

2001

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN
CAPITAL TERRITORY**

COMMUNITY TITLE BILL 2001

EXPLANATORY MEMORANDUM

**Circulated by authority of the
Minister for Urban Services
Mr Brendan Smyth MLA**

COMMUNITY TITLE BILL 2001

Outline

The *Community Title Bill 2001* (the Bill) provides for the establishment and administration of community title schemes. The Bill governs the arrangements under which land may be parcelled to allow separate ownership of a primary lease, whilst having a shared interest and responsibility over common land on an adjacent Crown lease.

Part 1 of the Bill deals with preliminary matters, such as the name of the Act, commencement and the effect of the Dictionary and Notes in the Act.

Part 2 of the Bill lists the requirements for a community title scheme. A community title scheme must include one or more lots that are common property and two or more lots that are not common property. A community title scheme requires a community plan for developing scheme land and a management statement for the body corporate.

Part 3 of the Bill provides for establishing a community title scheme. A community title scheme must receive the Minister's approval and endorsement and must be registered by the Registrar-General.

Part 4 of the Bill provides for the vesting of common property in the body corporate and Part 5 deals with development rights.

Part 6 of the Bill provides for varying the scheme and Part 7 deals with enforcing the scheme by injunction and implied terms in the contract for sale.

Part 8 of the Bill establishes the body corporate and sets out the functions, duties and powers of the body corporate. In addition, this Part covers membership of the body corporate, general meetings, management, by laws and records.

Part 9 of the Bill deals specifically with the transfer of land within a community title scheme. The Part has different provisions for the transfer of land in a scheme that is yet to be developed and land in a completed community title scheme.

Part 10 of the Bill provides for easements for lots included in the scheme. There may be easements for support, for utility services, for shelter, for projections and for the maintenance of buildings close to the boundary.

Part 11 of the Bill provides for the amalgamation of community title schemes. The effect of an amalgamation is that the schemes cease their existence as a separate scheme and a new scheme is created with a new body corporate.

Part 12 of the Bill provides for the termination of community title schemes. Only a basic scheme may be terminated; that is, a scheme that does not contain units or a community title scheme. A scheme may be terminated by unanimous agreement or by order of the Supreme Court. A termination must be registered by the Registrar-General to have effect.

Part 13 of the Bill provides for the notification of decisions and administrative review of decisions made by the Minister. In addition, this Part provides for approval of forms and setting of fees and permits the Executive to make regulations. This Part also makes consequential amendments to the *Land Titles Act 1925*, the *Land (Planning and Environment) Act 1991* and the *Unit Titles Act 2001*.

Financial Implications

Nil.

Clause Notes

Clauses 1 and 2 – Name of Act and commencement – are machinery provisions that specify the name of the Act and provide for the commencement of its provisions.

Clauses 3 – Dictionary– provides that the dictionary is part of the Act and is located at the end of the Act.

Clause 4 – Notes – specifies that any note in the Act is explanatory and does not form part of the Act.

Clause 5 – Community title schemes – states the requirements for a community title scheme, which include a plan for developing the scheme and a management statement.

Clause 6 – Form and content of master plan – states the requirements of a master plan.

Clause 7 – Form and content of management statements – states the requirements of a management statement.

Clause 8 – Community title scheme proposal – application for approval – permits a developer to apply to the Minister for approval of a community title scheme and specifies the documents that must accompany the application.

Clause 9 – Power of Minister to require changes to scheme proposal – permits the Minister to change a community title scheme before its approval.

Clause 10 – Community title scheme proposal – approval – states that the Minister may approve or refuse to approve a community title scheme.

Clause 11 – Community title scheme proposal – amendment of management statement – provides that the Minister may, before approving a community title scheme, vary the management statement.

Clause 12 – Notice of approval of community title scheme proposal – provides that following Ministerial approval of a community title scheme the developer must be sent written notice of the approval and a schedule setting out the provisions under which leases of the lots of common property are to be held.

