

Community Land Management Regulation 2021

[2021-601]



New South Wales

Status Information

Currency of version

Historical version for 14 October 2021 to 11 November 2021 (accessed 18 July 2024 at 1:14)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

None of the provisions displayed in this version of the legislation have commenced.

Notes—

- **Staged repeal status**

This legislation is currently due to be automatically repealed under the [Subordinate Legislation Act 1989](#) on 1 September 2027

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 14 October 2021

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Contents

Part 1 Preliminary	5
1 Name of Regulation	5
2 Commencement	5
3 Definitions	5
4 Connected persons—the Act, s 6(1)(f)	5
Part 2 Management of schemes	6
5 Functions that may only be delegated to association committee member or managing agent—the Act, s 11(1)(h)	6
6 Agenda for first AGM—the Act, s 13(o)	7
7 Documents and records to be provided to association at first AGM—the Act, s 14(1)(f)	7
Part 3 Associations and association committees	7
8 Tenant representatives on neighbourhood committees—the Act, s 36(5)	7
9 Vacation of office by tenant representatives of neighbourhood committees	8
10 Election of association committees	8
11 Ballot for association committees	9
12 Nominations for officers of association committees	10
13 Priority votes in relation to associations—the Act, Schedule 1, clause 23(2)(b)	11
14 Other means of voting—associations and association committees	11
15 Electronic ballot paper for pre-meeting electronic voting	12
16 Informal votes	13
17 Ascertaining result of pre-meeting electronic voting	13

Part 4 Financial management	13
18 Payment plans for unpaid contributions—the Act, s 90(7).....	13
19 Notice of recovery action for unpaid contributions, interest or expenses—the Act, s 91(6)(c)	14
20 Calculation of annual budget—the Act, s 99(4)	14
21 Accounting records—the Act, s 100(4)	15
22 Levy register.....	15
23 Receipts—the Act, s 101(2)	16
24 Approval for legal services costs—the Act, s 106	16
Part 5 Property management	16
25 Initial maintenance schedule—the Act, s 115(1)	16
Part 6 Management statements and by-laws for associations	18
26 Exception to occupancy limits—the Act, s 129(3)(b)	18
Part 7 Insurance	18
27 Approved insurers	18
28 Calculating insurance limit under damage policy—the Act, s 149(a)	18
29 Qualifications of person making valuations—the Act, s 150(2)	19
30 Insurance amount—the Act, s 152(2)	19
Part 8 Records and information about association schemes	19
31 Electronic voting records—the Act, s 169	19
32 Inspection of records—the Act, s 172(l).....	19
Part 9 Alternative dispute resolution—the Act, s 180	19
33 Application of Part	19
34 Directions of Secretary	19
35 Attendance and representation	20
36 Costs	20
37 Termination.....	20
Part 10 Miscellaneous	20
38 Limit for gifts to managing agents—the Act, s 61.....	20
39 Fees—the Act, s 171(2).....	20

40 Penalty notice offences and penalties—the Act, s 210	20
41 Seals of associations—savings provision	20
Schedule 1 Fees	21
Schedule 2 Penalty notice offences	21

Community Land Management Regulation 2021



New South Wales

Part 1 Preliminary

1 Name of Regulation

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

2 Commencement

This Regulation commences on 1 December 2021.

3 Definitions

In this Regulation—

close of the ballot—see section 15(8).

eligible tenant, for Part 3—see section 8(10).

pre-meeting electronic voting, for Part 3—see section 14(6).

the Act means the *Community Land Management Act 2021*.

Note—

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

4 Connected persons—the Act, s 6(1)(f)

- (1) A person that is a corporation (the **principal person**) is connected with another person if the other person—
 - (a) is a related body corporate or an associated entity of the principal person, or
 - (b) holds an executive position in a related body corporate or an associated entity of the principal person, or
 - (c) holds or will hold a relevant financial interest in the principal person and, because of that interest, is or will be able to exercise significant influence over or in relation to the management or operation of the principal person, or

(d) is or will be—

- (i) entitled to exercise a relevant power, whether in the person's own right or on behalf of another person, in the business of the principal person, and
- (ii) because of that power—able to exercise significant influence over or in relation to the management or operation of the principal person.

