

Queensland



**SOUTH BANK CORPORATION
AMENDMENT ACT 1991**

1	Short title	4
2	Commencement	4
3	Amended Act	4
4	Amendment of s.4 (Interpretation)	4
5	Insertion of new ss. 4A and 4B	6
	4A. Interpretation—Modified Building Units and Group Titles Act	7
	4B. Interpretation—words etc. used in Modified Building Units and Group Titles Act	7
6	Amendment of s. 12 (Variation of Corporation Area)	7
7	Amendment of s. 13 (Vesting of public lands other than roads)	7
8	Insertion of new s. 13A	8
	13A. Riverside Parkland	8
9	Amendment of s. 14 (Notification of vesting of land)	9
10	Replacement of s. 15 (Exemption from fees and charges)	9
	15. Exemption from fees and charges	9
11	Amendment of s. 16 (Objects)	9
12	Amendment of s. 17 (Functions)	10
13	Amendment of s. 22 (Implementation of Approved Development Plan) ...	10
14	Insertion of new ss. 22A and 22B	12
	22A. Variation of development approval	12
	22B. Completion of development	12
15	Amendment of s. 23 (Powers in relation to land)	13
16	Amendment of s. 24 (Closure of Roads)	13
17	Replacement of s. 25 (Subdivision and amalgamation of land)	14
	25. Subdivision and amalgamation of land and opening of roads	14

18	Insertion of new ss. 25A to 25G	16
	25A. Stratum lots and dealings with stratum lots	16
	25B. Support and shelter for certain stratum lots	19
	25C. Services for certain stratum lots	20
	25D. Ancillary rights for implied easements	21
	25E. Management statement	21
	25F. Subdivision of land by a leasehold building units plan	24
	25G. reation of easements	24
19	Amendment of s.34 (Effect of Act on Town Plan)	26
20	Insertion of new s.34A	26
	34A. Interim use	27
21	Amendment of s.35 (Application of Town Plan to Corporation Area)	27
22	Amendment of s.36 (Complementary Development Area)	27
23	Amendment of s.37 (Payment in lieu of rates)	28
24	Insertion of new s.38A	28
	38A. Payment of surplus funds	28
25	Insertion of new ss.39A to 39H	28
	39A. Fire safety requirements	28
	39B. Lessee taken to be owner of land or lot	29
	39C. Valuation of stratum lots	29
	39D. Acts not to apply to leases from Corporation	30
	39E. Dividing Fences Act not to apply	31
	39F. Application of Land Sales Act to Public Authorities	31
	39G. Building work by or on behalf of the Crown	31
	39H. Inconsistency with other Acts	31
26	Replacement of s.40 (Regulations)	31
	40. Regulations	32
27	Omission of s.44 (Winding up Corporation's affairs)	33
28	Insertion of Schedules	33
29	Amendment of other Acts	33

SCHEDULE 1

NEW SCHEDULES TO BE INSERTED IN THE SOUTH BANK
CORPORATION ACT 34

SCHEDULE 6

MANAGEMENT STATEMENT 34

SCHEDULE 7

MODIFIED BUILDING UNITS AND GROUP TITLES ACT 37

SCHEDULE 8

COUNCIL LAND VESTED IN CORPORATION 226

SCHEDULE 9

PROVISIONS NOT TO APPLY AFTER DEVELOPMENT COMPLETION
DATE 226

SCHEDULE 2

AMENDMENT OF ACTS 227

**SOUTH BANK CORPORATION AMENDMENT ACT
1991**

as amended by all amendments that commenced before 1 July 1991

An Act to Consolidate and Amend The Law relating to South Bank Corporation Amendment Act 1991

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows.

Short title

1. This Act may be cited as the *South Bank Corporation Amendment Act 1991*.

Commencement

2. This Act commences on a day to be fixed by proclamation.

Amended Act

3. The *South Bank Corporation Act 1989* is amended as set out in this Act.

Amendment of s.4 (Interpretation)

4.(1) Section 4 (definition "land")—
omit.

(2) Section 4—
insert—

- ‘ **“appropriate authority”** means—
 - (a) at any time before the development completion date—
 - (i) in relation to sections 25(13), 25(14), 25A(1) and 25F(1)—the Corporation after consultation with the Council; and
 - (ii) in any other case—the Corporation; and
 - (b) at any other time—the Council;
- ‘ **“boundary adjustment plan”** means a plan that, as provided by section 25A(4), shows minor adjustments to the boundaries of stratum lots;
- ‘ **“building management committee”** means the building management committee for a management statement referred to in clause 2(2) of Schedule 6;
- ‘ **“development completion date”** means the date of completion of development specified by proclamation under section 22B;
- ‘ **“land”** includes—
 - (a) any estate in, on, over or under land; and
 - (b) the airspace above the surface of land and any estate in the airspace; and
 - (c) the subsoil of land and any estate in the subsoil; and
 - (d) a building; and
 - (e) a stratum lot;
- ‘ **“management statement”** means a statement of by-laws and other particulars that, as provided by section 25E, regulates a building and its site or is intended to regulate a proposed building and its site;
- ‘ **“Modified Building Units and Group Titles Act”** has the meaning given by section 4A;
- ‘ **“Parkland Precinct”** means the land referred to as “Precinct 3—Parkland Precinct” in the Approved Development Plan;
- ‘ **“Public Authority”** means—
 - (a) the Corporation; or
 - (b) the Council; or

- (c) a Public Agency;
- ‘ **“Real Property Acts”** means the *Real Property Act 1861* and the *Real Property Act 1877*;
- ‘ **“restricted property”** means part of a building or its site or part of a proposed building or its site, the use of which is restricted by a management statement;
- ‘ **“South Bank public land”** means land that is—
- (a) under the Real Property Acts; and
 - (b) within the Corporation Area; and
 - (c) held in fee simple by a Public Authority;
- ‘ **“stratum lot”** means a lot in a stratum plan that is limited wholly or partly in height, depth or both;
- ‘ **“stratum parcel”** means a parcel created by a subdivision permitted by section 8(1B) of Schedule 7;
- ‘ **“stratum plan”** means a plan of subdivision that, under section 25A, subdivides land into stratum lots;
- ‘ **“stratum plan of amalgamation”** means a plan, under section 25A, for the amalgamation of 2 or more, or all, stratum lots in a stratum plan;
- ‘ **“stratum plan of subdivision”** means a plan, under section 25A, for the subdivision of a stratum lot into 2 or more stratum lots;’.
- (3) Section 4 (definition **“development”**)—
- omit* ‘(d)the subdivision or amalgamation of any land;’,
- insert*—
- ‘(d) the subdivision or amalgamation of any land;
- but does not include anything authorised under section 34A;’.

Insertion of new ss. 4A and 4B

5. After section 4—

insert—

‘Interpretation—Modified Building Units and Group Titles Act

‘4A. For the purposes of this Act, the Modified Building Units and Group Titles Act consists of the provisions set out in Schedule 7.

‘Interpretation—words etc. used in Modified Building Units and Group Titles Act

‘4B. Unless the contrary intention appears, words and expressions used in the Modified Building Units and Group Titles Act have the same meaning in this Act.’.

Amendment of s. 12 (Variation of Corporation Area)

6. Section 12(4)—

omit, insert—

‘(4) If the Corporation Area is varied by the exclusion of certain land—

- (a) the provisions of this Act relating to the Corporation Area cease to apply to the land; and
- (b) the land becomes part of the Complementary Development Area and is subject to the Town Plan under section 35.’.

Amendment of s. 13 (Vesting of public lands other than roads)

7.(1) Section 13(1) to (4)—

omit, insert—

‘Vesting of public lands other than roads

‘13.(1) The Governor in Council may, by order in council—

- (a) if land within the Corporation Area is within the title of a Public Agency or is Crown land—vest title in the Corporation; and
- (b) if land within the Corporation Area is within the control of a Public Agency—vest title or control in the Corporation.

‘(2) If title or control is vested in the Corporation under this section, the Governor in Council may determine the amount of compensation, if any, that the Corporation must pay to the Public Agency.

‘(3) In this section—

“**land**” does not include the land owned in fee simple by Queensland Railways that, in the opinion of the Governor in Council, is required for the operation of the railways, but includes land above and below that land.’.

(2) Section 13(5)—

renumber as section 13(4).

Insertion of new s. 13A

8. After section 13—

insert—

‘Riverside Parkland

‘**13A.(1)** The land referred to in Schedule 8 is divested from the Council and vested in the Corporation for an estate in fee simple.

‘(2) Any easement, right, liberty or privilege in relation to the land, (other than an easement, right, liberty or privilege under the *Metropolitan Water Supply and Sewerage Acts 1909* or the *Local Government Act 1936*) is extinguished and compensation is not payable for the extinguishment.

‘(3) The Governor in Council may, by order in council, vest for an estate in fee simple in the Corporation and the Council, as tenants in common in the shares of 60 per cent and 40 per cent respectively, the part of the Parkland Precinct held by the Corporation.

‘(4) The Corporation is to manage the Parkland Precinct.

‘(5) The Corporation and the Council must not transfer an estate in the land contained in the Parkland Precinct if the estate is required to be registered under the Real Property Acts, unless the written consent of the Minister has been obtained.’.

Amendment of s. 14 (Notification of vesting of land)

9.(1) Section 14(1)(a)—

omit, insert—

- ‘(a) on the written request of the Corporation, register the Corporation or the Corporation and the Council with respect to any estate in land that vests in the Corporation or the Corporation and the Council under this Act;’.

(2) Section 14(1)(b)—

omit ‘, in the prescribed form.’.

Replacement of s. 15 (Exemption from fees and charges)

10. Section 15—

omit, insert—

‘Exemption from fees and charges

‘15. No fee or charge, nor any duty under the *Stamp Act 1894*, is payable by the Corporation or the Council in relation to—

- (a) the transfer of any land in the Corporation Area; or
- (b) the transfer of control of any land in the Corporation Area;

to or from the Corporation or the Council.’.

Amendment of s. 16 (Objects)

11. Section 16—

omit ‘of land’,

insert ‘, disposal and management of land and other property’.

Amendment of s. 17 (Functions)**12.** Section 17(1)(c)—

omit, insert—

- ‘(c) to efficiently manage, and dispose by lease, of land vested in or under the control of the Corporation under the Approved Development Plan so as to secure the maximum prudent financial benefit for the Corporation;
- (d) to efficiently manage and dispose of other property vested in or under the control of the Corporation so as to secure the maximum prudent financial benefit for the Corporation;
- (e) to manage on an ongoing basis all land and other property vested in or under the control of the Corporation so as to secure the maximum prudent financial benefit for the Corporation;
- (f) to promote, organise and conduct tourist, educational, recreational, entertainment, cultural and commercial activities in the Corporation Area;
- (g) to construct, establish, maintain, develop and operate tourist, educational, recreational, entertainment, cultural and commercial facilities within the Corporation Area;
- (h) to construct, establish, maintain, develop and operate transport facilities between places in the Corporation Area;
- (i) to carry out works for the purpose of landscaping the Corporation Area.’.

Amendment of s. 22 (Implementation of Approved Development Plan)**13.(1)** Section 22(1)—

omit ‘within a period of five years of the date of commencement of this Act or such other period as the Governor in Council by Order in Council may determine’,

insert ‘as soon as is reasonably practicable having regard to the objects and functions of the Corporation’.

(2) After section 22(1)—

insert—

‘(1A) The Corporation is to submit a development program for the approval of the Minister.

‘(1B) The program is—

- (a) to be in accordance with the Approved Development Plan; and
- (b) to set down the proposed stages and the time for each stage.’.

(3) Section 22(2)(b)—

omit, insert—

- ‘(b)** the land the subject of the development has become subject to the Town Plan and the developmental conditions, if any, under section 35; and’.

(4) After section 22(2)—

insert—

‘(3) Subsection (2) does not apply, and never did apply, to development within the Parkland Precinct.

‘(4) When the Corporation is satisfied that development within the Parkland Precinct is substantially complete, the Precinct must, as soon as practicable, be included in an appropriate zone under the Town Plan.

‘(5) The inclusion of the Precinct in a zone is not to be subject to any developmental conditions.

‘(6) Before the Parkland Precinct is included in an appropriate zone under the Town Plan, the Corporation may, in writing, approve development within the Parkland Precinct that is in accordance with the Approved Development Plan.

‘(7) Where the Corporation approves development under subsection (6), the development is taken to be—

- (a) development in accordance with the Approved Development Plan; and

- (b) a lawful use of the land for the purposes of the *Local Government (Planning and Environment) Act 1990* and the Town Plan from the day that the Parkland Precinct is included in an appropriate zone under the Town Plan.’.

Insertion of new ss. 22A and 22B

14. After section 22—

insert—

‘Variation of development approval

‘22A.(1) An application for variation of a development approval before completion of development is to be made to the Corporation.

‘(2) The Corporation must—

- (a) if it considers that the variation is in accordance with the Approved Development Plan—approve the application in writing;
or
- (b) in any other case—refuse the application in writing.

‘(3) The provisions of this Act that apply to an application for approval of development apply to an application for approval to vary the development.

‘Completion of development

‘22B.(1) When the Governor in Council is satisfied that development within the Corporation Area is substantially complete, the Governor in Council may, by order in council, issue instructions to the Corporation that the Governor in Council considers will assist in completion of development.

‘(2) The Corporation must promptly comply with the instructions.

‘(3) When the Governor in Council is satisfied that development is substantially complete and that the Corporation has complied with any instructions given to it, the Governor in Council may, by proclamation, specify the date of completion of development.

‘(4) After the development completion date—

- (a) the Approved Development Plan does not apply to the Corporation Area; and
- (b) the Town Plan applies to the Corporation Area; and
- (c) the provisions of this Act referred to in Schedule 9 no longer have any effect and are taken to be repealed.’

Amendment of s. 23 (Powers in relation to land)

15.(1) Section 23(2) to (4)—

omit.

(2) After section 23(5)—

insert—

‘**(6)** Subsection (5) does not apply to leases of land in the Parkland Precinct.

‘**(7)** The Corporation must not transfer an estate in fee simple in its land to any person other than the Council under section 13A.

‘**(8)** The Minister’s approval under subsection (1) is not required for the transfer of an estate that does not require registration under the Real Property Acts.

‘**(9)** Before entering into a lease of land over a road, a Public Authority is to consult with the Minister administering the *Land Act 1962*.’

Amendment of s. 24 (Closure of Roads)

16. Section 24(3)—

omit ‘become’,

insert ‘on application made to the Minister administering the *Land Act 1962* be issued with a Deed of Grant and becomes’.

Replacement of s. 25 (Subdivision and amalgamation of land)

17. Section 25—

omit, insert—

‘Subdivision and amalgamation of land and opening of roads

‘25.(1) In this section—

‘**“access”** means practical means of entry and exit for persons and, where appropriate, vehicles, from a road that abuts the area or lot concerned or by means of an easement;

‘**“land”** means land—

- (a) under the Real Property Acts; and
- (b) within the Corporation Area;

‘**“lot”** means a single parcel of land, the boundaries of which are defined in a plan of survey registered under this Act or the Real Property Acts;

‘**“road”** means (for the purposes of subsection (19) and the definition **“access”** only)—

- (a) a street or road dedicated to public use; and
- (b) a bridge or ferry and the approaches to them; and
- (c) an access way that permits the movement of persons and, where appropriate, vehicles.

‘(2) In relation to South Bank public land only, a reference in this section to the subdivision or amalgamation of land includes a reference to a subdivision or amalgamation of land and the opening of roads permitted under sections 25A and 25F.

‘(3) Land may be subdivided and amalgamated and roads may be opened under this Act.

‘(4) Despite the *Local Government (Planning and Environment) Act 1990* and the *City of Brisbane Act 1924*, the owner of land may lodge with the Registrar of Titles a plan for the subdivision or amalgamation of land.

‘(5) The plan must—

- (a) show, distinctly delineated, all roads dedicated to public use; and
- (b) show each of the parcels into which the land is divided by the plan, with each parcel—
 - (i) distinctly delineated; and
 - (ii) marked with a separate number or symbol; and
- (c) be certified as accurate by a licensed surveyor within the meaning of the *Surveyors Act 1977*; and
- (d) for the purposes of the *Real Property Act 1861*, be certified by the owner as being correct for registration as an instrument.

‘(6) If the Registrar of Titles is satisfied that the plan is correct, the Registrar of Titles is to record the plan in the register kept under the *Real Property Act 1861*.

‘(7) After the plan is recorded, the land must not be dealt with under that Act otherwise than in accordance with the plan.

‘(8) Subject to subsection (9), the Registrar of Titles is to record in the register particulars of any dedication to public use of land under this section.

‘(9) Any dedication of land must be of all of the estate or interest of the owner in the land.

‘(10) Land dedicated to public use vests in the Crown.

‘(11) If land under the *Real Property Act 1861* is the subject of a plan under this section, the owner of the land must, immediately after the plan has been registered, apply to take out and receive, in the owner’s own name, a certificate or certificates of title in relation to the land.

‘(12) On receiving an application under subsection (11), the Registrar of Titles may issue to the applicant a certificate or certificates of title, each containing such number of parcels as the Registrar of Titles considers appropriate for the orderly registration of dealings with the parcels.

‘(13) Land may be subdivided only if—

- (a) each proposed lot in the proposed subdivision has access; and
- (b) the appropriate authority has approved the subdivision.

‘(14) Land may be amalgamated and a road may be opened, only with the approval of the appropriate authority.

‘(15) When giving its approval to a dealing under this section, the appropriate authority must endorse the approval on the plan.

‘(16) Despite the *Local Government (Planning and Environment) Act 1990*, a lease or sublease of land in the Parkland Precinct, which would otherwise be a subdivision referred to in section 1.4 of the *Local Government (Planning and Environment) Act 1990*, is not a subdivision within the meaning of that Act.

‘(17) A lease or sublease of land within the Parkland Precinct, which would otherwise be a subdivision referred to in section 1.4 of the *Local Government (Planning and Environment) Act 1990*, may be granted only if the appropriate authority is satisfied that the area the subject of the lease has access.

‘(18) Subject to subsection (19) and except where a contrary intention appears in this Act, the *Local Government (Planning and Environment) Act 1990* (as modified by this Act) and the Town Plan do not apply before the development completion date to the subdivision and amalgamation of land and the opening of roads within the Corporation Area.

‘(19) For the purposes of subsections (13) and (17), the Council, in considering whether there is access, must apply the meanings given to “access”, “lot” and “road” in subsection (1) instead of the definitions “access”, “allotment” and “road” in section 1.4 of the *Local Government (Planning and Environment) Act 1990*.’.

Insertion of new ss. 25A to 25G

18. After section 25—

insert—

‘Stratum lots and dealings with stratum lots

‘25A.(1) Despite the Real Property Acts or any other Act—

- (a) South Bank public land may be subdivided by a stratum plan; and
- (b) South Bank public land may be opened as a road by a stratum

plan; and

- (c) a stratum lot may be subdivided by a stratum plan of subdivision; and
- (d) minor adjustments may be made to the boundaries of stratum lots by a boundary adjustment plan; and
- (e) stratum lots may be amalgamated by a stratum plan of amalgamation;

under this section only if the appropriate authority approves.

‘(2) The Real Property Acts apply to stratum lots in the same way as they apply to other land except to the extent that they are inconsistent with this Act or incapable of applying.

‘(3) An adjustment that, in the opinion of the appropriate authority, is a minor adjustment may be made to the boundaries of stratum lots by the registration of a boundary adjustment plan.

‘(4) A boundary adjustment plan registered under this section—

- (a) operates, without any further assurance, to vest the land in accordance with the adjusted boundaries; and
- (b) does not of itself give rise to any liability for stamp duty.

‘(5) A registered mortgage, lease or other registered estate in a stratum lot adjusted by the registration of a boundary adjustment plan is not affected by the registration of that plan and is taken to relate to the adjusted stratum lot.

‘(6) A stratum lot may be subdivided into 2 or more stratum lots by the registration of a stratum plan of subdivision.

‘(7) The Registrar of Titles may register a stratum plan of subdivision only if the stratum plan of subdivision is accompanied by a schedule showing, as a whole number for each proposed stratum lot, the proposed unimproved value proportion for each stratum lot for the purposes of section 39C and clause 2(1)(p) of Schedule 6.

‘(8) When registering a stratum plan of subdivision, the Registrar of Titles may make any recordings on and amendments to the management statement to which the stratum plan relates, that the Registrar of Titles considers appropriate to give effect to the stratum plan.

‘(9) Subject to subsection (12), 2 or more, or all, stratum lots in a stratum plan may be amalgamated by the registration of a stratum plan of amalgamation.

‘(10) When registering a stratum plan of amalgamation, the Registrar of Titles may make any recordings on and amendments to the management statement to which the stratum plan relates that the Registrar of Titles considers appropriate to give effect to the stratum plan.

‘(11) For the purposes of section 39C and clause 2(1)(p) of Schedule 6, the relevant unimproved value proportion for the stratum lot created by the amalgamation of 2 or more stratum lots is the sum of the unimproved value proportions of the stratum lots.

‘(12) A stratum lot that has been subdivided by a leasehold building units plan may be amalgamated with another stratum lot only if the leasehold building units plan has been terminated under Schedule 7.

‘(13) On registration of a stratum plan of amalgamation that amalgamates all of the stratum lots in a stratum plan—

- (a) the stratum plan; and
- (b) the management statement that relates to the stratum plan;

are extinguished.

‘(14) A request to terminate a management statement must comply with the requirements prescribed by the regulations.

‘(15) If a stratum plan of amalgamation is accompanied by a request to terminate a management statement, the Registrar of Titles—

- (a) must record the termination of the management statement on the stratum plan to which it relates; and
- (b) may make such other recordings in the register as the Registrar of Titles considers appropriate to give effect to the termination of the management statement.

‘(16) Stratum plans, boundary adjustment plans, stratum plans of subdivision and stratum plans of amalgamation must comply with the requirements prescribed by the regulations.

‘(17) Despite the Real Property Acts, the *Surveyors Act 1977* or any other Act, if a stratum plan, a boundary adjustment plan, a stratum plan of subdivision or a stratum plan of amalgamation has been endorsed by the appropriate authority, the Registrar of Titles may—

- (a) register the relevant plan under the Real Property Acts; and
- (b) issue certificates of title for stratum lots created by the registration of the relevant plan; and
- (c) make such other recordings in the register as the Registrar of Titles considers appropriate to give effect to the registration of the relevant plan.

‘(18) On registration of a stratum plan, a boundary adjustment plan, a stratum plan of subdivision or a stratum plan of amalgamation, the plan is, for the purposes of the Real Property Acts, taken to form part of the register.

‘Support and shelter for certain stratum lots

‘25B.(1) Without affecting the implied easements appurtenant to and affecting the lots in a leasehold building units plan created under section 15 of Schedule 7, there is implied in a stratum plan—

- (a) as appurtenant to the stratum lots comprised in the stratum plan on which a building is situated, an easement for their subjacent and lateral support by other parts of the building that are capable of affording support; and
- (b) as affecting the stratum lots, an easement for the subjacent and lateral support of other parts of the building that are capable of enjoying support; and
- (c) as appurtenant to the stratum lots, an easement for their shelter by other parts of the building that are capable of affording shelter; and
- (d) as affecting the stratum lots, an easement for the shelter of other parts of the building that are capable of being sheltered by those stratum lots.

‘(2) An easement for support and shelter created by subsection (1)—

- (a) entitles the owner of the dominant tenement to enter on the servient tenement to replace, renew or restore any support or shelter; and
- (b) subsists until the stratum plan is cancelled or the easement is otherwise surrendered.

‘Services for certain stratum lots

‘25C.(1) In this section—

“drainage” includes the product of rain, storm, soakage, a spring or seepage;

“service” means—

- (a) a service in relation to water, sewage, drainage, gas, electricity, oil, garbage or conditioned air; or
- (b) a service in relation to television, telephone or another means of telecommunication; or
- (c) any other prescribed service.

