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# Body Corporate and Community Management Amendment Bill 2010

## Explanatory Notes

### Short Title

The short title of the Bill is the Body Corporate and Community Management Amendment Bill 2010.

### Objective of the Bill

The objective of the Bill is to amend the *Body Corporate and Community Management Act 1997* (BCCM Act) to provide a new lot entitlements system. The new lot entitlements system provides several principles for the setting of contribution schedule lot entitlements and a limited ability to adjust contribution schedule lot entitlements. For community titles schemes established prior to the commencement of the Bill, lot owners are given an opportunity to revert the contribution schedule lot entitlements for each lot in the scheme to their original settings prior to an adjustment order.

### Reasons for the Bill

Community titles schemes involve the collective ownership and management of common property and body corporate assets. Costs associated with living in a scheme are proportioned by a lot owner's allocated lot entitlement.

The predecessor to the current body corporate legislation, the *Building Units and Group Titles Act 1980*, provided a single schedule of lot entitlements for community titles schemes. Lot entitlements for standard format lots (for example, some townhouse-type lots) were to be set in proportion to the unimproved value of the lots, and lot entitlements for building format lots (typically units in multi-storey developments) were to be set at the developer's discretion.

Then in 1997, the BCCM Act was introduced. The BCCM Act introduced two types of lot entitlement schedules, a contribution schedule and an interest schedule. Most body corporate expenses are proportioned by each lot's contribution schedule lot entitlement. The current principle for setting and adjusting contribution schedule lot entitlements is that they should be equal, except to the extent it is just and equitable in the circumstances for them not to be equal.

The BCCM Act also introduced the ability for lot owners in all schemes to apply for an adjustment of a scheme's contribution schedule and interest schedule lot entitlements. In some instances, there has been a significant adjustment of contribution schedule lot entitlements, which has resulted in some lot owners experiencing significant financial challenges in being able to afford their proportion of the body corporate expenses.

### **Achievement of the Objective**

The amendments to the BCCM Act will ensure there is as much certainty around body corporate costs as possible, as well as providing more appropriate and flexible principles for setting contribution schedule lot entitlements.

For a lot in a standard format plan or volumetric format plan included in a community titles scheme (for example, some townhouse-type lots), the respective contribution schedule lot entitlements for each lot must be proportionate to the unimproved value of the lots (the unimproved value principle) or equal except to the extent to which it is just and equitable in the circumstances for them not to be equal (the equality principle).

For a lot in a building format plan included in a community titles scheme (typically units in multi-storey developments), the contribution schedule lot entitlements must be set in accordance with the equality principle or there must be a demonstrated relationship between the lots by reference to one or more prescribed relevant factors (the relativity principle). Where the relativity principle is used, a relevant factor is to be one or more of the following: how the scheme is structured; the nature, features and characteristics of the lots; the purposes for which the lots are used; the impact the lots may have on the costs of maintaining the common property; and/or market values of the lots.

In relation to interest schedule lot entitlements, they must reflect the respective market values of the lots, except to the extent to which it is just and equitable in the circumstances for the individual lot entitlements to not reflect the respective market values of the lots.

Lot owners in community titles schemes established prior to and after the commencement of the Bill will not be able to adjust contribution schedule lot entitlements unless it is unanimously agreed by all lot owners through a resolution without dissent of the body corporate. However, for a community titles scheme established after the commencement of the Bill, where a lot owner believes the contribution schedule lot entitlements are not set in accordance with the contribution schedule principle applying to the contribution schedule lot entitlements, they may seek an order of a specialist adjudicator or QCAT to adjust the contribution schedule lot entitlements. The order must only be in accordance with the contribution schedule principle which already applies to the contribution schedule lot entitlements.

The current provisions of the BCCM Act providing the ability to seek an adjustment of interest schedule lot entitlements will continue to be available for all schemes after the commencement of the Bill.

It is also proposed to provide community titles schemes established prior to the commencement of the Bill, which have been subject to one or more orders to adjust contribution schedule lot entitlements, the ability to revert their lot entitlements to their original settings prior to any, and all, adjustment orders.

