

Subdivision (Body Corporate) Regulations 2001

Subdivision (Body Corporate) Regulations 2001
S.R. No. 28/2001
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STATUTORY RULES 2001
S.R. No. 28/2001
Subdivision Act 1988

Subdivision (Body Corporate) Regulations 2001

The Administrator with the advice of the Executive Council makes the following Regulations:

Dated: 10 April 2001

Responsible Minister:

JOHN THWAITES

Minister for Planning

HELEN DOYE

Clerk of the Executive Council

PART 1--PRELIMINARY

101. Objectives

The objectives of these Regulations are--

- (a) to specify the functions, powers and duties of bodies corporate;
- (b) to make further provision for the establishment and operation of bodies corporate;
- (c) to specify rights and duties of members of bodies corporate;
- (d) to provide for forms and procedures for the recording or giving of information required by the Act;
- (e) to make further provision for plans of strata and cluster subdivision.

102. Authorising provisions These Regulations are made under sections 28A, 29, 31 and 43 of the **Subdivision Act 1988**.

103. Commencement

These Regulations come into operation on 17 April 2001.

104. Definitions

In these Regulations--

"**Act**" means the **Subdivision Act 1988**;

"**additional rules**" in relation to a body corporate, means any rules made by the body corporate under regulation 220;

"**rules**" means standard rules and additional rules;

"**committee**" in relation to a body corporate, means a committee of the body corporate established under Division 2 of Part 3;

"**form**" means a form in the Schedule;

"**GST**" has the same meaning as in the A New Tax System (Goods and Services) Act 1999 of the Commonwealth;

"**manager**" in relation to a body corporate, means the person, if any, appointed in accordance with regulation 302 as the manager (by whatever name called) for the body corporate;

"**member**" in relation to a body corporate means an owner of a lot affected by the body corporate;

"**secretary**" in relation to a body corporate, means the person, if any, appointed under regulation 301 as the secretary of the body corporate;

"**special resolution**" means a resolution passed by--

- (a) if the vote is taken at a meeting, at least 75% of the votes for the total number of lots affected by the body corporate; or
- (b) if a poll or ballot is taken, at least 75% of total lot entitlements of all the lots affected by the body corporate;

"**standard rules**" means the rules set out in Form 1; "**unanimous resolution**" means a resolution passed by--

- (a) if a poll or ballot is taken, the total lot entitlements of all the lots affected by the body corporate; or
- (b) in any other case, the total votes for all the lots affected by the body corporate.

PART 2--FUNCTIONS AND POWERS OF BODIES CORPORATE

Division 1--General Functions and Powers

201. Functions of bodies corporate

A body corporate has the following functions--

- (a) to repair and maintain--
 - (i) the common property;
 - (ii) the chattels, fixtures, fittings and services related to the common property or its enjoyment;
 - (iii) the equipment and services for which an easement exists for the benefit of the land affected by the body corporate;
- (b) to manage and administer the common property;
- (c) to take out, maintain and pay premiums on insurance required or permitted by any Act or Division 4 of this Part and any other insurance the body corporate considers appropriate;
- (d) to provide a certificate in accordance with Division 7 when requested;
- (e) to take any action necessary or desirable to ensure that these Regulations and the rules of the body corporate are complied with;
- (f) to carry out any other functions conferred on the body corporate by the Act, these Regulations or any other law.

202. Powers of bodies corporate

- (1) A body corporate has all the powers that are necessary to enable it to perform its functions, including, but not limited to, the following powers--
- (a) to set fees intended to cover general administration and maintenance, insurance and other recurrent obligations of the body corporate, based on lot liability and to determine the times for payment of these fees;
 - (b) to levy special fees or charges designed to cover extraordinary items of expenditure, based on lot liability;
 - (c) to acquire, hold and dispose of personal property for the use of members of the body corporate and the occupants of lots and the general public;
 - (d) to borrow, repay and invest money;
 - (e) to establish and operate any bank account consistent with current business practice;
 - (f) to appoint or employ persons to assist the body corporate in the performance of its functions;
 - (g) to provide services or to enter into agreements for the provision of services to members of the body corporate and the occupiers of lots;
 - (h) any other powers conferred on it by these Regulations or the rules of the body corporate.
- (2) A special resolution is required when exercising a power under sub-regulation (1)(b) if the amount involved is more than twice the total amount of the current annual fees set under sub-regulation (1)(a).

Division 2--Financial Provisions

203. Accounts and financial statements

- The body corporate must--
- (a) keep proper books of account covering all income and expenditure of the body corporate and assets and liabilities of the body corporate; and
 - (b) prepare proper financial statements of all income and expenditure and assets and liabilities.

204. Recovery of amounts owed to the body corporate

The body corporate may recover any amount owed to the body corporate in a court of competent jurisdiction.

205. *Charging of interest*

(1) The body corporate may, by special resolution, determine a rate of interest to be charged on money owed by a member to the body corporate after the due date for fees and charges set under regulation 202(1)(a) or (b).

(2) The rate of interest determined must not exceed a rate that is 2% per annum less than the rate for the time being fixed under section 2 of the

Penalty Interest Rates Act 1983.

Division 3--Use of and Repairs, Maintenance and Other Works on Property

206. *Use of common property*

By special resolution, the body corporate may--

(a) permit the use of the common property or the personal property of the body corporate by members of the public when it is not required by the members of the body corporate; and

(b) charge a fee for the use of that property by members of the public.

