schedule prepared by the original owner under section 115.

initial period—

- (a) for a strata scheme—means the initial period of a strata scheme within the meaning of the *Strata Schemes Management Act 2015*, or
- (b) for a neighbourhood scheme—means the period that commences on the day the neighbourhood association is constituted and ends on the day there are owners of lots in the neighbourhood scheme (other than the original owner) the sum of whose unit entitlements is at least one-third of the total unit entitlement under the scheme, or
- (c) for a precinct scheme or community scheme—means the period that commences on the day the scheme association is constituted and ends on the day that at least one third of the sum of the total unit entitlement under the scheme consists of one or both of the following—
 - (i) former development lots in the scheme that are the subject of subsidiary schemes for which the initial period has expired,
 - (ii) development lots in the scheme that are not owned by the original owner and for which occupation certificates (within the meaning of the *Environmental Planning and Assessment Act 1979*) have been issued for development on the lots.

interested person—see section 187.

make a by-law—see section 126.

management statement means a community management statement, a precinct management statement or a neighbourhood management statement.

managing agent means a person appointed as the managing agent for a scheme.

mediation, for Part 11—see section 179.

mediation session, for Part 11—see section 179.

mediator, for Part 11—see section 179.

neighbourhood association has the same meaning as in the *Community Land Development Act 2021*.

neighbourhood committee means the committee for a neighbourhood association constituted under Part 3, Division 1.

neighbourhood lot means a lot in a neighbourhood plan that is not any of the following—

- (a) neighbourhood property,
- (b) a public reserve,
- (c) 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 property means the lot shown in a neighbourhood plan as neighbourhood property.

neighbourhood scheme has the same meaning as in the *Community Land Development Act 2021*.

occupier of a lot means a person in lawful occupation of the lot.

officer of an association means the chairperson, secretary or treasurer of the association.

open access way means an open access way set apart under Part 6 of the *Community Land Development Act 2021*.

original owner of land means the person who held the fee simple in the land when a community plan, precinct plan or neighbourhood plan subdividing the land was registered.

owner of a development lot or a neighbourhood lot means—

- (a) a person for the time being recorded in the Register as being entitled to a fee simple in the lot, or
- (b) a person who has an interest in the lot that entitles the person to vote at a meeting of an association and who has given the association an association interest notice in accordance with this Act.

parcel means—

- (a) in relation to an association—the land from time to time comprising the lots and association property in the scheme, and
- (b) in relation to a strata scheme—the land from time to time comprising the lots and common property in the scheme.

person present at a meeting includes a person who is not personally present but is able to vote at the meeting by another means specified under Schedule 1, clause 27 or Schedule 2, clause 8.

planning approval means—

- (a) a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*, or
- (b) an approval under Division 5.2 of that Act.

precinct association has the same meaning as in the *Community Land Development Act 2021*.

precinct committee means the committee for a precinct association constituted under Part 3, Division 1.

precinct development lot means a lot in a precinct plan that is not any of the following—

- (a) precinct property,

- (b) a public reserve or a drainage reserve,
- (c) subject to a subsidiary scheme,
- (d) 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 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 property means the lot shown in a precinct plan as precinct property.

precinct scheme has the same meaning as in the *Community Land Development Act 2021*.

private access way means a private access way set apart under Part 6 of the *Community Land Development Act 2021*.

public authority means a public or local authority that is constituted by or under an Act.

public reserve has the same meaning as in the *Local Government Act 1993*.

Register means the Register kept under the *Real Property Act 1900*.

registered means registered by the Registrar-General.

registrar means a registrar of the Tribunal.

restricted property means—

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

schedule of unit entitlement for a strata scheme has the same meaning as in the *Strata Schemes Development Act 2015*.

scheme means a community scheme, precinct scheme, neighbourhood scheme or strata scheme.

Secretary means—

- (a) the Commissioner for Fair Trading, Department of Customer Service, or
- (b) if there is no person employed as Commissioner for Fair Trading—the Secretary of the Department of Customer Service.

sign includes seal and, for a corporation other than an association or a strata corporation, includes sign as a person authorised by the corporation.

special resolution—see section 5.

strata committee has the same meaning as in the *Strata Schemes Management Act 2015*.

strata corporation means an owners corporation constituted for a strata scheme under the *Strata Schemes Management Act 2015*.

strata lot means a lot within the meaning of the *Strata Schemes Development Act 2015* that is part of a community scheme.

strata parcel means land the subject of a strata plan.

strata plan has the same meaning as in the *Strata Schemes Development Act 2015*.

strata scheme has the same meaning as in the *Community Land Development Act 2021*.

subsidiary body—

- (a) of a community scheme—means a 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) of a precinct scheme—means a neighbourhood association or strata corporation constituted under a neighbourhood scheme or strata scheme that is part of the precinct scheme.

subsidiary scheme—

- (a) of a community scheme—means a precinct scheme, neighbourhood scheme or strata scheme that is part of the community scheme, or
- (b) of a precinct scheme—means a neighbourhood scheme or strata scheme that is part of the precinct scheme.

sustainability infrastructure and ***sustainability infrastructure resolution***—see section 125.

tenancy notice means a notice given to an association under section 219.

tenant of a lot means a lessee, sublessee or assignee of a lot, but does not include an owner of the lot.

Tribunal means the Civil and Administrative Tribunal.

unanimous resolution—see section 5.

unfinancial member means a member of a scheme who has not paid all contributions levied on the member that are due and payable, and any other amounts recoverable from the member by the association for the scheme.

unfinancial owner means an owner of a community development lot, precinct development lot or neighbourhood lot who has not paid all contributions levied on the owner that are due and payable, and any other amounts recoverable from the owner by the association for the scheme.