To facilitate a reversion of contribution schedule lot entitlements, the Bill provides that if a lot owner submits a motion to be considered at a general meeting of the body corporate requesting the contribution schedule lot entitlements for all the lots in the scheme to be reverted to the original contribution schedule lot entitlements in place before any, and all, adjustment orders were made, it is deemed that the body corporate passed the motion. The

body corporate will then be required to give effect to the motion by updating the scheme's community management statement.

## **Notes on Provisions**

### Clause 1 – Short title

*Clause 1* establishes the short title of the Act is the *Body Corporate and Community Management Amendment Act 2010*.

### Clause 2 – Act amended

*Clause 2* provides that the Act being amended is the *Body Corporate and Community Management Act 1997*.

### Clause 3 – Amendment of s 46 (Lot entitlements)

Clause 3 amends section 46 of the Act to require lot entitlements for lots in a community titles scheme established after the commencement of the subsection to be set in accordance with a contribution schedule principle and an interest schedule principle.

For a lot in a standard format plan or volumetric format plan included in a community titles scheme, the contribution schedule lot entitlements must either be proportionate to the unimproved value of the lots (the unimproved value principle) or equal except to the extent to which it is just and equitable in the circumstances for them not to be equal (the equality principle).

For a lot in a building format plan included in a community titles scheme, the contribution schedule lot entitlements must either demonstrate the relationship between the lots by reference to one or more prescribed relevant factors (the relativity principle) or equal except to the extent to which it is just and equitable in the circumstances for them not to be equal (the equality principle).

For the interest schedule for a community titles scheme, the interest schedule lot entitlements for each lot must reflect the respective market values of the lots, except to the extent to which it is just and equitable in the circumstances for the individual lot entitlements not to reflect the respective market values of the lots (the market value principle).

### Clause 4 – Insertion of new s 46A and 46B

*Clause 4* inserts new section 46A to establish the unimproved value principle, the equality principle and the relativity principle for deciding contribution schedule lot entitlements for lots included in a community titles scheme. For the relativity principle, new section 46A provides a restricted list of relevant factors which may be used to demonstrate the relationship between the lots.

*Clause 4* also inserts new section 46B to establish the market value principle for deciding interest schedule lot entitlements for lots included in a community titles scheme.

### Clause 5 – Insertion of new ss 47A and 47B

*Clause 5* inserts new section 47A to enable bodies corporate to adjust the contribution schedule lot entitlements of the lots included in a community titles scheme by a resolution without dissent. The notice of the meeting at which the resolution is proposed to be passed

must include the proposed changes to the contribution schedule lot entitlements and the reasons for the proposed changes to the contribution schedule lot entitlements. The changed contribution schedule lot entitlements must be consistent with either the principle on which the existing contribution schedule lot entitlements were decided or another contribution schedule principle provided by the Act. The body corporate must lodge a request to record a new community management statement reflecting the lot entitlement adjustments as quickly as practicable after the body corporate unanimously agrees by a resolution without dissent to adjust the lot entitlements. The body corporate must bear the costs of preparing and recording the new statement.

*Clause 5* also inserts new section 47B to allow a specialist adjudicator or the Queensland Civil and Administrative Tribunal (QCAT) to adjust contribution schedule lot entitlements if a community titles scheme is affected by a material change or for a community titles scheme established after the commencement of this section if a lot owner in the scheme believes the contribution schedule lot entitlements do not accurately reflect the deciding principle for the lots entitlements. This provision explicitly provides that a specialist adjudicator or QCAT can only change the contribution schedule lot entitlements for lots in a community titles scheme in accordance with the contribution schedule principle which already applies to the scheme or, if there is no apparent contribution schedule principle for the lot entitlements, the allocation of lot entitlements must be just and equitable. The body corporate must lodge a request to record a new community management statement reflecting the contribution schedule lot entitlements adjustments as quickly as practicable after an order of a specialist adjudicator or QCAT is made.

Clause 6 – Amendment of s 48 (Adjustment of lot entitlement schedule)

*Clause 6* amends section 48 to only provide for the adjustment of interest schedule lot entitlements.