Clause 13 – Security for staged developments and unfinished work – provides that a developer may be required by the Minister to give a bond to the Territory to provide security that the development will be completed.

Clause 14 – Endorsement of community title plan for registration – provides for the endorsement of an approved community title plan by the Minister for registration.

Clause 15 – Expiry of endorsement – provides that the endorsement given under section 14 only lasts 3 months.

Clause 16 – Request to register community title scheme – provides that a developer may lodge a community title scheme with the Registrar-General for registration and specifies the documents that must be accompanied by an application for registration.

Clause 17 – Registration of community title scheme – provides for the registration of community titles schemes.

Clause 18 – Common property – provides that the common property includes all parts of the land that are included in the scheme and are identified as common property on the master plan.

Clause 19 – vesting of common property – provides that the common property is vested in the body corporate of the scheme.

Clause 20 – Development rights – provides that the developer of a community title scheme is entitled to reasonable access to the scheme land to complete the proposed development.

Clause 21 – Progressive development – provides that the land in a community title scheme is to be developed in accordance with the terms of the scheme.

Clause 22 – Application for authorisation to amend scheme – provides that a developer or a body corporate may apply to the Minister for authorisation to vary a community title scheme.

Clause 23 – Ministerial authorisation – provides the criteria under which the Minister may vary a community title scheme.

Clause 24 – Expiry of authorisation – provides that a ministerial authorisation to vary a community title scheme lasts 3 months.

Clause 25 – Request to register amendment – provides that a request to vary a community title scheme may be lodged with the Registrar-General and the documents that must accompany a request.

Clause 26 – Registration of amendment – provides for the registration of a variation and that a variation takes effect on registration.

Clause 27 – Amendment by the Supreme Court – provides that the Supreme Court may vary a scheme on application by an interested person.

Clause 28 – Injunction – provides that the Supreme Court may issue an injunction requiring the community title scheme to be completed in accordance with the terms of the scheme.

Clause 29 – Implied term in contract for sale of lot – provides that until a community title scheme is complete the developer warrants that the scheme will be completed in accordance the registered documents.

Clause 30 – Establishment of body corporate – provides that a body corporate is created on registration of a community title scheme and specifies the name of the body corporate.

Clause 31 – legal status of body corporate – states the legal status of bodies corporate, who have perpetual succession, have a common seal and may sue and be sued.

Clause 32 – Members of body corporate – provides that the members of the body corporate are the lessees of the blocks in the scheme.

Clause 33 – Merger and division of bodies corporate – provides that bodies corporate may merge and divide, provided there is always a managing body corporate.

Clause 34 – Common seal – specifies how the body corporate common seal is to be used and when it must be used.

Clause 35 – Functions and duties of body corporate – states that the body corporate has the functions and duties specified in the registered constituent documents and provides that bodies corporate may conduct a business subject to some limitations.

Clause 36 – Borrowing powers – provides that the body corporate may borrow money if authorised by unanimous resolution.

Clause 37 – Recovery of expenditure resulting from member's etc default – provides that the body corporate may recover money from a member for a member or an occupier's act, omission or breach.

Clause 38 – Public liability insurance by body corporate – provides that the body corporate must take out public liability insurance for an amount stated in the Regulations.

Clause 39 – Building insurance by body corporate – provides that the body corporate must insure all buildings on the common property for an amount provided for in the Regulations.

Clause 40 – General meetings of body corporate – provides for the holding of annual general meetings.

Clause 41 – Voting at general meeting – provides that a member of a body corporate may vote personally or by proxy.

Clause 42 – People under 18 or under other legal disabilities – provides for voting when a member of a body corporate is under 18 years old or is under another legal disability.

Clause 43 – Committee of management – provides for the appointment of a committee of management to transact business for the body corporate.

Clause 44 – Appointment of manager – provides for the appointment of a manager and the delegation of some functions from a body corporate to a manager.

Clause 45 – Administrative fund – provides that bodies corporate must keep a fund for meeting its financial obligations.