207. *Repairs and maintenance of common property*

(1) The body corporate must keep in a state of good and serviceable repair and maintain--

(a) the common property;

(b) the chattels, fixtures, fittings and services related to the common property or its enjoyment;

(c) the equipment and services for which an easement exists for the benefit of the land affected by the body corporate;

(2) The body corporate does not have to maintain any service that is exclusively for the benefit of one lot.

(3) For the purposes of this regulation, the body corporate may carry out any necessary repairs, maintenance and other works on common property.

(4) A special resolution is required if the total cost of the works on common property (other than maintenance and repairs) is more than twice the total amount of the current annual fees set under regulation 202(1)(a).

208. *Repairs and maintenance of lots*

(1) If a member has refused or failed to carry out repairs, maintenance or other works to the member's lot that are required because--

(a) the outward appearance or outward state of repair of the lot is adversely affected; or

(b) the use and enjoyment of the lots or common property by other members is adversely affected--

the body corporate may serve a notice on the member requiring the member to carry out the necessary repairs, maintenance or other works.

(2) If a member has been served with a notice under sub-regulation (1), the member must carry out the repairs, maintenance or other works required by the notice within 28 days of the service of the notice.

(3) If a member has been served with a notice under sub-regulation (1) and has not complied with the notice within the required time, the body corporate may carry out the necessary repairs, maintenance or other works to the lot.

209. Cost of repairs, maintenance or other work

A body corporate may recover the cost of repairs, maintenance or other work undertaken substantially for the benefit of some of the lots from the members who are the owners of those lots, but the amount payable by those lots is to be calculated on the basis that the lot that benefits more pays more.

210. When can the body corporate authorise a person to enter a lot? A body corporate may authorise a person to enter a lot or a building on a lot on its behalf--

(a) to inspect, maintain or replace any structural or service component of the building for which the body corporate is responsible; or

(b) to carry out repairs, maintenance or other works in accordance with regulation 208(3).

211. What notice must be given?

(1) The body corporate must give at least 7 days notice in writing to the occupier of a lot of its intention to enter the lot unless--

(a) the occupier agrees to a lesser time; or

(b) there is an emergency.

(2) Despite sub-regulation (1), if the lot is occupied under a residential tenancy agreement, the body corporate must give the same notice to the occupier as that required by a landlord under section 85 of the **Residential Tenancies Act 1997**.

(3) In this regulation--

"**emergency**" includes--

(a) an interruption to gas, water, electricity, telephone, drainage, sewerage or a similar service; or

(b) a leak or a similar problem requiring prompt attention; or

(c) cracking or a similar problem likely to affect the immediate safety of the building.

Division 4--Insurance

212. When is insurance compulsory and what must be insured?

(1) The body corporate must take out public liability insurance for the common property in accordance with regulation 213.

(2) The body corporate must take out reinstatement and replacement insurance for all buildings on the common property in accordance with regulation 214.

(3) If, in the plan of subdivision, any lots or common property are located above or below common property, reserves or other lots, the body corporate must take out the following insurance in respect of all lots in the plan--

- (a) public liability insurance in accordance with regulation 213; and
- (b) reinstatement and replacement insurance for all buildings on each lot in accordance with regulation 214.

213. *Body corporate must have public liability insurance*

(1) The public liability insurance required under regulation 212 is insurance for any liability of the body corporate to pay compensation in respect of--

(a) any bodily injury to or death or illness of a person; and

(b) any damage to or loss of property--

which is sustained as a result of an occurrence or happening in connection with the common property or the lot.

(2) The body corporate must ensure that, in the insurance which the body corporate has under sub-regulation (1), the limit of liability is a minimum of \$10 000 000 in any one claim and in the aggregate during any one period of insurance.

214. *Body corporate must have reinstatement and replacement insurance*

The reinstatement and replacement insurance required under regulation 212 is insurance for damage to property under which the body corporate insures for--

(a) the cost necessary to replace, repair or rebuild the property to a condition substantially the same, but not better or more extensive than its condition when new; and

(b) the payment of expenses necessarily and reasonably incurred in the removal of debris and the remuneration of architects and other persons whose services are necessary, being incidental to the replacement, repair or rebuilding of the damaged property and must ensure that the insurance includes--

(i) a provision that the interests of mortgagees are noted; and

(ii) a provision that a mortgagee whose interest is noted shall be given the notices that are required under section 59 of the Insurance Contracts Act 1984 of the Commonwealth at the same time that those notices are given to the insured; and

(iii) a provision that the insurer cannot avoid the whole contract for breach of a condition of the contract unless the breach is by the body corporate or all members, but the insurer has a right of indemnity against those members who breach the contract.

215. *Body corporate may have additional insurance*

By special resolution, the body corporate may resolve to insure any additional insurable interest--

(a) in the land affected by the body corporated; and

(b) relating to the performance of its functions.

216. *Insurance not required where there is no common property*

(1) By unanimous resolution, the body corporate may resolve that, if there is no common property, each member of the body corporate must arrange for the member's own insurance.

- (2) A resolution under sub-regulation (1) must be recorded in the additional rules of the body corporate.
- (3) A resolution under sub-regulation (1) is not effective until notice of the resolution is recorded by the Registrar.

217. Insurance not required where another body corporate has insured

Regulations 212, 213 and 214 do not apply to a body corporate if the land affected by the body corporate is affected by another body corporate which has the insurance required by those regulations.

Division 5--Lease or Licenses

218. Leasing or licensing of the common property

- (1) By special resolution, the body corporate may lease or license the whole or any part of the common property.
- (2) The body corporate may lease or obtain a licence for personal property for the use of the members and the occupiers of lots.

Division 6--Rules of the Body Corporate

219. Application of standard rules

The rules set out in Form 1 apply to all bodies corporate.

