



Norfolk Island Continued Laws Amendment (Community Title) Ordinance 2018

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Ordinance.

Dated 02 March 2018

Peter Cosgrove
Governor-General

By His Excellency's Command

John McVeigh
Minister for Regional Development, Territories and Local Government

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1 Name

This Ordinance is the *Norfolk Island Continued Laws Amendment (Community Title) Ordinance 2018*.

2 Commencement

- (1) Each provision of this Ordinance specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Ordinance	The day after this Ordinance is registered.	10 March 2018

Note: This table relates only to the provisions of this Ordinance as originally made. It will not be amended to deal with any later amendments of this Ordinance.

- (2) Any information in column 3 of the table is not part of this Ordinance. Information may be inserted in this column, or information in it may be edited, in any published version of this Ordinance.

3 Authority

This Ordinance is made under section 19A of the *Norfolk Island Act 1979*.

4 Schedules

Each instrument that is specified in a Schedule to this Ordinance is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Ordinance has effect according to its terms.

Schedule 1—Amendments

Norfolk Island Continued Laws Ordinance 2015

1 After item 37 of Schedule 1

Insert:

Community Title Act 2015 (Norfolk Island)

37A Subsection 2(2)

Omit “a day or days fixed by the Administrator”, substitute “the day after the *Norfolk Island Continued Laws Amendment (Community Title) Ordinance 2017* is registered on the Federal Register of Legislation”.

37B Section 3 (heading)

Repeal the heading, substitute:

3 Binding the Crown

37C Subsection 3(1)

Omit “and the Administration”, substitute “in each of its capacities”.

37D Subsection 3(2)

Omit “or the Administration”.

37E Subsection 5(1)

Insert:

approved form means a form approved by the Registrar.

37F Paragraph 21(3)(g)

Omit “form prescribed by regulation”, substitute “approved form”.

37G Paragraph 21(3)(h)

Omit “prescribed form”, substitute “approved form”.

37H Paragraphs 35(3)(a) and 38(2)(e)

Omit “form prescribed by regulation”, substitute “approved form”.

37J Subsection 38(5)

Repeal the subsection, substitute:

- (5) If the body corporate does not make any rules or revokes all of its rules, the model rules set out in Schedule 1A apply to it.
- (6) If the model rules set out in Schedule 1A provide for a matter and the rules of the body corporate do not provide for that matter, the model rules relating to that matter are taken to be included in the rules of the body corporate.

37K Subsection 39(6)

Omit “form prescribed by regulation”, substitute “approved form”.

37L Paragraphs 49(2)(n) and 52(7)(a)

Omit “form prescribed by regulation”, substitute “approved form”.

37M Subparagraph 54(6)(e)(ii)

Omit “form prescribed by regulation”, substitute “approved form”.

37N Paragraphs 60(3)(d) and (e) and 62(3)(f) and (g)

Omit “form prescribed by regulation”, substitute “approved form”.

37P Subsection 141(4)

Repeal the subsection.

37Q Section 166

Repeal the section, substitute:

166 Regulations and other matters in Schedule 6

- (1) This Act has effect as if regulations had been made in the terms of the provisions of Schedule 6 that are expressed to be made for the purposes of another provision of this Act.
- (2) Any other provision of Schedule 6 has effect according to its terms.

37R Subparagraph 12(4)(b)(i) of Schedule 1

Omit “form prescribed by regulation”, substitute “approved form”.

37S After Schedule 1

Insert:

Schedule 1A—Model rules for body corporate

Note: See subsections 38(5) and (6).

Part 1—Health, safety and security**1 Health, safety and security of lot owners, occupiers of lots and others**

A lot owner or occupier must not use the lot, or permit it to be used, so as to cause a hazard to the health, safety and security of an owner, occupier or user of another lot.

2 Storage of flammable liquids and other dangerous substances and materials

- (1) Except with the approval in writing of the body corporate, an owner or occupier of a lot must not use or store on the lot or on the common property any flammable chemical, liquid or gas or other flammable material.
- (2) This rule does not apply to:

- (a) chemicals, liquids, gases or other material used or intended to be used for domestic purposes; or
- (b) any chemical, liquid, gas or other material in a fuel tank of a motor vehicle or internal combustion engine.

3 Waste disposal

An owner or occupier must ensure that the disposal of garbage or waste does not adversely affect the health, hygiene or comfort of the occupiers or users of other lots.

Part 2—Management and administration

4 Metering of services and apportionment of costs of services

- (1) The body corporate must not seek payment or reimbursement for a cost or charge from a lot owner or occupier that is more than the amount that the supplier would have charged the lot owner or occupier for the same goods or services.
- (2) If a supplier has issued an account to the body corporate, the body corporate cannot recover from the lot owner or occupier an amount which includes any amount that is able to be claimed as a concession or rebate by or on behalf of the lot owner or occupier from the relevant supplier.
- (3) Subrule (2) does not apply if the concession or rebate:
 - (a) must be claimed by the lot owner or occupier and the body corporate has given the lot owner or occupier an opportunity to claim it and the lot owner or occupier has not done so by the payment date set by the relevant supplier; or
 - (b) is paid directly to the lot owner or occupier as a refund.

Part 3—Use of common property

5 Use of common property

- (1) An owner or occupier of a lot must not obstruct the lawful use and enjoyment of the common property by any other person entitled to use the common property.
- (2) An owner or occupier of a lot must not, without the written approval of the body corporate, use for his or her own purposes as a garden any portion of the common property.
- (3) An approval under subrule (2) may state a period for which the approval is granted.
- (4) If the body corporate has resolved that an animal is a danger or is causing a nuisance to the common property, it must give reasonable notice of this resolution to the owner or occupier who is keeping the animal.
- (5) An owner or occupier of a lot who is keeping an animal that is the subject of a notice under subrule (4) must remove that animal.

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- (6) Subrules (4) and (5) do not apply to an animal that assists a person with an impairment or disability.

