

NORTHERN TERRITORY OF AUSTRALIA

UNIT TITLE SCHEMES (MANAGEMENT MODULES) REGULATIONS

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Subordinate Legislation No. 21 of 2009

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# NORTHERN TERRITORY OF AUSTRALIA

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Subordinate Legislation No. 21 of 2009\*

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## ***Unit Title Schemes (Management Modules) Regulations***

I, Thomas Ian Pauling, Administrator of the Northern Territory of Australia, acting with the advice of the Executive Council, make the following regulations under the *Unit Title Schemes Act*.

Dated 24 June 2009

T. I. PAULING  
Administrator

By His Honour's Command

D. P. Lawrie  
Minister for Justice and Attorney-General

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\* Notified in the *Northern Territory Government Gazette* on 26 June 2009.

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**1 Citation**

These Regulations may be cited as the *Unit Title Schemes (Management Modules) Regulations*.

**2 Commencement**

These Regulations commence on the commencement of section 94 of the *Unit Title Schemes Act 2009*.

**3 Definitions**

In these Regulations:

***small scheme*** means a basic scheme with less than 4 unit owners.

***standard scheme*** means:

- (a) a basic scheme with at least 4 unit owners; or
- (b) a higher scheme.

**4 Scheme statement may specify management module**

The scheme statement for a standard scheme may specify that management module 1, which is set out in Schedule 1, applies to the scheme.

**5 Management modules**

- (1) The management module that applies to a standard scheme, for section 94 of the Act, is:
  - (a) if the scheme statement specifies that management module 1 applies to the scheme – management module 1, which is set out in Schedule 1; or
  - (b) otherwise – management module 2, which is set out in Schedule 2.
- (2) The management module that applies to a small scheme, for section 94 of the Act, is management module 3, which is set out in Schedule 3.

*Note for regulation 5*

*The schemes supervisor may approve changes to the management module applying to a particular scheme under section 94(4)(b) of the Act.*

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## **6 Change in management module**

- (1) This regulation applies if the management module applying to a scheme changes because one of the following events happens:
  - (a) the schemes supervisor approves a change to the management module under section 94(4)(b) of the Act;
  - (b) the number of unit owners for the scheme changes;
  - (c) the scheme becomes, or ceases to be, a higher scheme.
- (2) The management module applying to the scheme immediately before the event continues to apply to the scheme until 1 July immediately following the event.

## **7 Offences**

- (1) The original owner for a scheme must comply with a requirement under the management module applying to the scheme that the original owner give the body corporate, or the committee of the body corporate, particular documents at the first annual general meeting of the body corporate.

Fault element:                      The original owner intentionally fails to comply with the requirement.

Maximum penalty:                100 penalty units.

- (2) Each committee member commits an offence if the committee for a standard scheme fails to comply with a requirement under the management module applying to the scheme that the committee:
  - (a) ensure particular records are kept for the body corporate; and
  - (b) prepare a financial statement at the end of a financial year showing particular information.

Fault element:                      The committee member is reckless in relation to the failure to comply with the requirement.

Maximum penalty:                20 penalty units.

## Schedule 1 Management module 1 – standard scheme

regulation 5(1)(a)

### Part 1 Preliminary matters

#### 1 Definitions

In this management module:

***acting committee member***, see clause 10(1).

***annual financial statement***, see clause 55(1)(b).

***annual general meeting***, see clause 29.

***authorised audit company***, see section 9 of the Corporations Act 2001.

***chairperson***:

- (a) of a committee – means the person elected under clause 7(1)(a); or
- (b) of a body corporate – means the chairperson under clause 7(2).

***committee meeting*** means a meeting of the committee of a body corporate.

***company*** means:

- (a) a company as defined in section 9 of the Corporations Act 2001; or
- (b) an incorporated association as defined in section 4 of the *Associations Act*; or
- (c) any other body corporate.

***dispute***, see clause 74.

***eligible adjudicator***, see clause 75.

***first annual general meeting*** means the meeting mentioned in clause 26.

**former owner**, for a terminated scheme, means a person who was an owner of a unit in the scheme immediately before the termination of the scheme.

**general meeting** means a meeting of a body corporate.

**interim resolution**, see clause 3.

**notice of opposition**, see clause 21(1).

**party**, to a dispute, see clause 76(3).

**plan of termination**, see clause 70(1).

**restricted matter**, for a body corporate, means a matter a decision on which, under the Act or clause 25 of this management module, may be made only by the body corporate.

**secretary**:

(a) of a committee – means the person elected under clause 7(1)(b); or

(b) of a body corporate – means the secretary under clause 7(2).

**special levy** means a levy charged under clause 50 or 51.

**teleconferencing** includes the use of telephone, computer or video equipment.

## **2 Decisions of body corporate**

(1) A decision of a body corporate must be made:

(a) at a general meeting of the body corporate; or

(b) in accordance with the process set out in clause 34.

(2) Unless otherwise specified in this management module, a motion is passed at a general meeting if it is passed by an ordinary resolution.

## **3 Interim resolutions**

(1) An **interim resolution** is a resolution of a committee or body corporate made at a meeting without a quorum.

(2) An interim resolution does not have effect until it becomes a resolution in accordance with the process set out:

(a) for an interim resolution of a committee – in clause 15; or

- (b) for an interim resolution of a body corporate – in clause 34.

## **Part 2                      Committee of body corporate**

### **Division 1                Constitution of committee**

#### **4                      Constitution of committee before first annual general meeting**

- (1) Until the first annual general meeting of a body corporate, the committee of the body corporate consists of the members of the body corporate, who are taken to be elected committee members.
- (2) If a member of the body corporate is a company, the member must appoint an individual to be a committee member in place of the member.
- (3) The committee must not exercise a power or perform a function of the body corporate unless authorised to do so by a resolution without dissent of the body corporate recorded in accordance with clause 57.
- (4) Each committee member vacates office immediately before the election of committee members at the first annual general meeting.

#### **5                      Number of committee members after first annual general meeting**

- (1) The body corporate must, at its first annual general meeting:
  - (a) decide the number of members who will constitute the committee; and
  - (b) elect the committee members.
- (2) The number of committee members must be:
  - (a) at least 2; and
  - (b) unless decided by a special resolution – not more than 7.
- (3) The body corporate may, by a special resolution at a later annual general meeting, vary the number.
- (4) However, the committee consists of all the members of the body corporate if:
  - (a) there are not more than 3 members of the body corporate; or



- (b) the number of members of the body corporate is equal to or less than the number decided to be the number of committee members.

(5) If subclause (4) applies:

- (a) the committee members are taken to be elected committee members; and
- (b) if a member of the body corporate is a company – the member must appoint an individual to be a committee member in place of the member.

## **6 Election of committee members**

- (1) The body corporate must elect the committee members at each annual general meeting.
- (2) If a member of the body corporate is a company, the member may appoint an individual to stand for election on behalf of the member.

*Note for clause 6*

*Under section 74(3) of the Act, a committee member must be:*

- (a) a unit owner that is an individual; or*
- (b) an individual appointed by a unit owner that is a body corporate.*

## **7 Chairperson and secretary**

- (1) At the first committee meeting after the annual general meeting, the committee must elect:
  - (a) the chairperson of the committee; and
  - (b) the secretary of the committee.
- (2) The chairperson and secretary of the committee are also the chairperson and secretary of the body corporate.
- (3) The chairperson and secretary hold office for the term and on the conditions decided by the body corporate.

## **8 Term of office of committee member**

- (1) The term of office of a committee member expires immediately before the election of the committee members at the next annual general meeting after the member's election.

- (2) A committee member leaves office before the member's term expires:
  - (a) for a committee member who is a unit owner that is an individual – if the committee member stops being a unit owner; or
  - (b) for a committee member who is an appointee of a unit owner that is a company – if the unit owner:
    - (i) stops being a unit owner; or
    - (ii) gives the body corporate written notice that the unit owner has terminated the appointment of the committee member; or
  - (c) if the committee member resigns from office by written notice to the body corporate; or
  - (d) if the body corporate removes the committee member from office under clause 9.
- (3) If a committee member leaves office before the committee member's term expires, the committee must appoint another member of the body corporate, who is a person mentioned in section 74(3) of the Act, to be a committee member for the unexpired part of the term.
- (4) However, if the committee consists of all the members of the body corporate because of clause 5(4):
  - (a) subclauses (2)(c) and (3) do not apply; and
  - (b) if the body corporate removes a committee member from office under clause 9, the committee continues to exist without the member.

## **9 Removal of committee member for breach of code**

- (1) If the body corporate believes a committee member has breached the code of conduct, the body corporate may decide to give the committee member a written notice stating the following:
  - (a) the body corporate believes the committee member has breached a stated provision of the code of conduct and the basis for that belief;
  - (b) the committee member may give the body corporate, within 21 working days after the committee member receives the notice, a written response to the notice;

- (c) the body corporate will consider a motion to remove the committee member from office for the breach at the next general meeting of the body corporate called after the period mentioned in paragraph (b) ends.
- (2) The body corporate must:
  - (a) include on the agenda of the next general meeting of the body corporate, called after the period mentioned in subclause (1)(b) ends, a motion to remove the committee member from office for breaching the code of conduct; and
  - (b) attach to the agenda a copy of the notice given to the committee member.
- (3) The body corporate may decide to remove the committee member from office at the next general meeting mentioned in subclause (2)(a).
- (4) In this clause:

**code of conduct** means the code of conduct that applies to a committee member under section 77 of the Act.

## **10 Acting committee member**

- (1) A committee member may, with the consent of the committee, appoint a person (an **acting committee member**) to act in the committee member's place at a committee meeting.
- (2) The acting committee member must be a person mentioned in section 74(3) of the Act.
- (3) If the acting committee member is also a committee member, the acting committee member may vote at the meeting separately:
  - (a) as a committee member; and
  - (b) on behalf of the member who has appointed the acting committee member.

## **Division 2 Committee meetings**

### **11 How often committee meets**

The committee may decide how often it meets.

**12 Calling committee meeting**

A committee meeting may be called by:

- (a) the chairperson of the committee; or
- (b) the secretary of the committee; or
- (c) an ordinary resolution of the committee.

**13 Notice of committee meeting**

- (1) The secretary of the committee must give written notice of the committee meeting to each committee member at least 5 working days before the date of the meeting.
- (2) The notice must:
  - (a) specify the date, time and place of the meeting; and
  - (b) include the agenda for the meeting.

**14 Quorum at committee meeting**

- (1) A quorum for the committee meeting exists if at least 50% of the committee members are present at the meeting.
- (2) For deciding whether or not a quorum is present, an acting committee member is taken to be a committee member.

**15 Interim resolution if no quorum present**

- (1) If there is no quorum present at the meeting:
  - (a) the meeting may take place but all resolutions made at the meeting are interim resolutions; and
  - (b) the secretary of the committee must give the following to each committee member within 14 working days after the meeting:
    - (i) details of each interim resolution made at the meeting;
    - (ii) the minutes of the meeting;
    - (iii) a notice setting out the effect of subclauses (2) to (4);
    - (iv) a voting paper for each interim resolution.

- (2) If an interim resolution is made at the meeting, a committee member may, within 14 working days after receiving the documents mentioned in subclause (1)(b), vote on the resolution by recording a vote on the voting paper and sending it to the secretary of the committee.
- (3) The interim resolution becomes a resolution if:
  - (a) at least 50% of the committee members vote on it under subclause (2); and
  - (b) the votes counted in favour of confirming the interim resolution are more than the votes counted against confirming it.
- (4) If less than 50% of the committee members vote on the interim resolution under subclause (2), it must be voted on at the next committee meeting at which a quorum is present.
- (5) An interim resolution may only be made under this clause on a motion that may be passed by an ordinary resolution.

## **16 Attendance by teleconferencing**

- (1) A committee member may attend and participate in the committee meeting by teleconferencing.
- (2) The secretary of the committee must arrange teleconferencing facilities if requested to do so by the committee member.
- (3) If the committee member attends the meeting by teleconferencing, the committee member is taken to be present at the meeting.

## **17 Procedures for committee meeting**

Except as otherwise provided in the Act and this Division, the committee may decide the procedures for the committee meeting.