(2) In this section—

associated entity has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

relevant financial interest, in relation to a principal person, means—

- (a) shares in the capital of the principal person, or
- (b) an entitlement, whether arising at law, in equity or otherwise, to receive—
 - (i) income derived from a business carried on by the principal person, or
 - (ii) another financial benefit or financial advantage from the carrying on of the business.

relevant power means a power to participate in, or to elect or appoint a person to, a directorial, managerial or an executive position in the principal person, whether the power is exercisable—

- (a) by voting or otherwise, and
- (b) alone or in association with other powers.

Part 2 Management of schemes

5 Functions that may only be delegated to association committee member or managing agent—the Act, s 11(1)(h)

The following functions of an association may be delegated to or conferred only on a member of the association committee or a managing agent—

- (a) ensuring that the association complies with relevant requirements under the *Work Health and Safety Act 2011*,
- (b) entering into contracts relating to the maintenance of association property or the provision of services to the association property, other than contracts relating to a parcel,
- (c) arranging for inspections of records and other documents under the Act, section 173,
- (d) giving certificates under the Act, section 174.

6 Agenda for first AGM—the Act, s 13(o)

The agenda for the first annual general meeting of a neighbourhood association must, if a tenant representative has been nominated for the neighbourhood committee in accordance with the Act, section 36, include an item to receive the nomination.

7 Documents and records to be provided to association at first AGM—the Act, s 14(1)(f)

- (1) The following documents obtained or received by the original owner or lessor and relating to the scheme parcel, or to a building, plant or equipment on the parcel, are prescribed—
 - (a) if a building is required to be insured under the Act, Part 9, Division 1—a valuation of the building,
 - (b) maintenance and service manuals,
 - (c) all service agreements relating to the supply of gas, electricity or other utilities to the scheme parcel,
 - (d) copies of building contracts for the scheme parcel, including variations to the contracts,
 - (e) the most recent BASIX certificate for each building on the scheme parcel.

- (2) In this section—

BASIX certificate has the same meaning as in the [Environmental Planning and Assessment Regulation 2000](#).

Part 3 Associations and association committees

8 Tenant representatives on neighbourhood committees—the Act, s 36(5)

- (1) A person (the **convenor**) who is entitled to convene an annual general meeting of a neighbourhood scheme that has tenants in at least half of the number of lots in the scheme must convene a meeting of eligible tenants (a **tenants meeting**) to nominate a person for the position of tenant representative on the neighbourhood committee.
- (2) The convenor must, at least 14 days before the annual general meeting, give notice of the tenants meeting to each eligible tenant.
- (3) The tenants meeting may be held before the annual general meeting, but may not be held earlier than 7 days after notice of the tenants meeting is given.
- (4) Notice may be given—
 - (a) by causing a copy of the notice to be prominently displayed on a notice board

required to be maintained by or under the by-laws on the association property, or

(b) by written notice given to each eligible tenant.

- (5) The convenor, or a tenant elected by the eligible tenants present at the meeting, must chair the tenants meeting.
- (6) An eligible tenant may, at the tenants meeting, propose themselves or propose another eligible tenant for nomination as the tenant representative.
- (7) The tenant representative must be determined by majority vote of eligible tenants present at the tenants meeting.
- (8) The quorum for the tenants meeting is 1 eligible tenant.
- (9) The term of a tenant representative commences at the end of the annual general meeting at which the nomination is received.
- (10) In this Part—

eligible tenant means a tenant notified in a tenancy notice given in accordance with the Act.