6 Vehicles and parking on common property

An owner or occupier of a lot must not, unless in the case of an emergency, park or leave a motor vehicle or other vehicle or permit a motor vehicle or other vehicle:

- (a) to be parked or left in parking spaces situated on common property and allocated for other lots; or
- (b) on the common property so as to obstruct a driveway, pathway, entrance or exit to a lot; or
- (c) in any place other than a parking area situated on common property specified for that purpose by the body corporate.

7 Damage to common property

- (1) An owner or occupier of a lot must not damage or alter the common property without the written approval of the body corporate.
- (2) An owner or occupier of a lot must not damage or alter a structure that forms part of the common property without the written approval of the body corporate.
- (3) An approval under subrule (1) or (2) may state a period for which the approval is granted, and may specify the works and conditions to which the approval is subject.
- (4) An owner or person authorised by an owner may install a locking or safety device to protect the lot against intruders, or a screen or barrier to prevent entry of animals or insects, if the device, screen or barrier is soundly built and is consistent with the colour, style and materials of the building.
- (5) The owner or person referred to in subrule (4) must keep any device, screen or barrier installed in good order and repair.

Part 4—Lots

8 Change of use of lots

An owner or occupier of a lot must give written notification to the body corporate if the owner or occupier changes the existing use of the lot in a way that will affect the insurance premiums for the body corporate.

Example: If the change of use results in a hazardous activity being carried out on the lot, or results in the lot being used for commercial or industrial purposes rather than residential purposes.

Part 5—Behaviour of persons

9 Behaviour of owners, occupiers and invitees on common property

An owner or occupier of a lot must take all reasonable steps to ensure that guests of the owner or occupier do not behave in a manner likely to unreasonably

interfere with the peaceful enjoyment of any other person entitled to use the common property.

10 Noise and other nuisance control

- (1) An owner or occupier of a lot, or a guest of an owner or occupier, must not unreasonably create any noise likely to interfere with the peaceful enjoyment of any other person entitled to use the common property.
- (2) Subrule (1) does not apply to the making of a noise if the body corporate has given written permission for the noise to be made.

Part 6—Dispute resolution

11 Grievance procedure

- (1) The grievance procedure set out in this rule applies to disputes involving a lot owner, manager or occupier or the body corporate.
- (2) The party making the complaint must prepare a written statement in the approved form.
- (3) If there is a grievance committee of the body corporate, it must be notified of the dispute by the complainant.
- (4) If there is no grievance committee, the body corporate must be notified of any dispute by the complainant, regardless of whether the body corporate is an immediate party to the dispute.
- (5) The parties to the dispute must meet and discuss the matter in dispute, along with either the grievance committee or the body corporate, within 14 business days after the dispute comes to the attention of all the parties.
- (6) A party to the dispute may appoint a person to act or appear on his or her behalf at the meeting.
- (7) If the dispute is not resolved, the grievance committee or body corporate must notify each party of his or her right to take further action under Part 14 of the *Community Title Act 2015*.
- (8) This process is separate from and does not limit any further action under Part 14 of the *Community Title Act 2015*.

37T At the end of the Act

Add:

Schedule 6—Regulations and other matters

Note: See section 166.

Part 1—Preliminary

1 Interpretation—definition of *special resolution*

For the purposes of subparagraph (b)(i) of the definition of *special resolution* in subsection 5(1), the reason for the proposed resolution is information that must be served in accordance with that subparagraph.

2 Interpretation—definition of *unanimous resolution*

For the purposes of paragraph (a) of the definition of *unanimous resolution* in subsection 5(1), the reason for the proposed resolution is information that must be served in accordance with that paragraph.

Part 2—Requirements relating to schemes and plans

3 Scheme description—section 34

- (1) In order to comply with section 34 a scheme description must:
 - (a) be in a form approved by the Registrar; and
 - (b) identify the community parcel and the lots and common property into which the parcel is to be divided (this may be done by reference to the plan of community division with which the description will be filed); and
 - (c) describe the purpose or purposes for which the lots and common property may be used; and
 - (d) specify the standard of buildings and other improvements (if any) to be, or which may be, erected on or made to the lots or common property; and
 - (e) if the scheme is to be completed in stages:
 - (i) identify the part or parts of the community parcel (which may, in the case of a strata scheme, include a stratum or strata of space not defined by a building or other monument) to be developed in a subsequent stage or subsequent stages; and
 - (ii) provide a brief description of the nature and scope of the development to be undertaken in respect of each stage; and
 - (iii) state the time expected for the completion of each stage or, if it is not possible to estimate a time for completion, explain briefly why it is not possible to do so; and
 - (f) if the owner or owners of one or more of the community lots are to be under an obligation to develop the lot—include a brief description of the nature and scope of that development and the time for its completion or, if it is not possible to estimate a time for completion, explain briefly why it is not possible to do so; and
 - (g) if the developer is to make improvements to the common property or undertake any other development work on the common property—include a brief description of the nature and scope of those improvements or that work and the time expected for their completion or, if it is not possible to estimate a time for completion, explain briefly why it is not possible to do so; and

- (h) if the division or other development of the land pursuant to the scheme is subject to conditions imposed by development approval under the *Planning Act 2002*—set out those conditions in full; and
 - (j) set out any other important features of the scheme; and
 - (k) be endorsed with a certificate in the approved form from the person who prepared the scheme description certifying that the scheme description has been correctly prepared in accordance with this Act; and
 - (m) include any other information required by this Schedule.
- (2) The scheme description of a secondary scheme must not be inconsistent with the scheme description or the rules of the primary scheme and the scheme description of a tertiary scheme must not be inconsistent with the scheme description or the rules of the secondary or primary scheme.
- (3) A scheme description should be written as clearly as possible and should not include any unnecessary detail.
- (4) Before endorsing a scheme description, the Registrar may require modifications to it:
- (a) to add any information that is necessary or desirable in the opinion of the Registrar; or
 - (b) to clarify any part of the description; or
 - (c) to remove any unnecessary detail.

4 Plans and maps to comply with guidelines

A plan or map lodged with the Registrar must comply with any requirements specified in guidelines issued, from time to time, by the Registrar.

5 Lot entitlements—subsection 26(3)

The aggregate of the lot entitlements of all community lots defined on a plan of community divisions may be any whole number between 2 and 100,000 but must not be a number that exceeds 100,000.