Clause 46 – Contributions – provides for the body corporate to levy contributions from members to meet expected expenditure.

Clause 47 – Interest on overdue contributions – provides that interest may accrue on overdue contributions at the rate fixed by a resolution of the body corporate.

Clause 48 – Power to make by-laws – provides the body corporate with the power to make by-laws about the administration, management and control of the common property and the use and enjoyment of community title land.

Clause 49 – Limitations on by-law making power – puts limitations of the types of by-laws that a body corporate can make.

Clause 50 – Registration and commencement of changes to by-laws – provides that by-laws must be lodged for registration within 3 months of being passed by the body corporate. Any resolutions that are not registered within 3 months of being passed lapse.

Clause 51 – Exclusive use by-laws – provides that bodies corporate may make by-laws giving exclusive rights over the common property or part of the common property.

Clause 52 – Legal effect of by-laws – provides that a by-law is binding on the body corporate, owners and occupiers of blocks in the scheme and invitees of owners or occupiers.

Clause 53 – Breach of by-laws – remedy – provides that a body corporate may remedy a breach of by-laws.

Clause 54 – Subrogation of contractual rights – provides that where building work was carried out for the developer and is defective, then the body corporate is subrogated to the contractual rights of the developer for damages for the defects.

Clause 55 – Roll to be kept by body corporate – provides that bodies corporate must keep a roll containing the plan number for the scheme, the name and address of all owners of the scheme, sublessees and agents employed by the body corporate.

Clause 56 – Community title certificate and access to body corporate records – provides that an eligible person may request a community title certificate from a body corporate or may access body corporate records. The certificate contains information about a lot or common property.

Clause 57 – Acting on information in community title certificate – provides that the body corporate is estopped from denying the truth of a matter in a certificate, if it has been honestly relied upon by a person.

Clause 58 – Failure to provide certification or access – offence – provides that it is an offence for a body corporate to fail to comply with a request for a certificate or access to body corporate records.

Clause 59 – Address for service – states that the address for service for a body corporate is the address registered by the Registrar-General.

Clause 60 – Mailbox – provides that body corporates must keep a mailbox.

Clause 61 – Appointment of administrator – Provides that the Supreme Court may appoint an administrator of the body corporate's affairs.

Clause 62 – Application of div 9.1– provides that Division 9.1 only applies to land that is yet to be developed or further developed in accordance with the scheme.

Clause 63 – Acquisition of title to land under scheme – provides that a person who acquires land under a community title scheme that is yet to be completed is bound to develop it in accordance with the scheme.

Clause 64 – Assignment of land under scheme – provides that an owner who is to dispose of land that is yet to be developed in accordance with the scheme must give written notice to the Minister if they propose to sell or dispose of land. In addition, the person acquiring the land must undertake to develop the land in accordance with the registered scheme and must pay any required security.

Clause 65 – Registration of dealing – provides for the registration of dealings in land that is yet to be developed in accordance with the registered scheme.

Clause 66 – Effect of registration – states the effect of the registration of dealings for the disposal or sale of land under an incomplete scheme.

Clause 67 – Statement to be given by seller to buyer – provides that a statement must be given by a seller of a lot to a prospective buyer. The statement must set out contacts for the body corporate, state that the lot is included in a community title scheme and state the amount of annual contributions.

Clause 68 – Contents of contract – the statement in clause 67 forms part of the contract for sale.

Clause 69 – Application of pt 10 – states that the Part provides for easements for lots included in community title schemes and limits the application of the Part.

Clause 70 – Easements for support – provides that easements for support may exist in a community title scheme and states the entitlements of owners if such an easement exists.

Clause 71 – Easements for utility services – provides for easements for supplying and maintaining utility services.

Clause 72 – Easements for shelter – provides for easements for shelter and states the entitlements of owners where such an easement exists.

Clause 73 – Easements for projections – provides for easements for projections and states the entitlements of owners where such an easement exists.

Clause 74 – Easement for maintenance of building close to boundary – provides an easement for maintaining buildings that are close to the boundary of another lot.