220. Making rules

- (1) By special resolution, the body corporate may make rules in addition to the rules applied under regulation 219.
- (2) By special resolution, the body corporate may amend or revoke any rules made under sub-regulation (1).
- (3) If the body corporate does not make any rules or revokes all its rules, then the standard rules apply to it.
- (4) If the body corporate makes, amends or revokes a rule, the body corporate must lodge with the Registrar--
 - (a) the form in Form 2; and
 - (b) a copy of those rules (if any) currently in force;
 - (c) a copy of the special resolution which authorised the making, amendment or revocation.
- (5) If the body corporate makes, amends or revokes its rules, the making, amendment or revocation do not come into effect until the Registrar has recorded the making, amendment or revocation.
- (6) Any person may obtain a copy from the body corporate of any additional rules of a body corporate and the body corporate may require that person to pay the reasonable costs of providing that copy.

Division 7--Body Corporate Certificates

221. Body corporate certificate

- (1) Any person may apply to the body corporate for a body corporate certificate.

(2) The application must be in writing and must be accompanied by the fee fixed under regulation 222.

(3) On receipt of an application and the fee fixed under regulation 222, the body corporate must issue a certificate in the form of Form 3.

222. Fee for certificate

The fee to be paid for the issue of a certificate under this Division is \$50.00 and is to be increased by an amount equal to the amount (if any) of GST payable on the issue of the certificate.

Division 8--Provision of Services

223. Services to members and occupiers

(1) The body corporate, by special resolution may decide--

(a) to provide a service to members of the body corporate or occupiers of lots; or

(b) to enter into agreements for the provision of services to members of the body corporate or occupiers of lots.

(2) The body corporate may require a member or occupier to whom a service has been provided to pay for the cost of providing the service to the member or occupier.

Division 9--General

224. Limitations on a body corporate

(1) A plan may specify limitations on a body corporate in accordance with sub-regulation (2).

(2) If the plan includes the statement "limited to common property", then regulations 208, 209, 210, 211, 503 and 504 (except as it applies to eaves overhanging boundaries with common property) and standard rules (c), (d) (except as it applies to common property), (e) and (f) (except as it applies to common property) do not apply.

PART 3--OPERATION OF BODIES CORPORATE

Division 1--Secretary, Manager and Other Officers

301. Appointment of secretary

(1) A body corporate may, by ordinary resolution, appoint a member of the body corporate to be the secretary of the body corporate.

(2) The body corporate may, at an annual or special general meeting, decide to revoke the appointment of the secretary.

302. Appointment of manager

(1) A body corporate may, by ordinary resolution, appoint a person to be the manager of the body corporate.

(2) A manager need not be a member of the body corporate.

303. *Payment of manager*

- (1) If the manager is to receive a fee, the body corporate must use Form 4 to appoint the manager.
- (2) It is a condition of a manager's appointment that the manager holds insurance to indemnify the manager against any claims due to the negligence of the manager or the manager's employees arising from their actions on behalf of the body corporate.
- (3) The minimum level of insurance to be taken out by a manager must be sufficient to meet claims up to a level of \$2 000 000 in any one year.
- (4) The manager must submit a report of the manager's activities to each annual general meeting.

304. *Removal of manager*

At an annual general meeting or special general meeting, a body corporate may resolve to remove its manager.

Division 2--Committee

305. *Election of committee*

- (1) A body corporate with 13 or more members must elect a committee at each annual general meeting.
- (2) A body corporate with less than 13 members may elect a committee at an annual general meeting.

306. *Membership of committees*

- (1) A committee of a body corporate must have at least 3 and not more than 12 members.
- (2) The members of the committee must be members of the body corporate or hold proxies on behalf of members of the body corporate.
- (3) Subject to these Regulations, the members of the committee hold office from their election until a new committee is elected.
- (4) The body corporate may at an annual general meeting or special general meeting, resolve to add or remove a committee member or replace or remove a committee.

307. *Casual vacancies on a committee*

- (1) A casual vacancy is a vacancy that occurs between annual general meetings.
- (2) If there is a casual vacancy on a committee, the remaining members of the committee may--
 - (a) co-opt another member of the body corporate or a person holding a proxy for a member of the body corporate to be a member of the committee;
 - (b) if there are 3 or more remaining members, proceed without filling the vacancy.

308. *Chairpersons of committees*

The members of the committee must appoint a member of the committee to be the chairperson.

309. *Proceedings of committees*

- (1) The quorum for a meeting of a committee is at least half of the members of the committee.
- (2) Subject to the directions of the body corporate, the committee may regulate its own proceedings.
- (3) The committee may appoint sub-committees.
- (4) The committee must present a report of its activities to the annual general meeting of the body corporate.

Division 3--Delegation

310. *Delegation*

- (1) A body corporate may by instrument delegate all or any of its powers and functions to a member or officer of the body corporate, except--
 - (a) a power or function requiring a special resolution or a unanimous resolution; or
 - (b) the holding of an annual general meeting or a special general meeting; or
 - (c) the power to remove a committee or officer of the body corporate; or
 - (d) this power of delegation.
- (2) A body corporate may by instrument delegate its power of delegation to the secretary or manager of the body corporate.
- (3) Without limiting any other conditions that may be imposed, a power of delegation under sub-regulation (2) must be granted on condition that--
 - (a) the secretary may only sub-delegate to a member of the body corporate; and
 - (b) the manager may only sub-delegate to an employee of the manager.
- (4) In this regulation "**officer**" includes secretary and manager.