6 Minor amendment of plan—subsection 56(3)

The minor amendment of the delineation of lots or common property referred to in subsection 56(3) is a change in the position of the boundary of a lot or the common property by 200 millimetres or less.

7 Submission of outer boundary survey plan

- (1) Subject to subclause (2), a person who intends making an application for the division of an allotment or allotments by a primary plan of community division must, before making the application, submit to the Registrar:
- (a) an outer boundary survey plan of the land to be divided in a form approved by the Registrar; and
 - (b) the appropriate fee prescribed by clause 45.
- (2) Subclause (1) does not apply in relation to an application for the division of land in respect of which the Registrar has determined that subclause (1) should not apply.

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- (3) The Registrar must examine the outer boundary survey plan and must, if satisfied that the requirements of this Schedule have been met and the information on the plan appears to be adequate and accurate, send a copy of the plan to the applicant or the applicant's manager.

8 Examination of plans

The Registrar must not accept the filing of a plan under this Act unless he or she has examined the plan and is satisfied with it.

9 Additional information as to applications

The Registrar may require a person who has made an application to him or her under this Act to provide him or her with any information that the Registrar requires to consider the application.

10 Certification of irregular boundaries

Where a plan shows land bounded by a watercourse, the sea or some other irregular boundary, the Registrar may require the accuracy of the boundary as shown on the plan to be certified by a licensed surveyor.

11 Notification on deposit of plan

- (1) After the Registrar registers a plan under this Act he or she must notify the applicant or the applicant's manager in writing of the registration.
- (2) A notification or other document required to be given under this clause may be sent by electronic means.

12 Issue of certificates of title on deposit of plan

Upon registering a plan of community division, the Registrar must issue a separate certificate of title for each lot and the common property created by the plan.

13 Application to Tribunal to amend or Supreme Court to cancel a community plan—sections 61 and 69

- (1) For the purposes of subsection 61(4), in determining an application to amend a community plan, the Tribunal must have regard to the matters set out in subclause (3).
- (2) For the purposes of subsection 69(3), in determining an application to cancel a community plan, the Supreme Court must have regard to the matters set out in subclause (3).
- (3) The matters are:
 - (a) whether there is evidence that any owners object to the amendment or cancellation and, if so, how many owners object to it; and
 - (b) whether there are to be any adverse consequences to owners if the application is granted and the extent to which those adverse consequences could be ameliorated or alleviated by court order or other action; and

- (c) whether there are to be any adverse consequences to owners if the application is refused and the extent to which those adverse consequences could be ameliorated or alleviated by court order or other action; and
- (d) any other reason why it is in the interests of justice that the application should be granted or refused.

Part 3—Administration of community schemes

Division 1—General

14 Content of rules—subsection 38(3)

For the purposes of subsection 38(3), the rules may:

- (a) regulate:
 - (i) the position, design, dimensions, methods and materials of construction and external appearance of buildings or other improvements on community lots; or
 - (ii) the maintenance and repair of buildings or other improvements on community lots; or
 - (iii) landscaping, including the establishment, care and maintenance of lawns, gardens and other areas on community lots; or
- (b) impose requirements or restrictions relating to the appearance of community lots or buildings or other improvements situated on community lots; or
- (c) regulate the use and enjoyment of community lots in order to prevent interference with the use and enjoyment of other lots.

15 Body corporate managers—section 82

- (1) For the purposes of paragraph 82(2)(b), a body corporate manager must provide the body corporate with a copy of the schedule to the policy of professional indemnity insurance maintained by the body corporate manager that sets out:
 - (a) the name of the body corporate manager; and
 - (b) the name of the insurer; and
 - (c) the nature of the policy; and
 - (d) the amount for which indemnity is provided under the policy.
- (2) For the purposes of paragraph 82(2)(c), a policy of professional indemnity insurance maintained by a body corporate manager must provide an indemnity of at least \$1.5 million per claim during a period of 12 months.
- (3) For the purposes of paragraph 82(3)(f), a contract between a body corporate manager and a body corporate must contain the following particulars:
 - (a) a statement verifying that the body corporate manager is insured under a policy of professional indemnity insurance as required by this Act and an undertaking by the body corporate manager that the body corporate manager will maintain that insurance throughout the life of the contract;
 - (b) an undertaking by the body corporate manager that the body corporate manager will allow any member of the community corporation to inspect, at any time during ordinary business hours, the records of the community

corporation in the possession or control of the body corporate manager and specifying how an inspection can be arranged.

- (4) For the purposes of subsection 82(8), the body corporate manager must ensure the availability of a copy of a pamphlet that sets out the role of the body corporate manager and the rights of the body corporate and its members, including:
- (a) the right to inspect records held by the manager; and
 - (b) the right to revoke the delegation of a particular function of the manager; and
 - (c) the right to appoint the manager as a proxy and revoke that appointment; and
 - (d) the right to be informed of any payment that the manager receives from another trader for placing the corporation's business; and
 - (e) the right to terminate the contract; and
 - (f) the right to apply to the Tribunal for a resolution of any dispute.

16 Return of records and trust money when delegations revoked—section 84

- (1) For the purposes of subsection 84(6), records must:
- (a) be returned by mail sent by registered post; or
 - (b) be made available for collection;
- within 10 business days of the delegations being revoked.
- (2) For the purposes of subsection 84(6), trust money must:
- (a) be returned by electronic funds transfer; or
 - (b) be returned by cheque sent by registered post; or
 - (c) be made available for collection;
- within 10 business days of the delegations being revoked.
- (3) For the purposes of paragraph 84(7)(b), the maximum fee that may be charged for providing a copy of records of the body corporate is 0.05 fee units per page.

17 Matters to be addressed at first general meeting—paragraph 86(2)(e)

The following are prescribed under paragraph 86(2)(e) as matters that must be addressed at the first general meeting of a body corporate:

- (a) whether the policies of insurance taken out by the developer are adequate;
- (b) whether the body corporate should establish a management committee;
- (c) the delegation of functions and powers by the body corporate;
- (d) whether the rules of the scheme need amendment.