Clause 75 – Exercise of rights under easement – limits the exercise of rights under an easement.

Clause 76 – Ancillary rights and obligations – provides that ancillary rights and obligations exist to make the easements under Part 10 effective.

Clause 77 – Meaning of *subsidiary scheme* – defines “subsidiary scheme” for the purposes of part 11.

Clause 78 – General principles of amalgamation – provides that two or more community title schemes may be amalgamated, and the effect of amalgamation.

Clause 79 – Community title schemes that may be amalgamated – defines the type of community title schemes that may be amalgamated.

Clause 80 – Purpose of div 11.2 – states the purpose of Division 11.2, which is to describe the requirements and process for amalgamating community title schemes.

Clause 81 – Approval for amalgamations – provides that two or more community title schemes may be amalgamated by unanimous agreement of the bodies corporate or by order of the Supreme Court.

Clause 82 – Request to record amalgamation of community title schemes – provides for applying to the Registrar-General for registration of an amalgamation.

Clause 83 – Recording amalgamation of community title schemes – provides that an amalgamation takes effect on registration.

Clause 84 – Dissolution of bodies corporate on amalgamation – provides that on registration of an amalgamation the bodies corporate for the schemes are dissolved and a new body corporate is created.

Clause 85 – Effects of amalgamation of community title schemes – states the effect of amalgamation of community title schemes.

Clause 86 – Purpose of pt 12 – provides for the termination of community title schemes.

Clause 87 – Definitions for pt 12 – provides definitions of “basic scheme” and “termination issues” for the purposes of the Part.

Clause 88 – Application of div 12.2 – provides that Division 12.2 applies to basic schemes as defined in clause 87.

Clause 89 – Termination of schemes – provides that community title schemes may be terminated by unanimous resolution and requires that, prior to termination, an agreement about termination issues be entered into.

Clause 90 – Request to record termination of basic scheme – provides that a request to register a termination may be made to the Registrar-General.

Clause 91 – Recording termination of scheme – provides that the termination of a community title scheme takes effect on registration.

Clause 92 – Dissolution of body corporate for terminated scheme – provides that on termination of a community title scheme the body corporate is dissolved.

Clause 93 – Review of decisions – lists the decisions of the Minister that can be appealed to the Administrative Appeals Tribunal.

Clause 94 – Notification of decisions – provides for the Minister to notify persons of a decision mentioned in the section regarding review of decisions.

Clause 95 – Notice of intention not to proceed to enforce mortgage – provides that a mortgagee in possession of a lot included in a community title scheme must inform the body corporate of a decision not to enforce the mortgage.

Clause 96 – Determination of fees – provides that the Minister may determine fees for the purposes of the Act.

Clause 97 – Approved forms – provides that the Minister may approve forms for this Act and that an approved form is a notifiable instrument.

Clause 98 – Regulation-making power – provides that the Executive may make Regulations for the purposes of the Act.

Clause 99 – Land Titles Act 1925, section 139(1) (other than the examples and note) – amends the *Land Titles Act 1925* by permitting the Minister to determine fees for the *Community Title Act 2001*.

Clause 100 – Land Titles Act 1925, section 140(1) – amends the *Land Titles Act 1925* by permitting the Registrar-General to approve forms for the *Community Title Act 2001*.

Clause 101 – Land (Planning and Environment) Act 1991, section 172B – amends the *Land (Planning and Environment) Act 1991* by renumbering section 172B as 172C.

Clause 102 – Land (Planning and Environment) Act 1991, new section 172B
– amends the *Land (Planning and Environment) Act 1991* by providing that the Executive may only grant a further lease for a lot in a community title scheme if leases are also granted for all other lots in the scheme for the same length of time.

Clause 103 – Unit Titles Act 2001, new section 48(3)(d) – provides that an owners corporation for a units plan may have an interest in the common property of a community title scheme that includes the units plan.

Dictionary – defines words for the purposes of the Act.