Clause 7 – Insertion of new s 48A

*Clause 7* inserts new section 48A to establish what a specialist adjudicator or QCAT may have regard to for deciding whether contribution schedule lot entitlements accurately reflect the deciding principle that applies to the contribution schedule for the purpose of an application made for an adjustment of contribution schedule lot entitlements order. A specialist adjudicator or QCAT may have regard to the principle on which the contribution schedule lot entitlements were decided; the information in the community management statement about the application of the principle to the lot entitlements; the matters to which a specialist adjudicator or QCAT may have regard to under section 49 of the Act if the contribution schedule lot entitlements were decided in accordance with the equality principle; and the matters forming the basis of the applicant's belief that the contribution schedule lot entitlements do not accurately reflect the deciding principle that applies to the contribution schedule.

Clause 8 – Amendment of s 49 (Criteria for deciding just and equitable circumstances)

*Clause 8* amends section 49 of the Act to limit the section to only apply where an application is made for an order of a specialist adjudicator or QCAT for the adjustment of a lot entitlements schedule decided on the equality principle or market value principles.

Clause 9 – Amendment of s 51 (Limited adjustment of lot entitlement schedule—after formal acquisition of part of scheme land)

*Clause 9* amends section 51 of the Act to provide that any changes to a lot entitlements schedule, consequential to a lot or common property in the scheme compulsorily acquired

under the *Acquisition of Land Act 1967*, must be consistent with the deciding principle that applies to the lot entitlement schedule or, if there is no apparent deciding principle used to decide the lot entitlements, be just and equitable.

Clause 10 – Insertion of new s 51B and 51C

*Clause 10* inserts new section 51B to provide for limited adjustment of lot entitlement schedules after the subdivision of a lot. Where a lot is subdivided into two or more lots, the lot entitlements for the pre-subdivided lot must be apportioned to the post-subdivided lots consistent with the deciding principle that applies to the lot entitlement schedules or, if there is no apparent deciding principle that applies to the lot entitlement schedules, according to the respective market values of the lots except to the extent to which it is just and equitable in the circumstances for the individual lot entitlements not to reflect the respective market values of the lots.

This provision does not apply to a lot which is subdivided into two or more lots, one of which is a subsidiary scheme.

*Clause 10* also inserts new section 51C to provide for limited adjustment of lot entitlement schedules after the amalgamation of two or more lots. Where two or more lots are amalgamated into one lot, the lot entitlements for the post-amalgamated lot must be the total of the lot entitlements for the pre-amalgamated lots.

*Clause 10* provides the body corporate must lodge a request to record a new community management statement reflecting the lot entitlement adjustments as quickly as practicable after the body corporate has received written notice of the new lot entitlements from the affected lot owners. The owners of the affected lots must bear the costs of preparing and recording the new statement.

Clause 11 – Amendment of s 66 (Requirements for community management statement)

*Clause 11* amends section 66 to require the community management statement for a scheme established after the commencement of subsection (1)(db) or a scheme established before the commencement of subsection (1)(db) where the contribution schedule lot entitlements are adjusted after the commencement of that subsection to state the principle provided by the Act on which the contribution schedule lot entitlements have been decided. If the contribution schedule lot entitlements have been decided in accordance with the equality principle and the lot entitlements are not equal, the community management statement must include an explanation about why they are not equal. Where contribution schedule lot entitlements have been decided in accordance with the relativity principle, the community management statement must include sufficient details about how individual contribution schedule lot entitlements for the lots were decided by using the relativity principle.

The community management statement must also state that the interest schedule lot entitlements reflect the respective market values of the lots or, if they do not reflect the respective market values of the lots, explain why the interest schedule lot entitlements do not reflect the respective market values of the lots. This provision applies to schemes established after the commencement of subsection (1)(dc) and schemes established before the commencement of subsection (1)(dc) where the interest schedule lot entitlements are adjusted after the commencement of that subsection.