18 Agenda for annual general meeting—subparagraph 87(6)(d)(vi)

For the purposes of subparagraph 87(6)(d)(vi), the agenda for each annual general meeting must include:

- (a) the appointment of the presiding officer, treasurer and secretary of the body corporate; and
- (b) other appointments to be made or revoked by the body corporate at the meeting; and

- (c) the policies of insurance required by this Act to be held by the body corporate; and
- (d) the number of applications for relief made under Part 14 and the nature of the claims or disputes the subject of those applications; and
- (e) if it is proposed to enter into a contract, or renew or extend a contract, with a body corporate manager under section 82:
 - (i) the text of the resolution to enter into, or renew or extend, the contract; and
 - (ii) where and when a copy of the contract or proposed contract, and the pamphlet referred to in subclause 15(4), can be viewed or obtained by members of the body corporate; and
 - (iii) the matter of landscaping, including the establishment, care and maintenance of lawns, gardens and other areas on community lots; and
- (f) proposed controls on expenditure by delegates of the body corporate.

19 Procedure at meetings—Schedule 2

- (1) For the purposes of subrule 1(4) of Schedule 2, if a member of the body corporate has given the body corporate manager or an employee of the body corporate manager a specific proxy or power of attorney to vote on the question of whether the manager or employee of the manager is to preside at a meeting of the body corporate, the manager or employee is entitled to vote on that question at the meeting as a proxy or attorney of the member in accordance with the terms of that specific proxy or power of attorney.
- (2) For the purposes of subrule 1(5) of Schedule 2, the following procedures must be followed at a meeting to which that subrule applies:
 - (a) the body corporate manager or employee of a body corporate manager must, at the outset of the meeting, inform the persons present and entitled to vote at the meeting of the proxies or powers of attorney that are held by him or her for the meeting and that those proxies or powers of attorney are available for inspection;
 - (b) the manager or employee of the manager must, at the outset of the meeting, also inform the persons present and entitled to vote at the meeting:
 - (i) that he or she may preside at the meeting only if the majority of persons present and entitled to vote agree to him or her presiding; and
 - (ii) that he or she is not entitled to vote on the question of whether he or she should preside at the meeting except as a proxy or attorney of a member of the body corporate acting in accordance with the terms of a specific proxy or power of attorney given in relation to the question; and
 - (iii) that he or she has no right to prevent any person present and entitled to vote at the meeting from moving or voting on any question or motion;
 - (c) the manager or employee of the manager must make any proxies or powers of attorney held by him or her available for inspection by persons present and entitled to vote at the meeting.
- (3) For the purposes of subrule 1(9) of Schedule 2, a member of a body corporate may attend and vote at a meeting by a means of remote communication:
 - (a) if:

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- (i) the rules of the body corporate make provision for attendance and voting at meetings by members by means of remote communication; and
 - (ii) the member complies with any applicable requirements specified in those rules; or
- (b) if:
- (i) the member makes a request in writing, given to the secretary of the body corporate, to attend and vote at the meeting by means of remote communication; and
 - (ii) the secretary of the body corporate makes the necessary arrangements to receive and record the member's attendance and voting at the meeting by remote communication; and
 - (iii) the member complies with any requirements of the secretary in relation to the request referred to in subparagraph (i).
- (4) For the purposes of rule 6 of Schedule 2, a notice setting out the text of a proposed special resolution must also set out the reasons for the proposed resolution.

20 Fidelity guarantee insurance—section 103

For the purposes of subsection 103(3):

- (a) a policy of fidelity guarantee insurance must insure a body corporate in the amount of:
 - (i) the maximum total balance of the body corporate's bank accounts at any time in the preceding 3 years; or
 - (ii) \$50,000;whichever is higher; and
- (b) the following kinds of bodies corporate are not required to maintain fidelity guarantee insurance:
 - (i) bodies corporate that have buildings and other improvements on their common property insured for a sum not exceeding \$100,000;
 - (ii) 2 lot bodies corporate with no administrative or sinking funds.

21 Proof of insurance—subsection 105(2)

For the purposes of subsection 105(2), a photocopy (including a copy made by digital means) of the current certificate of the insurance that includes reference to the matters in subsection 105(1), is required as evidence of compliance with that subsection.

22 Unanimous or special resolution for acquisition of property—paragraph 111(3)(b)

For the purposes of paragraph 111(3)(b):

- (a) if the cost of the acquisition by a body corporate of property is \$5,000 or more the acquisition must be authorised by a unanimous resolution of the body corporate; and
- (b) if the cost of the acquisition by a body corporate of property is less than \$5,000 the acquisition must be authorised by a special resolution of the body corporate.

23 Statement of expenditure etc.—section 112

- (1) For the purposes of paragraph 112(1)(a), the prescribed period is:
 - (a) in the case of a body corporate consisting of at least 7 but not more than 20 community lots—3 years; or
 - (b) in the case of a body corporate consisting of more than 20 community lots—5 years.
- (2) For the purposes of subsection 112(2), new information must be prepared for the purposes of paragraph 112(1)(a):
 - (a) if the proposed expenditure (other than recurrent expenditure) is for a period of 3 years—every 3 years; or
 - (b) if the proposed expenditure (other than recurrent expenditure) is for a period of 5 years—every 5 years.
- (3) The following are excluded from the operation of paragraphs 112(1)(a) and (b):
 - (a) bodies corporate consisting of 6 or less community lots;
 - (b) bodies corporate that have buildings and other improvements on their common property insured for a sum not exceeding \$100,000.

24 Interest on arrears of contributions by lot owners—paragraph 113(4)(b)

For the purposes of paragraph 113(4)(b), a body corporate, when fixing interest payable by the owner of a community lot in respect of a contribution, or an instalment of a contribution, that is in arrears must not:

- (a) exceed a rate of 12% per annum; or
- (b) demand payment of interest on unpaid interest.