Division 4--Miscellaneous matters

311. *Common seal*

- (1) The common seal of a body corporate must be kept as directed by the body corporate.
- (2) The common seal of a body corporate must only be affixed to a document in accordance with a resolution of the body corporate.
- (3) The common seal must be affixed in the presence of 2 members of the body corporate.
- (4) Each member of the body corporate who witnesses the affixing of the common seal must record next to the seal that he or she has witnessed the affixing of the seal by--
 - (a) signing his or her name; and
 - (b) printing in full his or her name and address; and
 - (c) stating the capacity in which he or she has witnessed the affixing of the seal.

312. *What records must a body corporate keep?*

In addition to any other records required under these Regulations to be kept, the body corporate must keep the following records--

- (a) the full name and address of each member;
- (b) records of postal ballots.

313. *Availability of records and documents*

The body corporate, on request by a member, a mortgagee of a lot or their representative, must make the accounts and minutes of meetings of the body corporate and its books of accounts available to that person for inspection at any reasonable time.

314. *Letterbox or other indication of body corporate*

- (1) The body corporate must maintain a letterbox and a sign labelled "Body Corporate Plan No. (insert plan number)" or "Body Corporate No. (insert number) Plan No. (insert plan number)", as the case requires.
- (2) The body corporate address on the sign must correspond with the address on the registered plan.
- (3) The letterbox must be near other letterboxes for the land affected by the body corporate or, if those letterboxes are dispersed, near a street abutting the land.
- (4) It is sufficient compliance with sub-regulation (1) if the sign is placed on the letterbox of a member of the body corporate who is responsible for the body corporate mail.
- (5) If the body corporate appoints a manager, the body corporate must erect and maintain a sign giving the manager's name and address and the body corporate number in a place clearly visible from either the main group of letterboxes or the main entrance to the land.
- (6) If the body corporate appoints a manager and a sign referred to in sub-regulation (5) has been erected, a letterbox need not be provided.

315. *Body corporate to notify Registrar of change of address for service*

If the address for service of notices of the body corporate changes, the body corporate must notify the Registrar in the form of Form 5.

PART 4--MEETINGS OF BODIES CORPORATE

401. *First meeting of a body corporate*

- (1) The applicant for registration of a plan which provides for the creation of a body corporate must convene the first meeting of the body corporate within 6 months of the registration of the plan.
- (2) At the first meeting of the body corporate the applicant must provide for the purposes of the body corporate all of the following--
 - (a) the full name and address for service of notices of each member of the body corporate;
 - (b) a copy of the plan of subdivision and all related building plans and other similar documents;

- (c) a copy of the Act and these Regulations;
- (d) any insurance policies in force in relation to the property, including any insurance policy taken out under section 9AAA of the **Sale of Land Act 1962**;
- (e) the names of those companies, tradespeople or suppliers who provided a warranty or other guarantee on any matter for which the body corporate is responsible and copies of those warranties and guarantees;
- (f) books to enable the body corporate to keep the necessary minutes, accounts and other records;
- (g) a common seal for the body corporate.

402. Annual general meeting

- (1) A body corporate must have an annual general meeting if it receives or pays out money in any financial year.
- (2) The time between those annual general meetings must not exceed 15 months.

403. Who may convene annual general meetings?

- (1) The first meeting of a body corporate convened under regulation 401 is the first annual general meeting.
- (2) All other annual general meetings must be convened either by the manager acting on the authority of the committee, the secretary, the chairperson of the committee or in the absence of a committee, by a member or the manager.

404. Can additional general meetings be convened?

- (1) Members whose lot entitlements total at least 25% of all lot entitlements for the land affected by the body corporate may petition the secretary, the manager or the committee to convene a special general meeting.
- (2) The secretary, the manager or the chairperson of the committee must convene a special general meeting when petitioned.
- (3) If there is no secretary, manager, chairperson of the committee or committee or they do not convene the special general meeting, then any member may convene it.
- (4) The secretary, the manager, the chairperson of the committee or the committee may convene a special general meeting whenever there is a matter requiring decision by the members.

405. How is notice given for a general meeting?

- (1) The convenor must give each member 14 days notice in writing before either an annual general meeting or a special general meeting.
- (2) The notice may either be handed to a member or posted to the member at the member's last known address.
- (3) The notice must set out the time and place of the meeting and the general nature of any business or any resolutions proposed to be discussed at the meeting.
- (4) The notice must set out the text of any special or unanimous resolution to be moved at the meeting.

- (5) In the case of the annual general meeting, the notice must be accompanied by financial statements required by regulation 203.
- (6) The notice must state that a member has the right to appoint a proxy.

406. Proxies

- (1) A member may authorise a person in writing to act as proxy for any of the following--
 - (a) to attend, speak or vote on the member's behalf at a meeting of the body corporate;
 - (b) to vote on the member's behalf at a ballot;
 - (c) to represent the member on a committee.
- (2) The authorisation may set out how to vote on particular matters.
- (3) An authorisation under sub-regulation (1)--
 - (a) must be in writing in the form of Form 6; and
 - (b) must authorise a named individual; and
 - (c) must not be transferred by the holder of the proxy to a third person; and
 - (d) must be delivered either personally, by post or by facsimile to the secretary of the body corporate; and
 - (e) is effective from the beginning of the first meeting of the body corporate held after it is delivered to the secretary; and
 - (f) lapses 12 months after being given or, if there is an earlier date specified in the authorisation, on that date.
- (4) A person who is not a member of the body corporate who holds a proxy for a member may not vote on matters affecting himself or herself relating to--
 - (a) the delegation of powers and functions under regulation 310; or
 - (b) the changing, overturning, revoking or directing the exercise of a delegation in accordance with regulation 310; or
 - (c) the appointment, payment or removal of a manager under regulation 302, 303 or 304.