‘(2) Without affecting the easements appurtenant to and affecting lots in a leasehold building units plan created under sections 17 and 17A of Schedule 7, unless an easement is created for a particular service or services, there is implied in a stratum plan—

- (a) as appurtenant to the stratum lots comprised in the stratum plan on which a building is situated, an easement for the passage or supply of the service or services through or by means of pipes, poles, wires, cables or ducts to be laid down or erected that are for the time being existing in or over the building to the extent to which the service or services are capable of being used in the enjoyment of the stratum lots; and
- (b) as affecting the stratum lots, an easement for the passage or supply of the service or services through or by means of pipes, poles, wires, cables or ducts to be laid down or erected that are for the time being existing in or over the building to the extent to which the services are capable of being used in the enjoyment of the stratum lots.

‘(3) Easements conferred by this section must not be exercised unreasonably by an owner of a stratum lot in such a way as to prevent the owner of another stratum lot from reasonably enjoying the use and occupation of the other owner’s stratum lot.

‘Ancillary rights for implied easements

‘25D. All ancillary rights and obligations reasonably necessary to make an easement implied by sections 25B or 25C effective are conferred by this section.

‘Management statement

‘25E.(1) Subject to subsection (2), the Registrar of Titles may register a stratum plan only if the plan is accompanied by a management statement that—

- (a) if the stratum plan subdivides land including parts of a building—regulates the building and its site; and
- (b) if the stratum plan subdivides land on which it is proposed to construct a building—is intended to regulate the proposed building and its site; and
- (c) complies with subsection (3).

‘(2) A stratum plan of subdivision need not be accompanied by a management statement if it subdivides a stratum lot on a stratum plan that is already the subject of a management statement.

‘(3) A management statement must comply with Schedule 6.

‘(4) The appropriate authority may, in relation to a particular management statement, waive compliance with an item in clause 2(1) of Schedule 6 if it considers compliance with the item is unnecessary, unreasonable or impracticable for the regulation of the building and its site the subject of the management statement.

‘(5) If the appropriate authority waives compliance with an item in clause 2(1) of Schedule 6, it must endorse that fact on the management statement.

‘(6) If a management statement bears the approval of the appropriate authority, then, immediately after the registration of the stratum plan to

which it relates, the Registrar of Titles is to record the management statement on the stratum plan.

‘(7) If a stratum lot in the stratum plan referred to in subsection (6) is subsequently subdivided by a leasehold building units plan, the Registrar of Titles is to record the management statement, and any amendments to the management statement, on the leasehold building units plan.

‘(8) The management statement is binding on—

- (a) the body corporate of the leasehold building units plan for the part of the building concerned; and
- (b) any lessee, sublessee, occupier or mortgagee of a lot in the leasehold building units plan for the part of the building concerned; and
- (c) any lessee, sublessee, occupier or mortgagee of any part of the building or its site that does not form part of a stratum parcel.

‘(9) Subsection (8) has effect as if—

- (a) the management statement included mutual covenants to observe its provisions entered into by each person bound by it; and
- (b) each person bound had executed the management statement under seal.

‘(10) Subject to subsection (11), a management statement may be amended by an ordinary resolution passed by the building management committee for the management statement.

‘(11) The by-laws and other particulars in a management statement relating to a matter in clause 2(1)(p) of Schedule 6 may only be amended—

- (a) in the way provided in section 25A(8) or (10); or
- (b) by unanimous resolution passed by the building management committee for the management statement.

‘(12) A body corporate of a leasehold building units plan may support a resolution to amend a management statement only if—

- (a) the amendment is an amendment referred to in subsection (11)—the body corporate has passed a unanimous resolution in general meeting to support the amendment; and
- (b) in any other case—the body corporate has passed an ordinary resolution in general meeting to support the amendment.

‘(13) An amendment of a management statement must comply with Schedule 6.

‘(14) If an amendment of a management statement bears the approval of the appropriate authority, the Registrar of Titles is to record the amendment—

- (a) on the stratum plan to which it relates; and
- (b) if a stratum lot in the stratum plan has been subdivided by a leasehold building units plan—on the leasehold building units plan.

‘(15) An amendment of a management statement has no effect unless the amendment is lodged with the Registrar of Titles within 2 months after the passing of the resolution making the amendment.

‘(16) A by-law in a management statement may restrict use of any part of a building or its site to—

- (a) the lessee or sublessee of a lot in a leasehold building units plan; or
- (b) a body corporate in a leasehold building units plan; or
- (c) the lessee or sublessee of a lease of land in any part of the building or its site that does not form part of the stratum parcel.

‘(17) A management statement terminates and ceases to bind the persons referred to in subsection (8) when the Registrar of Titles records its termination under section 25A(15).

‘(18) The Registrar of Titles must provide to the Valuer-General and the Council—

- (a) a copy of a management statement within 28 days after the registration of a stratum plan which is accompanied by the management statement; and

- (b) a copy of an amendment of a management statement within 28 days after the recording of the amendment.

‘(19) If there is an unresolved dispute between persons bound by a management statement concerning the regulation of a building and its site, the dispute must be submitted for final resolution to—

- (a) a single arbitrator agreed on between the persons in dispute; or
- (b) if the parties do not agree within 14 days of receipt of a written notice given by one person to the other person or persons requiring the appointment of an arbitrator—an arbitrator appointed by the appropriate authority.

‘(20) Every reference under subsection (19) is an arbitration under the *Commercial Arbitration Act 1990*.

‘(21) If a management statement or an amendment of a management statement bears the approval of the appropriate authority, the approval is evidence to the Registrar of Titles that the management statement or the amendment of the management statement complies with this section.

‘Subdivision of land by a leasehold building units plan

‘25F.(1) Despite the Real Property Acts or any other Act, South Bank public land may be subdivided by a leasehold building units plan only if the appropriate authority approves.

(2) The Modified Building Units and Group Titles Act applies to land that is subdivided under this section.

‘Creation of easements

‘25G.(1) In this section—

“**instrument**” means an instrument in the form approved by the regulations.

‘(2) Despite the Real Property Acts or any other Act, the Registrar of Titles may, for the purposes of this Act, register a plan relating to South Bank public land that—

- (a) clearly indicates the nature and location of the easements intended to be created on registration of the plan; and

(b) is accompanied by an instrument executed by the registered proprietor of the land to be burdened by the easements.

‘(3) The instrument must—

- (a) specify the nature of the easements and any terms and conditions attaching to them; and
- (b) except for easements mentioned in subsection (5)—specify the land to be benefited, and the land to be burdened, by the easements.

‘(4) A lessee of land from a Public Authority may not create easements by way of a plan and instrument under subsection (2).

‘(5) Easements may be created under subsection (2) in favour of—

- (a) the Crown or a Public Authority to enable the supply of services to the Corporation Area; and
- (b) a Public Authority to enable the public to use and enjoy land in the Corporation Area;

despite the easements not being annexed to or used and enjoyed with any other land.

‘(6) Easements under this section may be limited wholly or partly in height, depth or both.

‘(7) On registration under this section of a plan and instrument, the proposed easements shown on the plan are created, and without any further assurance and by virtue of the registration, are vested in the person entitled to the benefit of the easement.

‘(8) For the purposes of this section, the site of easements—

- (a) intended to be created in relation to existing tunnels, pipes, conduits, wires or other similar objects that are underground, or that are within or beneath an existing building, may be indicated on a plan by defining the position of the easements; and
- (b) may be indicated on the plan as being the whole or part of a lot.

‘(9) The instrument under subsection (2) may also nominate the persons (if any) whose consent to a surrender of an easement is required.

‘(10) Subsection (9) does not affect the requirement for the proprietor of the land benefited by an easement to join in a surrender of the easement.

‘(11) On registration of a plan under this section—

- (a) an easement created by the registration has effect according to the terms and conditions specified in the instrument as if the instrument were a deed under seal; and
- (b) the nomination in the instrument of a person (if any) whose consent to a surrender of the easement is required, operates to require the consent of the person to a surrender of the easement.

‘(12) Despite the Real Property Acts, any other Act, or any rule of law or equity to the contrary—

- (a) an easement may be created under this section; and
- (b) the rights and obligations in the instrument creating the easement are enforceable;

whether or not at the time the relevant plan is registered the land burdened and the land benefited are in common ownership.

‘(13) When issuing a certificate of title for land benefited or burdened by an easement created under this section, the Registrar of Titles is to record the easement on the certificate of title in such manner as the Registrar of Titles considers appropriate.

‘(14) An easement created under this section is not extinguished merely because the owner of the land benefited by the easement holds or acquires a greater interest in the land burdened.

‘(15) A plan proposing to establish an access easement to a road (as defined in section 25(1)) must be approved by the appropriate authority.

Amendment of s.34 (Effect of Act on Town Plan)

19. At the end of section 34(3)(d)—

insert ‘except an interim use authorised by section 34A’.

Insertion of new s.34A

20. After section 34—

insert—

‘Interim use

‘34A.(1) It is competent and has always been competent to use land within the Corporation Area of which the Corporation is the registered proprietor (whether solely or jointly) for a use other than a use to which land was put immediately before the commencement of this Act—

- (a) before development starts on the relevant land in accordance with the Approved Development Plan; and
- (b) for a period specified by the Corporation and subject to the terms and conditions imposed by the Corporation;

where that use is authorised by the Corporation.

‘(2) The Corporation must consult with the Council before authorising a use under subsection (1) if the use is to happen after the commencement of section 20 of the *South Bank Corporation Amendment Act 1991*.’.

Amendment of s.35 (Application of Town Plan to Corporation Area)

21.(1) Section 35(3)—

omit ‘subject to the Town Plan’,

insert ‘subject to the Town Plan and the Approved Development Plan’.

(2) After section 35(3)—

insert—

‘(3A) If there is an inconsistency between the Town Plan and the Approved Development Plan, the Approved Development Plan applies.’.

(3) Section 35(7)—

omit.

Amendment of s.36 (Complementary Development Area)

22. Section 36—

omit ‘in accordance with section 4(4B) of the *City of Brisbane Town Planning Act 1964*’,

insert ‘and dealt with under the *Local Government (Planning and Environment) Act 1990*’.

Amendment of s.37 (Payment in lieu of rates)

23. After section 37(2)—

insert—

‘**(3)** Despite subsection (2), if land referred to in subsection (1) becomes the subject of a lease from a Public Authority, the land is taken to be rateable land for the purposes of the *City of Brisbane Act 1924*.’

‘**(4)** Nothing in this section requires a Public Authority to pay rates under the *City of Brisbane Act 1924*.’.

Insertion of new s.38A

24. After section 38—

insert—

‘Payment of surplus funds

‘**38A.** The Minister may direct, from time to time, the Corporation to pay amounts from accumulated funds to the Consolidated Fund.’.

Insertion of new ss.39A to 39H

25. After section 39—

insert—

‘Fire safety requirements

‘**39A.** Despite the *Fire Service Act 1990* or any other Act relating to fire safety, but without compromising the principles of fire safety in those Acts, when issuing a fire safety approval for a building on South Bank public land, the relevant fire authority and fire safety officer must take into account—

- (a) the provisions of this Act; and
- (b) the physical structure of the building as opposed to its title boundaries; and
- (c) the methods of subdivision permitted by this Act; and

- (d) requests made by a Public Authority; and
- (e) the by-laws in the management statement (if any) regulating the building; and
- (f) any other matters relating to fire safety approvals for buildings situated within the Corporation Area as are prescribed by the regulations.

‘Lessee taken to be owner of land or lot

‘39B.(1) A lessee from a Public Authority is, for the purposes of the *Valuation of Land Act 1944*, the *City of Brisbane Act 1924*, the *Local Government Act 1936* and any other Act relating to the valuation or rating of land, taken to be the owner of the land or lot the subject of the lease.

‘(2) For the purposes of the *Land Tax Act 1915* and any other Acts relating to land tax, a lessee from a Public Authority is not to be taken to be the owner of the land the subject of the lease.

‘Valuation of stratum lots

‘39C.(1) Despite the *Valuation of Land Act 1944* and any other Act relating to valuation of land or the rating of land, the Valuer-General in valuing land comprised in a stratum plan within the Corporation Area must, for the purposes of those Acts, apply the following principles of valuation—

- (a) the Valuer-General must first value the land comprised in the stratum plan as though the land were a single parcel of land in 1 ownership even though the land may consist of 1 or more stratum lots;
- (b) the Valuer-General must then apportion the unimproved value of the land in the stratum plan between the stratum lots in the stratum plan according to the unimproved value proportions allocated from time to time in the management statement for each stratum lot.

‘(2) The unimproved value apportioned to each stratum lot under subsection (1)(b) is, for the purposes of making, levying, imposing, assessing or recovering rates, taken to be the unimproved value of the stratum lot.

‘(3) If a management statement is amended to give effect to a change in the unimproved value proportions allocated to a stratum lot, the Valuer-General must, on notification of the amendment, cause new valuations to be made of the stratum lots affected by the amendment—

- (a) if the amendment is made under section 25A(8)—by apportioning the former unimproved value of the former stratum lot the subject of the subdivision between the new stratum lots created by the subdivision according to the new unimproved value proportions allocated for each new stratum lot; and
- (b) if the amendment is made under section 25A(10)—by taking the sum of the former unimproved values of the former stratum lots the subject of the amalgamation as the unimproved value of the stratum lot created by the amalgamation; and
- (c) if the amendment is made under section 25E(11)—by apportioning the unimproved value of the land in the stratum plan between the stratum lots in the stratum plan according to the new unimproved value proportions allocated for each stratum lot, or, if the unimproved value proportions of some stratum lots remain unchanged, according to those unchanged proportions.

‘(4) If a stratum lot in a stratum plan is a stratum parcel, the value apportioned under this section to the stratum lot is taken to be the value of the stratum parcel for the purposes of Division 7 of Part 4 of Schedule 7.

‘Acts not to apply to leases from Corporation

‘39D.(1) Leases of land within the Corporation Area from a Public Authority are not subject to the *Residential Tenancies Act 1975* or the *Retail Shop Leases Act 1984*.

(2) Subsection (1) does not apply to subleases of land within the Corporation Area granted by lessees from a Public Authority.

‘Dividing Fences Act not to apply

‘39E. The *Dividing Fences Act 1953* does not apply to South Bank public land.

‘Application of Land Sales Act to Public Authorities

‘39F. Part 3 of the *Land Sales Act 1984* applies to the sale of a proposed lot, within the meaning of section 6 of that Act, by a Public Authority.

‘Building work by or on behalf of the Crown

‘39G. For the purposes of section 4 of the *Building Act 1975*, building work, within the meaning of that Act, carried out on South Bank public land is taken to be building work carried out on behalf of the Crown.

‘Inconsistency with other Acts

‘39H.(1) It is the intention of the Parliament that, to the greatest extent practicable, this Act should have effect despite any inconsistency with any other Act.

‘(2) Without limiting subsection (1), this Act has effect despite any law in force at the time of commencement of this Act.

‘(3) Without limiting any provision of this Act, the Registrar of Titles is authorised and directed to accept and register all plans and other instruments prepared under the authority of this Act if, subject to this Act, they are in a form acceptable to the Registrar.’.

Replacement of s.40 (Regulations)

26. Section 40—

omit, insert—

‘Regulations

‘40.(1) The Governor in Council may make regulations, not inconsistent with this Act, with respect to any matter that—

- (a) is required or permitted to be prescribed by this Act; or
- (b) is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

‘(2) Without limiting subsection (1), the regulations may make provision with respect to the following—

- (a) the preparation of plans and documents for the purposes of this Act;
- (b) the plans and documents that may be lodged with the Registrar of Titles;
- (c) the registration by the Registrar of Titles of plans and documents;
- (d) the fees to be paid in respect of the lodgement and registration by the Registrar of Titles of plans and documents;
- (e) the forms to be used for the purposes of this Act;
- (f) the nomination and election of the offices of chairperson, secretary and treasurer of bodies corporate and of other members of committees;
- (g) the practice or procedure to be followed by referees and tribunals;
- (h) the enforcement of orders made by referees and tribunals;
- (i) matters relating to fire safety approvals for buildings in the Corporation Area;
- (j) the information to be contained in a management statement.

‘(3) A regulation may impose a penalty not exceeding 10 penalty units for an offence against a regulation.

‘(4) Regulations prescribing forms to be used for the purposes of this Act may also prescribe—

- (a) the size, type and quality of paper on which a form must be printed; and
- (b) the size and nature of the type to be used in the printing and completion of the form; and
- (c) the ink or other substance with which the form must be printed or completed.’.

Omission of s.44 (Winding up Corporation’s affairs)

27. Section 44—

omit.

Insertion of Schedules

28. At the end of the Act—

insert the Schedules set out in Schedule 1.

Amendment of other Acts

29. The Acts specified in Schedule 2 are amended as set out in that Schedule.

SCHEDULE 1

New Schedules to be inserted in the *South Bank Corporation Act 1989*.

‘SCHEDULE 6

section 25E

‘MANAGEMENT STATEMENT**‘Form of management statement**

‘1. A management statement must—

- (a) include the prescribed information; and
- (b) bear the approval of the appropriate authority; and
- (c) not be inconsistent with this Act.

‘Matters to be included

‘2.(1) A management statement must include—

- (a) the real property description of the stratum lots in the stratum plan to which the management statement relates; and
- (b) a plan that delineates the external surface boundaries of the site of the building and shows the location of the building in relation to the external surface boundaries; and

must also include by-laws and other particulars relating to the following—

- (c) the regulation (including the control, management, use, maintenance and enjoyment) of the building and its site;
- (d) the establishment and composition of the building management committee and its office bearers;
- (e) the functions of the building management committee and its office bearers in regulating the building and its site;
- (f) meetings of the building management committee;
- (g) voting on motions submitted to the building management committee;

- (h) the keeping of records of proceedings of the building management committee;
- (i) the manner in which the building management committee may enter into contracts and the provision of appropriate indemnities to contracting parties by the other members of the building management committee;
- (j) the inspection of records and documents in the custody or under the control of the building management committee;
- (k) certification to members of the building management committee and lessees of lots in a leasehold building units plan as to whether there is any amount unpaid by a member or a lessee of a lot in a leasehold building units plan under the management statement;
- (l) the establishment and operation of bank accounts by the building management committee;
- (m) the storage and collection of garbage on and from the various parts of the building and its site;
- (n) the location of any restricted property;
- (o) compliance with fire safety requirements;
- (p) the apportionment of the unimproved value of land comprised in the relevant stratum plan between stratum lots in the stratum plan;
- (q) where section 55B of Schedule 7 applies—the apportionment of the cost of insurance premiums for a damage policy for the building effected under section 55B of Schedule 7;
- (r) any other matters required by the appropriate authority.

‘(2) Each body corporate for a leasehold building units plan for part of the building, and any other lessee of land in any part of the building or its site, that does not form part of a stratum parcel must be members of the building management committee.

‘(3) If a by-law restricts use of any part of the building or its site, the by-law must include the following—

- (a) a description of the restricted property;
- (b) details of the persons entitled to use the restricted property;
- (c) the terms and conditions on which those persons may use the

restricted property;

- (d) particulars relating to access to the restricted property and the supply and keeping of any necessary key;
- (e) particulars of the hours during which the restricted property may be used;
- (f) provisions relating to the maintenance of the restricted property;
- (g) provisions relating to the determination, imposition and collection of levies from those entitled to use the restricted property.

‘Optional matters for management statement

‘3.(1) A management statement may include by-laws and other particulars relating to any of the following—

- (a) safety and security measures;
- (b) the appointment of a building manager;
- (c) the control of unacceptable noise levels;
- (d) prohibiting or regulating trading activities;
- (e) management and service contracts (which must not be for a term of more than 5 years);
- (f) an architectural code to preserve the appearance of the building;
- (g) a landscaping code to preserve the appearance of the building or its site.

‘(2) This clause does not limit the matters that may be included in a management statement.

‘(3) A management statement may incorporate plans and other instruments as part of the statement.’.

‘SCHEDULE 7

section 25F

**‘MODIFIED BUILDING UNITS AND GROUP TITLES
ACT****Explanatory Notes to Schedule 7**

1. The provisions set out in this Schedule are, subject to note 2, the provisions of the *Building Units and Group Titles Act 1980* as in force at the enactment of this Schedule (in these notes called the “applied Act”).

2. Various provisions of the applied Act have been omitted or appear in a modified form in this Schedule. Other provisions have been inserted.

3. Notes have been included at the end of various provisions of the Schedule to indicate the source of provisions. The following rules have been followed in the inclusion of notes—

- (a) if a provision of the applied Act has not been amended (other than in a way in which an Act is authorised to be reprinted by section 47F of the *Acts Interpretation Act 1954*)—no note is included;
- (b) if a provision of the applied Act has been omitted—instead of that provision, the note “(not applied)” appears;
- (c) if an additional provision has been inserted or a provision has been replaced—the note “(new)” appears;
- (d) if a provision has been otherwise amended (other than in a way in which an Act is authorised to be reprinted by section 47F of the *Acts Interpretation Act 1954*)—the note “(amended)” appears.

4. The notes do not form part of the provisions of this Schedule.

5. In the provisions of the Schedule, unless the contrary intention appears—

- (a) a reference to the “**Principal Act**” is a reference to this Act; and
- (b) a reference to a “**section**” or other provision is a reference to a section or other provision in this Schedule; and

- (c) a reference to “**Act**” or “**this Act**” is a reference to this Schedule; and
- (d) a reference to a “**Schedule**” or “**the Schedules**” is a reference to a Schedule or the Schedules to this Schedule.

PART 1—PRELIMINARY

Short title

- 1.** (not applied)

Commencement

- 2.** (not applied)

Arrangement of Act

- 3.** (not applied)

Repeals and amendments

- 4.** (not applied)

Savings and Transitional

- 5.** (not applied)

Construction of Act

6.(1) This Act shall be read and construed with and as an amendment of the Real Property Acts, *Registrar of Titles Act 1884*, *Real Property (Local Registries) Act 1887* and *Central and Northern District Boundaries Act 1900*.

Provided that those Acts shall be read and construed subject to this Act and to the extent that those Acts are inconsistent with this Act, this Act shall prevail.

(2) The Real Property Acts apply to lots and common property in the same way as they apply to other land except in so far as any provision of the Real Property Acts is inconsistent with this Act or is incapable of applying to lots or common property.

(new)

(3) No stamp duty is payable under the *Stamp Act 1894* in respect of the determination or partial determination of a lease by the operation of Parts 2 or 3.