25 Notice for payment of contribution or instalment—paragraph 113(6)(a)

For the purposes of paragraph 113(6)(a), a notice of a contribution, or of an instalment of a contribution, served by a body corporate on the owner of a lot must include the following information:

- (a) identification of the lot in relation to which the contribution or instalment is payable;
- (b) the amount of the contribution or instalment;
- (c) in the case of a contribution that is payable in instalments—the amount of each instalment and the day on which each instalment is payable;
- (d) the day on or before which the contribution or instalment must be paid (being a day not less than 14 days after the notice is served);
- (e) the total amount that the body corporate has decided to raise by way of contributions by the owners of community lots;
- (f) the purpose or purposes for which the money raised will be used;
- (g) the rate of interest payable in respect of a contribution or instalment that is in arrears;
- (h) the name of the person to whom the contribution or instalment should be sent or delivered.

26 Resolutions authorising expenditure—section 118

For the purposes of section 118, expenditure by a body corporate:

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- (a) of less than an amount that is equivalent to \$2,000 multiplied by the number of community lots in the scheme must be authorised by an ordinary resolution of the body corporate; and
 - (b) of the amount referred to in paragraph (a) or more but less than an amount that is equivalent to \$5,000 multiplied by the number of community lots in the scheme must be authorised by a special resolution; and
 - (c) of the larger of the 2 amounts referred to in paragraph (b) or more must be authorised by a unanimous resolution.

27 Register of owners of community lots—subsection 134(2)

For the purposes of subsection 134(2), the period prescribed is 7 years.

28 Records—sections 135 and 136

- (1) For the purposes of paragraph 135(h), the following documentary material is prescribed (as material that must be kept by a body corporate):
 - (a) receipts for the expenditure of money;
 - (b) passbooks, deposit books and all other documents providing evidence of the deposit or investment of money (including bank statements).
- (2) All documents and records kept by a body corporate must be kept in an orderly manner to enable them to be found easily for the purposes of inspection or copying.
- (3) The following periods are prescribed for the purposes of section 135 and subsection 136(2) as the period for which a body corporate must keep its records and documents:
 - (a) minutes of meetings—30 years;
 - (b) accounting records—7 years;
 - (c) any statements of account—7 years;
 - (d) notices or orders served on the body corporate—7 years;
 - (e) correspondence—7 years;
 - (f) notices of meetings—7 years.

29 Audit—subsection 137(4)

- (1) For the purposes of subparagraph 137(4)(a)(i), the prescribed amount (of the aggregate of the contributions made, or to be made, by members of the body corporate in respect of a year) is \$10,000.
- (2) For the purposes of subparagraph 137(4)(a)(ii), the prescribed amount (of the balance standing to the credit of the administrative fund and the sinking fund at the commencement of a year) is \$10,000 for each fund.

30 Fee for provision of information—subsection 138(4)

- (1) The following fees are prescribed for the purposes of subsection 138(4):
 - (a) in the case of an application for all or any of the information referred to in paragraph 138(1)(a):
 - (i) if the applicant is the owner of a community lot—no fee; and
 - (ii) in any other case—\$15 per application;

- (b) in the case of an application for copies of all or any of the documentary material referred to in paragraph 138(1)(b):
 - (i) if the applicant is the owner of a community lot—\$5 per application; and
 - (ii) in any other case—\$15 per application, plus an additional fee of \$5 where the application is for, or includes a request for, a copy of current policies of insurance taken out by the body corporate;
- (c) where an application is made to inspect all or any of the documentary material referred to in paragraph 138(1)(c):
 - (i) where the applicant is the owner of a community lot—no fee; and
 - (ii) in any other case—\$5 per application;
- (d) in the case of an application for the documentary material referred to in subsection 138(2)—\$25 per application.

(2) A body corporate may reduce or waive any fees prescribed by subclause (1).

31 Services provided by bodies corporate—section 151

- (1) A body corporate may, under section 151, provide to the owner or occupier of a lot any kind of service that relates to the ownership or occupation of the lot.
- (2) The provision of a service under subclause (1) is subject to the following restrictions:
 - (a) a service must not be provided to a person who has not agreed with the body corporate to accept the service;
 - (b) the cost of the service must be paid for by the persons who have agreed to accept it and must not be subsidised by the body corporate.

32 Functions of secretary and treasurer of body corporate

- (1) The secretary of a body corporate has the following functions:
 - (a) to prepare and distribute minutes of meetings of the body corporate and submit a motion for confirmation of the minutes of any meeting of the body corporate at the next such meeting;
 - (b) to give, on behalf of the members of the body corporate and the management committee, the notices required to be given under this Act;
 - (c) to answer communications addressed to the body corporate;
 - (d) to convene meetings of the management committee;
 - (e) to attend to matters of an administrative or secretarial nature in connection with the exercise, by the body corporate or the management committee, of its functions.
- (2) The treasurer of a body corporate has the following functions:
 - (a) to notify owners of community lots of any contributions to be raised from them in accordance with this Act;
 - (b) to receive, acknowledge, bank and account for any money paid to the body corporate;
 - (c) to keep accounting records and prepare financial statements.

Note: The offices of secretary and treasurer can be held by the same person in certain circumstances—see section 78.

Division 2—Manager’s trust accounts**33 Authorisation of fees, costs and disbursements—paragraph 122(b)**

- (1) A manager may withdraw money from a trust account held on behalf of a body corporate in satisfaction of a claim that the manager has against the body corporate for fees, costs or disbursements if the body corporate has agreed in writing to pay to the manager those fees, costs or disbursements.
- (2) A manager who becomes entitled to money held in the manager’s trust account in or towards satisfaction of the manager’s fees, costs or disbursements must, as soon as practicable (and in any event within 3 months), transfer the money to an account maintained by the manager for receipts other than trust money.

Maximum penalty: 5 penalty units.

34 Authorised trust accounts—section 123

For the purposes of section 123:

- (a) a trust account approved by the Commonwealth Minister for the holding of trust money; and
- (b) a trust account of a legal practitioner under the *Legal Profession Act 1993*; are prescribed.

35 General duty with respect to electronic records

If a manager uses a computer program to keep records under this Division, the manager must ensure that:

- (a) an electronic copy of all the records is made within 24 hours of any alteration of the records; and
- (b) at least once in each week, an electronic copy of all the records is made and kept in a safe place at a location other than the premises where the computer program is operating; and
- (c) before any information is deleted from the computer records, a hard copy of the information is made and kept by the manager as part of the manager’s records; and
- (d) an up-to-date electronic copy of the computer program is made and kept in a safe place at a location other than the premises where the computer program is operating.