407. Decisions by meeting or postal ballot

Resolutions of the body corporate may be made by meeting or postal ballot.

408. Postal ballots

- (1) A postal ballot may be arranged--
 - (a) by the secretary, the manager, the chairperson of the committee or the committee; or
 - (b) if there is no secretary, manager, chairperson or committee, by a member.
- (2) A postal ballot must include a closing date for the receipt of ballots being at least 14 days after the date the notice of ballot is posted.
- (3) If there is a postal ballot, the decision is made as follows--
 - (a) matters requiring an ordinary resolution must be passed by a majority of the votes returned by the closing date but the number of votes returned must be not less than the number needed for a quorum in accordance with regulation 409;
 - (b) other matters must be passed by a special resolution or unanimous resolution, as appropriate.

(4) If a postal ballot is arranged by members they must give the body corporate all information necessary to enable it to keep records of the postal ballot.

(5) A member may vote by completing any ballot paper.

409. *Quorum for a meeting*

A quorum for a meeting is at least 50% of the total votes or if 50% of the total votes is not available the quorum is at least 50% of the total lot entitlement.

410. *Can a meeting proceed even without a quorum?*

(1) If there is not a quorum, the meeting may proceed but all decisions are interim decisions.

(2) Notice of all interim decisions must be forwarded to all members within 14 days of the meeting.

(3) A further meeting is only required if the members petition a meeting, as provided in regulation 404, within 28 days of the meeting.

(4) Interim decisions become decisions of the body corporate--

(a) if no petition is received within 29 days from the date of the interim decision; or

(b) in any other case, when confirmed at a later meeting.

411. *Who chairs the meeting?*

(1) At a meeting, the body corporate may elect a chairperson.

(2) If the body corporate does not elect a chairperson then the chairperson of the committee chairs the meeting.

412. *Are votes related to the value of the lots?*

(1) Subject to sub-regulation (3), there is to be one vote for each lot.

(2) At a meeting, voting may be by show of hands unless the meeting resolves otherwise.

(3) A member present in person or by proxy may, before or after the vote is taken, require that a poll be taken based on one vote for each unit of lot entitlement.

(4) Voting at a poll must be by written ballot.

(5) If a poll is required after the vote is taken, the decision taken by the vote has no effect and the decision on the matter is the decision of the poll.

(6) All matters other than matters requiring special resolutions and unanimous resolutions must be determined by a simple majority of votes cast at a meeting.

413. *Does the chairperson have a casting vote?*

(1) The chairperson may only have a second vote or the casting vote if the voting is equal and the chairperson is a member of the body corporate or votes as proxy for a member.

(2) If the voting is equal and the chairperson does not exercise a casting vote, the motion is not passed.

414. *Can a member vote if fees are unpaid to the body corporate?*

A member whose body corporate fees or other amounts owing to the body corporate are in arrears is not entitled to vote, either in person, by ballot or by proxy, except when a special resolution or unanimous resolution is required.

415. *Minutes of meetings*

(1) The body corporate must arrange for minutes to be kept of general meetings and committee meetings.

(2) The minimum information to be recorded in the minutes for each meeting is--

- (a) the date, time and venue of the meeting; and
- (b) the names of members and holders of proxies present; and
- (c) the names of people who have provided proxies; and
- (d) the voting on any resolutions.

PART 5--DUTIES AND RIGHTS OF MEMBERS

501. *Care of lots*

A member must properly maintain the member's lot in a state of good and serviceable repair and must also maintain any service that serves that lot exclusively.

502. *Care of common property*

A member must not use or neglect the common property or permit it to be used, or neglected in a manner that is likely to cause damage or deterioration to the common property.

503. *Overhanging eaves*

If a boundary of a lot which bisects a roof is located at any location other than the internal face of the walls of the building, the member who owns the lot is responsible for the maintenance of any eaves which overhang the boundary of the lot.

504. *Right to decorate interior walls, floors and ceilings*

(1) If a boundary of a lot is shown on a plan as being the interior face of the building, the member who owns the lot has the right to decorate or attach fixtures or chattels to that face.

(2) This regulation permits works such as curtaining, painting, wallpapering and installing floor coverings, light fittings and other chattels.

505. *Address of new owners*

A member who sells a lot must advise the body corporate of the name and address of the new owner within one month of settlement.

506. *Address of absent owners*

A member who does not occupy his or her lot or who will be absent from his or her lot for more than 3 months must advise the body corporate of his or her mailing address for service of notices and any changes to it as soon as possible.

507. *Advice to occupiers*

A member who does not occupy his or her lot must give the occupier of the lot--

- (a) a copy of the rules of the body corporate, at the commencement of occupation; and
- (b) a copy of any new rules as soon as possible after the new rules are made.

508. *Compliance with rules and Regulations*

A member must comply with the rules of the body corporate and these Regulations.

PART 6--MISCELLANEOUS PROVISIONS

601. *Notice of intention to wind up a body corporate--Section 31(4)*

- (1) The prescribed form for notice to the Registrar under section 31(4) of the Act is the form in Form 7.
- (2) The prescribed manner for the Registrar to record the notice under section 31(4) of the Act is "An application has been made to the County Court to wind up Body Corporate (No.)* Plan No. (insert plan number) (insert date)".

602. *Application to Registrar after Court Order--Section 31(6)*

The prescribed form for an application to the Registrar under section 31(6) of the Act is the form in Form 8.

603. *Form of application to alter lot entitlement and liability--Section 33(1)*

The prescribed form for an application to the Registrar under section 33(1) of the Act to alter the lot entitlement or liability is the form in Form 9.