## **18 Chairperson of committee meeting**

- (1) The chairperson of the committee is the chairperson of the committee meeting.
- (2) If the chairperson is unable to act as chairperson of the meeting, the committee members must elect a committee member present at the meeting to be chairperson.

## **19 Voting at committee meeting**

- (1) The chairperson of the committee meeting has the right to vote as a committee member.

- (2) If the voting on a motion that may be passed by an ordinary resolution is equal, the chairperson of the meeting may cast the deciding vote in addition to a vote cast under subclause (1).

## **20 Minutes of committee meeting**

- (1) The secretary of the committee must keep minutes of each committee meeting.
- (2) The following matters must be recorded in the minutes:
- (a) the date, time and place of the meeting;
  - (b) the names of the committee members present at the meeting;
  - (c) the names of the committee members voting at the meeting;
  - (d) all resolutions of the committee made at the meeting;
  - (e) the voting on all resolutions of the committee at the meeting.
- (3) The secretary must give a copy of the minutes to each member of the body corporate and each other person with a right to vote at a general meeting of the body corporate within 21 working days after the meeting.

## **21 Notice of opposition to decision of committee meeting**

- (1) One or more persons, who together have the right to vote in relation to at least 50% of the total interest entitlements of the scheme, may give a notice opposing a decision of the committee (a **notice of opposition**) to the secretary or the chairperson of the committee.
- (2) The notice must be given within 7 working days after the secretary gives a copy of the minutes containing the decision under clause 20(3).
- (3) The body corporate must consider the notice of opposition at the next general meeting and either approve or disapprove the decision of the committee.

## **Division 3 Powers of committee**

### **22 Giving effect to decisions of committee**

The committee may give effect to a decision of the committee only if:

- (a) the time for giving a notice of opposition to the decision under clause 21 ends without a notice of opposition being given; or

- (b) the decision is necessary to deal with an emergency; or
- (c) the decision is approved by the body corporate.

## **23 Committee decisions are decisions of body corporate**

- (1) A decision of the committee on a matter is taken to be a decision of the body corporate unless:
  - (a) the matter is a restricted matter; or
  - (b) the committee cannot give effect to the decision under clause 22.
- (2) If subclause (1)(a) or (b) applies, the committee's decision has no effect.

## **24 Restriction on spending by committee**

- (1) The body corporate may decide a maximum amount of expenditure that the committee may undertake for repairs or improvements to the common property of the scheme.
- (2) The committee must not undertake expenditure above the amount unless authorised by the body corporate.

# **Part 3 Meetings of body corporate**

## **Division 1 Matters to be decided by body corporate**

### **25 Body corporate may decide certain matters**

Except as otherwise provided by the Act, the body corporate may decide that a matter concerning the scheme may be decided only by the body corporate.

## **Division 2 Annual general meetings**

### **Subdivision 1 First annual general meeting**

#### **26 Calling first annual general meeting**

Within 3 months after the registration of a scheme statement, the original owner for the scheme must call the first annual general meeting of the body corporate for the scheme.

## **27 Documents to be given by original owner**

- (1) At the first annual general meeting of the body corporate, the original owner for the scheme must give the committee the following:
- (a) the proposed budget for the first financial year for the body corporate;
  - (b) a list of all body corporate assets and liabilities;
  - (c) the name and contact address of each unit owner;
  - (d) if a body corporate manager has been engaged – the name and business address of the body corporate manager;
  - (e) a copy of the scheme statement;
  - (f) the accounting records kept by the original owner for the body corporate;
  - (g) documents evidencing each contract, lease and licence binding or benefiting the body corporate;
  - (h) each certificate of insurance in force for the scheme;
  - (i) documents evidencing each warranty or guarantee given on any matter for which the body corporate is responsible;
  - (j) the seal of the body corporate;
  - (k) the certificate of title for the common property of the scheme;
  - (l) a copy of this management module.
- (2) However, the original owner is not required to give the certificate of title for the common property if it is not in the possession or under the control of the original owner.

*Note for clause 27*

*Under regulation 7(1), it is an offence for the original owner to fail to comply with this clause.*

## **28 Matters to be decided at first annual general meeting**

The body corporate must, at the first annual general meeting, decide the following:

- (a) whether any insurance policies in force for the scheme should be retained, varied or extended;



- (b) the annual contributions payable by the unit owners to the body corporate;
- (c) whether the proposed budget should be amended;
- (d) under clause 25, which matters may be decided only by the body corporate;
- (e) whether any matters mentioned in paragraph (d) must be decided by a special resolution, a resolution without dissent or a unanimous resolution.

## **Subdivision 2 Further annual general meetings**

### **29 Annual general meetings**

After the first annual general meeting, the body corporate must hold a general meeting (the ***annual general meeting***):

- (a) at least once every calendar year; and
- (b) within 15 months after the last annual general meeting.

### **30 Agenda for annual general meeting**

The following matters must be on the agenda for an annual general meeting:

- (a) election of committee members;
- (b) consideration of the engagement of a body corporate manager;
- (c) consideration of the annual financial statement;
- (d) approval of a budget for the next financial year;
- (e) review of existing delegations and consideration of proposed delegations.

## **Division 3 Calling general meetings**

### **31 Calling general meeting other than the first annual general meeting**

A general meeting of the body corporate, other than the first annual general meeting, may be called by:

- (a) the chairperson of the body corporate; or

- (b) the secretary of the body corporate; or
- (c) the body corporate manager; or
- (d) a person with a right to vote at the meeting nominated by persons who together have the right to vote in relation to at least 25% of the total interest entitlements of the scheme.

## **32 Notice of general meeting**

- (1) The person calling the general meeting must give written notice of the meeting to each person who has the right to vote at the meeting at least:
  - (a) 14 working days before the date of the meeting; or
  - (b) 21 working days before the date of the meeting if:
    - (i) a resolution without dissent or a unanimous resolution is proposed to be moved at the meeting; or
    - (ii) a resolution to terminate the scheme is proposed to be moved at the meeting.
- (2) The notice must:
  - (a) specify the date, time and place of the meeting; and
  - (b) include the agenda for the meeting; and
  - (c) if the meeting is the annual general meeting – include the annual financial statement for the previous financial year and the proposed budget for the next financial year for the body corporate; and
  - (d) include the text of any special resolution, resolution without dissent or unanimous resolution to be moved at the meeting; and
  - (e) if a resolution to authorise expenditure for repairs or improvements above the amount mentioned in clause 24(1) will be moved – include 2 quotations for the cost of the repairs or improvements; and
  - (f) if a resolution to terminate the scheme will be moved at the meeting – include the plan of termination.
- (3) The proceedings at the meeting are not invalidated only because notice of the meeting is not given in accordance with this clause.

- (4) However, the meeting must be adjourned to a later date decided by the persons present who have the right to vote at the meeting if:
  - (a) notice of the meeting is given to a person who has the right to vote at the meeting after the last day for giving notice under subclause (1); and
  - (b) the person requests an adjournment:
    - (i) before the meeting, in writing to the secretary of the body corporate; or
    - (ii) at the meeting.

### **33 Quorum at general meeting**

A quorum for the general meeting exists if persons who together have the right to vote in relation to at least 50% of the total interest entitlements of the scheme are present at the meeting.

### **34 Interim resolutions if no quorum present**

- (1) If there is no quorum present at the general meeting:
  - (a) the meeting may take place but all resolutions made at the meeting are interim resolutions; and
  - (b) the secretary of the body corporate must give the following to each person with a right to vote at the meeting within 14 working days after the meeting:
    - (i) details of each interim resolution made at the meeting;
    - (ii) the minutes of the meeting;
    - (iii) a notice setting out the effect of subclauses (2) and (3).
- (2) If an interim resolution is made at the meeting, a person may, in accordance with clauses 31 and 32, call a further general meeting within 29 working days after the date of the interim resolution.
- (3) An interim resolution becomes a resolution of the body corporate:
  - (a) if notice of a further general meeting is given and the meeting is held within 28 working days after the notice is given – if the resolution is confirmed at the meeting; or
  - (b) if notice of a further general meeting is given and the meeting is not held within 28 working days after the notice is given – at the end of that 28 working day period; or

(c) otherwise – 29 working days after the date of the interim resolution.

(4) An interim resolution may only be made under this clause on a motion that may be passed by an ordinary resolution.

### **35 Attendance by teleconferencing**

(1) A person who has the right to vote at a general meeting may attend and participate in the meeting by teleconferencing.

(2) The secretary of the body corporate must arrange teleconferencing facilities if requested to do so by the person.

(3) A person who attends a meeting by teleconferencing is taken to be present at the meeting.

### **36 Procedures for general meeting**

Except as otherwise provided in the Act and this Division, the body corporate may decide the procedures for the general meeting.

### **37 Chairperson of general meeting**

(1) The chairperson of the committee is the chairperson of the general meeting.

(2) If the chairperson is unable to act as chairperson of the meeting, the persons present who have the right to vote at the meeting must elect to be chairperson for the meeting a person present at the meeting who:

(a) has the right to vote at the meeting; or

(b) is the body corporate manager.

## **Division 4 Voting at general meeting**

### **Subdivision 1 Voting generally**

#### **38 Voting by chairperson**

If the chairperson of a general meeting would otherwise have the right to vote at the meeting:

(a) the chairperson has the right to vote at the meeting; and

(b) if the voting on a motion that must be passed by an ordinary resolution is equal, the chairperson may cast the deciding vote in addition to a vote cast under paragraph (a).

**39 Method of voting**

Voting at a general meeting must be by:

- (a) written vote:
  - (i) if a poll is taken; or
  - (ii) if a person casts an absentee vote on a motion that must be passed by a resolution without dissent or a unanimous resolution; or
  - (iii) on a motion to terminate the scheme; or
- (b) otherwise – show of hands.

**40 Result of voting**

Following a vote on a motion at a general meeting, the chairperson of the meeting must either:

- (a) declare the result; or
- (b) if the chairperson is unable to declare the result based on a vote by show of hands – call a poll.

**41 Polls**

- (1) A poll must be taken for a motion (including a motion that must be passed by a special resolution, a resolution without dissent or a unanimous resolution) if:
  - (a) a person present at the meeting with a right to vote on the motion calls a poll; or
  - (b) the chairperson calls a poll under clause 40(b).
- (2) If 2 or more persons have the right to exercise 1 vote jointly, one of the persons may call a poll under subclause (1)(a).
- (3) A call for a poll under subclause (1)(a) may be withdrawn.
- (4) The result of the poll determines whether or not the motion for which the poll was taken has been carried.
- (5) The chairperson must declare the result as soon as it is determined.

## **Subdivision 2 Alternative methods of voting**

### **42 Appointment of proxy**

- (1) A person with a right to vote at a general meeting may appoint a proxy to vote on the person's behalf at the meeting.
- (2) If 2 or more persons have the right to exercise 1 vote jointly, the persons may jointly appoint a proxy to exercise the right.
- (3) The appointment of a proxy must:
  - (a) be in writing in the form approved by the committee; and
  - (b) include the period of appointment; and
  - (c) if 2 or more persons are jointly appointing a proxy under subclause (2) – be signed by each of the persons.

### **43 Absentee vote on resolution without dissent or unanimous resolution**

- (1) If a resolution without dissent or a unanimous resolution is proposed to be moved at a general meeting:
  - (a) the person giving notice of the meeting must give each person who has the right to vote on the motion an absentee voting paper with the notice; and
  - (b) a person who has the right to vote on the motion may cast an absentee vote by recording the vote on the voting paper and giving it to the body corporate before the meeting.
- (2) The person must give the voting paper to the body corporate by:
  - (a) placing it in the letterbox mentioned in section 83(1) of the Act at least 24 hours before the meeting; or
  - (b) giving it to the secretary of the body corporate before the meeting.
- (3) A person who casts an absentee vote is, except for deciding whether a quorum is present at the meeting, taken to be present at the meeting and to have exercised the person's right to vote on the motion.