36 Cash books—paragraph 125(1)(c)

- (1) For the purposes of paragraph 125(1)(c), the detailed accounts of receipts and disbursements of trust money to be compiled by a manager must comply with the following requirements:
 - (a) a cash receipts book must be kept in which the manager records the following information in respect of each receipt of trust money:
 - (i) the date and reference number of the receipt;
 - (ii) the name of the person from whom the money is received;
 - (iii) the name of the body corporate or reference to which the transaction relates;
 - (iv) brief particulars of the purpose of the receipt;

- (v) the amount of the receipt;
- (b) a cash payments book must be kept in which the manager records the following information in respect of each payment of trust money:
 - (i) the date and reference number of the cheque or electronic transfer of funds by which the payment was made;
 - (ii) the name of the payee;
 - (iii) the body corporate's name or reference to which the transaction relates;
 - (iv) brief particulars of the purpose of the payment;
 - (v) the amount of the cheque or electronic transfer of funds.
- (2) However, a manager need not keep a cash receipts book or a cash payments book as required by subclause (1) if the manager uses a computer program to record the information referred to in that subclause in respect of each receipt or payment of trust money and the program:
 - (a) requires input in each field of a data entry screen intended to receive information in respect of a receipt or payment so that all of the information referred to in subclause (1) is recorded in respect of each receipt and payment; and
 - (b) is capable, at any time, of producing:
 - (i) a report of the information in respect of receipts of trust money in the order in which they were received; and
 - (ii) a report of the information in respect of payments of trust money in the order in which they were made.
- (3) A manager who uses a computer program as referred to in subclause (2) must ensure that:
 - (a) at the end of each month, hard copies of each of the following reports are produced:
 - (i) a report of the information in respect of receipts of trust money received during that month in the order in which they were received;
 - (ii) a report of the information in respect of payments of trust money made during that month in the order in which they were made; and
 - (b) those hard copies are kept as part of the manager's records.
- (4) The records of receipts and payments must be made by the manager in accordance with this clause in the order in which they are received or made, each such record being made within 2 business days after the receipt or payment in question.
- (5) Subclause (4) does not apply in relation to receipts or payments by way of electronic transfer of funds, a record of which must be made within 2 business days after the manager receives official confirmation that the transfer has occurred.

37 Separate trust ledger accounts

- (1) A manager must ensure that the manager's trust ledger accounts are kept separately:
 - (a) in respect of each of the manager's clients; and

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- (b) if the manager performs services for a body corporate in respect of a number of transactions between different parties—in respect of each such transaction.
- (2) The manager must record in each of the separate accounts the following details:
- (a) the name and address of the body corporate to whom the accounts relate;
 - (b) a brief description of the service provided and the transaction to which the accounts relate;
 - (c) in respect of each receipt or disbursement of trust money:
 - (i) the date and reference number of the receipt or disbursement; and
 - (ii) the name of the person from whom the money is received or to whom the money is disbursed; and
 - (iii) brief particulars of the purpose of the receipt or disbursement; and
 - (iv) the amount received or disbursed.
- (3) The manager must ensure that any changes in the details referred to in paragraph (2)(a) or (b) are recorded in a manner that enables the changes and the order in which they occurred to be identified.
- (4) If the manager transfers money between any of the separate accounts, the manager must clearly record the transfer:
- (a) in both accounts; and
 - (b) in a transfer journal;
- in sufficient detail that the transfer may be clearly understood.
- (5) The records of receipts, disbursements and transfers must be made by the manager in accordance with this clause in the order in which the receipts, disbursements or transfers are received or made, each such record being made within 2 business days after the receipt, disbursement or transfer in question.
- (6) Subclause (5) does not apply in relation to receipts or payments by way of electronic transfer of funds, a record of which must be made within 2 business days after the manager receives official confirmation that the transfer has occurred.
- (7) If a manager uses a computer program to keep trust ledger accounts or a transfer journal, the manager must ensure that:
- (a) the program is incapable of:
 - (i) recording a transaction that would result in a debit balance in a trust ledger account unless a separate contemporaneous record of the transaction is also made so that, at any time, a hard copy may be produced of all such transactions in chronological order; and
 - (ii) deleting from its records the information relating to a trust ledger account unless the balance of the account is nil and a hard copy of all of the information required under this Division relating to the account has been produced; and
 - (iii) changing existing information relating to a transaction otherwise than by making a further entry showing a separate transaction to effect the change; and
 - (b) the program automatically inserts consecutive page numbers into any hard copy report produced by use of the program; and
 - (c) the program requires input in each field of a data entry screen intended to receive information for the purposes of a trust ledger account or transfer

journal so that the entry contains all of the information required by this clause; and

- (d) hard copies of the trust ledger accounts and transfer journal are produced within 2 business days of a request from the Commonwealth Minister or the manager's auditor.

38 Reconciliation statements

At the end of each month, reconciliation statements must be prepared:

- (a) reconciling the balance of the manager's cash books, or equivalent computer records, kept under clause 36 with the balance of the manager's trust account; and
- (b) reconciling the balances of the ledgers comprised in the manager's trust ledger accounts with the balance of the manager's trust account;
- (but the manager is not required to set out in a statement a list of individual balances, or the names of the bodies corporate on whose behalf money is held).