604. *Registrar to record information--Section 27(5)*

- (1) The Registrar must record information within the meaning of section 27(5) of the Act--
 - (a) on the relevant plan; or
 - (b) in an appropriate part of the Register.

(2) The Registrar must amend information so recorded whenever a material alteration is brought to the notice of the Registrar under the Act.

PART 7--SAVINGS PROVISIONS FOR STRATA AND CLUSTER PLANS

701. Definitions

In this part--

"strata plan" means any plan of strata subdivision or strata redevelopment registered or approved--

- (a) before the commencement of the Act; or
- (b) on or after that commencement under the provisions applied by section 44(3B) of the Act;

"cluster plan" means any plan of cluster subdivision or cluster redevelopment registered or approved--

- (a) before the commencement of the Act; or
- (b) on or after that commencement under the provisions applied by section 44(3B) of the Act.

702. Location of boundaries on strata plans

(1) On a strata plan a thick continuous line on which no measurement is shown represents a vertical or near vertical boundary or part of a boundary along or within a wall or fence.

(2) On a strata plan a thick broken line on which a measurement is shown represents a vertical or near vertical boundary or part of a boundary which does not lie along or within a wall or fence.

(3) On a strata plan the location of any common boundary between a unit and another unit or a unit and common property is the median of any wall, fence, floor or ceiling unless the plan by legend or otherwise indicates that the boundary is in another position.

703. Form of application to remove restrictions--Section 44(5)

The prescribed form for an application to the Registrar under section 44(5) of the Act to remove the restriction on a restricted lot on a plan of strata subdivision or on a restricted lot on a plan of cluster subdivision is the form in Form 10.

704. Form of application to alter or cancel a scheme of development

(1) The prescribed form for an application to the Registrar by a body corporate under section 44(5A) of the Act to cancel or alter a scheme of development on a plan of cluster subdivision is the form in Form 11.

(2) The prescribed form for an application to the Registrar by an owner under section 44(5B) of the Act to cancel or alter a scheme of development on a plan of cluster subdivision is the form in Form 12.

705. Bodies corporate created on or after 30 October 1989

- (1) These Regulations apply to a body corporate created on or after 30 October 1989 on a strata or cluster plan.
- (2) The by-laws in the First and Second Schedules of the **Strata Titles Act 1967** do not apply to that body corporate.

PART 8--FURTHER TRANSITIONAL PROVISIONS

801. *Definition* In this Part--

"old regulations" means the Subdivision (Body Corporate) (Interim) Regulations 2000 as in force immediately before the commencement of these Regulations.

802. *Saving of existing rules*

Any rules (including consolidated rules) made or deemed to be made by a body corporate under the old regulations and existing immediately before the commencement of these Regulations are deemed to be rules made by the body corporate under regulation 220 to the extent that they are not inconsistent with the Act or these Regulations.

803. *Saving of secretary*

A secretary who was appointed or deemed to be appointed by a body corporate under the old regulations and held that office immediately before the commencement of these Regulations--

- (a) is deemed on that commencement to be a secretary of the body corporate appointed under regulation 301; and
- (b) continues to be so appointed until the first annual general meeting of the body corporate held after the first anniversary of the commencement of these Regulations, unless the secretary is changed or removed earlier by the body corporate or resigns.

804. *Saving of managers*

A manager who was appointed or deemed to be appointed by a body corporate under the old regulations and held that office immediately before the commencement of these Regulations is deemed on that commencement to be a manager appointed under regulation 302.

805. *Saving of existing delegations*

Any delegation made or deemed to be made by a body corporate under the old regulations and existing immediately before the commencement of these Regulations--

- (a) is deemed to be a delegation of the body corporate under regulation 310; and
 - (b) continues in force until the first annual general meeting of the body corporate held after the first anniversary of the commencement of these Regulations, unless revoked earlier by the body corporate.
-

SCHEDULE

FORM 1

Regs 104 and 219 Subdivision (Body Corporate) Regulations 2001

Subdivision Act 1988

STANDARD RULES

Use of common property and lots

A member must not, and must ensure that the occupier of a member's lot does not--

- (a) use the common property or permit the common property to be used in such a manner as to unreasonably interfere with or prevent its use by other members or occupants of lots or their families or visitors;
- (b) park or leave a vehicle or permit a vehicle to be parked or left on the common property so as to obstruct a driveway or entrance to a lot or in any place other than in a parking area specified for such purpose by the body corporate;
- (c) use or permit a lot affected by the body corporate to be used for any purpose which may be illegal or injurious to the reputation of the development or may cause a nuisance or hazard to any other member or occupier of any lot or the families or visitors of any such member or occupier;
- (d) make or permit to be made any undue noise in or about the common property or any lot affected by the body corporate;
- (e) make or permit to be made noise from music or machinery which may be heard outside the owner's lot between the hours of midnight and 8.00 a.m.;
- (f) keep any animal on the common property after being given notice by the body corporate to remove the animal after the body corporate has resolved that the animal is causing a nuisance.

FORM 2

Reg. 220 Subdivision (Body Corporate) Regulations 2001

Subdivision Act 1988

NOTIFICATION OF MAKING, AMENDMENT OR REVOCATION OF RULES

To the Registrar

Body Corporate* Strata* Cluster* (No.) Plan No.

Attached is a copy of--

1. The rules of the body corporate currently in force.
2. The special resolution passed on // / under regulation 220 of the Subdivision (Body Corporate) Regulations 2001 authorising the making amendment or revocation of the additional rules of the body corporate.