(new)

Interpretation

7.(1) In this Act—

“**administrative fund**” means the fund established by a body corporate under section 38(1);

“**aggregate lot entitlement**” means the sum of the lot entitlements of all lots on a leasehold building units plan;

“**body corporate**” means a body corporate incorporated by section 27;

“**body corporate manager**” means a person appointed under section 50 or 94 for the time being a body corporate manager of a body corporate;

“**building**” means the building or buildings shown on the leasehold building units plan each of which contains 2 or more lots or parts of lots and, where more than 1 building is shown on the leasehold building units plan, means any 1 or more of those buildings;

“**building approvals authority**” means the authority required to give approval to building work as defined in the *Building Act 1975*, carried out on land, which is land—

- (a) under the Real Property Acts; and
- (b) within the Corporation Area; and
- (c) held in fee simple by the Corporation, the Council or other Public Agency, solely or jointly;

“Building Units and Group Titles Act” means the *Building Units and Group Titles Act 1980* in force at the commencement of this Schedule;

“ceiling” does not include a false ceiling;

“committee” means the committee of a body corporate constituted under this Act;

“common property” means so much of a parcel as from time to time is not comprised in any lot and includes contiguous common property and non-contiguous common property;

“company nominee”, in relation to a corporation, means the individual, if any, for the time being authorised under section 52 by the corporation;

“contiguous common property” means land within the Corporation Area which is contiguous—

- (a) in any case, to the parcel; or
- (b) in the case of a stratum parcel, to the site on which is erected the building, part of which is comprised in the leasehold building units plan;

“Court” means the Supreme Court of Queensland;

“leasehold building units plan” means a plan which—

- (a) is described in the title or heading as a leasehold building units plan; and
- (b) in the case of a plan that does not relate to a proposed stratum parcel, shows the building comprised therein as being divided into lots; and
- (c) in the case of a plan that does relate to a proposed stratum parcel, shows—
 - (i) the building; and
 - (ii) part of the building being subdivided into lots; and
- (d) shows the common property (if any) comprised therein; and
- (e) complies with the requirements of section 9;

“lessee”, in relation to a lot, means a person for the time being recorded in the register as entitled to a leasehold estate in the lot but does not include a sublessee from a lessee of the lot;

“lessor” means the person who is the lessor of the lots or the lots and common property in a leasehold building units plan;

“local authority” means the Corporation, until the proclamation is made under section 22B of the Principal Act, and after the day on which that proclamation is made, the Council;

“lot” means a lot shown as such on a leasehold building units plan;

“lot entitlement” means the lot entitlement of a lot specified or apportioned in accordance with the provisions of section 10(5) or (6) or 19, as the case may be;

“mortgage” includes a charge on a lease of a lot for securing money or money’s worth;

“non-contiguous common property” means land within the Corporation Area which is not contiguous—

- (a) in any case, to the parcel; or
- (b) in the case of a stratum parcel, to the site on which is erected the building, part of which is comprised in the leasehold building units plan;

“occupier”, in relation to a lot, means a person in lawful occupation of that lot;

“original leasehold building units plan”—

- (a) in relation to a leasehold plan of resubdivision, means the registered leasehold building units plan containing the lots or common property the subject of the leasehold plan of resubdivision;
- (b) in relation to a leasehold plan of amalgamation, means the registered leasehold building units plan containing the lots the subject of the leasehold plan of amalgamation;
- (c) in relation to a conversion of lots into common property, means the registered leasehold building units plan containing those lots;

“original lessee” means—

- (a) for the purposes of sections 29, 39(3)(b), 53(1), clauses 2 and 3 of Part 1 of Schedule 2 and clauses 15 and 16 of Part 2 of Schedule 2, any person who, immediately after the registration of

the leasehold building units plan concerned, is—

- (i) the lessee of all lots in the leasehold building units plan; or
- (ii) the lessee of 2 or more of those lots, the sum of whose lot entitlements is more than two-thirds of the aggregate lot entitlement;

and includes any successor or assignee of the lessee or lessees referred to in subparagraphs (i) or (ii) but does not include a bona fide transferee for value of the lease of a lot or any successor or assignee of that transferee; and

- (b) for the purposes of sections 30(7B), 49, 49A, 50(9) and 55C, any person who, immediately after the registration of the leasehold building units plan concerned, is the lessee of all lots in the leasehold building units plan, and includes any successor or assignee of that lessee but does not include a bona fide transferee for value of the lease of a lot or any successor or assignee of that transferee;

“parcel” means the land comprised in a leasehold building units plan;

“person” includes, where the context permits, the Corporation, Council or other Public Agency;

“prescribed arrangement” means any agreement or arrangement (including an arrangement set out in the by-laws or the management statement (if any) for the building and its site the subject of the leasehold building units plan concerned) between—

- (a) in the case of a lot the leasehold estate of which is recorded in the register, the body corporate or the original lessee and any other person; or
- (b) in the case of a proposed lot, the original lessee and any other person;

being an agreement or arrangement—

- (c) by instrument in writing appointing, pursuant to section 50, a body corporate manager; or
- (d) for the carrying out of any of the duties of the body corporate under section 37(1)(a), (b) or (c); or

- (e) entered into pursuant to section 37(2)(a), (b), (c), (d) or (e) or section 38C; or
- (f) for the protection of the parcel or any part or of the security of the occupants of the lots; or
- (g) for the conduct of a business upon the parcel (whether upon a lot or the common property) of subletting of lots on behalf of any lessees of lots; or
- (h) under which the rights of the lessee of a lot are or are likely to be affected to a material extent;

“Principal Act” means the *South Bank Corporation Act 1989* including regulations or other instruments under it and consolidations, amendments, re-enactments or replacements of it;

“Public Trustee” means the Public Trustee within the meaning of the *Public Trustee Act 1978*;

“Real Property Acts” means the *Real Property Act 1861* and the *Real Property Act 1877*;

“referee” means a referee appointed under section 69 of the Building Units and Group Titles Act;

“registered leasehold building units plan” means a leasehold building units plan as amended from time to time registered under this Act;

“resolution without dissent” means a resolution which is passed at a duly convened general meeting of a body corporate and against which no vote is cast;

“roll” means the roll referred to in section 39 that relates to a leasehold building units plan or to a leasehold building units plan that has been terminated;

“service obligation” means a service obligation created or implied by section 17, 17A or 18;

“service right” means a service right created or implied by section 17, 17A or 18;

“sinking fund” means the fund established by a body corporate under section 38(4);

“special resolution” means a resolution proposed as a special resolution

that is passed at a duly convened general meeting of a body corporate by the lessees if the lessees who vote against the resolution do not together—

- (a) constitute more than 25% of the total number of lessees (determined on the basis of each lot having 1 lessee); and
- (b) hold more than 25% of the aggregate lot entitlements;

“tribunal” means a tribunal constituted under section 96;

“unanimous resolution” means a resolution which is unanimously passed at a duly convened general meeting of a body corporate at which all persons entitled to exercise the powers of voting conferred by or under this Act are present personally or by proxy or vote in writing at the time of the motion;

“wall” includes door, window or other structure dividing a lot from common property or from another lot.

(amended)

(2) A reference in this Act to a resubdivision of a lot or common property or of a lot and common property is a reference to the alteration of the boundaries of—

- (a) 1 or more lots so as to create only 2 or more different lots; or
- (b) 1 or more lots so as to create 1 or more different lots and common property; or
- (c) 1 or more lots and common property so as to create 1 or more different lots or 1 or more different lots and common property; or
- (d) common property so as to create 1 or more lots;

but does not include a reference to the amalgamation of 2 or more lots into 1 lot or the conversion of 1 or more lots into common property.

(3) In this Act, unless the contrary intention appears—

- (a) a reference to the *Local Government Act 1936* includes a reference to the *City of Brisbane Act 1924*; and
- (b) a reference to a provision of the *Local Government Act 1936* includes a reference to any corresponding provision of the *City of Brisbane Act 1924*.

(amended)

(4) In this Act, unless the contrary intention appears, a reference to the *Local Government (Planning and Environment) Act 1990* includes a reference to the Town Plan.

(amended)

PART 2—SUBDIVISION OF LAND

Division 1—Creation of lots and common property

Subdivision

8.(1) In this section,

“**land**” means land as defined in section 4 of the Principal Act being land—

- (a) under the Real Property Acts; and
- (b) within the Corporation Area; and
- (c) held in fee simple by the Corporation, the Council or other Public Agency, solely or jointly;

and, where the land is leased, being land subject to a lease or leases (the terms of which are all expressed to expire at the same time) which is or are registered, or lodged for registration under the Real Property Acts.

(new)

(1A) Land, including the whole of a building may be subdivided into lots or into lots and common property by the registration of a leasehold building units plan.

(new)

(1B) Land comprised in a stratum lot, including part only of a building may be subdivided into lots or into lots and common property by the registration of a leasehold building units plan, but only if the building is erected on a site of land within the Corporation Area held in fee simple by the Corporation, the Council or other Public Agency, solely or jointly.

(new)

(2) A lot may consist of separate parts.

(3) (not applied)

(4) (not applied)

(5) (not applied)

Registration of leasehold building units plan

9.(1) A leasehold building units plan shall—

(a) where the leasehold building units plan does not relate to a proposed stratum parcel, delineate the external surface boundaries of the parcel and in relation to those boundaries delineate the location of the building; and

(b) where the leasehold building units plan relates to a proposed stratum parcel, delineate the external surface boundaries of the site of the building, being the building of which the proposed stratum parcel forms part, and, in relation to those boundaries delineate the location of—

(i) the building; and

(ii) the proposed stratum parcel;

and, in relation to the external surface boundaries of the proposed stratum parcel, delineate the location of the part of the building which will be the subject of the proposed leasehold building units plan; and

(c) where the leasehold building units plan comprises contiguous common property or non-contiguous common property, or both, delineate the external surface boundaries of that common property and in relation to those boundaries show the location of that common property in relation to the parcel or, in the case of a proposed stratum parcel, to the site on which is erected the building part of which is comprised in the leasehold building units plan; and

(d) bear a statement containing such particulars as may be necessary to identify the title to such parcel; and

- (e) include a drawing illustrating the lots and distinguishing such lots by numbers; and
- (f) define the boundaries of each lot—
 - (i) where the leasehold building units plan does not relate to a proposed stratum parcel, in the building; or
 - (ii) where the leasehold building units plan relates to a proposed stratum parcel, in part of the building;

by reference to floors, walls, ceilings and, in the case where a boundary may be defined by reference to a permanent structure or permanent structures of the building, each such structure.

Provided that it shall not be necessary to show any bearing or dimensions of a lot; and
- (g) show the approximate floor area of each lot; and
- (h) have endorsed upon it a schedule complying with the provisions of section 19; and
- (i) have endorsed upon it—
 - (i) where the leasehold building units plan does not relate to a proposed stratum parcel, the name of the building; or
 - (ii) where the leasehold building units plan relates to a proposed stratum parcel, the name of the proposed stratum parcel;

and
- (j) have endorsed upon it the address at which documents may be served on the body corporate in accordance with section 127; and
- (k) contain such other features as may be prescribed.

(amended)

(1A) A leasehold building units plan must not be registered unless—

- (a) where land which is subject to a lease or leases registered under the Real Property Acts which is or are intended to be replaced wholly or partly by leases of each of the lots and the common property (if any) shown on the leasehold building units plan—
 - (i) the replacement leases relating to the proposed lots and, if the leasehold building units plan provides for common

property, the common property, have been lodged in the office of the Registrar of Titles for registration; and

- (ii) those replacement leases are expressed to be wholly or partly in substitution for the lease or leases first referred to in this paragraph; and
 - (iii) the terms of those replacement leases are all expressed to commence on registration of the leasehold building units plan and to expire at the same time as the lease or leases first referred to in this paragraph and, if those replacement leases confer rights of renewal, the renewal terms are the same; and
- (b) where the land is subject to leases registered under the Real Property Acts which are intended to subsist (after the leasehold building units plan is registered) as leases of each of the lots shown on the leasehold building units plan—
- (i) the terms of those leases have commenced and are all expressed to expire at the same time and, if those leases confer rights of renewal, the renewal terms are the same; and
 - (ii) a certificate of a licensed surveyor under the *Surveyors Act 1977* has been produced to the Registrar of Titles, stating that the area to which each of those leases relates (not being an area that is leased solely or principally for use by lessees of the land in common with each other) corresponds to a lot or lots shown on the plan; and
 - (iii) a meeting of the lessees is held and a resolution is proposed agreeing to the proposed subdivision of the land as shown on the leasehold building units plan; and
 - (iv) there is produced to the Registrar of Titles at the time of lodgment of the leasehold building units plan—
 - (A) where all of the lessees agree to the resolution referred to in subparagraph (iii), a certificate in the approved form, purporting to be signed by the persons prescribed for the purposes of this subparagraph, stating that the resolution was so passed; or

- (B) where a majority but not all of the lessees agree to the resolution referred to in subparagraph (iii), a copy of an order made under subsection (19) approving the proposed subdivision; and
 - (v) if the leasehold building units plan provides for common property, there has been lodged in the office of the Registrar of Titles for registration a lease of the common property; and
 - (vi) the term of the lease of the common property is expressed to commence on registration of the leasehold building units plan and to expire at the same time as the terms of the leases referred to in subparagraph (i) and, if the leases so referred to confer rights of renewal, the lease of the common property confers a right of renewal for a term that is the same as that conferred by those rights; and
- (c) where the leasehold building units plan is lodged in circumstances different from those described in paragraph (a) or (b)—
- (i) there have been lodged in the office of the Registrar of Titles for registration leases from the lessor of each of the lots (which may consist of or include leases to the lessor) and, if the leasehold building units plan provides for common property, a lease of the common property; and
 - (ii) the terms of the leases referred to in subparagraph (i) are all expressed to commence on registration of the leasehold building units plan (but, in the case of the leases of the lots, may be expressed to commence before registration of the leasehold building units plan) and to expire at the same time and, if the leases confer rights of renewal, the renewal terms are the same.
- (2)** (not applied)
- (3)** Save with the consent of the Minister responsible for the administration of the Building Units and Group Titles Act a leasehold building units plan shall not be registered if the name of the building or the name of the stratum parcel, as the case may be, endorsed thereon, in the opinion of the Registrar of Titles, is undesirable.
- (3A)** A leasehold building units plan shall not be registered if the name of the building or the name of the stratum parcel, as the case may be,

endorsed thereon is currently endorsed on—

- (a) a registered building units plan under the Building Units and Group Titles Act; or
- (b) a registered leasehold building units plan;
or is reserved pursuant to—
- (c) section 120 of the Building Units and Group Titles Act; or
- (d) section 120 of this Act.

(amended)

(4) A body corporate may, by resolution without dissent and with the consent of the Registrar of Titles, change the name of the building or the stratum parcel, as the case may be, endorsed upon the leasehold building units plan to a name with which the leasehold building units plan could be registered without contravention of subsection (3) or (3A).

(amended)

(5) In a leasehold building units plan, the common boundary of any lot with another lot or with common property shall be—

- (a) except as provided by paragraph (b), the centre of the wall, floor or ceiling, as the case may be; or
- (b) as described in the leasehold building units plan in the prescribed manner by reference to a wall, floor or ceiling, as the case may be.

(5A) Notwithstanding subsection (5), a balcony, courtyard, roof garden or other area (being part of a building) which is not bounded wholly by walls or a ceiling or walls and a ceiling may be included as part of a lot shown on a leasehold building units plan.

Provided that the balcony, courtyard, roof garden or other area shall be contiguous to a part of the lot the boundary of which part if it, by itself, were a lot would be the centre of walls, floor and ceiling.

(5B) Where, pursuant to subsection (5A), a balcony, courtyard, roof garden or other area of a building is included as part of a lot shown on a leasehold building units plan—

- (a) that part of the boundary of the lot that is not the centre of a wall and would, but for the operation of subsection (5A), be required

to be the centre of a wall shall be the vertical plane from the upper boundary of the lot to the floor along the line described connecting the centres of the permanent vertical structures of the building approved for that purpose by the Registrar of Titles (which may include part of a wall) on that boundary, with the centres of the walls that form part of the boundary of the lot;

- (b) that part of the boundary of the lot that is not the centre of a ceiling and would, but for subsection (5A), be required to be the centre of a ceiling shall be the horizontal plane from the edge of the existing ceiling to the vertical boundary of the lot over which that ceiling does not extend at the level or levels of the walls and, where paragraph (a) applies, the permanent vertical structures to that part, such that, in any case, the plane is no higher than the boundary of the area of the lot that is the centre of a ceiling.

(amended)

(6) (not applied)

(7) Every leasehold building units plan lodged for registration shall be endorsed with or be accompanied by a certificate of the local authority sealed with the common seal of the local authority that the proposed subdivision of the parcel as illustrated in the leasehold building units plan has been approved by the local authority and that all the requirements of the Principal Act and, where the Corporation is not the local authority, the *Local Government (Planning and Environment) Act 1990* as modified by this Act and the Principal Act have been complied with in regard to the subdivision.

(amended)

(8) Every leasehold building units plan lodged for registration shall be endorsed with or be accompanied by certificates respectively—

- (a) where the proposed parcel will not be a stratum parcel, of a licensed surveyor registered under the *Surveyors Act 1977* that the building shown on the leasehold building units plan is within the external surface boundaries of the parcel the subject of the leasehold building units plan and, where eaves or guttering project beyond such external boundaries, that an appropriate easement has been granted as an appurtenance of the parcel or, where that projection is over a road, that the local authority has consented, and where the Corporation is not the local authority, such consent is given pursuant to the ordinances or by-laws of the local

- authority, as the case may be; and
- (ab) of a licensed surveyor registered under the *Surveyors Act 1977* containing the particulars prescribed; and
 - (b) where the proposed parcel will be a stratum parcel, of a licensed surveyor under the *Surveyors Act 1977* that—
 - (i) part only of a building is included in the proposed stratum parcel; and
 - (ii) the proposed stratum parcel and that building are wholly within the external surface boundaries of the site of the building and, where eaves or guttering project beyond such external boundaries, that an appropriate easement has been granted as an appurtenance of the parcel or, where that projection is over a road, that the local authority has consented, and where the Corporation is not the local authority such consent is given pursuant to the ordinances or by-laws of the local authority, as the case may be; and
 - (iii) that each part of the building and so much (if any) of the site as constitute the proposed lots and the common property (if any) shown on the leasehold building units plan are wholly within the proposed stratum parcel and, where eaves or guttering project beyond such external boundaries, that an appropriate easement has been granted as an appurtenance of the parcel or, where that projection is over a road, that the local authority has consented, and where the Corporation is not the local authority such consent is given pursuant to the ordinances or by-laws of the local authority, as the case may be; and
 - (c) of an architect within the meaning of the *Architects Act 1962* that the building has been substantially completed in accordance with plans and specifications approved by the building approvals authority or a designated officer of the building approvals authority or, where the building has not been constructed under the supervision of an architect, of a building surveyor (or where there is no building surveyor a building inspector) of the building approvals authority (which certificate a building surveyor or building inspector is hereby authorised to give unless otherwise directed by the building approvals authority) that the building has

been substantially completed in accordance with plans and specifications approved by the building approvals authority or a designated officer of the building approvals authority.

(amended)

(9) No certificate given by a building surveyor or building inspector in good faith for the purposes of subsection (8)(c) shall subject the building surveyor or building inspector to any liability whatsoever and the proof of any allegation of the absence of good faith on the part of the building surveyor or building inspector shall be upon the person so alleging.

(amended)

(10) In this section—

“**building surveyor**” and “**building inspector**” include, where there is no building surveyor or building inspector of the building approvals authority, the officer of the building approvals authority whose duties include the performance of duties usually undertaken by a building surveyor or building inspector of the building approvals authority.

(amended)

(11) Before registering a leasehold building units plan the Registrar of Titles may require proof to his or her satisfaction by statutory declaration or otherwise of the time of commencement of construction of the building to which the leasehold building units plan relates.

(amended)

(12) (not applied)

(13) Before registering a leasehold building units plan the Registrar of Titles may make or cause to be made such inspection of the parcel to which the leasehold building units plan relates as the Registrar of Titles considers necessary.

(amended)

(14) Upon lodgment for registration of a leasehold building units plan the Registrar of Titles shall allot a number to the plan.

(amended)

(15) Registration of a leasehold building units plan shall be effected by notifying under the seal of the Registrar of Titles on the leasehold building units plan the fact and date of such registration.

(amended)

(16) Every leasehold building units plan, leasehold plan of resubdivision

or amalgamation or notice of conversion lodged for registration shall be accompanied by the prescribed fees (including the fee prescribed pursuant to section 14).

(amended)

(17) If a proposed leasehold building units plan provides for common property, a reference in subsection (1) to a lease of common property is a reference to a lease of common property from the lessor to the body corporate to be constituted on the registration of the leasehold building units plan, being a lease executed by the lessor as agent for that body corporate.

(new)

(18) Where a meeting of persons who are lessees of the land comprised in a parcel has been held for the purposes of subsection (1A)(b) and a majority (but not all) of those persons supported a resolution for the subdivision of the land as shown on a proposed leasehold building units plan, any 1 or more of the persons who supported the resolution may apply to the Court for an order under subsection (19).

(new)

(19) On hearing an application made under subsection (18), the Court may, if it appears to it to be just and equitable to do so, make—

- (a) an order approving the subdivision of the land as shown on the proposed leasehold building units plan; and
- (b) an order directing the Registrar of Titles to register the approved leasehold building units plan; and
- (c) such other orders that, in the opinion of the Court, are appropriate in the circumstances.

(new)

(20) Notice of an application made under subsection (18) must be given to any person who is a lessee of a part of the parcel concerned unless that person is the applicant or, as the case may be, 1 of the applicants.

(new)

Effect of registration of leasehold building units plan**9A.(1)** On registration of a leasehold building units plan—

- (a) where, immediately before registration of the leasehold building units plan, the whole of the parcel was subject to a lease or leases registered under the Real Property Acts which was or were intended to be wholly or partly replaced by leases of each of the lots and the common property (if any) shown on the leasehold building units plan—
 - (i) the lease or leases first referred to in this paragraph is or are determined in so far as it or they related to lots and common property; and
 - (ii) any registered mortgages, estates or interests (including any rates, charges or fees referred to in Division 7 of Part 4) and any caveat which affected the lease or leases wholly or partly determined by subparagraph (i) shall affect those replacement leases in so far as they relate to lots; and
 - (iii) all outstanding rights and obligations of the lessee under a lease wholly or partly determined by subparagraph (i), being rights and obligations existing immediately before the registration of the leasehold building units plan, shall continue to be exercisable, or as the case may be, shall be discharged by the person who was the lessee under that lease as if that lease had not been wholly or partly determined, except to the extent, if any, that those rights and obligations are inconsistent with the provisions of the replacement leases or extinguished or varied by the relevant parties;
- (b) where, immediately before registration of the leasehold building units plan, the parcel was subject to 2 or more leases registered under the Real Property Acts which were intended to subsist after the leasehold building units plan was registered as leases of each of the lots shown on the leasehold building units plan—

- (i) every lease which was, immediately before the registration of the leasehold building units plan, a lease of a part of the parcel that corresponds to a lot shown on the leasehold building units plan shall become a lease of that lot for the residue of the term of the lease, subject to any registered mortgage, estate or interest (including any rates, charges or fees referred to in Division 7 Part 4) and any caveat affecting the lease immediately before registration of the leasehold building units plan; and
- (ii) where any part of the parcel comprised in the leasehold building units plan is shown as common property, any lease affecting that part immediately before the registration of the leasehold building units plan is determined in so far as it relates to the common property.

(new)

(2) As soon as practicable after the registration of a leasehold building units plan, the Registrar of Titles shall—

- (a) record in the register the leasehold estates of the lessees in lots; and
- (b) record on the leasehold building units plan, the leasehold estate of the body corporate in the common property (if any); and
- (c) in the case of replacement leases referred to in subsection (1)(a)—record in the register for the leases of those lots, in such a manner as will preserve their priority of registration, any mortgages, estates or interests or caveats affecting those leases by virtue of subsection (1)(a)(ii).

(new)

(3) On registration of a leasehold building units plan, the leasehold building units plan is for the purposes of the Real Property Acts to be taken upon registration to form part of the register.

(new)

(4) For the purposes of this section, a leasehold building units plan lodged for registration under this Act which is required to be accompanied by a lease to be registered under the Real Property Acts shall be treated as having been registered only when the lease has been registered under that Act.

(new)

(5) A lessee of a leasehold estate in a lot holds the leasehold estate subject to any estates or interests for the time being notified on the leasehold building units plan and subject to any amendments to lots or common property shown on that leasehold building units plan.

(new)

(6) Upon registration of a leasehold building units plan, the Registrar of Titles is authorised to issue a separate certificate of title for the leasehold estate for each lot setting forth the information contained in the register. A certificate of title issued under this subsection is to be treated by the Registrar of Titles in the same manner as a certificate of title under the Real Property Acts.

(new)

(7) In issuing a new certificate of title for a leasehold estate in a lot, the Registrar of Titles is to certify in the certificate of title that the lessee of the lot holds the share in the common property appurtenant to the lot in accordance with the lot entitlement of the lot as set out in the leasehold building units plan.