39 Receipt of trust money

- (1) For the purposes of paragraph 125(2)(a), the receipt that a manager must make available to a person making a payment of trust money must:
- (a) be legibly written on a form comprised in a series of consecutively pre-numbered duplicate receipt forms marked with the name of the manager and the words "Trust Account"; and
- (b) contain the following information:
- (i) in the case of a payment made by electronic transfer of funds into a manager's trust account—the date on which the manager makes out the receipt;
- (ii) in any other case—the date of the payment;
- (iii) the name of the person making the payment;
- (iv) whether the payment is by cash, cheque, bank cheque or electronic transfer of funds into the manager's trust account and, if the payment is by cheque or bank cheque, the name of the drawer of the cheque;
- (v) the name of the body corporate for whom the money is received;
- (vi) brief particulars of the purpose of the payment;
- (vii) the amount of the payment.
- (2) A manager need not comply with paragraph (1)(a) if the manager uses a computer program to make out the receipt and the program:
- (a) automatically produces in chronological sequence consecutively numbered receipts marked with the name of the manager and the words "Trust Account"; and
- (b) automatically makes a separate contemporaneous record of the receipt so that, at any time, a hard copy of the receipt may be produced; and
- (c) requires input in each field of a data entry screen intended to receive information for the purposes of producing the receipt so that each receipt contains all of the information required by paragraph (1)(b).
- (3) A manager must make out a receipt in accordance with this clause:
- (a) in the case of a payment made by electronic transfer of funds into a manager's trust account—immediately the manager receives official confirmation that the payment has been made (whether that is by way of

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- receipt by the manager of a statement from a financial institution or some other way, whichever occurs sooner); or
- (b) in any other case—immediately on receipt of payment.

40 Payment of trust money

- (1) A manager must not make a payment of trust money in cash.

Maximum penalty: 5 penalty units.

- (2) When a manager makes a payment of trust money by cheque, the manager:
- (a) must ensure that the cheque is marked with the name of the manager and the words “Trust Account”; and
- (b) must:
- (i) cause the cheque to be crossed and endorsed “Not negotiable”; or
- (ii) obtain from the person receiving the cheque a receipt that complies with subclause (4) and keep the receipt as part of the manager’s records.

Maximum penalty: 5 penalty units.

- (3) When a manager makes a payment of trust money by cheque, the manager must prepare and keep as part of the manager’s records a cheque stub or voucher containing the following information:
- (a) the date and reference number of the cheque;
- (b) the name of the payee;
- (c) the client name or reference and brief particulars of the purpose of the payment;
- (d) the amount of the cheque.
- (4) The receipt must be legible and contain the following information:
- (a) the date and reference number of the cheque;
- (b) particulars identifying the trust account against which the cheque is drawn;
- (c) the name of the payee;
- (d) brief particulars of the purpose of the payment;
- (e) the amount of the cheque.
- (5) When a manager authorises the payment of trust money by electronic transfer of funds, the manager:
- (a) must prepare and keep as part of the manager’s records the following information:
- (i) the date and reference number of the payment;
- (ii) the name of the payee;
- (iii) the body corporate name or reference and brief particulars of the purpose of the payment;
- (iv) the name or style of the account to which the payment is made, its number and the identifying numbers of the receiving bank or institution and its branch;
- (v) the amount of the payment; and
- (b) must, on receiving official written confirmation that the payment has been made, keep that confirmation as part of the manager’s records.

41 Audit of trust accounts—section 126

- (1) For the purposes of paragraph 126(1)(a), the audit period in respect of which a manager must have the accounts and records audited is a financial year.
- (2) In carrying out an audit, the auditor must:
 - (a) make checks that will enable the auditor to give an opinion as to whether the manager has, during the period covered by the audit, complied with this Act relating to the manager's accounts and records; and
 - (b) ascertain what trust accounts were kept by the manager during that period; and
 - (c) make a general test examination of any trust account kept by the manager and of the passbooks and statements relating to any such account during that period; and
 - (d) make a comparison as to no fewer than 2 dates (1 to be the last day of the period of the audit and 1 other to be a date within that period selected by the auditor) between:
 - (i) the liabilities of the manager to the manager's clients as shown by the manager's trust ledger accounts and the records kept under this Schedule; and
 - (ii) the aggregate of the balances standing to the credit of the manager's trust account; and
 - (e) ask for such information and explanations as the auditor may require for the purposes of this clause.
- (3) For the purposes of paragraph 126(1)(b), the statement relating to the audit must be prepared by the auditor and must include all matters relating to the manager's accounts and records that should, in the auditor's opinion, be communicated to the body corporate and, in particular, deal with each of the following matters:
 - (a) whether the accounts and records appear to have been kept regularly and properly written up at all times;
 - (b) whether the accounts and records have been ready for examination at the periods appointed by the auditor;
 - (c) whether the manager has complied with the auditor's requirements;
 - (d) whether, at any time during the period of the audit, the manager's trust account was overdrawn and, if so, the full explanation for that given by the manager;
 - (e) whether the manager has, or has had, any debit balances in his or her trust account and the explanation or reason for such a debit given by the manager;
 - (f) whether the auditor has received and examined the notice given to the auditor under clause 42 and the result of that examination;
 - (g) if the manager uses a computer program to keep the manager's accounts and records, whether the program allows for the accounts and records to be conveniently and properly audited.
- (4) The auditor must attach to the auditor's statement a copy of the manager's notice delivered to the auditor under subclause 42(1).
- (5) The auditor must verify the statement by statutory declaration and give a signed copy of the statement to the manager.

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- (6) If the auditor in the course of auditing the manager's accounts and records discovers:
- (a) that they are not kept in a manner that enables them to be properly audited; or
 - (b) a matter that appears to the auditor to involve dishonesty or a breach of the law by the manager; or
 - (c) a loss or deficiency of trust money or a failure to pay or account for trust money; or
 - (d) a failure to comply with this Act;
- the auditor must, as soon as possible, give a report in respect of the discovery to the Commonwealth Minister and the manager concerned.
- Maximum penalty: 5 penalty units.
- (7) However, the auditor is not required to give a report to the Commonwealth Minister in respect of the discovery of a loss, deficiency or failure if the auditor is satisfied that:
- (a) bringing the discovery to the attention of the manager or body corporate will adequately deal with the matter; and
 - (b) the loss, deficiency or failure does not involve dishonesty or a breach of the law.
- (8) For the purposes of paragraph 126(2)(b), a manager must lodge an audit statement or declaration within 2 months after the end of each audit period.