Dated

Seal of body corporate

Note 1: In accordance with regulation 311 of the Subdivision (Body Corporate) Regulations 2001, the seal of the body corporate must be--

- (1) affixed in the presence of 2 members of the body corporate; and
- (2) each member of the body corporate who witnesses the affixing of the common seal must record next to the seal that he or she has witnessed the affixing of the seal by--
 - (a) signing his or her name; and
 - (b) printing in full his or her name and address; and
 - (c) stating the capacity in which he or she has witnessed the affixing of the seal.

Note 2: Rules must not be inconsistent with any Victorian Act.

FORM 3

Reg. 221(3) Subdivision (Body Corporate) Regulations 2001
Subdivision Act 1988
BODY CORPORATE CERTIFICATE

Body Corporate Number

Vendor

Purchaser

Reference

This certificate is issued for Lot on Plan No. ____ the postal address of which is--

1. The present fees for the above Lot are \$ /quarter (or other period).
2. The fees are paid up until / / .
3. Unpaid fees now total \$
4. The following special fees or levies have been struck and are payable on the dates indicated below.

(insert details)

5. The body corporate has performed or is about to perform the following repairs, work or act which may incur an additional charge to that set out above.

6. The body corporate presently has the following insurance cover--

Name of Company

No. of Policy

Kind of Policy

Building Amount

Public Liability Amount

Buildings Covered

Renewal Date

or

The body corporate has resolved that the members must arrange their own insurance.
(*Insert date of resolution*)

7. The body corporate has/has not submitted any additional rules to the Registrar of Titles.

8. The body corporate has/has not any contingent liabilities not otherwise shown or budgeted for in Items 1, 4 and 5. (*Attach details*)

9. The body corporate has not granted any lease licence or special privilege affecting the common property except the following--

10. The body corporate has not made any agreement to provide services to members and occupiers for a fee except the following-- 11. The body corporate is not a party to any proceedings or aware of any circumstances which may give rise to proceedings except the following--

12. No proposal has been made for the appointment of an administrator except as follows--

13. The body corporate has/has not resolved to appoint a manager.

Dated

*Seal of body corporate

*Signature of delegate

Print full name

State whether delegate is a member, secretary or manager of the body corporate.

*Delete if inapplicable

Note: In accordance with regulation 311 of the Subdivision (Body Corporate) Regulations 2001--

(a) the seal of the body corporate must be affixed in the presence of 2 members of the body corporate; and

(b) each member of the body corporate who witnesses the affixing of the common seal must record next to the seal that he or she has witnessed the affixing of the seal by-- (i) signing his or her name; and

(ii) printing in full his or her name and address; and

(iii) stating the capacity in which he or she has witnessed the affixing of the seal.

FORM 4

Reg. 303(1) Subdivision (Body Corporate) Regulations 2001
Subdivision Act 1988
APPOINTMENT OF MANAGER

Body Corporate* Strata* Cluster* (No.) Plan No.

The above body corporate hereby appoints

to act as manager.

The fee to be charged by the manager is (insert details or refer to any recognised fee structure).

Dated

Seal of body corporate

Note: In accordance with regulation 311 of the Subdivision (Body Corporate) Regulations 2001--

(a) the seal of the body corporate must be affixed in the presence of 2 members of the body corporate; and

(b) each member of the body corporate who witnesses the affixing of the common seal must record next to the seal that he or she has witnessed the affixing of the seal by--

(i) signing his or her name; and

(ii) printing in full his or her name and address; and

(iii) stating the capacity in which he or she has witnessed the affixing of the seal.

FORM 5

Reg. 315 Subdivision (Body Corporate) Regulations 2001
Subdivision Act 1988

To the Registrar

CHANGE OF ADDRESS

Body Corporate* Strata* Cluster* (No.) Plan No.

Notification under regulation 315 of the Subdivision (Body Corporate) Regulations 2001.

Please note that the body corporate has changed its address for service of notices to:

Dated

*Seal of body corporate

*Signature of delegate

Print full name

State whether delegate is a member, secretary or manager of the body corporate.

*Delete if inapplicable

Note: In accordance with regulation 311 of the Subdivision (Body Corporate) Regulations 2001--

(a) the seal of the body corporate must be affixed in the presence of 2 members of the body corporate; and

(b) each member of the body corporate who witnesses the affixing of the common seal must record next to the seal that he or she has witnessed the affixing of the seal by--

(i) signing his or her name; and

(ii) printing in full his or her name and address; and (iii) stating the capacity in which he or she has witnessed the

affixing of the seal.

FORM 6

Reg. 406(3) Subdivision (Body Corporate) Regulations 2001
Subdivision Act 1988

BODY CORPORATE PLAN NO. PROXY FORM

Pursuant to regulation 406 of the Subdivision (Body Corporate) Regulations 2001
I/We

of (address)

being the owner/s of lot/s authorise

of

as my/our proxy

A *to attend, speak and vote in person on my/our behalf at the (annual or special) general meeting of the body corporate to be held on the and at any adjournment of that meeting--

* to vote for me/us and on my/our behalf at the postal ballot having a closing date of

* I/we direct the proxy to vote in relation to the following resolutions or matters as follows--

(set out specific instructions to your proxy concerning how to vote in relation to particular resolutions or matters)

B *To represent me/us on a committee--

if the proxy is elected to a committee at any general meeting or is co-opted to a committee, the proxy's appointment continues until a new committee is elected.

DATED

(Signed by member/s giving proxy)

Print Name

*delete if inapplicable

FORM 7

Reg. 601(1) Subdivision (Body Corporate) Regulations 2001
Subdivision Act 1988

NOTICE OF APPLICATION TO WIND UP BODY CORPORATE

To the Registrar

*Body Corporate *Strata *Cluster *(No.) Plan No.