9 Vacation of office by tenant representatives of neighbourhood committees

- (1) A tenant representative ceases to be a tenant representative—
 - (a) if the person ceases to be an eligible tenant, or
 - (b) on receipt by the secretary of the neighbourhood association from the person of written notice of the person's resignation as the tenant representative, or
 - (c) at the end of the next meeting at which a new neighbourhood committee is elected by the neighbourhood association, or
 - (d) if the person dies.
- (2) If a tenant representative ceases to be a tenant representative before the next meeting at which a new neighbourhood committee is elected, a further tenants meeting must be held under section 8 to nominate a tenant representative.
- (3) The term of a replacement tenant representative is for the remainder of the term of the representative that the person replaces.

10 Election of association committees

- (1) At a meeting of an association at which its association committee is elected, the chairperson must—
 - (a) announce the names of the candidates already nominated in writing for election

to the association committee, and

- (b) call for oral nominations of candidates eligible for election to the association committee.
- (2) A written or oral nomination made for the purposes of the election is ineffective unless it is made by the nominee or supported by the consent of the nominee given—
- (a) in writing, if the nominee is not present at the meeting, or
 - (b) orally, if the nominee is present at the meeting.
- (3) After the chairperson declares that nominations have closed, the association must decide, in accordance with the Act, the number of members of its association committee.
- (4) If the number of candidates is—
- (a) the same as, or fewer than, the number of members—the candidates must be declared by the chairperson to be, and are taken to have been, elected as the association committee, or
 - (b) greater than the number of members—a ballot must be held.

11 Ballot for association committees

- (1) If a ballot for membership of the association committee of an association is required, the person presiding at the meeting of the association must—
- (a) announce to the meeting the name of each candidate, and
 - (b) provide each person present and entitled to vote at the meeting with a blank ballot paper for each vote the person is entitled to cast.
- (2) For a vote to be valid, a ballot paper must be signed by the voter and completed by the voter's writing on it—
- (a) the names of the candidates, without repeating a name, for whom the voter desires to vote, the number of names written being no more than the number determined by the association as the number of members of its association committee, and
 - (b) the capacity in which the voter is exercising a right to vote, whether—
 - (i) as owner, first mortgagee or covenant chargee of a specified lot, or
 - (ii) as a company nominee, or
 - (iii) by proxy, and

(c) if the vote is being cast by proxy—the name and capacity of the person who gave the proxy.

- (3) The completed ballot paper must be returned to the chairperson.
- (4) Until all places for membership of the association committee have been filled, the chairperson must declare elected successively each candidate who has a greater number of votes than all other candidates who have not been elected.
- (5) If only 1 place remains to be filled and there are 2 or more eligible candidates with an equal number of votes, the candidate to fill the place must be decided by a show of hands of the persons present and entitled to vote.
- (6) Subsection (5) is subject to a resolution referred to in section 14(1)(a).

12 Nominations for officers of association committees

- (1) The written notice of the first meeting of an association committee after the appointment of the committee must include a call for nominations for chairperson, secretary and treasurer of the committee.
- (2) A person who is a member of the association committee may nominate another member for election as any or all of chairperson, secretary or treasurer of the committee.
- (3) The nomination must be made by written notice given to the person convening 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 person convening the meeting must—
 - (a) include, in the notice of the meeting at which the election will take place, nominations, if any, received before the notice is given, and
 - (b) give notice at the meeting of nominations, if any, received by the convenor after the notice is given.
- (5) A nomination may be made at any time before the election is held and may be made at the meeting.
- (6) If a ballot for the election of a person as chairperson, secretary or treasurer of the committee is required, the election must be conducted by a show of hands of persons at the meeting.
- (7) Subsection (6) is subject to a resolution referred to in section 14(1)(a).

13 Priority votes in relation to associations—the Act, Schedule 1, clause 23(2)(b)

A priority vote may be cast on a motion if the motion would require expenditure that is more than an amount calculated by multiplying \$1,000 by the number of lots in the scheme.