### **Subdivision 3 Right to vote**

#### **44 Voting by mortgagees**

- (1) If a unit owner's interest in a unit is subject to a mortgage, the mortgagee may give the body corporate written notice that:
  - (a) the unit is subject to the mortgage; and
  - (b) the mortgagee proposes to exercise voting rights under this clause.
- (2) If the mortgagee gives the notice:
  - (a) the member does not have a right to vote in relation to the unit; and
  - (b) the mortgagee has the right to vote in relation to the unit.
- (3) If the mortgage is discharged, the mortgagee's right to vote ends.
- (4) If 2 or more persons are mortgagees of a unit as joint tenants or tenants in common:
  - (a) the right to give notice under subclause (1) may be exercised only by the mortgagees jointly; and
  - (b) the right to vote may be exercised only by the mortgagees jointly.
- (5) If a unit is held by 2 or more members as tenants in common and one of the members has mortgaged the member's interest in the unit:
  - (a) the mortgagee may give notice to the body corporate under subclause (1); and
  - (b) this clause applies to the mortgagee in relation to the right to vote that the mortgagor may otherwise exercise.
- (6) In this clause:

**mortgagee**, if there are 2 or more mortgages, means the mortgagee under the mortgage entitled to priority over the other mortgage or mortgages.

**45 Court may appoint person to vote**

- (1) This clause applies if, for a motion that must be passed by a resolution without dissent or a unanimous resolution:
  - (a) a person who has the right to vote on the motion in relation to a unit:
    - (i) is unavailable to vote on the motion; and
    - (ii) has not appointed a proxy to vote on the person's behalf;  
or
  - (b) the body corporate does not know who has the right to vote in relation to a unit.
- (2) The Local Court may:
  - (a) order that the person's right to vote may be dispensed with for the motion or permanently; or
  - (b) appoint another person to exercise the right to vote on the motion.
- (3) The body corporate or a person who has the right to vote on the motion may apply for an order under this clause.

**46 Incapacity to vote**

- (1) A member of the body corporate does not have a right to vote if:
  - (a) the member is under the age of 18 years; or
  - (b) a guardian has been appointed under the *Adult Guardianship Act* to manage the property of the member.
- (2) The right of a member mentioned in subclause (1)(a) to vote may be exercised by the member's parent or guardian.
- (3) The right of a member mentioned in subclause (1)(b) to vote may be exercised by the appointed guardian.



## **Part 4 Exclusive use by-laws**

### **47 Costs relating to common property**

If special rights about common property or a body corporate asset are allocated to a unit under an exclusive use by-law, the unit owner is not liable to pay maintenance and operating costs relating to the common property or asset unless the by-law specifically provides that the owner is liable.

## **Part 5 Financial and record management**

### **Division 1 Annual contributions and other levies**

#### **48 Amount of annual contributions**

The body corporate may, from time to time, decide:

- (a) the amount of annual contributions payable by the unit owners to the body corporate; and
- (b) how the contributions must be paid.

*Note for clause 48*

*Under section 39(3) of the Act, the contribution entitlement of a unit divided by the total contribution entitlements of all the units is the ratio representing the unit owner's share of annual contributions.*

#### **49 Purpose of annual contributions**

Annual contributions paid by unit owners to the body corporate must be used to fund the following:

- (a) the administration of the body corporate;
- (b) maintenance and repairs of the common property of the scheme;
- (c) the insurance policies the body corporate is required to maintain under the Act;
- (d) other costs reasonably incurred by the body corporate in performing its functions under the Act.

#### **50 Levy for single item of expenditure**

- (1) The body corporate may, by a special resolution, decide to charge unit owners a levy to fund a single item of expenditure.

- (2) The following matters must also be decided by a special resolution:
  - (a) the amount of the levy;
  - (b) how the levy must be paid.
- (3) The ratio representing a unit owner's share of the levy is the same as the ratio (mentioned in section 39(3) of the Act) representing the unit owner's share of annual contributions.

## **51 Levy for recurring expenditure**

- (1) The body corporate may, by a unanimous resolution, decide to charge unit owners a levy to fund a recurring class of expenditure.
- (2) The following matters must also be decided by a unanimous resolution:
  - (a) the amount of the levy, or the method for calculating the amount;
  - (b) how the levy must be paid;
  - (c) each unit owner's share of the levy, or the method for calculating each owner's share.

## **52 Interest on late payment**

- (1) The body corporate may charge interest for the late payment of contributions and special levies.
- (2) The interest rate is:
  - (a) an amount, decided by the body corporate, not more than the rate fixed from time to time for section 85 of the *Supreme Court Act*; or
  - (b) if the body corporate does not decide an amount – the rate fixed from time to time for section 85 of the *Supreme Court Act*.
- (3) The body corporate may decide to waive the interest in a particular case.

## **53 Recovery of amount owing**

An amount owing to the body corporate by a unit owner under this Division is a debt due and payable to the body corporate.

## **Division 2      Body corporate assets**

### **54      Mortgage or charge over body corporate asset**

The body corporate may, by a resolution without dissent, mortgage or create a charge over a body corporate asset to raise funds to be used for the performance of the functions of the body corporate.

## **Division 3      Records and notices**

### **55      Financial records**

- (1) The committee must:
  - (a) ensure proper accounting records are kept for the body corporate; and
  - (b) prepare a statement (the **annual financial statement**) at the end of each financial year showing:
    - (i) all income and expenditure of the body corporate for the year; and
    - (ii) all assets and liabilities of the body corporate on the last day of the year, including details of any mortgage or charge over an asset.
- (2) The committee must present the annual financial statement at the next annual general meeting held after the end of the financial year for which the statement was prepared.
- (3) The committee must ensure each accounting record and annual financial statement is kept for at least 7 years after the date it is created.

*Note for clause 55*

*Under regulation 7(2), each committee member commits an offence if the committee does not comply with subclause (1) or (3).*

### **56      Audit of accounting records**

- (1) The body corporate may decide at an annual general meeting that the accounting records of the body corporate for the last financial year must be audited by:
  - (a) a person who is a registered company auditor, under the Corporations Act 2001, or a firm whose members include a registered company auditor; or
  - (b) an authorised audit company; or

- (c) a person who is a member of CPA Australia, the National Institute of Accountants or the Institute of Chartered Accountants in Australia; or
  - (d) another person approved by the Minister as an auditor for this clause.
- (2) A person must not audit the accounting records if the person has a direct or indirect personal or financial interest in the body corporate.
- (3) The auditor must give a written report of the audit to the body corporate.

## **57 Other records of body corporate**

- (1) The committee must ensure the following records are kept for the body corporate:
  - (a) the full name and address of each member of the body corporate;
  - (b) minutes of general meetings;
  - (c) copies of resolutions made at general meetings;
  - (d) records of the results of voting (including by poll) on motions;
  - (e) copies of notices given by the body corporate;
  - (f) copies of appointments of proxies;
  - (g) used voting papers;
  - (h) correspondence sent or received by the body corporate;
  - (i) insurance policies maintained by the body corporate;
  - (j) contracts and agreements entered into by the body corporate;
  - (k) leases and licences entered into by the body corporate.
- (2) The committee must ensure each record is kept for at least 7 years after the date it is created.

*Note for clause 57*

*Under regulation 7(2), each committee member commits an offence if the committee does not comply with this clause.*

**58 Access to records**

- (1) An application to access a record kept by the committee or specified information contained in the record must:
- (a) be in the form approved by the committee; and
  - (b) contain adequate details for the committee to identify the record or information; and
  - (c) be accompanied by:
    - (i) a fee of \$30; or
    - (ii) an application, in the form approved by the committee, to waive the fee.
- (2) The body corporate may waive the fee on receipt of an application to do so.

**59 Notices required to be given**

If an event specified in the Table, column 1, happens in relation to the scheme, the person specified opposite in column 2 must give written notice of the event to the body corporate within 28 working days after the event.

**Table**

<b>Column 1</b>	<b>Column 2</b>
<b>Event</b>	<b>Person to give notice</b>
Transfer of unit ownership	Unit owner immediately after transfer
Change of unit owner's address or contact details	Unit owner
Registration of lease over unit for term of over 6 months	Unit owner
Mortgagee enters into possession of unit that is subject to registered mortgage	Mortgagee

## **Part 6 Administrative matters**

### **Division 1 Seal of body corporate**

#### **60 The seal**

- (1) The seal of the body corporate must include the name of the body corporate.
- (2) The body corporate may decide how the seal must be kept.

#### **61 When the seal may be used**

The seal must not be used except for a purpose authorised by the body corporate.

#### **62 Witnessing the use of the seal**

- (1) The use of the seal on a document must be witnessed by at least 2 members of the body corporate.
- (2) However, if there is only 1 member of the body corporate, the use of the seal must be witnessed by the member.
- (3) If a member is a company, a director of the company may witness the use of the seal on behalf of the company.
- (4) Each person who witnesses the use of the seal must record next to the seal that he or she has witnessed the use of the seal by:
  - (a) signing his or her name; and
  - (b) printing his or her name and address; and
  - (c) stating that he or she is a member of the body corporate or a director of a company that is a member of the body corporate.

### **Division 2 Administration of scheme**

#### **63 Body corporate may engage or employ persons**

The body corporate may engage or employ a person to assist it in exercising its powers and performing its functions.

#### **64 Termination of engagement of body corporate manager**

If the document engaging a body corporate manager does not specify how the engagement may be terminated, the body corporate may terminate the engagement by giving 3 months written notice to the body corporate manager.

**65 Functions of body corporate manager**

The body corporate manager has the functions and powers of the body corporate or committee delegated to the manager.

*Note for clause 65*

*Chapter 3, Part 3.4 of the Act provides for the engagement of a body corporate manager.*

**Division 3 Delegation of functions and powers**

**66 Delegation of body corporate functions and powers**

- (1) A delegation of the functions and powers of the body corporate must be:
  - (a) authorised by an ordinary resolution of the body corporate; and
  - (b) evidenced in a document affixed with the seal of the body corporate.
- (2) A copy of the document evidencing the delegation must be given to the delegate.
- (3) The delegation may be revoked in the same way it is made.

**67 Delegation of committee functions and powers**

The committee may, in writing, delegate any of its functions or powers under this management module to:

- (a) a committee member; or
- (b) a member of the body corporate; or
- (c) the body corporate manager.

**Division 4 Approved forms**

**68 Power to approve forms**

- (1) The committee may approve forms for use under this management module (other than Part 7).
- (2) The schemes supervisor may approve forms for use under Part 7 of this management module.

## **Part 7 Termination of scheme**

### **Division 1 Process for terminating scheme**

#### **69 Termination under section 15(b) of Act**

- (1) Section 15(b) of the Act applies to the scheme.
- (2) The scheme may be terminated under section 15(b) by a resolution passed at a general meeting by unit owners who together have the right to vote in relation to at least 90% of the total interest entitlements of the scheme.

*Note for clause 69*

*Because of section 15(b) of the Act, this clause applies only if the scheme (which may be a scheme as a result of a conversion under section 111 of the Act) has existed as a scheme under the Act for at least 20 years after the commencement of the Act. If the scheme has not existed as a scheme under the Act for at least 20 years after the commencement of the Act, it must be terminated by a unanimous resolution under section 15(a) of the Act.*

#### **70 Plan of termination**

- (1) A **plan of termination** is a document about the termination of the scheme that includes the following:
  - (a) full details of the proposed termination, including:
    - (i) the proposed date of the termination; and
    - (ii) whether it is proposed to sell the scheme land following the termination or form a new scheme under the existing ownership;
  - (b) the market value, determined by a valuer as defined in section 4(1) of the *Valuation of Land Act*, of:
    - (i) the scheme land; and
    - (ii) each unit;
  - (c) a statement setting out the effect of the proposed termination, including details of the distribution of any proceeds of sale in accordance with section 17(1)(b) of the Act;
  - (d) if it is proposed to form a new scheme with the scheme land under the existing ownership – the arrangements to compensate or temporarily relocate each unit owner affected by the proposal;



- (e) if it is not proposed to form a new scheme with the scheme land under the existing ownership – the amount to be paid to each unit owner to compensate the owner for the following:
    - (i) the difference between the value of the owner's share of the scheme land and the value of the owner's unit;
    - (ii) the costs of relocation, including, for example, costs associated with purchasing a new property and the cost of temporary accommodation;
  - (f) the security to be provided to unit owners for the payment of an amount specified for paragraph (d) or (e);
  - (g) an undertaking, given by a person required under the plan of termination to pay an amount to a unit owner, that the person will pay the amount in accordance with the plan.
- (2) A plan of termination may also provide for a dispute relating to the termination to be resolved using a procedure other than adjudication under Division 2.
- (3) If a resolution to terminate the scheme is proposed to be moved at a general meeting, the person giving notice of the meeting must give a plan of termination to each unit owner with notice of the meeting.