42 Manager's statement

- (1) A manager who is required to have accounts and records audited must, before the completion of the audit, certify:
- (a) under his or her hand; or
 - (b) in the case of a firm of managers—under the hands of not less than 2 partners of the firm; or
 - (c) in the case of a body corporate manager—under the hands of not less than 2 directors of the body corporate;
- and deliver to the auditor a notice setting out in detail, as of the last day of the period to which the audit relates, particulars of:
- (d) the names of all bodies corporate on whose behalf the manager is holding trust money and the amount of the credit of each such body corporate; and
 - (e) all negotiable or bearer securities or deposit receipts in the name of the manager which represent money drawn from the manager's trust account and which were held by the manager on that day; and
 - (f) the names of the trust accounts in which the balance of the manager's trust money is lodged and the balances on that date of those accounts; and
 - (g) if the trust account balances are not in agreement with the balances of the manager's ledger accounts—a statement reconciling those balances.

Maximum penalty: 5 penalty units.

- (2) The notice must be verified by statutory declaration:
- (a) of the manager; or
 - (b) in the case of a firm of managers—of not less than 2 partners of the firm; or

- (c) in the case of a body corporate manager—of not less than 2 directors of the body corporate.
- (3) The manager must give the auditor making the next audit of the manager’s accounts and records:
 - (a) at the request of the auditor, a copy of the notice, together with a signed copy of the auditor’s statement of the last audit of the manager’s accounts and records; or
 - (b) if the manager’s accounts and records are being audited for the first time or, if for any other reason a copy of the notice cannot be produced for the purposes of the audit—before completion of the audit, a notice containing the same particulars as to money, negotiable or bearer securities and deposit receipts held on the first day of the period to which the audit relates.

Maximum penalty: 5 penalty units.

43 Certain persons may not audit accounts and records of manager

A person must not audit the accounts and records of a manager if the person:

- (a) is, or has been within 2 years, an employee or partner of the manager; or
- (b) is an employee or partner of another manager carrying on business as a manager; or
- (c) is a manager carrying on business as a manager.

Maximum penalty: 5 penalty units.

44 Holding of deposit and other contract money when lot is pre-sold— section 149

- (1) For the purposes of subsection 149(1), a provision of a contract of sale that provides for any consideration payable by the purchaser prior to the deposit of the plan to be held on trust by a specified legal practitioner, registered agent or registered conveyancer until the plan is deposited must:
 - (a) be printed in bold in a font size of not less than 14 points; and
 - (b) be specifically brought to the attention of the purchaser by the vendor; and
 - (c) be initialled by, or on behalf of, both the vendor and the purchaser.
- (2) If a contract for the sale of a lot in a proposed community scheme specifies a period for the purposes of paragraph 149(4)(a), that provision of the contract must:
 - (a) be printed in bold in a font size of not less than 14 points; and
 - (b) be specifically brought to the attention of the purchaser by the vendor; and
 - (c) be initialled by, or on behalf of, both the vendor and the purchaser.

Part 4—Fees

45 Fees

There is payable to the Registrar for a matter set out in the following table the fee set out in the table for that matter.

Fees		
Item	Matter for which fee is payable	Fee (fee units)
1	Preliminary examination of plan to be lodged with application before application is lodged (section 152):	
	(a) for application for division of land by plan of community division (section 21):	
	(i) if there are 6 lots or less;	16
	(ii) if there are more than 6 lots;	32
	(b) for any other application	16
2	Application for division of land by plan of community division (section 21):	
	(a) for examination of application;	13
	(b) for examination of plan of community division not subject to prior approval under section 152:	
	(i) if there are 6 lots or less;	16
	(ii) if there are more than 6 lots;	32
	(c) for deposit of plan of community division;	4
	(d) for each lot requiring issue of certificate of title;	2
	(e) for filing of scheme description;	5
	(f) for filing of rules;	5
	(g) for filing of development contract	5
3	Application to amend schedule of lot entitlements (section 27)	5
4	Filing of copy of certified scheme description as amended (section 35)	5
5	Filing of certified copy of rules as varied (section 39)	5
6	Maximum fee for purchase from body corporate of copy of rules (section 47)	1
7	Fee for purchase from Registrar of copy of rules filed with plan of community division (section 47)	2
8	Filing of certified copy of development contract as varied or agreement to terminate development contract (section 52)	5
9	Maximum fee for purchase from body corporate of copy of development contract (section 53)	1
10	Fee for purchase from Registrar of copy of development contract filed with plan of community division (section 53)	2
11	Application for amendment of deposited community plan (section 54):	
	(a) for examination of application;	10
	(b) for examination of plan to be substituted or sheets of plan to be substituted or added if plan not subject to prior approval under section 152;	16
	(c) for each lot requiring issue of certificate of title;	2
	(d) for filing of amended scheme description	5
12	Application for division of development lot in pursuance of development contract and consequential amendment of community plan (section 60):	
	(a) for examination of application;	10
	(b) for examination of plan to be substituted or sheets of plan to be substituted or added if plan not subject to prior approval under section 152;	16
	(c) for each lot requiring issue of certificate of title	2
13	Application for amalgamation of deposited community plans (section 62):	
	(a) for examination of application;	10

Schedule 1 Amendments

Fees		
Item	Matter for which fee is payable	Fee (fee units)
	(b) for examination of plan of community division not subject to prior approval under section 152;	16
	(c) for deposit of plan of community division;	4
	(d) for each lot requiring issue of certificate of title;	2
	(e) for filing of scheme description;	5
	(f) for filing of rules	5
14	Application for cancellation of deposited community plan (section 71):	
	(a) for examination of application;	10
	(b) if application is for cancellation of primary plan:	
	(i) for examination of plan that delineates outer boundaries of primary parcel;	16
	(ii) for filing of plan;	4
	(c) for each certificate of title to be issued	2
15	Application to note Court order for cancellation of community plan (sections 66 and 69):	
	(a) for noting the order;	10
	(b) if application is for cancellation of primary plan:	
	(i) for examination of plan that delineates outer boundaries of primary parcel;	16
	(ii) for filing of plan;	4
	(c) for each certificate of title to be issued	2
16	Filing of notice of appointment, removal or replacement of administrator (section 99)	5
17	Submission of outer boundary plan (clause 7):	
	(a) for examination of plan;	32
	(b) for filing of plan	4
18	Fee for re-examination of plan when amended after approval for deposit is given	4
19	Lodgement of any other document required by this Act	5