(new)

Resubdivision

10.(1) Lots or common property or lots and common property may be resubdivided, with the approval of the local authority, by the registration of a leasehold plan of resubdivision relating to the lots or common property or lots and common property so resubdivided in the manner provided by this Act for the registration of leasehold building units plans.

Provided that where a resubdivision affects common property or creates additional common property the approval of the body corporate by resolution without dissent is required.

(amended)

(2) The provisions of this Act relating to leasehold building units plans and where the Corporation is not the local authority, to appeals from any decision of a local authority or failure of a local authority to make a decision shall with such modifications as may be necessary apply to resubdivision.

(amended)

(2A) A leasehold plan of resubdivision shall not be registered under this section unless—

- (a) there have been lodged in the office of the Registrar of Titles for registration the replacement leases relating to the proposed lots comprised in the leasehold plan of resubdivision; and
- (b) those replacement leases contain provisions to the effect that they are in substitution for the leases determined or otherwise affected by the resubdivision; and
- (c) the terms of those replacement leases are all expressed to commence on registration of the leasehold plan of resubdivision and to expire at the same time as any lease to be determined and, where the replacement leases confer rights of renewal, the renewal terms are the same as those contained in the leases of all other lots comprised in the original leasehold building units plan.

(new)

(3) Notwithstanding the provisions of section 27 lessees of lots in a leasehold plan of resubdivision shall not be a body corporate, but shall, upon the date of registration of such leasehold plan of resubdivision be members of the body corporate constituted in respect of the original leasehold building units plan.

(amended)

(4) On registration of a leasehold plan of resubdivision lots comprised therein shall be subject to the burden and have the benefit of any easements, service rights and service obligations affecting such lots in the original leasehold building units plan as are included in the leasehold plan of resubdivision.

(amended)

(5) Where the resubdivision is of 1 or more lots so as to create only 2 or more different lots the schedule endorsed on the leasehold plan of resubdivision as required by section 19 shall apportion among the lots the lot entitlement of such lot or lots in the original leasehold building units plan as are included in the leasehold plan of resubdivision and the Registrar

when registering that leasehold plan of resubdivision shall amend the schedule to the original leasehold building units plan to show the lot entitlement of each lot and each proposed lot and the aggregate lot entitlement as whole numbers.

(amended)

(6) Where the resubdivision affects common property or creates additional common property the schedule endorsed on the leasehold plan of resubdivision as required by section 19 shall—

(a) show as a whole number, in respect of—

- (i) each lot comprised in the parcel other than any lot or lots the subject of the proposed resubdivision; and
- (ii) each proposed lot, the proposed lot entitlement of that lot or proposed lot and show the proposed aggregate lot entitlement; and

(b) be accompanied by a certificate under the seal of the body corporate concerned certifying that it has by resolution without dissent agreed to each proposed lot entitlement and the proposed aggregate lot entitlement shown in that schedule.

(amended)

(7) A resubdivision that creates additional common property shall not be registered unless every mortgage, current sublease, caveat or other estate or interest recorded in the register in respect of the leases of each lot from which the additional common property or part of that property is derived has been discharged, surrendered, withdrawn or otherwise disposed of in so far as it affects that additional common property or part of that property.

(amended)

(8) When registering a leasehold plan of resubdivision the Registrar of Titles shall amend the original leasehold building units plan in the manner prescribed.

(amended)

(9) Upon registration of a leasehold plan of resubdivision land therein shall not be dealt with by reference to lots in the original leasehold building units plan.

(amended)

Consequences of registration of leasehold plan of resubdivision

10A.(1) On the registration of a leasehold plan of resubdivision referred to in section 10—

- (a) the lease of any lot that is the subject of the resubdivision, is determined and the lease of any common property that is the subject of the resubdivision ceases to apply to any lot created by the resubdivision; and
- (b) any registered mortgage, estate or interest (including any rates, charges or fees referred to in Division 7 of Part 4) and any caveat affecting a lease determined by paragraph (a) shall affect the replacement leases in so far as they relate to lots; and
- (c) the leasehold estate in any common property created vests in the body corporate as lessee for the residue of the term specified in the lease of the common property; and
- (d) all outstanding rights and obligations of the lessee under a lease determined by paragraph (a), being rights and obligations existing immediately before registration of the leasehold plan of resubdivision, shall continue to be exercisable or, as the case may be, shall be discharged by the person who was lessee under that lease as if that lease had not been determined, except to the extent, if any, that those rights and obligations are inconsistent with the provisions of the replacement leases or extinguished or varied by the relevant parties.

(new)

(2) Upon the recording of a leasehold plan of resubdivision referred to in section 10, the Registrar of Titles shall—

- (a) make such recordings in the register as the Registrar of Titles considers appropriate to give effect to the resubdivision; and
- (b) in relation to any replacement leases relating to lots, record in the register any registered mortgages, estates, interests or caveats affecting those leases by virtue of subsection (1)(b); and
- (c) be authorised to issue a separate certificate of title for the leasehold estate for each lot setting out the information contained in the register.

(new)

(3) For the purposes of this section, a leasehold plan of resubdivision lodged for registration under this Act which is required to be accompanied by a lease to be registered under the Real Property Acts shall be treated as having been registered only when the lease has been registered under that Act.

(new)

Amalgamation of lots

11.(1) Two or more lots may be amalgamated into 1 lot with the approval of the local authority by the registration of a leasehold plan of amalgamation.

(amended)

(2) The lot entitlement of a lot created by the amalgamation of 2 or more lots shall be the sum of the lot entitlements of those lots.

(3) When registering a leasehold plan of amalgamation the Registrar of Titles shall amend the original leasehold building units plan and the schedule of lot entitlements endorsed thereon in the manner prescribed.

(amended)

Conversion of lots into common property

12.(1) One or more lots may be converted into common property with the approval of the local authority by registering with the Registrar of Titles, as a notice of conversion, a notice executed by the lessor and the lessee of that lot, or that lessor and the lessees of those lots and approved by the body corporate by unanimous resolution.

(amended)

(2) The provisions of this Act relating to leasehold building units plans and where the Corporation is not the local authority, to appeals from any decision of a local authority or failure of a local authority to make a decision shall with such modifications as may be necessary apply to conversions of lots into common property.

(amended)

(3) A notice of conversion shall not be registered unless every mortgage, current sublease, caveat or other estate or interest recorded in the register in respect of the lease of each lot or lots to which the notice relates has been discharged, surrendered, withdrawn or otherwise disposed of, as the case may be.

(amended)

(4) When registering a notice of conversion the Registrar of Titles shall—

- (a) amend the original leasehold building units plan in the manner prescribed; and
- (b) amend the schedule of lot entitlements endorsed upon the original leasehold building units plan in accordance with the schedule complying with the provisions of section 19 lodged with the notice; and
- (c) record in the register the determination of the lease of the converted lot; and
- (d) make such other recordings in the register as the Registrar of Titles considers appropriate to give effect to the notice of conversion.

(amended)

Lease determined on registration

12A. On registration of a notice of conversion, the lease of any lot converted into common property is determined and the lot vests in the body corporate as lessee for the residue of the term specified in the lease of the common property.

(new)

Plans and notices of conversion to be signed

13. Where a leasehold building units plan, leasehold plan of resubdivision or amalgamation or notice of conversion is lodged in the office of the Registrar of Titles for registration it shall not be registered unless it is signed by every person having a sufficient estate or interest to transfer the leases of the lots and the lease of the common property comprised in the plan or notice.

(amended)

Copies of leasehold building units plan to certain authorities and bodies corporate

14. Upon payment of the prescribed fee the Registrar of Titles shall, within 28 days after the registration of a leasehold building units plan or an amendment of the plan, furnish to the Valuer-General, to the lessor, to the Council and to the body corporate, 2 copies of the registered leasehold building units plan or amendment of the plan including all endorsements thereon.

In this section—

“prescribed fee” means the fee prescribed under section 14 of the Building Units and Group Titles Act.

(amended)

Support and shelter

15.(1) In a leasehold building units plan there shall be implied—

- (a) as appurtenant to the lots and common property (if any) comprising that leasehold building units plan being lots and common property which are situated within a building an easement for their subjacent and lateral support by such other parts of the building as are capable of affording support; and
- (b) as affecting those lots and that common property an easement for the subjacent and lateral support of such other parts of the building as are capable of enjoying support; and
- (c) as appurtenant to those lots and that common property, an easement for their shelter by all such other parts of the building as are capable of affording shelter; and

- (d) as affecting those lots and that common property, an easement for the shelter of such other parts of the building as are capable of being sheltered by those lots and that common property.

(new)

(2) An easement for support or shelter created by subsection (1) shall—

- (a) entitle the owner and the lessee of the dominant tenement to enter upon the servient tenement to replace, renew or restore any support or shelter; and
- (b) subsist until the leasehold building units plan is terminated or the easement is otherwise released.

(new)

Shelter

16. (not applied)

Services

17.(1) In this section—

“drainage” includes the product of rain, storm, soakage, a spring or seepage; and

“service” means—

- (a) a service in relation to water, sewage, drainage, gas, electricity, oil, garbage or conditioned air; or
- (b) a service in relation to telephone, television or radio impulses or signals; or
- (c) any other prescribed service.

(new)

(2) If an easement of the kind referred to in section 17A has not been created for services or a particular service by an instrument referred to in section 17A then, in respect of the leasehold building units plan there is implied—

- (a) as appurtenant to the lots and common property (if any) comprising the leasehold building units plan being lots and common property which are situated within a building, an

easement for the passage or provision of the particular service or services through or by means of any pipes, poles, wires, cables or ducts to be laid down or erected which are for the time being existing in or over the parcel to the extent to which the particular service or services are capable of being used in connection with the enjoyment of the lot and the common property (if any); and

- (b) as affecting those lots and that common property an easement for the passage or provision of the particular service or services through or by means of any pipes, poles, wires, cables or ducts to be laid down or erected which are for the time being existing in or over the parcel, to the extent to which that particular service or those services are capable of being used in connection with the enjoyment of the lot and the common property (if any);

but the easements conferred by this section shall not be exercised by any lessee in such a manner as unreasonably prevent any other lessee from enjoying the use and occupation of his or her lot and the common property.
(new)

Easements in certain leasehold building units plans

17A.(1) In this section—

“drainage” and **“service”** have the meanings given to them in section 17;
and

“instrument” means an instrument in the form prescribed by the regulations.

(new)

(2) Where—

- (a) a leasehold building units plan relates to a stratum parcel; and
- (b) an instrument has or has had the effect of creating after the commencement of this Act a right of vehicular access, a right of personal access or an easement for a specified service or services, over or through or as appurtenant to the stratum parcel or the land comprised in that parcel; and
- (c) the site of the easement is identified on a plan lodged in the office of the Registrar of Titles;

the rights and obligations conferred or imposed by the easement created by the instrument shall be as specified in Schedule 5, except in so far as those rights or obligations may have been varied or negated under this section or in the instrument.

(new)

(3) Nothing in the Real Property Acts or any other enactment or in subsection (2)(c) requires the site of an easement for services, being an easement to which this section applies, to be identified on a plan lodged in the office of the Registrar of Titles.

(new)

(4) The terms of an easement created pursuant to subsection (2) in so far as they relate to—

- (a) responsibility for maintaining in good order or repairing the access or other things required for enjoyment of the easement; or
- (b) the proportions in which the persons having the benefit or burden of the easement are liable to contribute towards the cost of maintaining in good order or repairing that access or those things;

may be varied by memorandum of variation in the approved form and registered under the Real Property Acts as if it were a dealing.

(new)

(5) A variation of the terms of an easement referred to in subsection (4) must be executed by every person having an estate or interest registered under the Real Property Acts in the land benefited or burdened by the easement.

(new)

(6) On the application of any person who has an estate or interest in any land which has the benefit or burden of an easement to which this section applies, the Court may, by order, vary the terms of the easement in so far as they relate to—

- (a) responsibility for maintaining in good order or repairing the access or other things required for enjoyment of the easement; or
- (b) the proportions in which the persons having the benefit or burden of the easement are liable to contribute towards the cost of maintaining in good order or repairing that access or those things.

(new)

(7) An order under subsection (6) shall, when registered as provided by subsection (8), be binding on all persons, whether of full age or capacity or not, then entitled or later becoming entitled to the easement, and whether those persons are parties to the proceedings or have been served with notice or not.

(new)

(8) The Registrar of Titles shall, on application made in a form approved under the Real Property Acts, make all necessary recordings in the register and on the leasehold building units plan for giving effect to the order.

(new)

Ancillary rights

18. All ancillary rights and obligations reasonably necessary to make easements effective shall apply in respect of easements implied or created by this Act.

Lot entitlement

19.(1) Every leasehold building units plan and leasehold plan of resubdivision lodged for registration and every notice of conversion shall have endorsed upon it a schedule specifying in whole numbers the lot entitlement of each lot and a number equal to the aggregate lot entitlement of all lots contained in that leasehold building units plan, and that lot entitlement shall determine—

- (a) the voting rights of lessees;
- (b) the quantum of the undivided share of each lessee in the estate or interest in the common property;
- (c) the proportion payable by each lessee of contributions levied pursuant to section 32.

(amended)

(2) (not applied)

(3) (not applied)

Division 2—Common property**Body corporate to hold leasehold estate in common property as agent for lessees**

20.(1) The leasehold estate of a body corporate in common property shall be held by the body corporate as agent—

- (a) where the same person or persons is or are the lessee or lessees of the lots in the leasehold building units plan concerned—for that lessee or those lessees; or
- (b) where different persons are lessees of each of 2 or more of the lots in the leasehold building units plan concerned—for those lessees as tenants in common in shares proportional to the lot entitlements of their respective lots.

(new)

(2) The Registrar of Titles in issuing a certificate of title for a leasehold estate in a lot is to certify in the certificate of title that the lessee of the lot holds the share in the common property appurtenant to the lot in accordance with the lot entitlement of the lot as set out in the leasehold building units plan.

(new)

Common property to be dealt with only under this Act

20A. Common property shall not be capable of being dealt with except in accordance with the provisions of this Act.

(new)

Record on leasehold building units plan where no common property

20B. Where a leasehold building units plan that does not contain common property is registered, the Registrar of Titles shall record, in such manner as the Registrar of Titles considers appropriate on the leasehold building units plan a statement that the leasehold building units plan concerned does not contain common property.

(new)

Records on leasehold building units plan where there is common property

20C.(1) Notwithstanding the provisions of the Real Property Acts, the Registrar of Titles shall not record any easement of the description contained in section 23(a) or (b) (whether or not the easement was created after the commencement of this Act or under section 23) in the register for the lease of a lot the subject of the leasehold building units plan concerned but shall record the easement on the leasehold building units plan and any such easement shall affect any such lot to the extent that it is capable of affecting that lot and as if it were recorded by the Registrar of Titles in the register for the lease of that lot.

(new)

(2) Any mortgage, estate or interest or caveat recorded in the register for the lease of a lot the subject of a leasehold building units plan need not be recorded on the leasehold building units plan for the lease of the common property, but any such mortgage, estate or interest or caveat recorded in the register for the lease of a lot affects the beneficial interest of the lessee of that lot in the leasehold estate or interest in the common property in the manner provided in section 20D(1).

(new)

(3) On a leasehold estate in any common property being vested in, acquired by or divested from a body corporate for a leasehold building units plan, the Registrar of Titles shall make such recordings on the leasehold building units plan with respect to the leasehold estate so vested, acquired or divested as the Registrar of Titles considers appropriate.

(new)

Dealings with lots include leasehold estate in common property

20D.(1) In any dealing or caveat relating to a lease of a lot, a reference to the lot includes a reference to any estate or interest in the common property which is held by the body corporate as agent for the lessee of the lot without express reference to the common property and without the dealing or caveat being recorded on the leasehold building units plan.

(new)

(2) The beneficial interest of a lessee of a lot in the estate or interest in the common property, if any, held by the body corporate as agent for that lessee shall not be capable of being severed from, or dealt with except in conjunction with, the lease of the lot.

(new)

Acquisition of additional common property

21.(1) In this section “**land**” means land as defined in section 4 of the Principal Act being land—

- (a) under the Real Property Acts; and
- (b) within the Corporation Area; and
- (c) held in fee simple by the Corporation, the Council or other Public Agency, solely or jointly;

but does not include a leasehold interest in land evidenced by a lease not registered under the Real Property Acts.

(new)

(1A) Subject to subsection (1B), a body corporate may, pursuant to a unanimous resolution and with the consent of the lessor, accept a lease or sublease, or a transfer of a lease or sublease, of land (not being a grant or lot within the parcel) which is—

- (a) contiguous—
 - (i) in any case, to the parcel; or
 - (ii) in the case of a stratum parcel, to the site on which is erected the building part of which is comprised in the leasehold building units plan; or
- (b) not contiguous—
 - (i) in any case to the parcel; or
 - (ii) in the case of a stratum parcel, to the site on which is erected the building part of which is comprised in the leasehold building units plan;

for the purpose of creating, or creating additional, common property.

(new)

(1B) A body corporate shall not accept a lease or sublease or a transfer of a lease or sublease, referred to in subsection (1A) if—

- (a) the lease or sublease concerned is subject to a registered mortgage; or
- (b) the term of that lease or sublease would expire after the term of the lease of the common property.

(new)

(1C) On accepting a lease or sublease, or a transfer of a lease or sublease, in accordance with subsection (1A), the body corporate shall forthwith cause the dealing evidencing the transaction to be registered under the Real Property Acts.

(new)

(2) A lease, sublease or transfer referred to in subsection (1A) shall be accompanied by—

- (a) the deed of grant or certificate of title for the land affected by the lease or sublease; and
- (b) a certificate under the seal of the body corporate certifying that the resolution authorising the acceptance of the lease, sublease or transfer was a unanimous resolution.

(amended)

(2A) (not applied)

(3) (not applied)

(4) Upon the registration under the Real Property Acts of any such lease, sublease or transfer—

- (a) the leasehold interest becomes common property and thereupon is subject to the provisions of this Act relating to common property; and
- (b) the body corporate is responsible for all payments and the performance of all duties required of the lessee by the terms of the lease or sublease, as the case may be; and
- (c) the Registrar of Titles shall make an appropriate noting on the registered leasehold building units plan to which the parcel relates and on the certificate of title or the lease, as the case may be, comprising the demised land to the effect that during the term of

the lease or sublease the demised land is incorporated with land as part of the common property.

(amended)

(5) A body corporate may, pursuant to a unanimous resolution and with the concurrence of the lessor or sublessor, surrender a lease or sublease accepted by it under this section.

(amended)

(6) Upon the registration under the Real Property Acts of any such surrender the Registrar of Titles shall make an appropriate recording on the registered leasehold building units plan on which the lease was recorded.

(amended)

Transfer of lease of part of common property

22.(1) A body corporate may, pursuant to a resolution without dissent and with the consent of the local authority and lessor, and if not prevented by the terms of the lease, transfer a lease of part of the common property or grant a sublease of such a part.

(new)

(2) (not applied)

(3) A body corporate may, pursuant to a resolution without dissent, accept the surrender of a sublease, or, if otherwise empowered so to do, re-enter under a sublease granted under subsection (1).

(amended)

(4) Subject to subsection (7), the provisions of this Act relating to resubdivision and to appeals from any decision of a local authority or failure of a local authority to make a decision shall with such modifications as may be necessary apply to transfers of leases and to subleases of part of common property.

(amended)

(5) A transfer of lease or sublease of part of the common property shall be with such modifications as may be necessary in conformity with the provisions of the *Local Government (Planning and Environment) Act 1990*.

(amended)

(6) The body corporate, if it is satisfied that all persons having registered interests in the parcel and all other persons having interests (other than statutory interests) which have been notified to the body corporate have—

- (a) in the case of a memorandum of transfer of a lease, consented in writing to the release of those interests in respect of the land comprised in the proposed transfer; or
- (b) in the case of a grant of a sublease, approved in writing of the execution of the proposed sublease;

shall execute the appropriate sublease or memorandum of transfer of the lease and the sublease or memorandum of transfer of the lease shall be valid and effective without execution by any person having an interest in the common property and receipt of the body corporate for the purchase money, rent, premiums or other moneys payable to the body corporate under the terms of the sublease or memorandum of transfer of the lease shall be a sufficient discharge, and shall exonerate the sublessee or the persons taking under the memorandum of transfer, as the case may be, from any responsibility for the application of the moneys expressed to have been so received.

(amended)

(7) The local authority shall not give its approval to a sublease or transfer of a lease of part of the common property unless it is satisfied—

- (a) that the proposed sublease or transfer of lease will not interfere with the existing or likely future amenity of the neighbourhood, having regard to the circumstances of the case and the public interest; and
- (b) that if the application for approval were an application to the local authority for a certificate for the purposes of section 9(7) in respect of the subdivision of the parcel as illustrated in the plan (excluding the part the subject of the proposed sublease or transfer of lease) it would be proper for the local authority to direct the issue of the certificate; and

- (c) that the easements, services and rights referred to in sections 15, 17, 17A and 18 and presently enjoyed or exercised, or capable of being enjoyed or exercised, will not be, or be likely to be, unduly interfered with by the proposed sublease or transfer of lease or that suitable alternative arrangements approved by the local authority have been agreed upon by the parties.

(amended)

(8) Every sublease or memorandum of transfer of lease executed, or surrender of sublease accepted pursuant to subsections (1) and (3), lodged for registration with the Registrar of Titles shall be endorsed with or accompanied by a certificate under the seal of the body corporate that the resolution was duly passed, that the sublease or memorandum of transfer of lease or surrender of sublease conforms with the terms of the resolution and that all necessary consents were given.

(new)

(9) In favour of transferees or sublessees of part of the common property and in favour of the Registrar of Titles the certificate shall be evidence of the matters certified therein.

(amended)

(10) (not applied)

(11) The Registrar of Titles shall register the sublease, transfer of lease or, as the case may be, surrender of sublease by recording particulars in the register in accordance with the provisions of the Real Property Acts.

(amended)

(12) Notwithstanding the provisions of this section a body corporate shall not grant a sublease of common property where the access to or egress from the parcel by any lessee is interfered with.

(amended)

(13) The provisions of subsections (4), (5) and (7) do not apply where the Corporation is the local authority.

(new)

Creation of easements

23.(1) Subject to subsection (3A) a body corporate may by unanimous resolution—

- (a) execute a grant of easement which burdens the leasehold estate in the common property; and
- (b) accept a grant of easement which benefits the leasehold estate in the common property; and
- (c) surrender a grant of easement which benefits the leasehold estate in the common property; and
- (d) accept the surrender of a grant of easement which burdens the leasehold estate in the common property.

(amended)

(2) Subsection (1) does not authorise a body corporate to accept a grant or execute a surrender of easement relating to common property the subject of a lease or sublease accepted or acquired by the body corporate under section 21(1A) that, apart from subsection (1), it is not entitled to accept or execute as a lessee or sublessee or, by the terms of the lease or sublease, it is prevented from accepting or executing.

(amended)

(3) A body corporate may, pursuant to a unanimous resolution, or the lessor, or both of them, may join in or consent to the execution or acceptance of a dealing referred to in subsection (1) relating to a lease or sublease accepted or acquired by the body corporate under section 21(1A).

(new)

(3A) A dealing referred to in subsection (1) is not effective unless the lessor has consented in writing to the execution or acceptance of the dealing by the body corporate.

(new)

(3B) A body corporate, pursuant to a unanimous resolution, and the lessor may—

- (a) execute a grant of easement which burdens the common property;
or
- (b) accept a grant of easement which benefits the common property;
or

- (c) surrender a grant of easement which benefits the common property; or
- (d) accept the surrender of a grant of easement which burdens the common property.