## **71 Advertising proposed termination**

- (1) The secretary of the body corporate must, at least 21 working days before the general meeting, ensure an advertisement is published in a newspaper circulating in the location of the scheme land:
- (a) setting out details of the proposed termination; and
  - (b) specifying the date of the meeting at which the resolution to terminate will be moved; and
  - (c) inviting written submissions about the termination to be given to the body corporate before the meeting.
- (2) Submissions given under subclause (1)(c) must be considered by the body corporate at the meeting.

## **72 Notice of termination**

- (1) If the resolution to terminate the scheme is passed at the meeting, the secretary of the body corporate must, within 7 working days after the meeting, give written notice of the resolution to all unit owners including:
  - (a) the date of the meeting at which the resolution was passed; and
  - (b) the plan of termination; and
  - (c) the name and contact details of the secretary of the body corporate.
- (2) The secretary must give the notice by:
  - (a) sending it by prepaid post addressed to the unit owner at the unit owner's contact address; and
  - (b) attaching it to the main entrance to each unit in the scheme.

## **73 Date of termination**

The date of termination must be at least 2 months after the date of the meeting at which the resolution is passed.

## **Division 2 Dispute resolution**

### **Subdivision 1 Preliminary matters**

#### **74 What is a dispute**

There is a **dispute** relating to the termination of a scheme if, after the resolution mentioned in clause 69(2) is passed, a former owner claims another person (who may be another former owner) has not fulfilled an undertaking made by the person in the plan of termination.

#### **75 Panel of eligible adjudicators**

- (1) The schemes supervisor must appoint a panel of persons eligible to adjudicate a dispute (**eligible adjudicators**).
- (2) A person may only be appointed to the panel if the person:
  - (a) is a legal practitioner; and
  - (b) holds appropriate qualifications, or has relevant experience, as a conciliator or mediator.

## **Subdivision 2 Application for dispute resolution**

### **76 How application is made**

- (1) A person (the **applicant**) mentioned in clause 74 may apply to the schemes supervisor for the adjudication of a dispute between the applicant and another person (the **respondent**) mentioned in that clause in relation to the dispute.
- (2) The application must be made within 3 years after the date the dispute arose.
- (3) The applicant and the respondent are the parties to the dispute (the **parties**).
- (4) The applicant must:
  - (a) apply for the adjudication in writing in the form approved by the schemes supervisor; and
  - (b) serve the application on the respondent.

### **77 Notice to parties of dispute**

Within a reasonable time after receiving the application, the schemes supervisor must, by notice in writing to the parties:

- (a) give details of the outcome of the dispute the applicant is seeking to obtain; and
- (b) explain the process for appointing an adjudicator and invite the parties to jointly appoint an adjudicator; and
- (c) invite the parties to make written submissions about the dispute to the adjudicator within a specified time that is reasonable after the adjudicator is appointed.

## **Subdivision 3 Appointment of adjudicator**

### **78 How adjudicator is appointed**

- (1) The adjudicator for a dispute must be an eligible adjudicator who:
  - (a) agrees in writing to be the adjudicator, subject to the terms and conditions mentioned in subclause (2); and
  - (b) is appointed:
    - (i) by the parties jointly; or

- (ii) if the parties cannot agree to appoint an adjudicator – by the schemes supervisor.
- (2) The agreement of the adjudicator mentioned in subclause (1)(a) must set out the terms and conditions of the appointment, including provisions for:
  - (a) the fees payable to the adjudicator; and
  - (b) reimbursement of the reasonable costs and expenses incurred by the adjudicator; and
  - (c) the payment of an administrative fee to the adjudicator.

**79 Disqualification of adjudicator on grounds of conflict of interest**

- (1) An appointed adjudicator is disqualified from adjudicating the dispute if the adjudicator has a material personal interest:
  - (a) in the dispute concerned; or
  - (b) in the termination of the scheme to which the dispute relates; or
  - (c) in connection with either party.
- (2) If the appointed adjudicator is disqualified, the adjudicator must give written notice to the parties and schemes supervisor of the disqualification and the reasons for it.
- (3) A party may apply to the schemes supervisor for, and the schemes supervisor may make, a declaration that the appointed adjudicator is disqualified under subclause (1) from adjudicating the dispute.
- (4) The application must be made before the dispute is resolved under clause 84.
- (5) If the schemes supervisor makes the declaration sought, the schemes supervisor must give written notice to the appointed adjudicator and the parties of the declaration.
- (6) If a notice is given under subclause (2) or (5), the adjudicator's appointment ends unless, within 5 working days after the date of the notice, both parties authorise the appointed adjudicator in writing to continue as the adjudicator.
- (7) Another adjudicator must be appointed in accordance with clause 78 if the adjudicator's appointment ends.

- (8) If the schemes supervisor refuses to make the declaration sought, the schemes supervisor must give written notice to the appointed adjudicator and the parties of the refusal.
- (9) The notice under subclause (5) or (8) must state:
  - (a) the reasons for the decision; and
  - (b) that the person given the notice may apply for a review of the decision to the Local Court within 28 working days after receipt of the notice.

#### **80 Review of disqualification decision**

- (1) A person given notice under clause 79(5) or (8) may apply to the Local Court for a review of the decision.
- (2) The Court may decide the application as it considers appropriate.

### **Subdivision 4 Adjudication process**

#### **81 Dismissal of application**

The adjudicator must:

- (a) dismiss the application without adjudicating the dispute if:
  - (i) the application is not made in accordance with clause 76; or
  - (ii) an alternative dispute resolution procedure is specified in the plan of termination; or
  - (iii) the application is frivolous, vexatious or lacking in substance; or
- (b) adjudicate the dispute in accordance with clause 82.

#### **82 Procedure for adjudicating dispute**

- (1) In adjudicating the dispute, the adjudicator:
  - (a) must attempt to resolve the dispute:
    - (i) with as little formality and technicality as possible; and
    - (ii) in a reasonable time; and
  - (b) may, subject to the Act and the rules of natural justice, determine his or her own procedures; and

- (c) is not bound by the rules of evidence and may inform himself or herself in any way the adjudicator considers appropriate.
- (2) The parties must comply with any request made by the adjudicator, for the purposes of resolving the dispute:
  - (a) to provide specified documents or information to the adjudicator; or
  - (b) to allow the adjudicator or another person reasonable access to a specified part of the scheme land; or
  - (c) to attend interviews with the adjudicator; or
  - (d) to attend conciliation or mediation conferences.

### **83 Withdrawal of application**

The applicant may withdraw the application at any time before the dispute is resolved under clause 84.

### **84 Resolution of dispute**

- (1) The dispute must be resolved by:
  - (a) the parties reaching an agreement; or
  - (b) if the parties cannot reach an agreement within a reasonable time – an order made by the adjudicator.
- (2) The orders that may be made by the adjudicator include requiring a party:
  - (a) to pay a specified amount of money; and
  - (b) do, or refrain from doing, a specified act.
- (3) The adjudicator must give the parties written notice of an order made under subclause (1)(b).
- (4) An order of the adjudicator is binding on the parties.

### **85 Payment of fees, costs and expenses**

Unless the adjudicator orders otherwise:

- (a) the parties must pay the fees, costs and expenses mentioned in clause 78(2)(a) and (b) in equal shares; and
- (b) the applicant must pay the administrative fee mentioned in clause 78(2)(c).

**86 Party may apply for enforcement or review**

- (1) If a party contravenes an order of the adjudicator, the other party may apply to a court of competent jurisdiction for enforcement of the order.
- (2) If a party is aggrieved by an order of the adjudicator, the party may apply to a court of competent jurisdiction for review of the decision on its merits.

## Schedule 2 Management module 2 – standard scheme

regulation 5(1)(b)

### Part 1 Preliminary matters

#### 1 Definitions

In this management module:

***acting committee member***, see clause 10(1).

***annual financial statement***, see clause 55(1)(b).

***annual general meeting***, see clause 29.

***authorised audit company***, see section 9 of the Corporations Act 2001.

***chairperson***:

- (a) of a committee – means the person elected under clause 7(1)(a); or
- (b) of a body corporate – means the chairperson under clause 7(2).

***committee meeting*** means a meeting of the committee of a body corporate.

***company*** means:

- (a) a company as defined in section 9 of the Corporations Act 2001; or
- (b) an incorporated association as defined in section 4 of the *Associations Act*; or
- (c) any other body corporate.

***first annual general meeting*** means the meeting mentioned in clause 26.

***general meeting*** means a meeting of a body corporate.

***interim resolution***, see clause 3.

***notice of opposition***, see clause 21(1).



**restricted matter**, for a body corporate, means a matter a decision on which, under the Act or clause 25 of this management module, may be made only by the body corporate.

**secretary**:

- (a) of a committee – means the person elected under clause 7(1)(b); or
- (b) of a body corporate – means the secretary under clause 7(2).

**special levy** means a levy charged under clause 50 or 51.

**teleconferencing** includes the use of telephone, computer or video equipment.

## **2 Decisions of body corporate**

- (1) A decision of a body corporate must be made:
  - (a) at a general meeting of the body corporate; or
  - (b) in accordance with the process set out in clause 34.
- (2) Unless otherwise specified in this management module, a motion is passed at a general meeting if it is passed by an ordinary resolution.

## **3 Interim resolutions**

- (1) An **interim resolution** is a resolution of a committee or body corporate made at a meeting without a quorum.
- (2) An interim resolution does not have effect until it becomes a resolution in accordance with the process set out:
  - (a) for an interim resolution of a committee – in clause 15; or
  - (b) for an interim resolution of a body corporate – in clause 34.

# **Part 2 Committee of body corporate**

## **Division 1 Constitution of committee**

### **4 Constitution of committee before first annual general meeting**

- (1) Until the first annual general meeting of a body corporate, the committee of the body corporate consists of the members of the body corporate, who are taken to be elected committee members.

- (2) If a member of the body corporate is a company, the member must appoint an individual to be a committee member in place of the member.
- (3) The committee must not exercise a power or perform a function of the body corporate unless authorised to do so by a resolution without dissent of the body corporate recorded in accordance with clause 57.
- (4) Each committee member vacates office immediately before the election of committee members at the first annual general meeting.

**5 Number of committee members after first annual general meeting**

- (1) The body corporate must, at its first annual general meeting:
  - (a) decide the number of members who will constitute the committee; and
  - (b) elect the committee members.
- (2) The number of committee members must be:
  - (a) at least 2; and
  - (b) unless decided by a special resolution – not more than 7.
- (3) The body corporate may, by a special resolution at a later annual general meeting, vary the number.
- (4) The committee consists of all the members of the body corporate if:
  - (a) there are not more than 3 members of the body corporate; or
  - (b) the number of members of the body corporate is equal to or less than the number decided to be the number of committee members.
- (5) If subclause (4) applies:
  - (a) the committee members are taken to be elected committee members; and
  - (b) if a member of the body corporate is a company – the member must appoint an individual to be a committee member in place of the member.

## **6 Election of committee members**

- (1) The body corporate must elect the committee members at each annual general meeting.
- (2) If a member of the body corporate is a company, the member may appoint an individual to stand for election on behalf of the member.

*Note for clause 6*

*Under section 74(3) of the Act, a committee member must be:*

- (a) a unit owner that is an individual; or*
- (b) an individual appointed by a unit owner that is a body corporate.*

## **7 Chairperson and secretary**

- (1) At the first committee meeting after the annual general meeting, the committee must elect:
  - (a) the chairperson of the committee; and
  - (b) the secretary of the committee.
- (2) The chairperson and secretary of the committee are also the chairperson and secretary of the body corporate.
- (3) The chairperson and secretary hold office for the term and on the conditions decided by the body corporate.