This is a notice pursuant to section 31(4) of the **Subdivision Act 1988** that in respect of registered plan No. an application has been made to the Court for an order that the body corporate (No.)* be wound up and the plan cancelled or amended.

Applicant: (name, address)

Dated

Signature or seal of applicant

Print name

*Delete if inapplicable

FORM 8

Reg. 602 Subdivision (Body Corporate) Regulations 2001

Subdivision Act 1988

APPLICATION TO CANCEL OR AMEND PLAN

To the Registrar

*Body Corporate *Strata *Cluster (No.) Plan No.

This is an application pursuant to section 31(6) of the **Subdivision Act 1988** for
*(cancellation) *(amendment) of registered plan No.

A copy of every order made by the Court under section 31 of the **Subdivision Act 1988** in relation to the body corporate or registered plan together with the duplicate certificates of title, duplicate instruments, consents and other documents included in the schedule are produced.

Applicant: (name, address)

Schedule

Dated

Signature or seal of applicant

Print Name

*Delete if inapplicable

FORM 9

Reg. 603 Subdivision (Body Corporate) Regulations 2001

Subdivision Act 1988

APPLICATION FOR ALTERATION OF LOT ENTITLEMENT AND LIABILITY

Section 33(1) and 38(3) Subdivision Act 1988

To the Registrar

This is an application by *Body Corporate *Strata *Cluster (No.) Plan No. pursuant to section 33(1) of the **Subdivision Act 1988** to have the schedule of *(unit) *(lot) *entitlement *liability, endorsed on registered plan No. amended or altered to read as set out in the attached replacement schedule--

This amendment is by--

*(unanimous resolution duly passed //)

*(order of the Court under section 38(3) of the **Subdivision Act 1988**)

*(Attach relevant schedule as amended in full)

Dated

Seal of body corporate

*Delete if inapplicable

Note 1: A copy of the schedule of entitlement and liability must be attached. This schedule will be substituted for the present registered schedule. If amendment is by Court order a certified copy of the order should accompany this application.

Note 2: In accordance with regulation 311 of the Subdivision (Body Corporate) Regulations 2001--

(a) the seal of the body corporate must be affixed in the presence of 2 members of the body corporate; and

(b) each member of the body corporate who witnesses the affixing of the common seal must record next to the seal that he or she has witnessed the affixing of the seal by--

(i) signing his or her name; and (ii) printing in full his or her name and address; and

(iii) stating the capacity in which he or she has witnessed the affixing of the seal.

FORM 10

Reg. 703 Subdivision (Body Corporate) Regulations 2001
Subdivision Act 1988
APPLICATION FOR REMOVAL OF RESTRICTION

To the Registrar

*Body Corporate *Strata *Cluster (No.) Plan No.

This is an application by the owner of the following restricted lot for the deletion of that lot from the notice of restriction.

1. Applicant: (insert name and address)

2. Restricted lot: (insert lot and plan number and Volume and Folio reference)

The consent of the municipal council is supplied with this application.

Dated

Signature or seal of applicant

Print Name

*Delete if inapplicable

FORM 11

Reg. 704(1) Subdivision (Body Corporate) Regulations 2001
Subdivision Act 1988

**APPLICATION BY BODY CORPORATE FOR ALTERATION OR
CANCELLATION OF SCHEME OF DEVELOPMENT**

To the Registrar

This is an application by Body Corporate Cluster Plan No.

*for the cancellation of the scheme of development accompanying the registered plan.

*for the alteration of the scheme of development accompanying the registered cluster plan in the following particulars--

[State the nature of the proposed alteration]

1. A resolution in the following terms directing that this application be made was passed at a meeting of the body corporate held on [*insert date of meeting*] in the manner required for special resolution by the Subdivision (Body Corporate) Regulations 2001--

[Set out terms of resolution].

*endorsed on this application

2. The consent of the municipal council is

*produced with this application

Dated

Seal of body corporate

*Delete if inapplicable

Note: In accordance with regulation 311 of the Subdivision (Body Corporate) Regulations 2001--

(a) the seal of the body corporate must be affixed in the presence of 2 members of the body corporate; and

(b) each member of the body corporate who witnesses the affixing of the common seal must record next to the seal that he or she has witnessed the affixing of the seal by--

(i) signing his or her name; and

(ii) printing in full his or her name and address; and

(iii) stating the capacity in which he or she has witnessed the affixing of the seal.

FORM 12

Reg. 704(2) Subdivision (Body Corporate) Regulations 2001
Subdivision Act 1988

**APPLICATION BY REGISTERED PROPRIETOR FOR ALTERATION OR
CANCELLATION OF SCHEME OF DEVELOPMENT**

To the Registrar

*I [*name and address*] being the registered proprietor of Lot on Registered Cluster Plan No. apply for the cancellation of the scheme of development accompanying the registered cluster plan so far as it affects that lot.

*I [*name and address*] being the registered proprietor of Lot on Registered Cluster Plan No. apply for the alteration of the scheme of development accompanying the registered cluster plan so far as it affects that lot in the following particulars--

[State the nature of the proposed alteration]

1. A resolution in the following terms directing that the consent of the body corporate to the making of this application be duly signified was passed at a meeting of the body corporate held on [*insert date of meeting*] in the manner required for special resolution by the Subdivision (Body Corporate) Regulations 2001--

[Set out terms of resolution].

2. *Endorsed *Produced is the consent of the municipal council.

Dated

Signature of applicant

Print Name

*Delete if inapplicable

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