(new)

(3C) Subsection (3B) does not authorise a body corporate or the lessor—

- (a) to execute or accept a dealing relating to—
 - (i) common property the subject of a lease accepted or acquired by the body corporate under section 21(1A), unless the lessor is the lessor under the lease; or
 - (ii) common property the subject of a sublease; or
- (b) to execute or accept any such dealing contrary to the terms of a lease or sublease concerned or any other agreement entered into by either of them.

(new)

(4) The body corporate, if it is satisfied that all persons having registered interests in the parcel and all other persons having interests (other than statutory interests) which have been notified to the body corporate have consented in writing to the release of those interests in respect of the land comprised in the proposed disposition, shall execute the appropriate instrument and any plan necessary therefor and every instrument shall be valid and effective without execution by any person having an interest in the parcel, and the receipt of the body corporate of any moneys payable to the body corporate under the terms of the instrument shall be a sufficient discharge, and shall exonerate the persons taking under the instrument from any responsibility for the application of the moneys expressed to have been so received.

(5) Every instrument executed pursuant to subsection (4) and lodged for registration with the Registrar of Titles shall be endorsed with or accompanied by a certificate under the seal of the body corporate that the resolution was duly passed and that all necessary consents were given.

(6) In favour of persons dealing with the body corporate pursuant to this section and in favour of the Registrar of Titles the certificate shall be conclusive evidence of the matters certified therein.

(7) The Registrar of Titles shall register the instrument creating or surrendering an easement by recording the particulars in the register in the manner prescribed.

Division 3—Approval of local authority

Approval of subdivision

24.(1) The provisions relating to subdivision of land contained in the *Local Government (Planning and Environment) Act 1990* shall not apply to—

- (a) a subdivision of land into lots effected by the registration of a leasehold building units plan; or
- (b) a resubdivision of lots or common property or lots and common property effected by the registration of a leasehold plan of resubdivision; or
- (c) a lease or sublease of a lot or common property.

Provided always that the boundaries of the parcel correspond with boundaries of a lawful subdivision within the meaning of the Principal Act and, where the Council is the local authority, the *Local Government (Planning and Environment) Act 1990*.

(amended)

(2) (not applied)

(3) (not applied)

(4) In respect of an application for a certificate for the purposes of section 9(7) the local authority shall, direct the issue of the certificate if it is satisfied that—

- (a) the subdivision complies with subsection (1) and the Principal Act; and
- (b) separate occupation of the proposed lots will not contravene—

- (i) the provisions of—
 - (A) the Town Plan; or
 - (B) a by-law made pursuant to the *Local Government (Planning and Environment) Act 1990*; or
- (ii) the policies of the local authority in force in the case of a leasehold building units plan, at the date of the approval given by the local authority to the erection of the building; and
- (c) any consent or approval required under the Town Plan, ordinance or by-law has been given in relation to the separate occupation of the proposed lots; and
- (d) the proposed subdivision of the parcel into lots for separate occupation will not interfere with the existing or likely future amenity of the neighbourhood, having regard to the circumstances of the case, the public interest and the adequacy of access drives and parking areas within the common property.

(amended)

(5) (not applied)

(6) An applicant for a certificate required for the purposes of section 9(7) who feels aggrieved by the failure of a local authority to direct the issue of a certificate under the provisions of the *Local Government (Planning and Environment) Act 1990* may appeal to The Planning and Environment Court in accordance with the provisions of the *Local Government (Planning and Environment) Act 1990* and the provisions of that Act shall extend with such modifications as may be necessary to and in respect of such appeal.

(new)

(7) The decision of The Planning and Environment Court upon any appeal under this Act shall be final and shall be binding upon the local authority and the appellant and for the purposes of this Act shall be deemed to be the final decision of the local authority.

(amended)

(8) The provisions of subsections (4), (6) and (7) do not apply where the Corporation is the local authority.

(new)

Division 4—Leases of lots**Provisions generally applicable to leases**

24A.(1) The provisions of the *Property Law Act 1974* relating to leases of land apply to and in respect of a lease of a lot or of common property except in so far as those provisions are inconsistent with the provisions of this Part or the regulations.

(new)

(2) The lessor under a leasehold building units plan may be the lessee of any lot in that leasehold building units plan notwithstanding any law relating to the merger of leasehold and reversionary estates in land.

(new)

Dealings by lessees

24B. Except as expressly provided by Division 2, any provision in the lease of a lot or common property which purports to require the consent of the lessor under the leasehold building units plan to any dealing with the lease is void.

(new)

Powers of lessor where no current lease

24C.(1) Where the lessor is entitled to immediate possession of a lot because of the determination of a lease, the lessor shall, for the purposes only of this Act (but subject to such exceptions as may be prescribed), be deemed to be the lessee of the lot.

(new)

(2) Nothing in subsection (1) confers or imposes on the lessor any right or obligation created by any lease, sublease, mortgage, or other interest to which any former lessee was subject.

(new)

(3) Nothing in this section affects the rights of an under-lessee under the provisions of the *Property Law Act 1974*.

(new)

Further leases of lots and common property

24D.(1) Except as provided by subsection (3) and section 115 of the Property Law Act 1974, the lessor under a leasehold building units plan may grant further leases of the lots in the leasehold building units plan (which may consist of or include leases to the lessor) at any time before the leasehold building units plan is terminated.

(new)

(2) If a lease is granted under subsection (1) so as to commence when the lease of the common property expires, the lessor under the leasehold building units plan shall also grant a further lease of the common property to the body corporate.

(new)

(3) Where the lessees of lots the sum of whose lot entitlements is not less than four-fifths of the aggregate lot entitlement and the body corporate have, at least 6 months before the expiration of the terms of those leases, given written notice in accordance with subsection (4) to the lessor under the leasehold building units plan concerned of their intention to exercise their rights to renew their leases, the lessor shall, at least 3 months before those terms expire, grant and deliver—

- (a) further leases of those lots to those lessees; and
- (b) a further lease of the common property to the body corporate.

(new)

(4) A lessee of a lot or a body corporate gives notice in accordance with this section to the lessor under the leasehold building units plan concerned of an intention to exercise a right to renew a lease only if—

- (a) the right to a further lease, being a lease containing specified provisions, has been granted to the lessee or body corporate by the lessor in writing signed by the lessor; and
- (b) the notice is accompanied by a lease for execution by the lessor in the form approved for registration under the Real Property Acts and containing those provisions.

(new)

(5) Except where any such lease is granted so as to commence during the term of another lease of a lot or the common property and is expressed to expire at the same time as the other lease, the terms of all leases granted under this section with respect to a parcel shall be expressed—

- (a) to commence at the expiration of the terms of the leases they are intended to replace; and
- (b) to expire at the same time.

(new)

(6) If a lease granted under this section confers on the lessee a right of renewal, the renewal term shall be the same as that to which each other lessee under the leasehold building units plan is entitled.

(new)

(7) The lessor under the leasehold building units plan may execute a further lease of the common property as agent for the body corporate, unless the lease is granted pursuant to subsection (3).

(new)

(8) Notwithstanding subsection (3), the lessor may refuse to grant—

- (a) a further lease of a lot to a lessee, if—
 - (i) the lessee has committed a breach of a provision of the lease of that lot and that breach has not been remedied by the lessee or waived by the lessor; or
 - (ii) the lessee has not complied with a requirement imposed by the lessor in accordance with a provision of the lease for the renovation of improvements comprised within that lot; or
- (b) a further lease of the common property to the body corporate, if—
 - (i) a body corporate has committed a breach of a provision of the lease of the common property and that breach has not been remedied by the body corporate or waived by the lessor; or
 - (ii) the body corporate has not complied with a provision of the lease for the renovation of any improvements comprising common property.

(new)

(9) If a lessor refuses under subsection (8)(b) to grant a further lease of the common property the subject of a leasehold building units plan, the lessor shall also refuse to grant further leases of lots the subject of the same leasehold building units plan.

(new)

(10) A right to a further lease of a lot or of common property may not be exercised otherwise than in accordance with this section.

(new)

Expiry of leases of lots

24E.(1) When all leases of the lots and common property (if any) that are the subject of a leasehold building units plan expire or are otherwise determined without being wholly or partly replaced by further leases of the lots or common property registered under the Real Property Acts, then except as otherwise provided by this section—

- (a) the leasehold building units plan is terminated; and
- (b) the body corporate constituted for the purposes of the leasehold building units plan is dissolved; and
- (c) if the leases so provide or it is so provided in any other agreement, the former lessor under the leasehold building units plan is liable to pay to each person who, immediately before the termination of the plan, was the lessee of a lot (in this section referred to as “**the former lessee**”) such amount by way of compensation, calculated in accordance with the formula set out in Schedule 6 or as otherwise agreed by the former lessor and former lessee, in respect of the value of the improvements comprised within the former parcel as is attributable to the lot leased by the former lessee; and
- (d) all rights which were vested in the body corporate immediately before its dissolution (being rights which, but for the dissolution of the body corporate, would have survived the expiry of the term of the leases) are vested in the former lessees; and
- (e) the former lessees become jointly and severally liable for all of the liabilities of the body corporate subsisting immediately before its dissolution; and
- (f) any legal proceedings begun by or against the body corporate may be completed by or against the former lessees.

(new)

(2) As soon as practicable after the termination of a leasehold building units plan, the Registrar of Titles shall, on the application of the lessor—

- (a) record in the register the expiration or determination of the leases of the lots and common property comprised in the leasehold building units plan; and
- (b) cancel the leasehold building units plan; and
- (c) record in the register relating to the parcel that was the subject of the leasehold building units plan the fact that the leasehold building units plan has terminated.

(new)

(3) Where, in relation to a lot comprised in a leasehold building units plan that is about to be terminated by virtue of subsection (1) or to a former lot that was comprised in a leasehold building units plan that has already been so terminated, a dispute arises as to the amount to be paid in respect of the value of improvements under subsection (1)(c) to the lessee or former lessee of that lot, that dispute shall be resolved—

- (a) if the lease of that lot so provides or so provided or the parties to the dispute otherwise agree, by reference to arbitration under the *Commercial Arbitration Act 1990*; or
- (b) in any other case, by an order of the Court.

(new)

(4) An application for an order under subsection (3)(b) may be made by any party to the dispute concerned.

(new)

(5) Notice of the application shall be served, in accordance with rules of court, on such persons as the Court may direct.

(new)

(6) As far as practicable, all applications which relate to the same leasehold building units plan shall be heard together.

(new)

(7) At any time before the expiry of the terms of leases of the lots and the common property (if any) comprised in a leasehold building units plan, the lessee of any of those lots, the lessor, the body corporate or any creditor of the body corporate may apply to the Court for an order under subsection (10).

(new)

(8) Notice of an application under subsection (7) shall be served, in accordance with the Rules of Court, on every person referred to in that subsection other than the applicant and on such other persons (including creditors of the body corporate) as the Court directs.

(new)

(9) The person making an application under subsection (7) and any person referred to in subsection (8) (whether served with a copy of the notice of the application or not) is entitled to appear and be heard at the hearing of the application.

(new)

(10) At the hearing of an application under subsection (7), the Court may make an order to the effect that, notwithstanding the expiry of the leases of the lots and common property (if any) the subject of the leasehold building units plan concerned, the body corporate shall continue in existence for the purposes specified in the order until such date as may be specified in the order or in a further order of the Court.

(new)

(11) An order made under subsection (10) may include directions for or with respect to any of the following matters—

- (a) the sale or disposition of any property of the body corporate; or
- (b) the discharge of the liabilities of the body corporate; or
- (c) the persons liable to contribute money required for the discharge of the liabilities of the body corporate and the proportionate liability of each such person; or
- (d) the distribution of the assets of the body corporate and the proportionate entitlement of each person under that distribution; or
- (e) the administration and functions of the body corporate; or
- (f) any legal proceedings which have been brought by or against the body corporate and which are currently pending; or
- (g) the voting power at meetings of the body corporate of persons referred to in paragraphs (c) and (d); or
- (h) any matter in respect of which it is, in the opinion of the Court, just and equitable, in the circumstances of the case, to make provision in the order; or

- (i) the winding up of the body corporate (including the appointment and functions of any person to carry out the winding up).

(new)

(12) An order under subsection (10) shall have effect according to its tenor notwithstanding any other provision of this Part.

(new)

(13) The Court may, from time to time, vary any order made under subsection (10) on the application of any person who was entitled to appear and be heard on the hearing of the application for that order.

(new)

Restrictions on re-entry or forfeiture of lease of lot

24F.(1) Where the lease of a lot is subject to a registered mortgage, a right of re-entry or forfeiture under a provision of the lease for a breach of any covenant, condition or agreement (express or implied) in the lease shall, notwithstanding section 124(6) of the *Property Law Act 1974*, not be exercised unless the lessor has served on the mortgagee a copy of the notice relating to that breach served on the lessee under section 124 of that Act.

(new)

(2) Where a lessor has brought legal proceedings to enforce a right of re-entry or forfeiture under a provision of a lease of a lot, the Court may, on application by any person claiming as mortgagee of the lot make an order—

- (a) staying those proceedings on such terms as appear to the Court to be just and equitable; and
- (b) vesting, for the whole of the remaining term of the lease, or any shorter term, the lease of the lot in that mortgagee on such conditions as to the execution of any dealing or other document, payment of proper and reasonable rent, costs, expenses, damages, compensation, giving security or otherwise as that Court, having regard to all the circumstances of the case, thinks just and equitable.

(new)

(3) An order under subsection (2)—

- (a) may be made in proceedings for the purpose brought by the person claiming as mortgagee; or

- (b) where the proceedings brought by the lessor are already in the Court, may be made in those proceedings.

(new)

PART 3—VARIATION OR TERMINATION OF LEASEHOLD BUILDING UNITS PLAN

Variation of leasehold building units plan consequent upon damage to or destruction of building

25.(1) Where a building is damaged or destroyed—

- (a) the lessor concerned or any lessee of a lot in the leasehold building units plan;
- (b) where the lease of any such lot is subject to a registered mortgage—the mortgagee; or
- (c) the body corporate;

may make an application to the Court for an order under subsection (4).

(new)

(2) Notice of the application shall be served, in accordance with the Rules of Court, on—

- (a) every person referred to in subsection (1), other than the applicant; and
- (b) the local authority except where the Corporation is the local authority; and
- (c) the Registrar of Titles; and
- (d) such other persons as the Court may direct.

(new)

(3) The applicant and any person referred to in subsection (2) (whether or not served with notice of the application) shall be entitled to appear and be heard on the hearing of the application.

(new)

(4) The Court may, on an application made under subsection (1), make an order for or with respect to the variation of the existing leasehold building units plan or the substitution for the existing leasehold building units plan of a new leasehold buildings units plan. In making an order under this subsection, the Court must take into account the interests of the lessor and the interests of the lessees of lots.

(new)

(5) An order made under subsection (4) shall take effect on such day as may be specified in the order.

(new)

(6) Without limiting the generality of subsection (4), an order made under that subsection may include directions for or with respect to any 1 or more of the following matters—

- (a) the substitution for the existing schedule of lot entitlement of a new schedule of lot entitlement; and
- (b) the reinstatement in whole or in part of the building or, in the case of a stratum parcel, of the part of the building subject to the leasehold building units plan; and
- (c) the transfer to or vesting in the body corporate, free from registered mortgages, estates or interests, and caveats, of the interests of lessees of lots which have been wholly or partly destroyed; and
- (d) the application of any insurance money received by the body corporate in respect of damage to or the destruction of the building or, in the case of a stratum parcel, the part of the building subject to the leasehold building units plan; and
- (e) the payment of money to or by the body corporate, the lessor or the lessees or any 1 or more of them; and
- (f) any matter in respect of which it is, in the opinion of the Court, just and equitable, in the circumstances of the case, to make provision in the order.

(new)

(7) An order made under subsection (4) shall have effect according to its tenor.

(new)

(8) Where the Court is of the opinion that an order should not be made under subsection (4)—

- (a) it may, upon application made by any person entitled to appear and be heard on the hearing of the application made under subsection (1) or of its own motion, direct that the application be treated as an application for an order under section 26; and
- (b) where it makes such a direction—
 - (i) the application the subject of the direction shall be deemed to be made under section 26 by a person entitled to make the application; and
 - (ii) the applicant under subsection (1), as well as any other person entitled to appear and be heard under section 26, is entitled to appear and be heard on the hearing of the application.

(new)

(9) The Court may, from time to time, vary any order made under subsection (4) on the application of any person entitled to appear and be heard on the hearing of the application for that order.

(new)

(10) (not applied)

(11) (not applied)

(12) (not applied)

(13) (not applied)

Notification to local authority on extinguishment of plan

25A. (not applied)

Termination of leasehold building units plan

26.(1) An application to the Court for an order under subsection (4) may be made by—

- (a) the lessor or any lessee of a lot in the leasehold building units plan concerned; or
- (b) where the lease of any such lot is subject to a registered mortgage—the mortgagee; or
- (c) the body corporate.

(new)

(2) Notice of the application shall be served, in accordance with the Rules of Court, on—

- (a) every person referred to in subsection (1), other than the applicant; and
- (b) the local authority except where the Corporation is the local authority; and
- (c) the Registrar of Titles; and
- (d) such other persons (including creditors of the body corporate) as the Court may direct.

(new)

(3) The applicant and any person referred to in subsection (2) (whether or not served with notice of the application) shall be entitled to appear and be heard on the hearing of the application.

(new)

(4) The Court may, on an application made under subsection (1), make an order terminating the leasehold building units plan concerned. In making an order under this subsection the Court must take into account the interests of the lessor and the interests of the lessees of lots.

(new)

(5) An order made under subsection (4) shall take effect on such day as may be specified in the order.

(new)

(6) An order made under subsection (4) shall include directions for or with respect to the following matters—

- (a) the sale or disposition of any property of the body corporate; and
- (b) the discharge of the liabilities of the body corporate; and
- (c) the persons liable to contribute money required for the discharge of the liabilities of the body corporate and the proportionate liability of each such person; and
- (d) the distribution of the assets of the body corporate and the proportionate entitlement of each person under that distribution; and
- (e) the administration and functions of the body corporate; and
- (f) the voting power at meetings of the body corporate of persons referred to in paragraph (c) or (d); and
- (g) any matter in respect of which it is, in the opinion of the Court, just and equitable, in the circumstances of the case, to make provision in the order; and
- (h) the winding up of the body corporate (including the appointment and functions of any person to carry out the winding up).

(new)

(7) Upon an order under this section taking effect—

- (a) the estate or interest of the former lessees in that part of the former parcel which consisted of common property held by the body corporate as agent for the former lessees vests in the body corporate as principal, subject only to any estate or interest recorded on the leasehold building units plan or on any registered sublease, evidencing the estate or interest of the body corporate in that common property; and
- (b) the estates or interests of every lessee in that part of the former parcel which did not consist of common property vests in the body corporate as principal, subject only to any estate or interest recorded on the leasehold building units plan evidencing the estate or interest of the body corporate in the common property

comprised in that former parcel to the extent that the estate or interest so recorded was capable of affecting the lease of any former lot; and

- (c) the persons who, immediately before the order took effect, were lessees of lots the subject of the leasehold building units plan concerned cease to be lessees of lots subject to that leasehold building units plan; and
- (d) the persons whose estates or interests are divested by paragraph (b) have instead such rights and liabilities as are conferred or imposed upon them by the order; and
- (e) if the leases so provided or it is provided in any other agreement, the former lessor is liable to pay to each former lessee such amount by way of compensation, determined in accordance with the formula set out in Schedule 6 or as otherwise agreed by the former lessor and former lessee, in respect of the value of the improvements comprised within the former parcel as is attributable to the lot leased by the former lessee.

(new)

(8) The provisions of an order made under this section shall have effect notwithstanding any provision of this Act, other than this section.

(new)

(9) An order made under subsection (4) shall have effect according to its tenor.

(new)

(10) Where the Court is of the opinion that an order should not be made under subsection (4)—

- (a) it may, upon application made by any person entitled to appear and be heard on the hearing of the application made under subsection (1) or of its own motion, direct that the application be treated as an application for an order under section 25; and
- (b) where it makes such a direction—
 - (i) the application the subject of the direction shall be deemed to be an application made under section 25 by a person entitled to make the application; and

- (ii) the applicant under subsection (1), as well as any other person entitled to appear and be heard under section 25, is entitled to appear and be heard on the hearing of the application.

(new)

(11) The Court may, from time to time, vary any order made under subsection (4) on the application of any person who was entitled to appear and be heard on the hearing of the application for that order.

(new)

(12) Where, in relation to a former lot that was comprised in a leasehold building units plan that has been terminated by an order made under subsection (4), a dispute arises as to the amount to be paid in respect of the value of improvements under subsection (7)(e) to the former lessee of that lot, that dispute shall be resolved—

- (a) if the lease of the lot so provided or the parties to the dispute otherwise agree, by reference to arbitration under the *Commercial Arbitration Act 1990*; or
- (b) in any other case, by an order of the Court.

(new)

(13) An application for an order under subsection (12)(b) may be made by any party to the dispute concerned.

(new)

(14) Notice of an application for an order under subsection (12) shall be served, in accordance with the Rules of Court, on such persons as the Court may direct.

(new)

(15) As far as practicable, all applications which relate to the same leasehold building units plan shall be heard together.

(new)

Interchangeability of notices

26A. Any notice served under section 25 or 26 shall, where it relates to an application which is required to be treated as an application under another of those sections, be deemed to be a notice served under that other section.

(new)

Consequences of making an order under sections 25 or 26

26B.(1) Upon lodgement with the Registrar of Titles of a request in the prescribed form accompanied by a copy of an order made under section 25 or 26, the Registrar of Titles shall make appropriate recordings in the register and on the leasehold building units plan to give effect to the order.

(new)

(2) Where, by reason of the lodgement of a request in the prescribed form accompanied by a copy of an order made under section 25 or 26, the Registrar of Titles is required by subsection (1) to make recordings in the register, the Registrar of Titles shall—

- (a) record in the register the determination of the leases of the lots the subject of the former leasehold building units plan; and
- (b) record the determination of the lease of the common property on the former leasehold building units plan; and
- (c) record in the register evidencing the lessor's reversion in the former parcel that the body corporate is the lessee of that part of the parcel which contained the former lots and common property that were comprised in the leasehold building units plan, together with any other estates or interests to which the body corporate's leasehold estate in that part continues to be subject.

(new)

PART 4—MANAGEMENT

Division 1—Bodies corporate

Constitution of bodies corporate

27.(1) The lessee or lessees from time to time shall, by virtue of this Act, upon registration of the leasehold building units plan be a body corporate under the name “The Lessees—(insert name of the building or stratum parcel, as the case may be) Leasehold Building Units Plan No. ”. (The name of the building or the stratum parcel shall be the name endorsed upon the relevant leasehold building units plan and the leasehold building units plan number shall be the number allotted to that leasehold building units plan pursuant to section 9(14).).

(amended)

(2) The Corporations Law does not apply to or in respect of a body corporate constituted under this Act.

(amended)

(3) Subject to this Act the body corporate shall have the powers, authorities, duties and functions conferred or imposed on it by or under this Act or the by-laws or the management statement (if any) for the building or its site the subject of the leasehold building units plan concerned and shall do all things reasonably necessary for the enforcement of the by-laws, or management statement and the control, management and administration of the common property.

(amended)

(4) Notwithstanding the provisions of section 26, a body corporate for a leasehold building units plan which has been terminated under that section continues in existence until it is wound up in accordance with the order made under that section and, while it so continues in existence, is constituted by the persons referred to in section 26(6)(c) and (d).

(new)

(5) The body corporate shall have perpetual succession and a common seal and shall be capable of suing and being sued in its corporate name and shall be regulated in accordance with the by-laws or management statement (if any) for the building or its site the subject of the leasehold building units plan concerned for the time being in force.