## **8 Term of office of committee member**

- (1) The term of office of a committee member expires immediately before the election of the committee members at the next annual general meeting after the member's election.
- (2) A committee member leaves office before the member's term expires:
  - (a) for a committee member who is a unit owner that is an individual – if the committee member stops being a unit owner; or
  - (b) for a committee member who is an appointee of a unit owner that is a company – if the unit owner:
    - (i) stops being a unit owner; or
    - (ii) gives the body corporate written notice that the unit owner has terminated the appointment of the committee member; or

- (c) if the committee member resigns from office by written notice to the body corporate; or
  - (d) if the body corporate removes the committee member from office under clause 9.
- (3) If a committee member leaves office before the committee member's term expires, the committee must appoint another member of the body corporate, who is a person mentioned in section 74(3) of the Act, to be a committee member for the unexpired part of the term.
- (4) However, if the committee consists of all the members of the body corporate because of clause 5(4):
  - (a) subclauses (2)(c) and (3) do not apply; and
  - (b) if the body corporate removes a committee member from office under clause 9, the committee continues to exist without the member.

## **9 Removal of committee member for breach of code**

- (1) If the body corporate believes a committee member has breached the code of conduct, the body corporate may decide to give the committee member a written notice stating the following:
  - (a) the body corporate believes the committee member has breached a stated provision of the code of conduct and the basis for that belief;
  - (b) the committee member may give the body corporate, within 21 working days after the committee member receives the notice, a written response to the notice;
  - (c) the body corporate will consider a motion to remove the committee member from office for the breach at the next general meeting of the body corporate called after the period mentioned in paragraph (b) ends.
- (2) The body corporate must:
  - (a) include on the agenda of the next general meeting of the body corporate, called after the period mentioned in subclause (1)(b) ends, a motion to remove the committee member from office for breaching the code of conduct; and
  - (b) attach to the agenda a copy of the notice given to the committee member.

- (3) The body corporate may decide to remove the committee member from office at the next general meeting mentioned in subclause (2)(a).

- (4) In this clause:

**code of conduct** means the code of conduct that applies to a committee member under section 77 of the Act.

## **10 Acting committee member**

- (1) A committee member may, with the consent of the committee, appoint a person (an **acting committee member**) to act in the committee member's place at a committee meeting.
- (2) The acting committee member must be a person mentioned in section 74(3) of the Act.
- (3) If the acting committee member is also a committee member, the acting committee member may vote at the meeting separately:
  - (a) as a committee member; and
  - (b) on behalf of the member who has appointed the acting committee member.

## **Division 2 Committee meetings**

### **11 How often committee meets**

The committee may decide how often it meets.

### **12 Calling committee meeting**

A committee meeting may be called by:

- (a) the chairperson of the committee; or
- (b) the secretary of the committee; or
- (c) an ordinary resolution of the committee.

### **13 Notice of committee meeting**

- (1) The secretary of the committee must give written notice of the committee meeting to each committee member at least 5 working days before the date of the meeting.
- (2) The notice must:
  - (a) specify the date, time and place of the meeting; and

- (b) include the agenda for the meeting.

#### **14 Quorum at committee meeting**

- (1) A quorum for the committee meeting exists if at least 50% of the committee members are present at the meeting.
- (2) For deciding whether or not a quorum is present, an acting committee member is taken to be a committee member.

#### **15 Interim resolutions if no quorum present**

- (1) If there is no quorum present at the meeting:
  - (a) the meeting may take place but all resolutions made at the meeting are interim resolutions; and
  - (b) the secretary of the committee must give the following to each committee member within 14 working days after the meeting:
    - (i) details of each interim resolution made at the meeting;
    - (ii) the minutes of the meeting;
    - (iii) a notice setting out the effect of subclauses (2) to (4);
    - (iv) a voting paper for each interim resolution.
- (2) If an interim resolution is made at the meeting, a committee member may, within 14 working days after receiving the documents mentioned in subclause (1)(b), vote on the resolution by recording a vote on the voting paper and sending it to the secretary of the committee.
- (3) The interim resolution becomes a resolution if:
  - (a) at least 50% of the committee members vote on it under subclause (2); and
  - (b) the votes counted in favour of confirming the interim resolution is more than the votes counted against confirming it.
- (4) If less than 50% of the committee members vote on the interim resolution under subclause (2), it must be voted on at the next committee meeting at which a quorum is present.
- (5) An interim resolution may only be made under this clause on a motion that may be passed by an ordinary resolution.

**16 Attendance by teleconferencing**

- (1) A committee member may attend and participate in the committee meeting by teleconferencing.
- (2) The secretary of the committee must arrange teleconferencing facilities if requested to do so by the committee member.
- (3) If the committee member attends the meeting by teleconferencing, the committee member is taken to be present at the meeting.

**17 Procedures for committee meeting**

Except as otherwise provided in the Act and this Division, the committee may decide the procedures for the committee meeting.

**18 Chairperson of committee meeting**

- (1) The chairperson of the committee is the chairperson of the committee meeting.
- (2) If the chairperson is unable to act as chairperson of the meeting, the committee members must elect a committee member present at the meeting to be chairperson.

**19 Voting at committee meeting**

- (1) The chairperson of the committee meeting has the right to vote as a committee member.
- (2) If the voting on a motion that may be passed by an ordinary resolution is equal, the chairperson of the meeting may cast the deciding vote in addition to a vote cast under subclause (1).

**20 Minutes of committee meeting**

- (1) The secretary of the committee must keep minutes of each committee meeting.
- (2) The following matters must be recorded in the minutes:
  - (a) the date, time and place of the meeting;
  - (b) the names of the committee members present at the meeting;
  - (c) the names of the committee members voting at the meeting;
  - (d) all resolutions of the committee made at the meeting;
  - (e) the voting on all resolutions of the committee at the meeting.

- (3) The secretary must give a copy of the minutes to each member of the body corporate and each other person with a right to vote at a general meeting of the body corporate within 21 working days after the meeting.

## **21 Notice of opposition to decision of committee meeting**

- (1) One or more persons, who together have the right to vote in relation to at least 50% of the total interest entitlements of the scheme, may give a notice opposing a decision of the committee (a **notice of opposition**) to the secretary or the chairperson of the committee.
- (2) The notice must be given within 7 working days after the secretary gives a copy of the minutes containing the decision under clause 20.
- (3) The body corporate must consider the notice of opposition at the next general meeting and either approve or disapprove the decision of the committee.

## **Division 3 Powers of committee**

### **22 Giving effect to decisions of committee**

The committee may give effect to a decision of the committee only if:

- (a) the time for giving a notice of opposition to the decision under clause 21 ends without a notice of opposition being given; or
- (b) the decision is necessary to deal with an emergency; or
- (c) the decision is approved by the body corporate.

### **23 Committee decisions are decisions of body corporate**

- (1) A decision of the committee on a matter is taken to be a decision of the body corporate unless:
  - (a) the matter is a restricted matter; or
  - (b) the committee cannot give effect to the decision under clause 22.
- (2) If subclause (1)(a) or (b) applies, the committee's decision has no effect.



**24 Restriction on spending by committee**

- (1) The body corporate may decide a maximum amount of expenditure that the committee may undertake for repairs or improvements to the common property of the scheme.
- (2) The committee must not undertake expenditure above the amount unless authorised by the body corporate.

**Part 3 Meetings of body corporate**

**Division 1 Matters to be decided by body corporate**

**25 Body corporate may decide certain matters**

Except as otherwise provided by the Act, the body corporate may decide that a matter concerning the scheme may be decided only by the body corporate.

**Division 2 Annual general meetings**

**Subdivision 1 First annual general meeting**

**26 Calling first annual general meeting**

Within 3 months after the registration of a scheme statement, the original owner for the scheme must call the first annual general meeting of the body corporate for the scheme.

**27 Documents to be given by original owner**

- (1) At the first annual general meeting of the body corporate, the original owner for the scheme must give the committee the following:
  - (a) the proposed budget for the first financial year for the body corporate;
  - (b) a list of all body corporate assets and liabilities;
  - (c) the name and contact address of each unit owner;
  - (d) if a body corporate manager has been engaged – the name and business address of the body corporate manager;
  - (e) a copy of the scheme statement;

- (f) the accounting records kept by the original owner for the body corporate;
  - (g) documents evidencing each contract, lease and licence binding or benefiting the body corporate;
  - (h) each certificate of insurance in force for the scheme;
  - (i) documents evidencing each warranty or guarantee given on any matter for which the body corporate is responsible;
  - (j) the seal of the body corporate;
  - (k) the certificate of title for the common property of the scheme;
  - (l) a copy of this management module.
- (2) However, the original owner is not required to give the certificate of title for the common property if it is not in the possession or under the control of the original owner.

*Note for clause 27*

*Under regulation 7(1), it is an offence for the original owner to fail to comply with this clause.*

## **28 Matters to be decided at first annual general meeting**

The body corporate must, at the first annual general meeting, decide the following:

- (a) whether any insurance policies in force for the scheme should be retained, varied or extended;
- (b) the annual contributions payable by the unit owners to the body corporate;
- (c) whether the proposed budget should be amended;
- (d) under clause 25, which matters may be decided only by the body corporate;
- (e) whether any matters mentioned in paragraph (d) must be decided by a special resolution, a resolution without dissent or a unanimous resolution.

## **Subdivision 2 Further annual general meetings**

### **29 Annual general meetings**

After the first annual general meeting, the body corporate must hold a general meeting (the ***annual general meeting***):

- (a) at least once every calendar year; and
- (b) within 15 months after the last annual general meeting.

### **30 Agenda for annual general meeting**

The following matters must be on the agenda for an annual general meeting:

- (a) election of committee members;
- (b) consideration of the engagement of a body corporate manager;
- (c) consideration of the annual financial statement;
- (d) approval of a budget for the next financial year;
- (e) review of existing delegations and consideration of proposed delegations.

## **Division 3 Calling general meetings**

### **31 Calling general meeting other than the first annual general meeting**

A general meeting of the body corporate, other than the first annual general meeting, may be called by:

- (a) the chairperson of the body corporate; or
- (b) the secretary of the body corporate; or
- (c) the body corporate manager; or
- (d) a person with a right to vote at the meeting nominated by persons who together have the right to vote in relation to at least 25% of the total interest entitlements of the scheme.

## **32 Notice of general meeting**

- (1) The person calling the general meeting must give written notice of the meeting to each person who has the right to vote at the meeting at least:
  - (a) 14 working days before the date of the meeting; or
  - (b) 21 working days before the date of the meeting if:
    - (i) a resolution without dissent or a unanimous resolution is proposed to be moved at the meeting; or
    - (ii) a resolution to terminate the scheme is proposed to be moved at the meeting.
- (2) The notice must:
  - (a) specify the date, time and place of the meeting; and
  - (b) include the agenda for the meeting; and
  - (c) if the meeting is the annual general meeting – include the annual financial statement for the previous financial year and the proposed budget for the next financial year for the body corporate; and
  - (d) include the text of any special resolution, resolution without dissent or unanimous resolution to be moved at the meeting; and
  - (e) if a resolution to authorise expenditure for repairs or improvements above the amount mentioned in clause 24(1) will be moved – include 2 quotations for the cost of the repairs or improvements.
- (3) The proceedings at the meeting are not invalidated only because notice of the meeting is not given in accordance with this clause.
- (4) However, the meeting must be adjourned to a later date decided by the persons present who have the right to vote at the meeting if:
  - (a) notice of the meeting is given to a person who has the right to vote at the meeting after the last day for giving notice under subclause (1); and
  - (b) the person requests an adjournment:
    - (i) before the meeting, in writing to the secretary of the body corporate; or

- (ii) at the meeting.

### **33 Quorum at general meeting**

A quorum for the general meeting exists if persons who together have the right to vote in relation to at least 50% of the total interest entitlements of the scheme are present at the meeting.