Clause 12 – Amendment of s 206 (Information to be given by seller to buyer)

*Clause 12* amends section 206 of the Act to require the disclosure statement, which is to be given by a seller to a buyer, to state the amount of annual contributions currently fixed by the body corporate as payable by the owner; that the annual contributions are based on the contribution schedule lot entitlements for the lots included in the community titles scheme; and that the contribution schedule lot entitlements for the lots included in the scheme are set out in the community management statement. Amended section 206 of the Act also requires the disclosure statement to be accompanied by the community management statement for the scheme.

Clause 13 – Insertion of new s 206B

*Clause 13* inserts new section 206B to require a seller of a lot to give a buyer of the lot a copy of a new community management statement if, after a contract for the sale of the lot is entered into but before it settles, a new community management statement for the community titles scheme is recorded. The seller must give the buyer a copy of the new community management statement within 14 days of the scheme's new community management statement being recorded.

New section 206B provides that the buyer may terminate the contract for the sale of the lot if it has not already settled and the buyer would be materially prejudiced if compelled to complete the contract given the extent to which the new community management statement is different from the community management statement last advised to the buyer. The termination of the contract must be in writing and given to the seller within 14 days, or a longer period agreed between the buyer and seller, after the seller has given the buyer the new community management statement.

Clause 14 – Amendment of s 209 (Terminating contract for inaccuracy of disclosure statement)

*Clause 14* amends section 209 of the Act to provide that a buyer of a proposed lot may terminate the contract for the sale of the lot if the buyer would be materially prejudiced if compelled to complete the contract given the difference between the community management statement that was attached to the contract when it was entered into and the most recently advised community management statement.

Clause 15 – Insertion of new s 209A

*Clause 15* inserts section 209A to provide that a buyer of a lot may terminate the contract for the sale of the lot if the seller is the original owner for the scheme, and the buyer reasonably believes the contribution schedule lot entitlements do not accurately reflect the contribution schedule principle on which they were decided and the buyer would be materially prejudiced if compelled to complete the contract. The right to terminate the contract under this section must happen not later than 90 days or a longer period agreed between the buyer and seller after the buyer's copy of the contract is received by the buyer or a person acting for the buyer, and the notice of termination must state that it is given under section 209A of the Act.

Clause 16 – Amendment of s 213 (Information to be given by seller to buyer)

*Clause 16* amends section 213 of the Act to require the disclosure statement, which is to be given by a seller to a buyer for the sale of a proposed lot, to state the amount of annual contributions reasonably expected to be payable to the body corporate by the lot owner; that the annual contributions are based on the contribution schedule lot entitlements for the lots included in the proposed community titles scheme; and that the contribution schedule lot

entitlements for the lots included in the scheme are set out in the proposed community management statement.

Clause 17 – Amendment of s 217 (Terminating contract for inaccuracy of statement)

*Clause 17* amends section 217 of the Act to provide additional circumstances where a buyer may terminate a contract for the sale of a proposed lot.

The buyer of a proposed lot may terminate the contract of sale for the lot if the community management statement most recently advised to the buyer does not include the principle on which the contribution schedule lot entitlements have been decided.

If the contribution schedule lot entitlements are proposed to be set according to the equality principle and the contribution schedule lot entitlements are not equal, the buyer of a proposed lot may terminate the contract of sale for the lot if the community management statement most recently advised to the buyer does not explain why the contribution schedule lot entitlements are not equal.

If the contribution schedule lot entitlements are proposed to be set according to the relativity principle, the buyer of a proposed lot may terminate the contract of sale for the lot if the community management statement most recently advised to the buyer does not include sufficient details about the relativity principle to show how individual contribution schedule lot entitlements were decided by using the principle.

Clause 18 – Insertion of new s 217A

*Clause 18* inserts section 217A to provide that a buyer of a proposed lot may terminate the contract of sale for the lot if the seller is intended to be the original owner for the scheme when it is established, and the buyer reasonably believes the proposed contribution schedule lot entitlements do not accurately reflect the contribution schedule principle on which they are proposed to be decided and the buyer would be materially prejudiced if compelled to complete the contract. The right to terminate the contract under this section must happen not later than 90 days or a longer period agreed between the buy and seller after the buyer's copy of the contract is received by the buyer or a person acting for the buyer, and the notice of termination must state that it is given under section 217A of the Act.