(amended)

(6) The body corporate may—

- (a) sue and be sued on any contract made by it;
- (b) sue for and in respect of any damage or injury to the common property caused by any person, whether a lessee or not;
- (c) be sued in respect of any matter connected with the parcel for which the lessees are jointly liable.

(amended)

(7) In any case in which work is carried out for the purpose of constructing or preparing the common property the body corporate, upon registration of the leasehold building units plan, shall be deemed to have been a party to an enforceable contract for the carrying out of such work, and may sue in respect of that contract.

(amended)

Seal of body corporate

28.(1) The common seal of a body corporate shall be kept—

- (a) where the body corporate is constituted by 1 lessee, by that lessee;
or
- (b) where the body corporate is constituted by 2 or more lessees, by such lessee or member of the committee as the body corporate determines or, in the absence of any such determination, by the secretary of the committee.

(amended)

(2) The common seal of the body corporate shall only be affixed to an instrument or document in the presence of—

- (a) where the body corporate is constituted by 1 or 2 lessees, that lessee or those lessees, as the case may be; or
- (b) where the body corporate is constituted by more than 2 lessees, such 2 persons, being lessees or members of the committee, as the body corporate determines or, in the absence of any such determination, the secretary and any other member of the committee;

who shall attest the fact and date of the affixing of the seal by their signatures.

(amended)

(3) Notwithstanding subsections (1) and (2), a body corporate manager shall, for the purpose of exercising or performing any of his or her powers, authorities, duties or functions, be entitled to have the custody of the common seal of the body corporate and to affix it to any instrument or document and, where he or she so affixes it, shall attest the fact and date of the affixing of the seal by his or her signature.

(4) Where a body corporate manager has affixed the common seal of the body corporate to any instrument or document, he or she shall be deemed to have done so under the authority of a delegation made under section 50 by the body corporate.

(5) Subsection (4) shall not operate so as to enable a person to fraudulently obtain a benefit from its operation, but any benefit that accrues to a person from the operation of that subsection shall be deemed not to be fraudulently obtained if the benefit was first obtained by that person without any fraud by that person.

First annual general meeting of body corporate

29.(1) A meeting of the body corporate shall be convened and held in accordance with Part 1 of Schedule 2—

- (a) by the original lessee (if any), within the period of 3 months after registration of the leasehold building units plan, whether or not the original lessee is the lessee of a lot at the relevant time; or
- (b) if there is no original lessee, the lessor may convene the meeting.

If the lessor does not convene the meeting referred to in this subsection, the penalty provided in this subsection will not apply to the lessor.

Penalty—50 penalty units.

(new)

(2) The agenda for a meeting convened under subsection (1) shall consist of the following items—

- (a) to decide whether insurances effected by the body corporate should be confirmed, varied or extended or if not effected what insurances should be effected; and
- (b) to decide whether any amounts determined under section 38A(1), (2) or (4) should be confirmed or varied or if not determined what amounts should be determined; and
- (c) where there are more than 3 lessees, to determine the number of members of the committee; and
- (d) to elect the chairperson, secretary and treasurer of the body corporate and other members of the committee; and
- (e) to decide what matters, if any, shall be restricted matters for the purposes of section 46; and
- (f) to decide whether the by-laws in force immediately before the holding of the meeting should be amended, added to or repealed; and
- (g) to decide whether a body corporate manager should be appointed under section 50 by the body corporate and, if a body corporate manager is to be appointed, which powers, authorities, duties or functions of the body corporate should be delegated to the body corporate manager; and
- (h) to decide whether to appoint a person (who shall be a registered public accountant under the *Public Accountants Registration Act 1946*) to audit the books and accounts of the body corporate; and
- (i) such other matters as may be raised at the meeting.

(amended)

(2A) The agenda for a meeting convened under subsection (1) may include as an item that the body corporate resolve that the accounts of the body corporate shall not be audited.

If the body corporate so resolves, the item on the agenda referred to in subsection (2)(h) shall not be proceeded with.

(2B) Nothing in subsection (2A) shall prevent a body corporate resolving in general meeting that the accounts of the body corporate relating to any period specified in the resolution shall be audited.

(3) The meeting held under subsection (1) shall be the first annual general meeting of the body corporate and at such meeting a chairperson, secretary and treasurer shall be elected.

Provided that a person may be elected to 1 or more of those offices.

(4) An original lessee shall not fail or neglect to deliver to the body corporate at its first annual general meeting—

- (a) all plans, specifications, drawings showing water pipes, electric cables, drainage, ventilation ducts or air-conditioning systems, certificates (other than certificates of title for leases of lots), diagrams (including lift wiring diagrams) and other documents (including policies of insurance) obtained or received by the original lessee and relating to the parcel or building or part of the building subject to the leasehold building units plan; and
- (b) if they are in the possession or control of the original lessee, the roll, books of account and any notices or other records relating to the leasehold building units plan; and
- (c) the budget showing the estimated expenditure of the body corporate in relation to the parcel on an annual basis;

other than documents which exclusively evidence rights or obligations of the original lessee and which are not capable of being used for the benefit of the body corporate or any of the lessees, other than the original lessee.

Penalty—50 penalty units.

(amended)

(5) Part 1 of Schedule 2 applies to and in respect of the first annual general meeting of the body corporate and voting at that meeting.

(6) If a meeting of the body corporate is not convened and held in accordance with subsections (1) and (2), a referee may, pursuant to an application by the body corporate, a lessee or a mortgagee of a lease of a lot, appoint by order a person (other than the lessor) to convene a meeting of the body corporate within such time as may be specified in the order and the meeting convened by that person shall be held within that period and shall, for the purposes of subsection (3), be deemed to be the meeting convened under subsection (1).

(amended)

(7) (Omitted)

(8) An order made under subsection (6) may include such ancillary or consequential provisions as the referee thinks fit.

(9) Notwithstanding Schedule 2, where an order made under subsection (6) so provides—

- (a) the person appointed to convene a meeting of a body corporate by the order shall preside at the meeting and, while he or she so presides, shall be deemed to be the chairperson of the body corporate; and
- (b) notice of that meeting may be given in the manner specified in the order.

(10) An original lessee who has failed to convene a meeting of the body corporate in accordance with subsection (1) remains liable to the penalty provided by that subsection notwithstanding that an order has been made under subsection (6) or that a meeting has been convened pursuant to any such order.

(amended)

Meetings, other than first annual general meeting, of body corporate

29A.(1) An annual general meeting of a body corporate shall be held in each year on or after the anniversary of the first annual general meeting but not later than 2 months after the anniversary.

(2) A meeting of a body corporate which is not an annual general meeting shall be held whenever it is convened by the committee and shall be an extraordinary general meeting.

(3) Part 2 of Schedule 2 applies to and in respect of a meeting of the body corporate, which is not the first annual general meeting, and voting at that meeting.

Audit of accounts of body corporate

29B.(1) The books and accounts of the body corporate in respect of each financial year of the body corporate shall be audited except where the body corporate at the annual general meeting held at the beginning of that financial year by special resolution resolves that the accounts shall not be audited.

(2) The audit of the books and accounts of the body corporate shall be carried out by—

- (a) a person who is a registered company auditor under the Corporations Law; or
- (b) a person who is the holder of qualifications declared by the Minister responsible for the administration of the Building Units and Group Titles Act, in writing, to be approved qualifications.

(amended)

(3) The provisions of subsections (1) and (2) do not apply where a body corporate—

- (a) has appointed a body corporate manager who is a licensed body corporate manager under the *Auctioneers and Agents Act 1971*; and
- (b) has by special resolution resolved that Division 1A of Part 6 of that Act shall apply to the body corporate.

(amended)

By-laws

30.(1) Except as provided by in this section the by-laws set forth in Schedule 3 shall be the by-laws in force in respect of each leasehold building units plan.

(amended)

(1A) If a management statement has been recorded under the Principal Act on a leasehold building units plan and the by-laws are inconsistent with the management statement, the management statement prevails.

(new)

(2) Save where otherwise provided in subsections (7) and (11), a body corporate, pursuant to a special resolution, may, for the purpose of the control, management, administration, use or enjoyment of the lots or the lots and common property the subject of the leasehold building units plan, make by-laws amending, adding to or repealing the by-laws set forth in Schedule 3 or any by-laws made under this subsection.

(amended)

(3) An amendment of, addition to or repeal of the by-laws has no force or effect until the Registrar of Titles has, pursuant to a notification in the prescribed form lodged in the office of the Registrar of Titles by the body corporate, recorded the notification on the registered leasehold building units plan.

The Registrar of Titles shall not record a notification on the registered leasehold building units plan in relation to an amendment of, addition to or repeal of the by-laws made more than 3 months prior to the lodgment of the notification.

(amended)

(4) A sublease of a lot or common property shall be deemed to contain an agreement by the sublessee that he or she will comply with the by-laws for the time being in force.

(amended)

(5) Without limiting the operation of any other provision of this Act, the by-laws for the time being in force bind the body corporate and the lessees and any mortgagee in possession (whether by the mortgagee or any other person), sublessee or occupier, of a lot to the same extent as if the by-laws had been signed and sealed by the body corporate and each lessee and each such mortgagee, sublessee and occupier respectively and as if they contained mutual covenants to observe and perform all the provisions of the by-laws.

(amended)

(6) No by-laws or any amendment of or addition to a by-law shall be capable of operating to prohibit or restrict the devolution of a leasehold estate in a lot or a transfer, sublease, mortgage or other dealing therewith or

to destroy or modify any easement, service right or service obligation implied or created by this Act.

(amended)

(7) With the written consent of the lessee or lessees of the lot or lots concerned, a body corporate may, pursuant to a resolution without dissent make a by-law—

(a) conferring on the lessee of a lot specified in the by-law, or on the lessees of the several lots so specified—

(i) the exclusive use and enjoyment of; or

(ii) special privileges in respect of;

the whole or any part of the common property, upon conditions (including the payment of money at specified times or as required by the body corporate, by the lessee or lessees of the lot or several lots) specified in the by-law; or

(b) amending, adding to or repealing a by-law made in accordance with this subsection.

(amended)

(7A) A by-law referred to in subsection (7) shall either provide that—

(a) the body corporate shall continue to be responsible to carry out its duties pursuant to section 37(1)(b) and (c), at its own expense; or

(b) the lessee or lessees of the lot or lots concerned shall be responsible for, at the lessee's or lessees' expense, the performance of the duties of the body corporate referred to in provision (a);

and in the case of a by-law that confers rights or privileges on more than 1 lessee, any money payable by virtue of the by-law by the lessees concerned—

(c) to the body corporate; or

(d) to any person for or towards the maintenance or upkeep of any common property;

shall, except to the extent that the by-law otherwise provides, be payable by the lessees concerned proportionately according to the relevant proportions of their respective lot entitlements.

If a by-law does not provide as required by section (7A)(a) or (b), the lessee or lessees shall be responsible at his, her or their own expense, for the duties of the body corporate referred to in subsection (7A)(a).

(amended)

(7B) A by-law made pursuant to subsection (7)—

- (a) need not identify or define the common property the subject of the grant of exclusive use and enjoyment or special privileges provided that the by-law prescribes a method of identifying or defining the common property;
- (b) may authorise a person (including the original lessee or his or her agent) to identify or define the common property and to allocate such identified or defined area of common property to the respective lessees of each lot who are entitled by the by-law to the grant of exclusive use and enjoyment or special privileges;
- (c) may authorise the transposition of an identified or defined area of common property the subject of a grant of exclusive use and enjoyment or special privileges from 1 lessee of a lot to another lessee of a lot at any time and from time to time on receipt of written notice to the body corporate from both such lessees.

The notification on the registered leasehold building units plan referred to in the next paragraph shall be given forthwith by the body corporate on receipt of a written request from the person referred to in subsection (7B)(b) or the lessees referred to in subsection (7B)(c).

Neither the allocation of identified or defined common property nor any variation or transposition in relation to that allocation has any force or effect until the Registrar of Titles has, pursuant to a notification in the prescribed form lodged in his or her office by the body corporate, recorded the notification on the registered leasehold building units plan.

The Registrar of Titles shall not record a notification on the registered leasehold building units plan in relation to an allocation of identified or defined common property or any variation or transposition in relation to that allocation which occurred more than 3 months prior to the lodgment of the notification.

(amended)

(8) A by-law referred to in subsection (7) shall, while it remains in force, ensure as appurtenant to, and for the benefit of, and (subject to section

40(4) is binding upon, the lessee or lessees for the time being of the lot or lots specified in the by-law.

(amended)

(9) To the extent to which such a by-law makes a lessee directly responsible for the duties of the body corporate referred to in subsection (7A)(a), it discharges the body corporate from the performance of those duties.

(amended)

(9A) Where a person becomes a lessee of a lot at a time when, pursuant to a by-law, another person is liable to pay money to the body corporate, the person who so becomes lessee is, subject to section 40(4), jointly and severally liable with the other person to pay the money to the body corporate.

(amended)

(10) Any moneys payable by a lessee to the body corporate under a by-law referred to in subsection (7) may be recovered, as a debt, by the body corporate in any court of competent jurisdiction.

(amended)

(11) Where an order made under Division 3 of Part 5 has effect as if its terms were a by-law, a by-law may vary or nullify the effect of the order.

Provided always that such by-law shall be made pursuant to a resolution without dissent.

(12) A by-law which, but for this section, would have effect to prohibit or restrict—

- (a) the keeping on a lot of a guide dog used by a lessee or occupier of a lot who is a blind person or a deaf person; or
- (b) the use of a guide dog on a lot or common property by a blind person or a deaf person,

shall, to the extent of that prohibition or restriction, have no force or effect.

In this subsection—

“guide dog”, **“blind person”** and **“deaf person”** have the meanings respectively assigned to them in the *Guide Dogs Act 1972*.

(amended)

(13) (not applied)

Copy of by-laws and management statement to be produced upon request

31. Where any lot or common property the subject of a leasehold building units plan is sublet or rented, otherwise than to a lessee of a lot, the sublessor or, as the case may be, landlord shall upon the request of the sublessee or tenant produce or cause to be produced to the sublessee or tenant for his or her inspection a copy of the by-laws for the time being in force in respect of the leasehold building units plan and a copy of the management statement for the building and its site, the subject of the leasehold building units plan concerned.

Penalty—2 penalty units.
(amended)

Levies by body corporate on lessees

32.(1) A body corporate may levy the contributions determined by it in accordance with section 38A(1) and (2) and contributions referred to in section 38A(3) and the amount (if any) determined pursuant to section 38A(4) in respect of contributions by serving on the lessees notice in writing of the contributions payable by them in respect of their respective lots.

(amended)

(2) Contributions levied under subsection (1) by a body corporate shall be levied in respect of each lot and shall be payable, subject to this section, by the lessees in shares proportional to the lot entitlements of their respective lots.

(amended)

(3) In respect of a contribution levied under subsection (1) a lessee of a lot is, subject to section 40(4), liable, jointly and severally with any person who was liable to pay that contribution when that lessee became the lessee of that lot, to pay such part of that contribution as was unpaid when he or she became the lessee of that lot.

(amended)

(4) Regular periodic contributions to the administrative fund and sinking fund of a body corporate referred to in section 38A(5) shall be deemed to have been duly levied on a lessee of a lot notwithstanding that notice levying the contributions was not served on the lessee.

(amended)

(5) Without affecting the liability of a lessee of a lot in respect of a contribution levied under this section, where a mortgagee is in possession (whether by the mortgagee or any other person) of the lease of a lot the mortgagee shall be liable jointly and severally with the lessee of the lease of the lot of which the mortgagee is in possession for a contribution levied on that lessee in accordance with this Act but shall not be so liable in respect of a contribution, other than regular periodic contributions to the administrative fund and sinking fund referred to in section 38A(5), unless notice in writing of the levy of the contribution has been served on the mortgagee.

(amended)

(5A) A notice of the levy of contributions to a lessee of a lot shall—

- (a) if an amount has been determined pursuant to section 38A(4) in respect of the contributions, state the amount of the contribution attributable to that amount of discount; and
- (b) state the date when the contribution becomes due and payable; and
- (c) be served or deemed to be served on the lessee before the date when the contributions become due and payable.

(amended)

(6) A contribution levied in respect of a lot under this section—

- (a) becomes due and payable to the body corporate in accordance with the decision of the body corporate to make the levy; and
- (b) if paid within 30 days after the date when it becomes due and payable shall be reduced by that part of the contribution attributable to the amount determined pursuant to section 38A(4) (if any); and
- (c) may be recovered, as a debt, by the body corporate in any court of competent jurisdiction;

and any part of a contribution attributable to the amount determined pursuant to section 38A(4) so paid shall form part of the fund to which the contribution upon which the amount was determined belongs.

(7) Nothing in this section shall be construed to prevent a body corporate, in general meeting or the committee, either generally or in a particular case, determining that a contribution may be reduced as provided in subsection (6)(b) notwithstanding that the contribution is not paid as prescribed in that subsection.

Power of body corporate to carry out work

33.(1) Where a notice has been served on the lessee of a lot by a public authority or the Council requiring that lessee to carry out work on or in relation to that lot and the notice is not complied with the body corporate may carry out the work.

(amended)

(2) Where a lessee, mortgagee in possession, sublessee or occupier of a lot fails or neglects to carry out work—

- (a) required to be carried out by him or her under a term or condition of—
 - (i) a by-law referred to in section 30(7); or
 - (ii) the management statement (if any) for the building and its site the subject of the leasehold building units plan concerned; or
 - (iii) lease of the lessee's lot; or
- (b) necessary to remedy a breach of the duty imposed on him or her by section 51(1)(a);

the body corporate may carry out that work.

(amended)

(3) Where the body corporate carries out work on or in relation to a lot or common property pursuant to subsection (1) or (2), it may, subject to section 40(4), recover the cost of so doing, as a debt—

- (a) from the lessee, mortgagee in possession, sublessee or occupier referred to in subsection (1) or (2); or
- (b) where the work is carried out pursuant to—
 - (i) subsection (1) or (2)(b), from any person who, after the work is carried out, becomes the lessee of the lot on or in relation to which the work was carried out; or

- (ii) subsection (2)(a), from any person who, after the work is carried out, becomes the lessee of the lot in respect of which the by-law referred to in subsection (2)(a) was made.

(amended)

(4) Where an order has been made under Part 5 and the order is not complied with, the body corporate may carry out any work specified in the order and recover from the person against whom the order was made the cost of so doing, as a debt, in any court of competent jurisdiction.

(5) Where—

- (a) part of a building comprised in a lot in a leasehold building units plan contains a structural defect which affects or is likely to affect the support or shelter provided by that lot for another lot in that building or the common property; or
- (b) a defect occurs in any pipes, poles, wires, cables or ducts referred to in section 51(1)(a)(ii) within a lot;

and the defect is not due to any breach of the duty imposed on any person by section 51(1)(a), the body corporate shall, at its own expense, carry out such work as is necessary to rectify the defect.

(amended)

Body corporate's address

34.(1) A body corporate shall ensure that an address for the time being for service of notices on it is recorded on the registered leasehold building units plan.

(amended)

(2) Upon a change of address of a body corporate for service of notices on it, the body corporate shall cause a notice in the prescribed form of the change of address to be lodged forthwith in the office of the Registrar of Titles.

(3) (not applied)

(4) The Registrar of Titles shall make such recording on the registered leasehold building units plan of the change of address of a body corporate as the Registrar of Titles considers appropriate.

(amended)

(5) Upon the recording by the Registrar of Titles of the change of address notified in accordance with subsection (2) and not otherwise, that address as changed shall, notwithstanding any other provision of this Act, be an address for service of notices on the body corporate.

(amended)

Agreement for payment to a lessee of consideration on transfer or lease of common property

35.(1) A body corporate may, pursuant to a special resolution, make an agreement with a lessee with respect to the payment to the lessee of the whole or any part of the consideration under any transaction proposed to be entered into by the body corporate under Division 2 of Part 2 or of any moneys payable to the body corporate under a by-law referred to in section 30(7).

(amended)

Power of entry

36.(1) For the purpose of carrying out—

- (a) pursuant to section 33(1), (2), (4) or (5), any work; or
- (b) any work required to be carried out by a body corporate—
 - (i) by a notice served on it by a public authority or the Council; or
 - (ii) by an order of the referee or a tribunal; or
- (c) any work referred to in section 37(1)(b) or (c); or
- (d) any work necessary to repair or renew any pipes, poles, wires, cables or ducts referred to in section 51(1)(a)(ii);

the body corporate may, by its agents, servants or contractors, enter upon any part of the parcel for the purpose of carrying out the work—

- (e) in the case of an emergency, at any time; or
- (f) in any other case, at any reasonable time on notice given to any occupier of that part of the parcel.

(amended)

(2) A person shall not obstruct or hinder a body corporate in the exercise of its power under subsection (1).

Penalty: \$200.

Duties and powers of body corporate regarding property etc.

37.(1) A body corporate shall—

- (a) control, manage and administer the common property for the benefit of the lessees; and
- (b) where reasonably practicable, establish and maintain suitable lawns and gardens on the common property; and
- (c) subject to section 37A, properly maintain and keep in a state of good and serviceable repair (including, where reasonably necessary, renew or replace the whole or part of the common property)—
 - (i) the common property;
 - (ii) any fixture or fitting (including any pipe, pole, wire, cable or duct) comprised on the common property or within any wall, floor or ceiling the centre of which forms a boundary of a lot;
 - (iii) any fixture or fitting (including any pipe, pole, wire, cable or duct) which is comprised within a lot and which is intended to be used for the servicing or enjoyment of any other lot or of the common property;
 - (iv) each door, window and other permanent cover over openings in walls where a side of the door, window or cover is part of the common property;
 - (v) any personal property vested in the body corporate; and
- (d) cause to be constructed and maintained at an appropriate place within the parcel, accessible by the lessees a receptacle suitable for the receipt of mail and other documents with the name of the body corporate clearly shown thereon.

(amended)

(2) A body corporate may—

- (a) enter into an agreement, upon such terms and conditions (including terms for the payment of consideration) as may be agreed upon by the parties, with a lessee or occupier of a lot for the provision of amenities or services by it to the lot or to the lessee or occupier; and
- (b) acquire and hold any personal property; and
- (c) (Omitted)
- (d) enter into hiring agreements and leasing agreements; and
- (e) accept or acquire a lease, licence or permit for the purposes of providing moorings for vessels; and
- (f) make or cause to be made improvements to the common property where—
 - (i) in any 1 case, the cost of the improvements does not exceed the prescribed amount; or
 - (ii) the body corporate by resolution without dissent so resolves; or
 - (iii) the body corporate resolves in general meeting that the improvements are considered to be essential for the health, safety or security of users of the common property and the referee makes an order approving the making of the improvements.

(amended)

(2A) In subsection (2)(f)(i)—

“prescribed amount” means the amount prescribed under section 37(2)(g)(i) of the Building Units and Group Titles Act.

(new)

(3) (not applied)

(4) (not applied)

Improvement etc. to common property by lessee of lot

37A.(1) A body corporate may, upon such terms as it considers appropriate, at the request of a lessee of a lot, by resolution without dissent,

authorise the lessee of the lot to effect improvements (including erect or install fixtures and fittings) in or upon the common property for the benefit of that lessee.

(amended)

(2) The lessee for the time being of a lot in respect of which any improvement in or upon the common property has been effected pursuant to an authority granted under subsection (1) shall, unless excused by the body corporate, be responsible for the performance of the duty of the body corporate under section 37(1)(c) in respect of the improvement.

(amended)

Administrative fund and sinking fund

38.(1) A body corporate shall establish and maintain a fund as its administrative fund.

(2) A body corporate shall pay into its administrative fund—

- (a) all moneys received by it in respect of contributions determined pursuant to section 38A(1);
- (b) the proceeds of the sale or other disposal of any personal property of the body corporate;
- (c) any fees received by the body corporate under section 40;
- (d) any amounts paid to the body corporate by way of discharge of insurance claims;
- (e) interest received on any investments belonging to the administrative fund.