### **34 Interim resolutions if no quorum present**

- (1) If there is no quorum present at the general meeting:
  - (a) the meeting may take place but all resolutions made at the meeting are interim resolutions; and
  - (b) the secretary of the body corporate must give the following to each person with a right to vote at the meeting within 14 working days after the meeting:
    - (i) details of each interim resolution made at the meeting;
    - (ii) the minutes of the meeting;
    - (iii) a notice setting out the effect of subclauses (2) and (3).
- (2) If an interim resolution is made at the meeting, a person may, in accordance with clauses 31 and 32, call a further general meeting within 29 working days after the date of the interim resolution.
- (3) An interim resolution becomes a resolution of the body corporate:
  - (a) if notice of a further general meeting is given and the meeting is held within 28 working days after the notice is given – if the resolution is confirmed at the meeting; or
  - (b) if notice of a further general meeting is given and the meeting is not held within 28 working days after the notice is given – at the end of that 28 working day period; or
  - (c) otherwise – 29 working days after the date of the interim resolution.
- (4) An interim resolution may only be made under this clause on a motion that may be passed by an ordinary resolution.

### **35 Attendance by teleconferencing**

- (1) A person who has the right to vote at a general meeting may attend and participate in the meeting by teleconferencing.

- (2) The secretary of the body corporate must arrange teleconferencing facilities if requested to do so by the person.
- (3) A person who attends a meeting by teleconferencing is taken to be present at the meeting.

### **36 Procedures for general meeting**

Except as otherwise provided in the Act and this Division, the body corporate may decide the procedures for the general meeting.

### **37 Chairperson of general meeting**

- (1) The chairperson of the committee is the chairperson of the general meeting.
- (2) If the chairperson is unable to act as chairperson of the meeting, the persons present who have the right to vote at the meeting must elect to be chairperson for the meeting a person present at the meeting who:
  - (a) has the right to vote at the meeting; or
  - (b) is the body corporate manager.

## **Division 4 Voting at general meeting**

### **Subdivision 1 Voting generally**

#### **38 Voting by chairperson**

If the chairperson of a general meeting would otherwise have the right to vote at the meeting:

- (a) the chairperson has the right to vote at the meeting; and
- (b) if the voting on a motion that must be passed by an ordinary resolution is equal, the chairperson may cast the deciding vote in addition to a vote cast under paragraph (a).

#### **39 Method of voting**

Voting at a general meeting must be by:

- (a) written vote:
  - (i) if a poll is taken; or

- (ii) if a person casts an absentee vote on a motion that must be passed by a resolution without dissent or a unanimous resolution; or
  - (iii) on a motion to terminate the scheme; or
- (b) otherwise – show of hands.

#### **40 Result of voting**

Following a vote on a motion at a general meeting, the chairperson of the meeting must either:

- (a) declare the result; or
- (b) if the chairperson is unable to declare the result based on a vote by show of hands – call a poll.

#### **41 Polls**

- (1) A poll must be taken for a motion (including a motion that must be passed by a special resolution, a resolution without dissent or a unanimous resolution) if:
  - (a) a person present at the meeting with a right to vote on the motion calls a poll; or
  - (b) the chairperson calls a poll under clause 40(b).
- (2) If 2 or more persons have the right to exercise 1 vote jointly, one of the persons may call a poll under subclause (1)(a).
- (3) A call for a poll under subclause (1)(a) may be withdrawn.
- (4) The result of the poll determines whether or not the motion for which the poll was taken has been carried.
- (5) The chairperson must declare the result as soon as it is determined.

### **Subdivision 2 Alternative methods of voting**

#### **42 Appointment of proxy**

- (1) A person with a right to vote at a general meeting may appoint a proxy to vote on the person's behalf at the meeting.
- (2) If 2 or more persons have the right to exercise 1 vote jointly, the persons may jointly appoint a proxy to exercise the right.

- (3) The appointment of a proxy must:
  - (a) be in writing in the form approved by the committee; and
  - (b) include the period of appointment; and
  - (c) if 2 or more persons are jointly appointing a proxy under subclause (2) – be signed by each of the persons.

**43 Absentee vote on resolution without dissent or unanimous resolution**

- (1) If a resolution without dissent or a unanimous resolution is proposed to be moved at a general meeting:
  - (a) the person giving notice of the meeting must give each person who has the right to vote on the motion an absentee voting paper with the notice; and
  - (b) a person who has the right to vote on the motion may cast an absentee vote by recording the vote on the voting paper and giving it to the body corporate before the meeting.
- (2) The person must give the voting paper to the body corporate by:
  - (a) placing it in the letterbox mentioned in section 83(1) of the Act at least 24 hours before the meeting; or
  - (b) giving it to the secretary of the body corporate before the meeting.
- (3) A person who casts an absentee vote is, except for deciding whether a quorum is present at the meeting, taken to be present at the meeting and to have exercised the person's right to vote on the motion.

**Subdivision 3 Right to vote**

**44 Voting by mortgagees**

- (1) If a unit owner's interest in a unit is subject to a mortgage, the mortgagee may give the body corporate written notice that:
  - (a) the unit is subject to the mortgage; and
  - (b) the mortgagee proposes to exercise voting rights under this clause.



- (2) If the mortgagee gives the notice:
  - (a) the member does not have a right to vote in relation to the unit; and
  - (b) the mortgagee has the right to vote in relation to the unit.
- (3) If the mortgage is discharged, the mortgagee's right to vote ends.
- (4) If 2 or more persons are mortgagees of a unit as joint tenants or tenants in common:
  - (a) the right to give notice under subclause (1) may be exercised only by the mortgagees jointly; and
  - (b) the right to vote may be exercised only by the mortgagees jointly.
- (5) If a unit is held by 2 or more members as tenants in common and one of the members has mortgaged the member's interest in the unit:
  - (a) the mortgagee may give notice to the body corporate under subclause (1); and
  - (b) this clause applies to the mortgagee in relation to the right to vote that the mortgagor may otherwise exercise.
- (6) In this clause:

***mortgagee***, if there are 2 or more mortgages, means the mortgagee under the mortgage entitled to priority over the other mortgage or mortgages.

#### **45 Court may appoint person to vote**

- (1) This clause applies if, for a motion that must be passed by a resolution without dissent or a unanimous resolution:
  - (a) a person who has the right to vote on the motion in relation to a unit:
    - (i) is unavailable to vote on the motion; and
    - (ii) has not appointed a proxy to vote on the person's behalf; or
  - (b) the body corporate does not know who has the right to vote in relation to a unit.

- (2) The Local Court may:
  - (a) order that the person's right to vote may be dispensed with for the motion or permanently; or
  - (b) appoint another person to exercise the right to vote on the motion.
- (3) The body corporate or a person who has the right to vote on the motion may apply for an order under this clause.

#### **46 Incapacity to vote**

- (1) A member of the body corporate does not have a right to vote if:
  - (a) the member is under the age of 18 years; or
  - (b) a guardian has been appointed under the *Adult Guardianship Act* to manage the property of the member.
- (2) The right of a member mentioned in subclause (1)(a) to vote may be exercised by the member's parent or guardian.
- (3) The right of a member mentioned in subclause (1)(b) to vote may be exercised by the appointed guardian.

### **Part 4 Exclusive use by-laws**

#### **47 Costs relating to common property**

If special rights about common property or a body corporate asset are allocated to a unit under an exclusive use by-law, the unit owner is not liable to pay maintenance and operating costs relating to the common property or asset unless the by-law specifically provides that the owner is liable.

### **Part 5 Financial and record management**

#### **Division 1 Annual contributions and other levies**

#### **48 Amount of annual contributions**

The body corporate may, from time to time, decide:

- (a) the amount of annual contributions payable by the unit owners to the body corporate; and

- (b) how the contributions must be paid.

*Note for clause 48*

*Under section 39(3) of the Act, the contribution entitlement of a unit divided by the total contribution entitlements of all the units is the ratio representing the unit owner's share of annual contributions.*

#### **49 Purpose of annual contributions**

Annual contributions paid by unit owners to the body corporate must be used to fund the following:

- (a) the administration of the body corporate;
- (b) maintenance and repairs of the common property of the scheme;
- (c) the insurance policies the body corporate is required to maintain under the Act;
- (d) other costs reasonably incurred by the body corporate in performing its functions under the Act.

#### **50 Levy for single item of expenditure**

- (1) The body corporate may, by a special resolution, decide to charge unit owners a levy to fund a single item of expenditure.
- (2) The following matters must also be decided by a special resolution:
  - (a) the amount of the levy;
  - (b) how the levy must be paid.
- (3) The ratio representing a unit owner's share of the levy is the same as the ratio (mentioned in section 39(3) of the Act) representing the unit owner's share of annual contributions.

#### **51 Levy for recurring expenditure**

- (1) The body corporate may, by a unanimous resolution, decide to charge unit owners a levy to fund a recurring class of expenditure.
- (2) The following matters must also be decided by a unanimous resolution:
  - (a) the amount of the levy, or the method for calculating the amount;
  - (b) how the levy must be paid;

- (c) each unit owner's share of the levy, or the method for calculating each owner's share.

## **52 Interest on late payment**

- (1) The body corporate may charge interest for the late payment of contributions and special levies.
- (2) The interest rate is:
  - (a) an amount, decided by the body corporate, not more than the rate fixed from time to time for section 85 of the *Supreme Court Act*; or
  - (b) if the body corporate does not decide an amount – the rate fixed from time to time for section 85 of the *Supreme Court Act*.
- (3) The body corporate may decide to waive the interest in a particular case.

## **53 Recovery of amount owing**

An amount owing to the body corporate by a unit owner under this Division is a debt due and payable to the body corporate.

## **Division 2 Body corporate assets**

### **54 Mortgage or charge over body corporate asset**

The body corporate may, by a resolution without dissent, mortgage or create a charge over a body corporate asset to raise funds to be used for the performance of the functions of the body corporate.

## **Division 3 Records and notices**

### **55 Financial records**

- (1) The committee must:
  - (a) ensure proper accounting records are kept for the body corporate; and
  - (b) prepare a statement (the ***annual financial statement***) at the end of each financial year showing:
    - (i) all income and expenditure of the body corporate for the year; and

- (ii) all assets and liabilities of the body corporate on the last day of the year, including details of any mortgage or charge over an asset.
- (2) The committee must present the annual financial statement at the next annual general meeting held after the end of the financial year for which the statement was prepared.
- (3) The committee must ensure each accounting record and annual financial statement is kept for at least 7 years after the date it is created.

*Note for clause 55*

*Under regulation 7(2), each committee member commits an offence if the committee does not comply with subclause (1) or (3).*

## **56 Audit of accounting records**

- (1) The body corporate may decide at an annual general meeting that the accounting records of the body corporate for the last financial year must be audited by:
  - (a) a person who is a registered company auditor, under the Corporations Act 2001, or a firm whose members include a registered company auditor; or
  - (b) an authorised audit company; or
  - (c) a person who is a member of CPA Australia, the National Institute of Accountants or the Institute of Chartered Accountants in Australia; or
  - (d) another person approved by the Minister as an auditor for this clause.
- (2) A person must not audit the accounting records if the person has a direct or indirect personal or financial interest in the body corporate.
- (3) The auditor must give a written report of the audit to the body corporate.

## **57 Other records of body corporate**

- (1) The committee must ensure the following records are kept for the body corporate:
  - (a) the full name and address of each member of the body corporate;
  - (b) minutes of general meetings;

- (c) copies of resolutions made at general meetings;
  - (d) records of the results of voting (including by poll) on motions;
  - (e) copies of notices given by the body corporate;
  - (f) copies of appointments of proxies;
  - (g) used voting papers;
  - (h) correspondence sent or received by the body corporate;
  - (i) insurance policies maintained by the body corporate;
  - (j) contracts and agreements entered into by the body corporate;
  - (k) leases and licences entered into by the body corporate.
- (2) The committee must ensure each record is kept for at least 7 years after the date it is created.

*Note for clause 57*

*Under regulation 7(2), each committee member commits an offence if the committee does not comply with this clause.*

## **58 Access to records**

- (1) An application to access a record kept by the committee or specified information contained in the record must:
- (a) be in the form approved by the committee; and
  - (b) contain adequate details for the committee to identify the record or information; and
  - (c) be accompanied by:
    - (i) a fee of \$30; or
    - (ii) an application, in the form approved by the committee, to waive the fee.
- (2) The body corporate may waive the fee on receipt of an application to do so.