14 Other means of voting—associations and association committees

- (1) An association or association committee may, by resolution, adopt the following means of voting on a matter to be determined by the association or association committee—
 - (a) voting by teleconference, video-conferencing, email or other electronic means while participating in a meeting from a remote location,
 - (b) pre-meeting electronic voting.
- (2) If a matter is determined partly by pre-meeting electronic voting, the notice of the meeting must include a statement that—
 - (a) the relevant motion may be amended by a further motion given at the meeting after the pre-meeting electronic voting takes place, and
 - (b) consequently, the pre-meeting vote may have no effect.
- (3) A motion determined wholly by pre-meeting electronic voting must not be amended at the meeting for which the pre-meeting electronic voting has been conducted.
- (4) A motion determined partly by pre-meeting electronic voting must not be amended at the meeting for which the pre-meeting electronic voting has been conducted if the effect of the amendment is to change the subject matter of the original motion.
- (5) If a motion determined by pre-meeting electronic voting is amended at the meeting for which the pre-meeting electronic voting has been conducted, the minutes of the meeting distributed to members must be accompanied by—
 - (a) notice of the change, and
 - (b) a statement setting out the power to make a qualified request for a further meeting under the Act, section 17.
- (6) In this Part—

pre-meeting electronic voting means voting on a matter by email or other electronic means before the meeting at which the matter, not being an election, is to be determined by the association or committee, and may include requiring voters to access a voting website and to vote in accordance with directions contained on the website.

15 Electronic ballot paper for pre-meeting electronic voting

- (1) This section applies to a ballot for determination of a matter by an association or association committee that will be conducted by pre-meeting electronic voting.
- (2) The secretary of the association must ensure that the form for the electronic ballot paper contains—
 - (a) instructions for completing the ballot paper, and
 - (b) the question to be determined, and
 - (c) the means of indicating the voter's choice on the question to be determined.
- (3) The secretary of the association must, at least 7 days before the meeting at which the matter will be determined, give each person entitled to vote—
 - (a) access to an electronic ballot paper that complies with this section, and
 - (b) access to information about—
 - (i) how the ballot paper must be completed, and
 - (ii) the closing date of the ballot, and
 - (iii) if voting is by email, the address where the ballot paper must be returned, and
 - (iv) if voting is by other electronic means, the means of accessing the electronic voting system and how the completed electronic ballot paper must be sent to the secretary, and
 - (c) access to an electronic form of declaration requiring the voter to state—
 - (i) the voter's name, and
 - (ii) the capacity in which the voter is entitled to vote, and
 - (iii) for a matter that requires a special resolution, the voter's unit entitlement, and
 - (iv) if the vote is a proxy vote, the name and capacity of the person who gave the proxy.
- (4) Each person entitled to vote must vote in accordance with the instructions contained in the information.
- (5) If the ballot is a secret ballot, the secretary of the association must ensure that—
 - (a) the identity of the voter cannot be ascertained from the form of the electronic ballot paper, and

- (b) the declaration by the voter is dealt with so that it is not capable of being used to identify the voter.
- (6) An electronic ballot paper and the form of declaration must be sent to the secretary of the association no later than the close of the ballot.
- (7) The secretary of the association must ensure that all electronic ballot papers are stored securely until the counting of the votes begins.
- (8) In this section, **close of the ballot** means—
 - (a) for a matter determined by the association—the time that is 24 hours before the commencement of the meeting at which the matter will be determined, or
 - (b) for a matter determined by an association committee—immediately before the commencement of the meeting at which the matter will be determined.

16 Informal votes

- (1) A ballot paper of a voter who votes by pre-meeting electronic voting is informal if the voter has failed to record a vote in accordance with the information provided by the secretary of the association.
- (2) If voting is carried out by pre-meeting electronic voting using a voting website or other electronic application, the website or application must provide a warning message to a person casting an informal vote that the proposed vote is informal.