(3) A body corporate shall not disburse any moneys from its administrative fund otherwise than for the purpose of—

- (a) meeting its liabilities referred to in section 38A(1); or
- (b) carrying out its powers, authorities, duties or functions under this Act.

(4) A body corporate shall establish and maintain a fund as its sinking fund.

(5) A body corporate shall pay into its sinking fund—

- (a) all moneys received by it in respect of contributions determined pursuant to section 38A(2);
- (b) any amounts paid to the body corporate by way of discharge of insurance claims and not paid to its administrative fund;
- (c) all other amounts received by the body corporate and not paid or payable into the administrative fund;
- (d) interest received on any investments belonging to the sinking fund.

(6) A body corporate shall not disburse any moneys from its sinking fund otherwise than for the purpose of—

- (a) meeting its liabilities referred to in section 38A(2); or
- (b) carrying out its powers, authorities, duties or functions under this Act.

(7) A body corporate may only invest any moneys in its administrative fund or its sinking fund in any manner permitted by law for the investment of trust funds or in any prescribed investment.

In this subsection—

“prescribed investment” means the investment prescribed under section 38(7) of the Building Units and Group Titles Act.
(amended)

(8) A body corporate shall pay any moneys in its administrative fund or its sinking fund that are not otherwise invested in accordance with subsection (7) into an account established with a bank in the name of the body corporate.

Body corporate to determine contributions by lessees

38A.(1) Within 14 days after registration of the leasehold building units plan and from time to time thereafter, the body corporate shall determine the amounts which are reasonable and necessary to be raised by contributions for the purpose of meeting its actual or expected liabilities incurred or to be incurred within the period (not exceeding 12 months) specified in the determination in respect of—

- (a) the regular maintenance and keeping in good and serviceable repair pursuant to section 37 of parts of the parcel being the common property, fixtures, fittings and other property (including personal property) held by or on behalf of the body corporate; and
- (b) the payment of insurance premiums; and
- (c) all other liabilities incurred or to be incurred during that period by or on behalf of the body corporate in carrying out its powers, authorities, duties and functions under this Act other than liabilities referred to in subsection (2).

(amended)

(2) Within 12 months after registration of the leasehold building units plan and from time to time thereafter, the body corporate shall determine the amounts which are reasonable and necessary to be raised by contributions for the purposes of meeting its actual or expected liabilities in respect of—

- (a) painting or treating of any part of the common property which is a structure or other improvement for the preservation and appearance of the common property; and
- (b) the acquisition of personal property; and
- (c) the making of improvements to the common property; and
- (d) the renewal or replacement pursuant to section 37 of parts of the parcel being the common property, fixtures and fittings which the body corporate is required by this Act to maintain and keep in good and reasonable repair and other property (including personal property) held by or on behalf of the body corporate; and
- (e) such other liabilities expected to be incurred at a future time where the body corporate considers that the whole or part of the liabilities should be met from its sinking fund.

(amended)

(3) If the body corporate becomes liable to pay any moneys that it is unable to pay forthwith, the body corporate shall determine that amount to be raised by contributions.

(4) The body corporate from time to time may in respect of contributions determined in accordance with section 38A(1), (2) or (3) determine, for the purposes of subsection (6)(b) an amount being not greater than 20% of those contributions.

(5) A determination made by a body corporate under subsection (1) or (2) may specify that the amounts to be raised for the purposes therein referred to shall be raised by such regular periodic contributions as may be specified in the determination.

Levy by body corporate for contributions

38B. A body corporate shall from time to time levy, in accordance with section 32, on each person liable therefor a contribution to raise the amounts referred to in section 38A(1), (2) and (3).

Borrowings by body corporate

38C. A body corporate may borrow moneys and secure the repayment of borrowed moneys and of any interest in such manner as may be agreed upon by the body corporate and the lender.

Duty of body corporate as to keeping records, convening meetings etc.

38D.(1) A body corporate shall—

- (a) cause proper records to be kept of notices given to the body corporate under this or any other Act and of any orders made under this Act and served on the body corporate;
- (b) cause to be kept and retained for the prescribed time or times minutes of its meetings (which shall include particulars of motions passed by it at those meetings) and proper books of account in respect of moneys received or expended by the body corporate;
- (c) cause to be prepared, from the books referred to in paragraph (b), a proper statement of accounts of the body corporate in respect of each period commencing on the date of registration of the leasehold building units plan or the day immediately after the date up to which the last previous such statement was prepared and

ending on the last day of the month that precedes by 3 months the month in which occurs each anniversary of the first annual general meeting;

- (d) cause annual general meetings to be convened in accordance with section 29A.

(amended)

(2) For the purpose of this section—

- (a) proper books of account shall include a receipt book, cash book, bank deposit book, contributions levy register, cheque book and register of assets;
- (b) a register of assets shall disclose the personal property vested in the body corporate;
- (c) the expression “**book**” includes any register or other record of information and any accounts or accounting records however compiled recorded or stored and also includes any document.

(3) For the purposes of subsection (1)(c), there shall be shown in respect of each item shown in every statement of accounts of the body corporate, except the first statement after incorporation of the body corporate, the corresponding amount (if any) as at the end of the immediately preceding financial year and where the financial years are not equal in length, the periods covered shall be clearly indicated by way of note or otherwise.

If the statement of accounts does not include an item corresponding to an item in the statement of accounts as at the end of the immediately preceding financial year, that previous item and the amount of that item shall be shown.

(4) If a body corporate fails or neglects to convene an annual general meeting within the period required by section 29A, the annual general meeting held next after the expiration of that period shall be an annual general meeting of the body corporate.

Body corporate to implement its decisions

38E. A body corporate shall implement the decisions of the body corporate.

Roll

39.(1) A body corporate shall prepare and maintain a roll in accordance with this section.

(2) The roll shall be kept in the form of a book (either bound or loose-leaf) which shall contain 1 or more pages in respect of each lot the subject of the leasehold building units plan concerned.

(amended)

(3) The body corporate shall record the following information on a page of the roll relating to the lot to which the information relates—

- (a) the lot entitlement of the lot, as shown from time to time on copies of schedules of lot entitlements forwarded under section 14 and received by the body corporate; and
- (b) the name and address of the original lessee as shown in the register consequent upon registration of the leasehold building units plan and the name of and address for the service of notices on the lessee of each lot as shown in the prescribed notices; and
- (c) the name of the first mortgagee of a lease of the lot as shown on the prescribed notice and the address for the service of notices on the first mortgagee as shown therein; and
- (d) the name of the company nominee of any corporation that is a lessee or mortgagee of a lease of the lot as shown in the prescribed notices; and
- (e) the discharge, transfer or assignment of a mortgage referred to in paragraph (c) as shown in a prescribed notice and, except in the case of a discharge, the address for the service of notices on the transferee or assignee as shown therein; and
- (f) the entry into possession of a lease of the lot by a mortgagee as shown in a prescribed notice; and
- (g) the name and address of any sublessee of the lot the prescribed notice of the granting of whose sublease has been given and the address for the service of the notices on the sublessor and sublessee as shown therein; and

- (h) the termination or assignment of any sublease, referred to in paragraph (g), as shown in a prescribed notice and, in the case of an assignment, the name of the assignee and the address for the service of notices on the assignee as shown therein; and
- (i) the name of any person who has become entitled, otherwise than as a transferee, to a lease of the lot, the prescribed notice of which entitlement has been given to the body corporate and the address for the service of notices on the person as shown therein; and
- (j) the address for the service of notices on any person as shown in a prescribed notice; and
- (k) the name and address of any real estate agent, within the meaning of the *Auctioneers and Agents Act 1971*, appointed as agent by the lessee for the purpose of the subletting of the lot as shown in a prescribed notice.

In this subsection—

“prescribed notice” or **“prescribed notices”** means the relevant notice or, as the case may be, notices given to the body corporate under section 53.

(amended)

(4) The body corporate shall record and maintain in the roll a copy of the by-laws for the time being in force with respect to the leasehold building units plan concerned and a copy of the management statement (if any) for the building and its site, the subject of the leasehold building units plan concerned.

(amended)

(5) The body corporate shall maintain as part of the roll a register in which shall be recorded the prescribed particulars of each prescribed arrangement entered into in respect of the leasehold building units plan.

(amended)

Supply of information, certificates and copies by body corporate

40.(1) A body corporate incorporated by the registration of a leasehold building units plan shall, upon application made to it in writing in respect of a lot the subject of that leasehold building units plan by a prescribed person and on payment of the prescribed fee, do such 1 or more of the following things as are required of it in the application—

- (a) inform the applicant of the name and address of each person who is the chairperson, secretary or treasurer of the body corporate or a member of the committee and of any person who has been appointed under section 50 or 94 as a body corporate manager; or
- (b) make available for inspection by the applicant or the applicant's agent—
 - (i) the roll; and
 - (ii) the notices and orders referred to in section 38D(1)(a); and
 - (iii) the plans, specification, drawings showing water pipes, electric cables, drainage, ventilation ducts or air-conditioning systems, certificates, diagrams and other documents delivered under section 29(4); and
 - (iv) the minutes of general meetings of the body corporate and of the committee; and
 - (v) the books of account of the body corporate; and
 - (vi) a copy of the statement of accounts of the body corporate last prepared by the body corporate in accordance with section 38D(1)(c); and
 - (vii) every current policy of insurance effected by the body corporate and the receipt for the premium last paid in respect of each such policy; and
 - (viii) any other record or document in the custody or under the control of the body corporate; and
 - (ix) the by-laws for the time being in force; and
 - (x) the management statement (if any) for the building and its site, the subject of the leasehold building units plan concerned;

at such time and place as may be agreed upon by the applicant or the applicant's agent and the body corporate and, failing agreement, at the parcel at a time and on a date fixed by the body corporate under subsection (2); or

- (c) certify, as at the date of the certificate, in respect of the lot in respect of which the application is made—
- (i) the amount of any regular periodic contributions determined by the body corporate under section 38A(1), (2) and (5) and the periods in respect of which those contributions are payable; and
 - (ii) whether there is any amount unpaid of any contribution determined under section 38A(1) and of any contribution determined by the body corporate under section 38A(2) and, if so, the amount unpaid and, in the case of a contribution levied under section 38A(2), the date on which any such contribution was levied; and
 - (iii) whether there is any amount unpaid of any contribution levied under sections 38A(3) or 38B and, if so, the amount unpaid and the date on which it was levied; and
 - (iv) whether there is any amount unpaid by a lessee under a by-law referred to in section 30(7); and
 - (v) whether there is any amount unpaid of any contribution levied under section 124(2) and, if so, the amount unpaid and the date on which it was levied; and
 - (vi) whether there is any amount recoverable from the lessee of that lot under section 33(3) or (4) and, if so, the amount unpaid; and
 - (vii) the amount, if any, determined under section 38A(4) in respect of any unpaid contribution referred to in this paragraph; or

- (d) furnish to the applicant or the applicant's agent a copy of—
 - (i) the by-laws for the time being in force or any part of the by-laws; and
 - (ii) the management statement for the building and its site the subject of the leasehold building units plan concerned or any part of it;

within a period of 14 days commencing on the day next after the day on which the application is received by the body corporate.

(new)

(1A) In subsection (1)—

“prescribed fee” means the fee prescribed under section 40(1) of the Building Units and Group Titles Act. The lessor is not required to pay the prescribed fee in making an application under subsection (1).

(amended)

(2) Where an applicant and a body corporate fail to reach an agreement referred to in subsection (1) (b) within 3 days after the receipt of the application by the body corporate, the body corporate shall forthwith send by post to the applicant a notice fixing a time, specified in the notice, between 9 a.m. and 8 p.m. on a date so specified, being a date not later than 14 days after the receipt of the application by the body corporate for the making of the inspection referred to in subsection (1) (b).

(3) The body corporate shall permit any person to whom the by-laws or the management statement are made available for inspection to make copies of or take extracts from the by-laws or the management statement.

(amended)

(4) In favour of a person taking for valuable consideration an estate or interest in any lot a certificate given under subsection (1)(c) by the body corporate in respect of that lot is conclusive evidence, as at the date of the certificate, of the matters stated therein.

(5) For the purposes of subsection (1)—

“prescribed person” means—

- (a) the lessor, a lessee of the lot or mortgagee of a lease of the lot in respect of which the application is made or a person authorised in writing by the lessor or that lessee or mortgagee;

- (b) a person who signs (personally or by his or her agent) a contract or other instrument that is intended to bind the person (absolutely or conditionally) to accept a transfer of the lease of the lot in respect of which the application is made from the lessee of that lot or a person authorised in writing by the first mentioned person.

An application under subsection (1) by a person specified in provision (b) shall be supported by a statutory declaration under the *Oaths Act 1867* unless the body corporate is otherwise satisfied that an applicant is such a person.

(amended)

Body corporate may require information as to subletting of lot

40A. A lessee or real estate agent recorded on the roll pursuant to a notice given under section 53(14), shall, upon application made to him or her in writing in respect of a lot by the body corporate, certify whether, at the material time, the lot has or had been sublet by him or her and, if so, the name of the person to whom it has or had been sublet.

(amended)

Exemption from certain provisions of Act

41.(1) Where all of the lessees of lots contained in a leasehold building units plan reside permanently in their respective lots the body corporate may by resolution without dissent resolve that any 1 or more of the following provisions shall not apply to that body corporate, that is to say—

- (a) section 74(a) and (b);
- (b) clause 1(4)(a)(ia), (5), (6), (7), (8) and (10), 4(b), 5(b), 6 and 8 of Part 2 of Schedule 2;
- (c) clause 10(f) of Schedule 4 insofar as that clause casts a duty upon a secretary of the body corporate and any regulation prescribing any procedure for the carrying out of that duty.

(1A) A resolution pursuant to subsection (1) shall cease to be a resolution of the body corporate if the lessee of any lot ceases to reside permanently therein.

(amended)

(2) Where subsection (1) does not apply to a body corporate, it may by resolution without dissent resolve to make an application on any 1 or more of the prescribed grounds to the referee for an order that any 1 or more of the provisions specified in subsection (1) shall not apply to that body corporate.

(3) An application made by a body corporate pursuant to subsection (2) shall be in the prescribed form, be accompanied by the prescribed fee, if any, and specify the grounds upon which the application is made.

In this subsection—

“prescribed fee” means the fee prescribed under section 41(3) of the Building Units and Group Titles Act.

(amended)

(4) Where the referee considers that the grounds specified in an application made pursuant to subsection (2) justify the making of an order the referee may make an order specifying which provision or provisions specified in subsection (1) shall not apply to the body corporate which made the application.

(4A) Where, upon an application by a lessee or the body corporate for an order under this subsection, a referee considers that such an order should be made, the referee may by order—

- (a) revoke an order made under subsection (4); or
- (b) vary an order made under subsection (4); or
- (c) determine that the order made under subsection (4) shall apply or shall not apply to the extent indicated in the order and either generally or in respect of the applicant.

(amended)

(5) The provisions of Part 5 shall so far as applicable apply to the making of an order under this section.

(6) For so long as a resolution made under subsection (1) or an order made under subsection (4) or (4A) subsists, the provisions the subject of the resolution or, as the case may be, order shall not apply to the extent indicated in the resolution or order.

Division 2—Committees**Constitution of committees**

42.(1) After the first annual general meeting of a body corporate, there shall be a committee consisting of a chairperson, secretary and treasurer and such other members as may be elected or appointed pursuant to this section.

(2) The chairperson, secretary and treasurer of the body corporate shall be members of, and be also respectively the chairperson, secretary and treasurer of, the committee.

Provided that a person may be elected to 1 or more of those offices.

(3) Where there are not more than 3 lessees, the committee shall consist of each lessee, if any, who is an individual or the lessee's nominee, together with the company nominee of each lessee, if any, which is a corporation.

(3A) Where there is 1 lessee only, he or she may make any decision that a duly convened committee may make under this Act and such decision shall be deemed to be a decision of the committee.

(amended)

(4) Where there are more than 3 lessees, the body corporate shall determine the number of persons, being not less than 3 nor more than the number of lessees or 7, whichever is the less, to be members of the committee including the chairperson, secretary and treasurer of the body corporate.

(4A) The committee shall consist of such members as for the time being hold office not exceeding in number the number determined by the body corporate under subsection (4).

(amended)

(5) The members of a committee referred to in subsection (4A) (if any) and the chairperson, secretary and treasurer—

- (a) shall, upon the number of lessees increasing to more than 3, be first elected—
- (i) at an extraordinary general meeting convened for the purpose and held forthwith after notice has been duly given but not later than 3 months before the anniversary date of the annual general meeting of the body corporate first occurring after that increase or, if requested, in writing addressed to the secretary of the body corporate, by a lessee, at any time before that anniversary date; or
 - (ii) at the annual general meeting of the body corporate first held after that increase;
- whichever shall first occur;
- (b) shall be elected at each annual general meeting of the body corporate held after the first such election.

(amended)

(6) A person is not eligible for election as chairperson, secretary or treasurer of the body corporate or as a member of a committee unless he or she is—

- (a) an individual who is a lessee; or
- (b) a company nominee of a corporation which is a lessee; or
- (c) an individual who is not a lessee but who is nominated for election by a lessee.

Notwithstanding the provisions of this section, the body corporate may determine that the holder of the office of secretary or treasurer of the body corporate shall not be a member of the committee whereupon, upon election to that office a person shall be the secretary or, as the case may be, treasurer of the body corporate and of the committee but shall not be a member of the committee.

(amended)

(7) A member of a committee may, with the consent of the committee, appoint a lessee or company nominee of a corporation which is a lessee to act in his or her place as a member of the committee at any meeting of the committee and any lessee or company nominee of a corporation which is a lessee so appointed shall, when he or she is so acting, be deemed to be a member of the committee.

(amended)

(8) A lessee or committee nominee of a corporation may be appointed under subsection (7) whether or not he or she is a member of the committee.

(amended)

(9) If a person appointed under subsection (7) is a member of the committee he or she may, at any meeting of the committee, separately vote in his or her capacity as such a member and on behalf of the member in whose place he or she has been appointed to act.

(10) Notwithstanding any other provision of this section, a committee may be constituted before the first annual general meeting of the body corporate.

(11) The members of a committee constituted under subsection (10) (if any) and the chairperson, secretary and treasurer of a body corporate shall be elected at a general meeting of the body corporate and the provisions of subsection (6) and such of the provisions of Part 1 of Schedule 2 as relate to the election of the chairperson, secretary and treasurer of a body corporate and of members of a committee apply to and in respect of the election of the chairperson, secretary and treasurer of a body corporate and of members of a committee apply to and in respect of the election of the chairperson, secretary and treasurer and of those members of a committee to be so constituted.

(12) Part 2 of Schedule 2 (other than clause 16(1)) does not apply to or in respect of the election of the chairperson, secretary and treasurer of a body corporate and the members of a committee to be constituted under subsection (10).

(13) The provisions of this Division (other than subsections (1), (2), (3) or (3A) and (5) of this section) apply to and in respect of a committee constituted under subsection (10) and the members of the committee.

(amended)

(14) Where there is no committee of a body corporate, the body corporate shall exercise and perform the powers, authorities, duties and functions of the committee but nothing in this subsection prevents a body corporate manager appointed under this Act from exercising or performing any powers, authorities, duties or functions conferred or imposed upon the body corporate manager.

(15) The election of members of a committee and the chairperson, secretary and treasurer of a body corporate shall be by secret ballot unless the body corporate resolves otherwise.

Vacation of office of member of committee

43.(1) A person elected as chairperson, secretary or treasurer of the body corporate or as a member of a committee vacates his or her office—

- (a) if, where the person was a lessee at the time of his or her election, he or she ceases to be a lessee; or
- (b) if, where the person was not a lessee at the time of his or her election or was a company nominee, the individual who nominated the person for election or the corporation for which he or she is a company nominee, as the case may be—
 - (i) ceases to be a lessee; or
 - (ii) notifies the body corporate, in writing, that his or her office, as a member of the committee is vacated.

Provided that this paragraph (b) shall not apply to a secretary or treasurer of the body corporate who is not a member of the committee; or

- (c) upon the receipt by the body corporate from the person of notice in writing of his or her resignation; or
- (d) upon the election at a general meeting of the body corporate of another person to that office or as a member of the committee; or
- (e) where the person is a member referred to in section 42(3) or (3A) and the number of lessees increases to more than 3, upon the election of the chairperson, secretary and treasurer of the body

corporate and the other members of the committee at the annual general meeting, or the extraordinary general meeting referred to in section 42(5); or

- (f) if the person is absent without prior leave granted by the committee from 3 consecutive meetings of the committee of which due notice has been given to him or her; or
- (g) if the person becomes bankrupt or compounds with his or her creditors or otherwise takes advantage of the laws in force for the time being relating to bankruptcy; or
- (h) if the person is convicted in Queensland of an indictable offence or, elsewhere than in Queensland, is convicted of an offence which would be an indictable offence if committed in Queensland; or
- (i) if the person dies or becomes mentally ill; or
- (j) if the body corporate, in general meeting pursuant to a resolution, determines that the person's office is vacated.

(amended)

(2) Upon the occurrence of a vacancy in the office of chairperson, secretary or treasurer of the body corporate or another member of a committee, otherwise than by reason of subsection (1)(d) or (e), the body corporate shall appoint a person eligible for election as such to fill the vacancy, and a person so appointed shall, subject to this section, hold office for the balance of his or her predecessor's term of office.

(2A) If the membership of the committee is one-half or less than one-half of the number determined by the body corporate pursuant to section 42(4) to be members of the committee, the members for the time being of the committee shall, notwithstanding section 45(1), constitute a quorum at a meeting of the committee for the purpose only of appointing a person to fill a vacancy in the office of chairperson, secretary or treasurer of the body corporate or another member of the committee or of convening a meeting of the body corporate for that purpose.

Provided that, if—

- (a) there is no member of the committee; or
- (b) the members of the committee—
 - (i) do not appoint a person to fill the vacancy or vacancies in that office or those offices; and
 - (ii) have not convened a meeting of the body corporate for that purpose;

the referee may, pursuant to an application made to him or her by a lessee or mortgagee of a lease of a lot, appoint by order a person nominated by the lessee or mortgagee, who has consented to that nomination, to convene and hold a meeting of the body corporate within such time as may be specified in the order for the purpose of appointing a person or persons to fill the vacancy or vacancies in that office or those offices and a meeting so convened shall be held within that time.

(2B) An order under the proviso to subsection (2A) may include such ancillary or consequential provisions as the referee thinks fit.

(2C) Notwithstanding Schedule 2, where an order made under subsection (2A) so provides—

- (a) the person appointed to convene and hold a meeting of the body corporate by the order shall preside at the meeting and, while the person so presides, shall be deemed to be the chairperson of the body corporate; and
- (b) notice of that meeting may be given in the manner specified in the order.

(2D) A meeting convened and held pursuant to an order of the referee made under subsection (2A) by reason that there is no member of the committee shall, for the purpose of conducting the election of the chairperson, secretary and treasurer of the body corporate and the other members of the committee, be deemed to be a first annual general meeting of the body corporate.

(amended)

Chairperson, secretary and treasurer of committee

44.(1) The chairperson shall preside at all meetings of the committee at which he or she is present and, if he or she is absent from any meeting, the members of the committee present at that meeting shall appoint 1 of their number to preside at that meeting during the absence of the chairperson.

(1A) The committee may from time to time appoint a member of the committee to exercise the powers and authorities and perform the duties and functions of the secretary of the body corporate during any absence of the secretary specified in the appointment and that member while acting in accordance with the terms of his or her appointment shall be deemed to be the secretary of the committee.