Clause 19 – Insertion of new ch 8, pt 9

*Clause 19* inserts transitional provisions to provide for the *Body Corporate and Community Management Amendment Act 2010*.

*Division 1 – Preliminary*

Definitions for 'amending act' and 'commencement' are established in new section 374 to apply to the transitional provisions only.

*Division 2 – Interest schedules for particular schemes*

New section 375 states that in relation to interest schedule lot entitlements, section 48(8) does not apply to a community titles scheme established after the commencement of this part if a contract for the sale of a proposed lot was entered into before the commencement of this part. However, the interest schedule lot entitlements for these schemes must have regard to how the scheme is structured; the nature, features and characteristics of the lots included in the scheme; and the purpose for which the lots are used. This provision is being introduced because any change to an interest schedule prior to the settlement of contracts for the sale of proposed lots in a proposed community titles scheme could potentially put

some contracts at risk through no fault of developers or buyers as buyers may be materially prejudiced if compelled to complete a contract subject to the extent of the change in interest schedule lot entitlements.

*Division 3 – Effect of particular actions relating to contribution schedule lot entitlements*

New sections 376–377 provides that an adjustment action, including an application to a specialist adjudicator or QCAT for the adjustment of contribution schedule lot entitlements, taking place prior to the commencement of this part which has not been given effect ceases to have effect at the commencement of this part and no further action may be taken in relation to that adjustment action. An adjustment action which has not been given effect is where a new community management statement reflecting the adjustment has not been recorded.

*Division 4 – Adjustment of contribution schedule lot entitlements for existing schemes to which adjustment order applies*

New sections 378–386 provide the ability for a body corporate to revert its contribution schedule lot entitlements to its original settings if the community titles scheme had been subject to a contribution schedule lot entitlements adjustment order prior to the commencement of the part.

Definitions for ‘adjustment order’, ‘changed entitlements’, ‘pre-adjustment order entitlements’ and ‘prescribed scheme’ are established in new section 378 to apply to this division.

New sections 379–380 enable a lot owner to submit a motion to be considered at a general meeting of the body corporate proposing to revert the contribution schedule lot entitlements to their original settings prior to any adjustment orders relevant to the scheme. The lot owner submitting the motion must have been an owner of a lot at the time the adjustment order was given effect and, as a result of the adjustment order, the lot owner was adversely affected.

New sections 381–384 state how contribution schedule lot entitlements for lots which have been subject to a subdivision, amalgamation, boundary change or material change are to be dealt with when determining how the original contribution schedule lot entitlements are to be recorded as a result of a motion requesting to revert the contribution schedule lot entitlements to their original settings prior to any adjustment orders relevant to the scheme.

New section 385 provides that if a motion is submitted to a body corporate to revert the contribution schedule lot entitlements to their original settings prior to any adjustment orders relevant to the scheme (subject to any subdivided lots, amalgamated lots, changes in the scheme’s boundary or material changes since the original contribution schedule lot entitlements were set), the body corporate is taken to have passed a resolution without dissent to change the contribution schedule lot entitlements accordingly.

New section 386 requires a body corporate, which is taken to have passed a resolution to revert the contribution schedule lot entitlements to their original settings prior to any adjustment orders relevant to the scheme at a general meeting, to lodge a request to record a new community management statement within three months of the general meeting.

*Division 5 – Other provisions*

New section 387 enables a community titles scheme established before the commencement of this part to adjust their lot entitlements in accordance with sections 47A and 48 as in force after the commencement of this part.

New sections 388–390 provide that information to be given by a seller to a buyer under amended sections 206 and 213 will apply even if the seller of the lot has given the person who proposes to buy the lot a disclosure statement prior to the commencement of this part. However, this provision does not apply to a person who proposes to buy a lot if that person had entered into a contract for the sale of the lot before the commencement of this part.

Clause 20 – Amendment of sch 6 (Dictionary)

*Clause 20* defines particular terms used in the Bill.

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