17 Ascertaining result of pre-meeting electronic voting

- (1) As soon as practicable after the close of a ballot conducted by pre-meeting electronic voting, the secretary of the association must—
 - (a) review all information and reports about the electronic ballot, and
 - (b) reject as informal the votes, if any, that do not comply with the requirements of this Regulation, and
 - (c) ascertain the result of the electronic ballot.
- (2) The secretary of the association must, at the meeting to consider the matter for which the pre-meeting electronic voting was held, inform the persons present of the result of the ballot.

Part 4 Financial management

18 Payment plans for unpaid contributions—the Act, s 90(7)

- (1) A payment plan for the payment of overdue contributions must be in writing and must contain the following—

- (a) the name of the member of the association and the title details of the lot,
 - (b) the address for service of the member,
 - (c) the amount of the overdue contributions,
 - (d) the amount of the interest payable for the overdue contributions and the way in which it is calculated,
 - (e) the schedule of payments for the amounts owing and the period for which the plan applies,
 - (f) the way in which the payments must be made,
 - (g) contact details for a member of the association committee or a managing agent who is to be responsible for matters arising in relation to the payment plan,
 - (h) a statement that a further plan may be agreed to by the association by resolution,
 - (i) a statement that the existence of the payment plan does not limit a right of the association to take action to recover the amount of the unpaid contributions.
- (2) The association committee must, at the request of a member of the association who has entered into a payment plan, give the member a written statement of the plan—
- (a) for each calendar month, or a longer period specified by the member, and
 - (b) setting out the payments made during the month or period and the amount of unpaid contributions, including the interest owing.

19 Notice of recovery action for unpaid contributions, interest or expenses—the Act, s 91(6)(c)

A notice of proposed action to recover an amount of contributions, interest or expenses must include the following—

- (a) the date the amount was due to be paid,
- (b) the way in which the amount may be paid,
- (c) whether a payment plan may be entered into,
- (d) other action that may be taken to arrange for payment of the amount.

20 Calculation of annual budget—the Act, s 99(4)

The amount of the annual budget must be the sum of the following—

- (a) the amount of contributions levied for the relevant year, whether or not they have been paid,

- (b) income of the association from other sources,
- (c) other amounts held by the association for the association.

21 Accounting records—the Act, s 100(4)

The following accounting records are required to be kept—

- (a) receipts consecutively numbered,
- (b) a statement of deposits and withdrawals for the account of the association,
- (c) a cash record,
- (d) a levy register.

22 Levy register

- (1) The levy register for a fund must include a separate section—
 - (a) for a register kept by a community association—for each development lot and former development lot, if any, in the community scheme, or
 - (b) for a register kept by a precinct association—for each development lot and former development lot, if any, in the precinct scheme, or
 - (c) for a register kept by a neighbourhood association—for each neighbourhood lot in the neighbourhood scheme.
- (2) Each section must specify, by appropriate entries, the following matters in relation to each contribution levied by the association and must indicate whether the entries are debits or credits and the balances for the entries—
 - (a) the date on which the contribution is due and payable,
 - (b) the type of contribution and the period in relation to 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 is made,
 - (f) whether a payment was made in cash, by cheque or in another specified way,
 - (g) whether an amount paid comprised full or part payment,
 - (h) the balance of the account,
 - (i) details of a discount given, if any, for early payment.

23 Receipts—the Act, s 101(2)

Each receipt issued by the treasurer of the association must include the following—

- (a) the date of issue of the receipt,
- (b) the amount of money received,
- (c) the form, being cash, cheque, postal order or other, in which the money was received,
- (d) the name of the person on whose behalf the payment was made,
- (e) if the payment is for a contribution to the administrative or capital works fund—
 - (i) a statement that the payment was made for that contribution, and
 - (ii) the lot number for which the contribution was made, and
 - (iii) the period for which the payment is made, if relevant, and
 - (iv) details of the discount given, if any, for early payment,
- (f) if the payment is not a payment referred to in paragraph (e)—particulars of the transaction for which the payment is received,
- (g) if the payment is received for more than 1 transaction—the way in which the payment is apportioned between transactions.