**59 Notices required to be given**

If an event specified in the Table, column 1, happens in relation to the scheme, the person specified opposite in column 2 must give written notice of the event to the body corporate within 28 working days after the event.

**Table**

<b>Column 1</b>	<b>Column 2</b>
<b>Event</b>	<b>Person to give notice</b>
Transfer of unit ownership	Unit owner immediately after transfer
Change of unit owner's address or contact details	Unit owner
Registration of lease over unit for term of over 6 months	Unit owner
Mortgagee enters into possession of unit that is subject to registered mortgage	Mortgagee

**Part 6 Administrative matters****Division 1 Seal of body corporate****60 The seal**

- (1) The seal of the body corporate must include the name of the body corporate.
- (2) The body corporate may decide how the seal must be kept.

**61 When the seal may be used**

The seal must not be used except for a purpose authorised by the body corporate.

**62 Witnessing the use of the seal**

- (1) The use of the seal on a document must be witnessed by at least 2 members of the body corporate.
- (2) However, if there is only 1 member of the body corporate, the use of the seal must be witnessed by the member.
- (3) If a member is a company, a director of the company may witness the use of the seal on behalf of the company.

- (4) Each person who witnesses the use of the seal must record next to the seal that he or she has witnessed the use of the seal by:
  - (a) signing his or her name; and
  - (b) printing his or her name and address; and
  - (c) stating that he or she is a member of the body corporate or a director of a company that is a member of the body corporate.

## **Division 2 Administration of scheme**

### **63 Body corporate may engage or employ persons**

The body corporate may engage or employ a person to assist it in exercising its powers and performing its functions.

### **64 Termination of engagement of body corporate manager**

If the document engaging a body corporate manager does not specify how the engagement may be terminated, the body corporate may terminate the engagement by giving 3 months written notice to the body corporate manager.

### **65 Functions of body corporate manager**

The body corporate manager has the functions and powers of the body corporate or committee delegated to the manager.

*Note for clause 65*

*Chapter 3, Part 3.4 of the Act provides for the engagement of a body corporate manager.*

## **Division 3 Delegation of functions and powers**

### **66 Delegation of body corporate functions and powers**

- (1) A delegation of the functions and powers of the body corporate must be:
  - (a) authorised by an ordinary resolution of the body corporate; and
  - (b) evidenced in a document affixed with the seal of the body corporate.
- (2) A copy of the document evidencing the delegation must be given to the delegate.
- (3) The delegation may be revoked in the same way it is made.



**67 Delegation of committee functions and powers**

The committee may, in writing, delegate any of its functions or powers under this management module to:

- (a) a committee member; or
- (b) a member of the body corporate; or
- (c) the body corporate manager.

**Division 4 Approved forms**

**68 Committee may approve forms**

The committee may approve forms for use under this management module.

## Schedule 3 Management module 3 – small scheme

regulation 5(2)

### Part 1 Preliminary matters

#### 1 Definitions

In this management module:

***annual general meeting***, see clause 22.

***committee meeting*** means a meeting of the committee of a body corporate.

***chairperson***:

- (a) of a committee – means the person elected under clause 7(1)(a); or
- (b) of a body corporate – means:
  - (i) if the body corporate decides to form a committee – the chairperson under clause 7(2); or
  - (ii) otherwise – the person elected under clause 29(1)(a).

***company*** means:

- (a) a company as defined in section 9 of the Corporations Act 2001; or
- (b) an incorporated association as defined in section 4 of the *Associations Act*; or
- (c) any other body corporate.

***general meeting*** means a meeting of a body corporate.

***interim resolution***, see clause 3.

***restricted matter***, for a body corporate, means a matter a decision on which, under the Act or clause 19 of this management module, may be made only by the body corporate.

***secretary***:

- (a) of a committee – means the person elected under clause 7(1)(b); or

(b) of a body corporate – means:

- (i) if the body corporate decides to form a committee – the secretary under clause 7(2); or
- (ii) otherwise – the person elected under clause 29(1)(b).

**special levy** means a levy charged under clause 41 or 42.

**teleconferencing** includes the use of telephone, computer or video equipment.

## **2 Decisions of body corporate**

- (1) A decision of a body corporate must be made:
  - (a) at a general meeting of the body corporate; or
  - (b) in accordance with the process set out in clause 26.
- (2) Unless otherwise specified in this management module, a motion is passed at a general meeting if it is passed by an ordinary resolution.

## **3 Interim resolutions**

- (1) An **interim resolution** is a resolution of a committee or body corporate made at a meeting without a quorum.
- (2) An interim resolution does not have effect until it becomes a resolution in accordance with the process set out:
  - (a) for an interim resolution of a committee – in clause 14; or
  - (b) for an interim resolution of a body corporate – in clause 26.

## **Part 2 Committee of body corporate**

### **Division 1 Preliminary matters**

#### **4 Application of Part**

This Part applies if the body corporate decides, under section 74(1)(c) of the Act, to form a committee.

## **Division 2 Constitution of committee**

### **5 Number of committee members**

- (1) The body corporate must:
  - (a) decide the number of members who will constitute the committee; and
  - (b) elect the committee members.
- (2) The number of committee members must be:
  - (a) at least 2; and
  - (b) unless decided by a special resolution – not more than 7.
- (3) The body corporate may, by a special resolution at a later annual general meeting, vary the number.
- (4) The committee consists of all the members of the body corporate if:
  - (a) there are not more than 3 members of the body corporate; or
  - (b) the number of members of the body corporate is equal to or less than the number decided to be the number of committee members.
- (5) If subclause (4) applies:
  - (a) the committee members are taken to be elected committee members; and
  - (b) if a member of the body corporate is a company – the member must appoint an individual to be a committee member in place of the member.

### **6 Election of committee members**

- (1) The body corporate must elect the committee members at each annual general meeting.
- (2) If a member of the body corporate is a company, the member may appoint an individual to stand for election on behalf of the member.

*Note for clause 6*

*Under section 74(3) of the Act, a committee member must be:*

- (a) a unit owner that is an individual; or
- (b) an individual appointed by a unit owner that is a body corporate.

**7 Chairperson and secretary**

- (1) At the first committee meeting after the annual general meeting, the committee must elect:
  - (a) the chairperson of the committee; and
  - (b) the secretary of the committee.
- (2) The chairperson and secretary of the committee are also the chairperson and secretary of the body corporate.
- (3) The chairperson and secretary hold office for the term and on the conditions decided by the body corporate.

**8 Term of office of committee member**

- (1) The term of office of a committee member expires immediately before the election of the committee members at the next annual general meeting after the member's election.
- (2) A committee member leaves office before the member's term expires:
  - (a) for a committee member who is a unit owner that is an individual – if the committee member stops being a unit owner; or
  - (b) for a committee member who is an appointee of a unit owner that is a company – if the unit owner:
    - (i) stops being a unit owner; or
    - (ii) gives the body corporate written notice that the unit owner has terminated the appointment of the committee member; or
  - (c) if the committee member resigns from office by written notice to the body corporate; or
  - (d) if the body corporate removes the committee member from office under clause 9.
- (3) If a committee member leaves office before the committee member's term expires, the committee must appoint another member of the body corporate, who is a person mentioned in section 74(3) of the Act, to be a committee member for the unexpired part of the term.

- (4) However, if the committee consists of all the members of the body corporate because of clause 5(4):

- (a) subclauses (2)(c) and (3) do not apply; and
- (b) if the body corporate removes a committee member from office under clause 9, the committee continues to exist without the member.

## **9 Removal of committee member for breach of code**

- (1) If the body corporate believes a committee member has breached the code of conduct, the body corporate may decide to give the committee member a written notice stating the following:

- (a) the body corporate believes the committee member has breached a stated provision of the code of conduct and the basis for that belief;
- (b) the committee member may give the body corporate, within 21 working days after the committee member receives the notice, a written response to the notice;
- (c) the body corporate will consider a motion to remove the committee member from office for the breach at the next general meeting of the body corporate called after the period mentioned in paragraph (b) ends.

- (2) The body corporate must:

- (a) include on the agenda of the next general meeting of the body corporate, called after the period mentioned in subclause (1)(b) ends, a motion to remove the committee member from office for breaching the code of conduct; and
- (b) attach to the agenda a copy of the notice given to the committee member.

- (3) The body corporate may decide to remove the committee member from office at the next general meeting mentioned in subclause (2)(a).

- (4) In this clause:

**code of conduct** means the code of conduct that applies to a committee member under section 77 of the Act.

### **Division 3              Committee meetings**

#### **10              How often committee meets**

The committee may decide how often it meets.

#### **11              Calling committee meeting**

A committee meeting may be called by a committee member.

#### **12              Notice of committee meeting**

- (1) The committee member who calls the committee meeting must give written notice of the meeting to each committee member at least 3 working days before the date of the meeting.
- (2) The notice must specify the date, time and place of the meeting.

#### **13              Quorum at committee meeting**

A quorum for the committee meeting exists if at least 50% of the committee members are present at the meeting.

#### **14              Interim resolutions if no quorum**

- (1) If there is no quorum present at the meeting, the meeting may take place, but all resolutions made at the meeting are interim resolutions.
- (2) An interim resolution becomes a resolution of the committee if it is confirmed at the next committee meeting at which a quorum is present.

#### **15              Attendance by teleconferencing**

- (1) A committee member may attend and participate in the committee meeting by teleconferencing.
- (2) The secretary of the committee must arrange teleconferencing facilities if requested to do so by the committee member.
- (3) A committee member who attends a meeting by teleconferencing is taken to be present at the meeting.

#### **16              Procedures for committee meeting**

Except as otherwise provided in the Act and this Division, the committee may decide the procedures for the committee meeting.

**17 Minutes of committee meeting**

- (1) The secretary of the committee must keep minutes of each committee meeting.
- (2) The following matters must be recorded in the minutes:
  - (a) the date, time and place of the meeting;
  - (b) the names of the committee members present at the meeting;
  - (c) the names of the committee members voting at the meeting;
  - (d) all resolutions of the committee made at the meeting;
  - (e) the voting on all resolutions of the committee at the meeting.

**18 Committee decisions are decisions of body corporate**

- (1) A decision of the committee on a matter is taken to be a decision of the body corporate unless the matter is a restricted matter.
- (2) If the matter is a restricted matter, the committee's decision has no effect.

**Part 3 Meetings of body corporate**

**Division 1 Matters to be decided by body corporate**

**19 Body corporate may decide certain matters**

Except as otherwise provided by the Act, the body corporate may decide that a matter concerning the scheme may be decided only by the body corporate.

**Division 2 General meetings**

**20 Calling first annual general meeting**

Within 3 months after the registration of a scheme statement, the original owner for the scheme must call the first annual general meeting of the body corporate for the scheme.



## **21 Documents to be given by original owner**

- (1) At the first annual general meeting of the body corporate, the original owner for the scheme must give the body corporate the following:
- (a) the proposed budget for the first financial year for the body corporate;
  - (b) a list of all body corporate assets and liabilities;
  - (c) the name and contact address of each unit owner;
  - (d) if a body corporate manager has been engaged – the name and business address of the body corporate manager;
  - (e) a copy of the scheme statement;
  - (f) the accounting records kept by the original owner for the body corporate;
  - (g) documents evidencing each contract, lease and licence binding or benefiting the body corporate;
  - (h) each certificate of insurance in force for the scheme;
  - (i) documents evidencing each warranty or guarantee given on any matter for which the body corporate is responsible;
  - (j) the seal of the body corporate;
  - (k) the certificate of title for the common property of the scheme;
  - (l) a copy of this management module.
- (2) However, the original owner is not required to give the certificate of title for the common property if it is not in the possession or under the control of the original owner.

*Note for clause 21*

*Under regulation 7(1), it is an offence for the original owner to fail to comply with this clause.*

## **22 Annual general meetings**

After the first annual general meeting, the body corporate must hold a general meeting (the **annual general meeting**):

- (a) at least once every calendar year; and
- (b) within 15 months after the last annual general meeting.