24 Approval for legal services costs—the Act, s 106

- (1) For the purposes of the Act, section 106(2)(b), the prescribed amount is \$15,000.
- (2) For the purposes of the Act, section 106(3)(c), approval is not required to take other legal action if—
 - (a) the matter is not urgent, and
 - (b) the cost of the legal services is not more than \$3,000.

Part 5 Property management

25 Initial maintenance schedule—the Act, s 115(1)

- (1) The initial maintenance schedule for the maintenance of the association property of a scheme must include maintenance and inspection schedules for a thing if—
 - (a) the thing is on association property, and
 - (b) the maintenance and inspection is reasonably required to avoid damage to the thing or a failure to function properly for its intended purpose.

- (2) The initial maintenance schedule must include maintenance and inspection schedules for the following—
- (a) exterior walls, guttering, downpipes and roof,
 - (b) pools and surrounds, including fencing and gates,
 - (c) air conditioning, heating and ventilation systems,
 - (d) fire protection equipment, including sprinkler systems, alarms and smoke detectors,
 - (e) security access systems,
 - (f) embedded networks and micro-grids,
 - (g) stormwater and other drains,
 - (h) roads and footpaths,
 - (i) dams,
 - (j) gas and water monitoring wells and equipment,
 - (k) if the association property is on bush fire prone land—asset protection zones created for the purpose of bush fire hazard reduction.
- (3) The following must be included with, or attached to, the initial maintenance schedule—
- (a) all warranties for systems, equipment or other things referred to in the schedule,
 - (b) manuals or maintenance requirements provided by manufacturers for the systems, equipment or other things,
 - (c) the name and contact details of the manufacturer and installer of the systems, equipment or other things.
- (4) The initial maintenance schedule may be in hard copy or in an electronic form accessible by the association.
- (5) In this section—

bush fire prone land means land recorded for the time being as bush fire prone land on a map certified under the [Environmental Planning and Assessment Act 1979](#), section 10.3.

Part 6 Management statements and by-laws for associations

26 Exception to occupancy limits—the Act, s 129(3)(b)

- (1) A by-law that limits the number of adults who may reside in a lot has no effect if all of the adults who reside in the lot are related to each other.
- (2) In this section, a person is related to another person who resides in a lot if—
 - (a) the person is a relative of the other person, or
 - (b) the person is a relative of the other person's spouse or de facto partner or former spouse or de facto partner, or
 - (c) the person is the spouse or de facto partner of the other person, or
 - (d) the person is the carer of, or is cared for by, the other person, or
 - (e) if the person is an Aboriginal person or a Torres Strait Islander—the person is, or has been, part of the extended family or kin of the other person according to the indigenous kinship system of the person's culture.

- (3) In this section—

relative means a parent, guardian, grandparent, son, daughter, grandchild, brother, sister, uncle, aunt, niece, nephew or cousin.

Part 7 Insurance

27 Approved insurers

- (1) For the purposes of the Act, Dictionary, definition of **approved insurer**, paragraph (b), a Lloyd's underwriter authorised to carry on insurance business, or exempted from authorisation, under the [Insurance Act 1973](#) of the Commonwealth is an approved insurer.

- (2) In this section—

Lloyd's underwriter has the same meaning as in the [Insurance Act 1973](#) of the Commonwealth.

28 Calculating insurance limit under damage policy—the Act, s 149(a)

- (1) The minimum amount for which a building must be insured is an amount not less than the sum of the following amounts—
 - (a) the estimated cost, as at the date of commencement of the damage policy, of—
 - (i) carrying out the work that a damage policy is required to provide for under the Act, section 149, and

- (ii) making the payments that a damage policy is required to provide for under the Act, section 149,
 - (b) the estimated amount by which the estimated cost may increase during the period of 24 months following the date of commencement of the damage policy.
- (2) The amounts referred to in subsection (1)(a) and (b) must include taxes, fees and charges, including taxes, fees and charges of the Commonwealth, if any.

29 Qualifications of person making valuations—the Act, s 150(2)

The qualifications referred to in the *Community Land Development Act 2021*, Dictionary, definition of **qualified valuer**, paragraphs (a)-(d) are prescribed.

30 Insurance amount—the Act, s 152(2)

The insurance amount is—

- (a) for the Act, section 152(1)(b)—at least \$20,000,000 for each event for which a claim may be made, or
- (b) otherwise—the amount determined by resolution of the association.

Part 8 Records and information about association schemes

31 Electronic voting records—the Act, s 169

- (1) The period for which an association is required to keep voting papers, records and other documents referred to in the Act, section 169(a)-(j), is 13 months if the voting papers or records relate to secret ballots.
- (2) For the purposes of the Act, section 169(j), records relating to electronic voting for motions for resolutions by an association must be kept by the association.

32 Inspection of records—the Act, s 172(I)

The association must make available for inspection the accounting records and other records relating to the association scheme that are kept by the managing agent.

Part 9 Alternative dispute resolution—the Act, s 180

33 Application of Part

This Part applies to a mediation conducted under the Act, section 180.

34 Directions of Secretary

Subject to this Regulation, the Secretary may give written directions for regulating and prescribing the practice and procedure to be followed in connection with a mediation session, including the preparation and service of documents.

35 Attendance and representation

- (1) A mediation session must be attended by each party or a representative of the party if all other parties consent to the representation.
- (2) Other persons may attend a mediation session with the leave of the mediator.

36 Costs

The parties to a mediation must pay their own costs associated with the mediation.

37 Termination

- (1) A mediator may terminate a mediation at any time.
- (2) A party may terminate a mediation at any time by giving notice of the termination to the mediator and each other party.

Part 10 Miscellaneous

38 Limit for gifts to managing agents—the Act, s 61

For the purposes of the Act, section 61(3)(c), the prescribed amount is \$60.

39 Fees—the Act, s 171(2)

For the purposes of the Act, section 171(2), the fees payable are set out in Schedule 1.

40 Penalty notice offences and penalties—the Act, s 210

- (1) For the purposes of the Act, section 210—
 - (a) each offence created by a provision specified in Schedule 2, Column 1 is an offence for which a penalty notice may be served, and
 - (b) the penalty prescribed for each offence is the amount specified opposite the provision in—
 - (i) for an individual—Schedule 2, Column 2, or
 - (ii) for a corporation—Schedule 2, Column 3.
- (2) If the reference to a provision in Schedule 2, Column 1 is qualified by words that restrict its operation to specified kinds of offences, an offence created by the provision is a prescribed offence only if it is an offence of a kind so specified or committed in the circumstances so specified.

41 Seals of associations—savings provision

The seal of an association in existence before the commencement of this section may continue to be used as its seal for the purposes of the Act or another purpose, unless

replaced by the association.

Schedule 1 Fees

section 39

Item	Type of fee	Fee
Fees payable to association		
1	For making records available for inspection under the Act, section 171—	
	(a) for the first hour of inspection	\$31
	(b) for each half hour or part of half hour after the first hour of inspection	\$16
2	For giving a certificate under the Act, section 171—	
	(a) if the request is an initial request or request made more than 3 months after a previous request by the same person for the same lot	\$109
	(b) if the request is made not more than 3 months after a previous request by the same person for the same lot	\$94

Schedule 2 Penalty notice offences

section 40

Column 1	Column 2	Column 3
Provision	Penalty—individuals	Penalty—corporation
Offences under the Act		
Section 61(2)	\$550	\$1,100
Section 64(1) and (2)	\$550	\$1,100
Section 66(1)	\$550	\$1,100
Section 148	\$220	\$220
Section 209(4)	\$220	\$220
Section 219(1), (2) and (3)	\$110	\$220