**23 Calling general meeting**

A general meeting of a body corporate may be called by a person who has the right to vote at the meeting.

**24 Notice of general meeting**

- (1) The person calling the general meeting must give written notice of the meeting to each person who has the right to vote at the meeting at least 14 working days before the date of the meeting.
- (2) The notice must:
  - (a) specify the date, time and place of the meeting; and
  - (b) include the agenda for the meeting.
- (3) The proceedings at the meeting are not invalidated only because notice of the meeting is not given in accordance with this clause.
- (4) However, the meeting must be adjourned to a later date decided by the persons present who have the right to vote at the meeting if:
  - (a) notice of the meeting is given to a person who has the right to vote at the meeting after the last day for giving notice under subclause (1); and
  - (b) the person requests an adjournment:
    - (i) before the meeting, in writing to the secretary of the body corporate; or
    - (ii) at the meeting.

**25 Quorum at general meeting**

A quorum for the general meeting exists if persons who together have the right to vote in relation to at least 50% of the total interest entitlements of the scheme are present at the meeting.

**26 Interim resolutions if no quorum present**

- (1) If there is no quorum present at the general meeting, the meeting may take place but all resolutions made at the meeting are interim resolutions.
- (2) An interim resolution becomes a resolution of the body corporate if it is confirmed at the next general meeting at which a quorum is present.

**27 Attendance by teleconferencing**

- (1) A person who has the right to vote at a general meeting may attend and participate in the general meeting by teleconferencing.
- (2) The secretary of the body corporate must arrange teleconferencing facilities if requested to do so by the member.
- (3) A person who attends a meeting by teleconferencing is taken to be present at the meeting.

**28 Procedures for general meeting**

Except as otherwise provided in the Act and this Division, the body corporate may decide the procedures for the general meeting.

**29 Chairperson and secretary of body corporate**

- (1) If the body corporate has not formed a committee, the body corporate must, at a general meeting, elect:
  - (a) the chairperson of the body corporate; and
  - (b) the secretary of the body corporate.
- (2) The chairperson and secretary hold office for the term and on the conditions decided by the body corporate.

**30 Chairperson of general meeting**

- (1) The chairperson of the body corporate is the chairperson of the general meeting.
- (2) If the chairperson is unable to act as chairperson of the meeting, the persons present who have the right to vote at the meeting must elect to be chairperson for the meeting a person present at the meeting who:
  - (a) has the right to vote at the meeting; or
  - (b) is the body corporate manager.

## **Division 3 Voting at general meeting**

### **Subdivision 1 Voting generally**

#### **31 Voting by chairperson**

If the chairperson of a general meeting would otherwise have the right to vote at the meeting:

- (a) the chairperson has the right to vote at the meeting; and
- (b) if the voting on a motion that must be passed by an ordinary resolution is equal, the chairperson may cast a deciding vote in addition to a vote cast under paragraph (a).

#### **32 Method of voting**

Voting at a general meeting must be by show of hands.

#### **33 Result of voting**

- (1) Following a vote on a motion at a general meeting, the chairperson of the meeting must declare the result.
- (2) The declaration by the chairperson that a motion has been carried is evidence of the fact without proof of the number or proportion of votes recorded against or in favour of the motion.

### **Subdivision 2 Alternative method of voting**

#### **34 Appointment of proxy**

- (1) A person who has the right to vote at a general meeting may appoint a proxy to vote on the person's behalf at the meeting.
- (2) If 2 or more persons have the right to exercise 1 vote jointly, the persons may jointly appoint a proxy to exercise the right.

### **Subdivision 3 Right to vote**

#### **35 Voting by mortgagees**

- (1) If a unit owner's interest in a unit is subject to a mortgage, the mortgagee may give the body corporate written notice that:
  - (a) the unit is subject to the mortgage; and
  - (b) the mortgagee proposes to exercise voting rights under this clause.

- (2) If the mortgagee gives the notice:
  - (a) the member does not have a right to vote in relation to the unit; and
  - (b) the mortgagee has the right to vote in relation to the unit.
- (3) If the mortgage is discharged, the mortgagee's right to vote ends.
- (4) If 2 or more persons are mortgagees of a unit as joint tenants or tenants in common:
  - (a) the right to give notice under subclause (1) may be exercised only by the mortgagees jointly; and
  - (b) the right to vote may be exercised only by the mortgagees jointly.
- (5) If a unit is held by 2 or more members as tenants in common and one of the members has mortgaged the member's interest in the unit:
  - (a) the mortgagee may give notice to the body corporate under subclause (1); and
  - (b) this clause applies to the mortgagee in relation to the right to vote that the mortgagor may otherwise exercise.
- (6) In this clause:

***mortgagee***, if there are 2 or more mortgages, means the mortgagee under the mortgage entitled to priority over the other mortgage or mortgages.

### **36 Court may appoint person to vote**

- (1) This clause applies if, for a motion that must be passed by a resolution without dissent or a unanimous resolution:
  - (a) a person who has the right to vote on the motion in relation to a unit:
    - (i) is unavailable to vote on the motion; and
    - (ii) has not appointed a proxy to vote on the person's behalf; or
  - (b) the body corporate does not know who has the right to vote in relation to a unit.

- (2) The Local Court may:
  - (a) order that the person's right to vote may be dispensed with for the motion or permanently; or
  - (b) appoint another person to exercise the right to vote on the motion.
- (3) The body corporate or a person who has the right to vote on the motion may apply for an order under this clause.

### **37 Incapacity to vote**

- (1) A member of the body corporate does not have a right to vote if:
  - (a) the member is under the age of 18 years; or
  - (b) a guardian has been appointed under the *Adult Guardianship Act* to manage the property of the member.
- (2) The right of a member mentioned in subclause (1)(a) to vote may be exercised by the member's parent or guardian.
- (3) The right of a member mentioned in subclause (1)(b) to vote may be exercised by the appointed guardian.

## **Part 4 Exclusive use by-laws**

### **38 Costs relating to common property**

If special rights about common property or a body corporate asset are allocated to a unit under an exclusive use by-law, the unit owner is not liable to pay maintenance and operating costs relating to the common property or asset unless the by-law specifically provides that the owner is liable.

## **Part 5 Financial and record management**

### **Division 1 Annual contributions and other levies**

#### **39 Amount of annual contributions**

The body corporate may, from time to time, decide:

- (a) the amount of annual contributions payable by the unit owners to the body corporate; and
- (b) how the contributions must be paid.

*Note for clause 39*

*Under section 39(3) of the Act, the contribution entitlement of a unit divided by the total contribution entitlements of all the units is the ratio representing the unit owner's share of annual contributions.*

#### **40 Purpose of annual contributions**

Annual contributions paid by unit owners to the body corporate must be used to fund the following:

- (a) the administration of the body corporate;
- (b) maintenance and repairs of the common property of the scheme;
- (c) the insurance policies the body corporate is required to maintain under the Act;
- (d) other costs reasonably incurred by the body corporate in performing its functions under the Act.

#### **41 Levy for single item of expenditure**

- (1) The body corporate may, by a special resolution, decide to charge unit owners a levy to fund a single item of expenditure.
- (2) The following matters must also be decided by a special resolution:
  - (a) the amount of the levy;
  - (b) how the levy must be paid.
- (3) The ratio representing a unit owner's share of the levy is the same as the ratio (mentioned in section 39(3) of the Act) representing the unit owner's share of annual contributions.

**42 Levy for recurring expenditure**

- (1) The body corporate may, by a unanimous resolution, decide to charge unit owners a levy to fund a recurring class of expenditure.
- (2) The following matters must also be decided by a unanimous resolution:
  - (a) the amount of the levy, or the method for calculating the amount;
  - (b) how the levy must be paid;
  - (c) each unit owner's share of the levy, or the method for calculating each owner's share.

**43 Interest on late payment**

- (1) The body corporate may charge interest for the late payment of contributions and special levies.
- (2) The interest rate is:
  - (a) an amount, decided by the body corporate, not more than the rate fixed from time to time for section 85 of the *Supreme Court Act*; or
  - (b) if the body corporate does not decide an amount – the rate fixed from time to time for section 85 of the *Supreme Court Act*.
- (3) The body corporate may decide to waive the interest in a particular case.

**44 Recovery of amount owing**

An amount owing to the body corporate by a unit owner under this Division is a debt due and payable to the body corporate.

**Division 2 Body corporate assets**

**45 Mortgage or charge over body corporate asset**

The body corporate may, by a resolution without dissent, mortgage or create a charge over a body corporate asset to raise funds to be used for the performance of the functions of the body corporate.



## **Division 3        Records and notices**

### **46            Records of body corporate**

- (1) The body corporate must ensure the following records are kept:
  - (a) the full name and address of each member of the body corporate;
  - (b) minutes of general meetings;
  - (c) copies of resolutions made at general meetings;
  - (d) records of the results of voting on motions;
  - (e) copies of notices given by the body corporate;
  - (f) copies of appointments of proxies;
  - (g) used voting papers;
  - (h) correspondence sent or received by the body corporate;
  - (i) insurance policies maintained by the body corporate;
  - (j) contracts and agreements entered into by the body corporate;
  - (k) leases and licences entered into by the body corporate.
- (2) The body corporate must ensure each record is kept for at least 7 years after the date it is created.

### **47            Access to records**

An application to access a record kept by the body corporate or specified information contained in the record must:

- (a) be in writing; and
- (b) contain adequate details for the body corporate to identify the record or information.

**48 Notices required to be given**

If an event specified in the Table, column 1, happens in relation to the scheme, the person specified opposite in column 2 must give written notice of the event to the body corporate within 28 working days after the event.

**Table**

<b>Column 1</b>	<b>Column 2</b>
<b>Event</b>	<b>Person to give notice</b>
Transfer of unit ownership	Unit owner immediately after transfer
Change of unit owner's address or contact details	Unit owner
Registration of lease over unit for term of over 6 months	Unit owner
Mortgagee enters into possession of unit that is subject to registered mortgage	Mortgagee

**Part 6 Administrative matters****Division 1 Seal of body corporate****49 The seal**

- (1) The seal of the body corporate must include the name of the body corporate.
- (2) The body corporate may decide how the seal must be kept.

**50 When the seal may be used**

The seal must not be used except for a purpose authorised by the body corporate.

**51 Witnessing the use of the seal**

- (1) The use of the seal on a document must be witnessed by at least 2 members of the body corporate.
- (2) However, if there is only 1 member of the body corporate, the use of the seal must be witnessed by the member.
- (3) If a member is a company, a director of the company may witness the use of the seal on behalf of the company.

- (4) Each person who witnesses the use of the seal must record next to the seal that he or she has witnessed the use of the seal by:
  - (a) signing his or her name; and
  - (b) printing his or her name and address; and
  - (c) stating that he or she is a member of the body corporate or a director of a company that is a member of the body corporate.

## **Division 2 Administration of scheme**

### **52 Body corporate may engage or employ persons**

The body corporate may engage or employ a person to assist it in exercising its powers and performing its functions.

### **53 Termination of engagement of body corporate manager**

If the document engaging a body corporate manager does not specify how the engagement may be terminated, the body corporate may terminate the engagement by giving 3 months written notice to the body corporate manager.

### **54 Functions of body corporate manager**

The body corporate manager has the functions and powers of the body corporate or committee delegated to the manager.

*Note for clause 54*

*Chapter 3, Part 3.4 of the Act provides for the engagement of a body corporate manager.*

## **Division 3 Delegation of functions and powers**

### **55 Delegation of body corporate functions and powers**

- (1) A delegation of the functions and powers of the body corporate must be:
  - (a) authorised by an ordinary resolution of the body corporate; and
  - (b) evidenced in a document affixed with the seal of the body corporate.
- (2) A copy of the document evidencing the delegation must be given to the delegate.
- (3) The delegation may be revoked in the same way it is made.

**56 Delegation of committee functions and powers**

The committee may, in writing, delegate any of its functions or powers under this management module to:

- (a) a committee member; or
- (b) a member of the body corporate; or
- (c) the body corporate manager.