(2) A person shall not exercise or perform any of the powers, authorities, duties or functions of the body corporate or of the treasurer of the body corporate, being powers, authorities, duties or functions relating to the receipt or expenditure of, or accounting for, moneys, or the keeping of the books of account, of the body corporate, unless the person is—

- (a) the treasurer of the body corporate; or
- (b) a body corporate manager who is empowered to exercise or perform that power, authority, duty or function; or
- (c) a person with whom the treasurer of the body corporate is required by an order of the committee to exercise or perform jointly that power, authority, duty or function, and who is enabling the treasurer to comply with the order.

Penalty—\$500.

(3) The treasurer of a body corporate may delegate the exercise or performance of any of his or her powers (other than this power of delegation), authorities, duties or functions as treasurer, the delegation of which is specifically approved by the committee, to another member of the committee so approved, subject to such limitations as to time or otherwise as are so approved and, while a delegate is acting in accordance with the terms of a delegation under this subsection, he or she shall be deemed to be the treasurer of the body corporate.

(4) The committee may, by a notice in writing served on the treasurer of the body corporate, order that the treasurer shall not exercise or perform any of his or her powers, authorities, duties or functions that are specified in the notice, unless he or she does so jointly with another person so specified.

(5) A person who has possession or control of—

- (a) any records, books of account or keys belonging to a body corporate; or
- (b) the roll kept by a body corporate; or
- (c) any other property of a body corporate;

shall within 7 days after service on the person of notice of a resolution of the committee requiring him or her to do so, deliver those records, books of account and keys and that roll and other property to a member of the committee specified in the notice.

Penalty—\$500.

Meetings of committees

45.(1) At a meeting of a committee a quorum is constituted by members who number more than one-half of—

- (a) the number of persons determined by the body corporate pursuant to section 42(4) to be members of the committee; or
- (b) if such a determination has not been made, the members of the committee.

(2) Subject to this Act, the decision on any matter of that majority of the members voting on that matter shall be the decision of the committee at any meeting at which a quorum is present.

(3) A decision of a committee has no force or effect if, before that decision is made, notice in writing is given to the secretary of the committee by not less than half of the total number of lessees, the sum of whose lot entitlements exceed one-half of the aggregate lot entitlement, that the making of the decision is opposed by those lessees.

(amended)

(4) A committee shall cause to be kept a record of its decisions, of any notices given to its secretary under subsection (3) and full and accurate minutes of its meetings.

Committee's decisions to be decisions of body corporate

46. (1) In this section—

“restricted matter” means—

- (a) any matter relating to the striking of a special monetary levy on all lessees; and
- (b) any matter which seeks to alter the rights, privileges or obligations of lessees; and
- (c) any matter which seeks to alter the annual monetary contribution of lessees; and
- (d) any matter a decision which may, in accordance with any provision of this Act or the Principal Act, only be made by the body corporate pursuant to a unanimous resolution, resolution without dissent or a special resolution or in general meeting of the body corporate; and
- (e) any matter referred to in section 48 and specified in a resolution of the body corporate passed for the purposes of that section.

(amended)

(2) Subject to this Act, the decision of a committee on any matter, other than a restricted matter, shall be the decision of the body corporate.

(3) Notwithstanding that a committee holds office, the body corporate may in general meeting continue to exercise or perform all or any of the powers, authorities, duties and functions conferred or imposed on it by this Act.

Statutory restrictions on powers of committees**47.(1)** Unless—

- (a) otherwise determined by the body corporate in general meeting; or
- (b) in an emergency authorised by the referee; or
- (c) consented to by each person entitled to vote at a general meeting of the body corporate;

the committee shall not, in any 1 case, undertake expenditure exceeding the sum obtained by multiplying the prescribed amount by the number of lots the subject of the leasehold building units plan.

In this subsection—

“prescribed amount” means the amount prescribed under section 47(1) of the Building Units and Group Titles Act.

(amended)

(2) In respect of any proposed expenditure which, under subsection (1), the committee is not entitled to undertake the committee shall—

- (a) submit the proposal for determination at an extraordinary general meeting of the body corporate convened for the purpose of, or for purposes which include, consideration of the proposal; and
- (b) if the proposed expenditure is in respect of work to be performed or the purchase of personal property submit at least 2 tenders to that meeting with the proposal.

(3) Subsection (1) does not apply to the expenditure of moneys—

- (a) in payment of any premium of insurance effected by or on behalf of the body corporate; or
- (b) to comply with—
 - (i) a notice or order served on the body corporate by any public authority or the Council; or
 - (ii) an order made with respect to the body corporate by a referee or a tribunal; or

- (c) in discharge of any liability incurred in respect of an obligation of the body corporate authorised by the body corporate in general meeting.

(amended)

Restrictions imposed on committee by body corporate

48. The body corporate may in general meeting decide what matters or class of matters, if any, shall be determined only by the body corporate in general meeting.

Protection of committee members from liability

48A. No action shall lie against a member of a committee on account of anything done in good faith and without negligence under the authority of this Act or purporting to be under the authority of this Act.

Schedule 4

48B. Schedule 4 applies to and in respect of the committee of the body corporate, the chairperson, secretary and treasurer of the body corporate and the other members of the committee.

Division 3—Original Lessees

Duties of original lessee

49.(1) Before a person contracts to accept a transfer of the lease of a lot or a proposed lot from an original lessee, the original lessee shall give to the person (or to the person's agent) a statement in the prescribed form signed by the original lessee, in compliance in every respect with this section.

(amended)

(1A) In this section and in section 49A—

“transferee” means the person first referred to in subsection (1).

(new)

(2) A statement in writing under this section shall—

- (a) clearly identify the lot or proposed lot to which the statement relates; and
- (b) state the names and addresses respectively of the original lessee and the transferee; and
- (c) set out or be accompanied by particulars of—
 - (i) the lot entitlement of every lot and the aggregate lot entitlement; or
 - (ii) the proposed lot entitlement of every proposed lot and the proposed aggregate lot entitlement; and
- (d) set out or be accompanied by details of any prescribed arrangement entered into in respect of the leasehold building units plan or proposed leasehold building units plan including the terms and conditions of that prescribed arrangement and the cost or estimated costs to the lessee of each lot; and
- (e) set out or be accompanied by the by-laws in force in respect of the leasehold building units plan or the proposed by-laws in respect of the proposed leasehold building units plan; and
- (f) set out or be accompanied by the management statement (if any) for the building and its site, the subject of the leasehold building units plan concerned or the proposed management statement (if any) for the building and its site, the subject of the leasehold building units plan concerned; and
- (g) state the date on which the statement is signed; and
- (h) be signed by the original lessee or on his or her behalf by an agent authorised in writing by the original lessee in that regard.

(amended)

(3) A statement in writing under this section shall—

- (a) be given by the original lessee to the transferee before the transferee signs any contract, agreement or document whatsoever legally binding or intended to bind the transferee legally to accept the transfer of the lease of a lot; or

- (b) form part of a contract, agreement or document referred to in paragraph (a).

(amended)

(4) If, at any time before the transferee becomes lessee of a lot, a statement in writing of a description referred to in subsections (1) and (2) given to the transferee—

- (a) is not accurate as at the time it is given; or
- (b) contains information that subsequent to the time it is given becomes inaccurate in any respect;

it is the duty of the original lessee to give (forthwith upon the inaccuracy becoming known to him or her) to the transferee a notice in writing that rectifies the inaccuracy.

For the purposes of this section, every rectification notice given, together with the statement in writing to which it relates, shall be deemed to be the statement in writing given for the purposes of subsection (1).

(4A) Subsection (4) applies whether the statement in writing is given in due time in accordance with subsection (1) or at a later time.

(4B) If the transferee has been materially prejudiced (proof of which shall lie on the transferee) by any matter referred to in a notice given pursuant to subsection (4) and he or she has not agreed to be bound by that matter, he or she may avoid the contract, agreement or other document by notice in writing given to the original lessee or the original lessee's agent within 30 days of that date of receipt by the transferee of the notice given by the original lessee or the original lessee's agent.

(amended)

(5) If the original lessee fails to give to a transferee—

- (a) a statement in compliance in every respect with subsections (1), (2) and (3); or
- (b) a notice prescribed by subsection (4);

and the transferee is materially prejudiced by the failure (proof of which shall lie on the transferee) the transferee may, by notice in writing given to the original lessee, avoid the contract, agreement or other document within 30 days after he or she first becomes aware of the failure.

Provided that a transferee shall not be entitled to avoid a contract, agreement or other document pursuant to this subsection if he or she has not given the notice of avoidance herein prescribed before the expiration of 6 months after the transferee has become lessee of the lot.

(amended)

(6) Upon the avoidance of a contract referred to in this section the original lessee shall be liable at law for the repayment to the transferee of all moneys paid by the transferee under the contract and such moneys shall be recoverable, by action as for a debt, by the transferee accordingly.

(amended)

(7) Save as prescribed by subsections (4) and (5) this section applies so as not to render illegal or void any contract or to empower any party to avoid the contract.

(8) Where pursuant to this section a transferee avoids a contract entered into by the transferee for the acceptance of a transfer of a lease of a lot or a proposed lot to which this section applies after the leasehold estate in the lot has been registered in his or her name, then, that transferee, subject to the tender to him or her of repayment in full as prescribed by subsection (6), shall execute such instruments as, being necessary to record the leasehold estate in the lot in the name of the original lessee or the original lessee's nominee, are presented to him or her for execution by or on behalf of the original lessee and deliver up to the original lessee or the original lessee's nominee any relevant certificate of title in his or her possession or under his or her control, but the transferee shall not be liable for any costs or expenses for doing so.

(amended)

(9) Any covenant, agreement or condition expressed or implied in any contract, agreement or document whatsoever legally binding, or intended legally to bind, the transferee to accept the transfer of the lease of a lot or any proposed lot to which this section applies, or in a separate document, whereby it is agreed between the original lessee and the transferee that this section shall not apply in respect of that transfer, or shall so apply subject to exceptions, limitations or restrictions, or otherwise affecting or prejudicing the rights and remedies had by the transferee under this section shall be absolutely void and of no legal effect whatsoever.

(amended)

(10) In any civil proceedings arising out of or connected with a contract, agreement or document to which this section relates the onus of proving that the statement referred to in subsection (2) was duly given shall lie upon the party so alleging.

(11) In this section—

“**original lessee**” includes, in respect of a proposed lot or proposed leasehold building units plan, the person who upon registration of the proposed leasehold building units plan becomes the original lessee.

(amended)

(12) (not applied)

Interpretation of Awareness in s.49(5)

49A. For the purposes of the avoidance of any contract, agreement or other document to which section 49(5) applies the transferee under the contract, agreement or other document shall be taken to have been aware at all times of the provisions of section 49 and of the obligations of an original lessee thereunder, and to have read any statement or notice given to the transferee or to the transferee’s agent, being a statement or notice required by the section to be given to the transferee or the transferee’s agent, at the time when—

- (a) the transferee received it; or
- (b) the transferee’s agent received it;

whichever shall first occur.

(amended)

Division 4—Body Corporate Managers

Body corporate manager

50.(1) Subject to subsection (2), a body corporate may, in general meeting and by instrument in writing, appoint upon such terms and conditions as the body corporate determines a body corporate manager and may, in like manner, delegate to the body corporate manager—

- (a) all of its powers, authorities, duties and functions; or
- (b) any 1 or more of its powers, authorities, duties and functions specified in the instrument; or
- (c) all of its powers, authorities, duties and functions except those specified in the instrument;

and may, in like manner, revoke wholly or in part the delegation.

(2) A body corporate may not, under subsection (1), delegate to a body corporate manager its power to make—

- (a) a delegation under that subsection; or
- (b) a decision on a restricted matter within the meaning of section 46.

(3) A power, authority, duty or function the exercise or performance of which has been delegated under subsection (1) may, while the delegation remains unrevoked, be exercised from time to time in accordance with the delegation.

(4) A delegation under subsection (1) may be made subject to such conditions or such limitations as to the exercise or performance of all or any of the powers, authorities, duties or functions, or as to time or circumstances, as may be specified in the instrument of delegation.

(5) Notwithstanding any delegation made under subsection (1), the body corporate may continue to exercise or perform all or any of the powers, authorities, duties or functions delegated by it.

(6) Any act or thing done or suffered by a body corporate manager while acting in the exercise of a delegation under subsection (1) has the same force and effect as if it had been done or suffered by the body corporate and shall be deemed to have been done or suffered by the body corporate.

(7) Where the instrument of his or her appointment so provides, a body corporate manager shall have and may exercise and perform all the powers, authorities, duties and functions of the chairperson, secretary or treasurer of the body corporate and the committee or such of those powers, authorities, duties and functions as may be specified in the instrument.

(8) Upon registration of the leasehold building units plan, a person shall not be appointed a body corporate manager otherwise than by the body corporate or a referee.

(amended)

(9) Notwithstanding any agreement between a body corporate and a body corporate manager, there shall be implied in the agreement or instrument of appointment of a body corporate manager appointed pursuant to this section who is the body corporate manager at the expiration of a period of 3 years from the date of the first annual general meeting of the body corporate a term that the body corporate, within 30 days after the expiration of that period, may terminate his or her appointment as body corporate manager.

No action shall lie against a body corporate, original lessee or any lessee of a lot in respect of a termination of appointment under this subsection.

(amended)

Section 50A (Certain voting by proxy etc. restricted)

50A.(1) At any meeting of the body corporate, a person who has a financial interest in a prescribed arrangement or a proposed prescribed arrangement, is not entitled to vote as proxy for another person other than a person who is his or her colessee or comortgagee or as company nominee of a corporation other than a corporation where the company nominee is the majority shareholder or all of the shares held by the family of the nominee or by the nominee and the nominee's family upon a motion relating to that prescribed arrangement or proposed prescribed arrangement.

In this subsection—

“family” means the spouse, parent, brother, sister or child of the company nominee.

(amended)

(2) For the purposes of subsection (1), if a person or the person's spouse—

- (a) owns shares (whether beneficially or otherwise) in a company; or
- (b) is a member of a firm; or
- (c) is a director or employee of a company or of a firm;

that stands to be benefited directly from the prescribed arrangement or proposed prescribed arrangement to which the motion relates he or she shall be taken to thereby have a financial interest in that prescribed arrangement or, as the case may be, proposed prescribed arrangement.

Division 5—Lessees and Other Occupiers of Lots**Duties of lessees and other occupiers of lots**

51.(1) A lessee, mortgagee in possession (whether by the mortgagee or any other person), sublessee or occupier of a lot shall not—

- (a) do any thing or permit any thing to be done on or in relation to that lot so that—
 - (i) any support or shelter provided by that lot for another lot or common property is interfered with; or
 - (ii) the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air, heating oil and other services (including telephone, radio and television services) through or by means of any pipes, poles, wires, cables or ducts for the time being in or upon the lot is interfered with; or
- (b) use or enjoy that lot, or permit that lot to be used or enjoyed, in such a manner or for such a purpose as to cause a nuisance or hazard to the occupier of any other lot (whether that person is a lessee or not); or
- (c) use or enjoy the common property in such a manner or for such a purpose as to interfere unreasonably with the use or enjoyment of the common property by the occupier of any other lot (whether that person is a lessee or not) or by any other person entitled to the use and enjoyment of the common property.

(amended)

(2) A lessee or mortgagee in possession (whether by the mortgagee or any other person) shall repair and maintain his or her lot (including any part of a pipe, pole, wire, cable or duct which is intended to be used solely for the servicing or enjoyment of the lot and is within the lot but not within a wall, floor or ceiling forming a boundary of that lot) and keep the same in a state of good repair, reasonable wear and tear, and damage by fire, storm, tempest or act of God excepted.

(amended)

Illegal use of lot prohibited

51A. A lessee, mortgagee in possession (whether by the mortgagee or any other person), sublessee or occupier of a lot shall not use his or her lot for any purpose which may be illegal or injurious to the reputation of the parcel.

(amended)

Power for individuals to act for corporate lessees and mortgagees of lots

52.(1) A corporation may authorise an individual to exercise or perform on its behalf any power, authority, duty or function conferred by or under this Act on the corporation as lessee or mortgagee of a lease of a lot and may revoke the authority of an individual so authorised.

(amended)

(2) Where an individual exercises or performs a power, authority, duty or function that he or she is, by a lessee or mortgagee of a lease of a lot, authorised pursuant to subsection (1) to exercise or perform, the power, authority, duty or function shall be deemed to be exercised or performed by the lessee or mortgagee, as the case may be, of the lot.

(amended)

(3) Nothing in subsection (1) or (2) affects any liability or obligation imposed by or under this Act on a corporation which is a lessee or mortgagee of a lease of a lot.

(amended)

(4) A document under the seal of a corporation purporting to be an authorisation under subsection (1) or to be a revocation of such an authorisation is admissible in evidence and shall, unless the contrary is proved, be deemed to be such an authorisation or revocation, as the case may be.

Notices to be given by lessees and mortgagees

53.(1) An original lessee and any person who, under this section, has given notice of an address for the service of notices on him or her may give notice in writing to the body corporate of an address or change of address for the service of notices on him or her.

(amended)

(2) After delivery to a transferee of the lease of a lot of an instrument or instruments of transfer in the name of the transferee duly executed and capable of immediate registration, the transferor shall give to the body corporate written notice which shall identify the lot and—

- (a) specify the name of the transferee in full, the address for the service of notices on the transferee, the address for the service of notices on the transferor and the date upon which the instrument was or instruments were so delivered; and
- (b) bear written confirmation by the transferee of the accuracy of the information contained in the notice.

(2A) Where a transferor of the lease of a lot fails to comply with subsection (2), the transferee of the lease of the lot may give to the body corporate written notice which shall identify the lot and specify his or her name in full, address for service of notices and the date upon which the instrument was or instruments were delivered to him or her.

(amended)

(3) After the delivery to a first mortgagee of an executed bill of mortgage of the lease of a lot, the mortgagee may give to the body corporate written notice of the mortgage which shall identify the lot and—

- (a) specify the name of the mortgagee in full and the address for the service of notices on the mortgagee and the date on which the bill of mortgage was so delivered; and
- (b) bear written confirmation by the mortgagor of the accuracy of the information contained in the notice.

(amended)

(4) After the delivery to a mortgagor of a discharge of a bill of mortgage of the lease of a lot the mortgagor may give to the body corporate written notice of the discharge which shall identify the lot and the mortgage that has been discharged and—

- (a) specify the date on which the discharge was so delivered; and
- (b) bear written confirmation by the mortgagee of the discharge of the bill of mortgage.

(amended)

(5) After the delivery by a first mortgagee of a transfer of a bill of mortgage of the lease of a lot, the transferee may give to the body corporate written notice of the transfer which shall identify the lot and—

- (a) specify the name of the transferee in full and the address for the service of notices on the transferee and the date on which the transfer was so delivered; and
- (b) bear written confirmation by the transferor of the accuracy of the information contained in the notice.

(amended)

(6) After the entry into possession of the lease of a lot by a first mortgagee, the mortgagee may give to the body corporate written notice which shall identify the lot and specify the date on which he or she entered into possession.

(amended)

(7) After granting a sublease of a lot or part of a lot, a sublessor, to whom this subsection applies, shall give to the body corporate written notice of the granting of the sublease which shall identify the lot, specify the name of the sublessee in full and the address for the service of notices on the sublessee and the address for the service of notices on the sublessor.

This subsection applies to a sublessor who grants a sublease of a lot or part of a lot for a period of not less than 6 months except where the body corporate by resolution without dissent determines, either generally or in a particular case, that this subsection shall not apply.

(amended)

(8) After the termination or assignment of any sublease of a lot or part of a lot, notice of which sublease has, pursuant to subsection (7), been given to the body corporate, the sublessor shall give to the body corporate written notice of the termination or assignment which shall identify the lot and the lease or sublease that has been terminated or assigned and—

- (a) specify the date of the termination or assignment; and
- (b) in the case of an assignment—

- (i) specify the name of the assignee in full and the address for the service of notices on the assignee;
- (ii) bear written confirmation by the assignee of the accuracy of the information contained in the notice.

(amended)

(9) After a person becomes entitled, otherwise than as a transferee of the lease of the lot, to be registered under the Real Property Acts as the lessee of a lot, he or she may give to the body corporate written notice, in the form of a statutory declaration, which shall identify the lot and specify—

- (a) by what right the person became entitled to the lease of the lot; and
- (b) the person's name in full, the address for the service of notices on him or her and the date upon which he or she became entitled to the lease of the lot.

(amended)

(10) Where—

- (a) a body corporate believes that a person, under this section, may or is required to give a notice to it; and
- (b) the body corporate has not received that notice;

the body corporate may serve a notice on that person specifying the capacity in which it believes the person is entitled to give the notice and requiring the person—

- (c) to state, within 14 days, whether or not he or she is a person entitled or required to give a notice in that capacity; and
- (d) if he or she is such a person, to give that notice.

(11) Where a body corporate has served a notice under subsection (10) on a person whom it believes to be a person entitled to give a notice to the body corporate under this section that person is not entitled to cast a vote at any meeting of the body corporate until he or she gives the required notice.

(12) A vote cast at a meeting of a body corporate by or on behalf of a company nominee of a corporation has no effect unless the body corporate has been given notice in writing specifying the company nominee of the corporation.

(13) A notice referred to in subsection (12) may be included in any other notice that the corporation to which it relates or any other person is entitled under this section to give to the body corporate.

(14) A lessee who appoints a real estate agent within the meaning of the Auctioneers and Agents Act 1971 as his or her agent for the purpose of letting (within the meaning of that Act) of the lot shall forthwith give notice in writing to the body corporate of the name and business address of the agent and, upon cessation of the appointment, shall forthwith give notice in writing to the body corporate.

(amended)

Division 6—Insurance

Interpretation

54.(1) In this Division—

“**building**” means a building or buildings shown on the leasehold building units plan, but does not include a lessee’s fixture;

“**damage policy**”, in relation to a building or the common property including improvements thereon, means a contract of insurance providing, in the event of the building or the common property including improvements thereon being destroyed or damaged by fire, storm, tempest, explosion or any other occurrence specified in the policy—

- (a) the rebuilding of the building or the common property including improvements thereon or its replacement by a similar building or the common property including improvements thereon in the event of its destruction; and
- (b) the repair of damage to or the restoration of the damaged portion of the building or the common property including improvements thereon in the event of its being damaged but not destroyed;

so that, in the case of destruction, every part of the rebuilt building or the common property including improvements thereon or the replacement building or the common property including

improvements thereon and, in the case of damage, the repaired or restored portion, is in a condition no worse nor less extensive than that part or portion or its condition when that part or portion was new; and

- (c) for the payment of expenses incurred in the removal of debris and the remuneration of architects and other persons whose services are necessary as an incident to the rebuilding, replacement, repair or restoration;

“lessee’s fixture” means a structure or fixture made after the registration of the leasehold building units plan forming part of a building, being a structure or fixture—

- (a) which is exclusively for the use and enjoyment of a lot within or partly within that building but not being a floor, wall or ceiling; and
- (b) which—
 - (i) is not made for the necessary renewal or replacement of a structure or fixture made before the registration of the leasehold building units plan; or
 - (ii) replaces a structure or fixture made before the registration of the leasehold building units plan and is of greater value than the necessary replacement of and of a like nature to the structure or fixture replaced.

(amended)

(2) A damage policy may provide that, instead of the work and the payments specified in the definition of “damage policy” in subsection (1) being carried out or made upon the occurrence of any of the events specified in that definition, the liability of the insurer shall, upon the occurrence of any such event, be limited to an amount specified in the policy.

Insurance on common property

55. The body corporate shall insure and keep insured any improvements on the common property not covered by a damage policy effected under section 55A or 55B, under a damage policy to the reinstatement value in the joint names of the body corporate and the lessor.

(new)

Insurance of buildings

55A. Where the parcel is not a stratum parcel, the body corporate shall insure and keep insured the building under a damage policy to the reinstatement or replacement value in the joint names of the body corporate and the lessor.

(new)

Insurance of buildings in stratum parcel

55B.(1) Where the parcel is a stratum parcel—

- (a) the body corporate and any other lessee of part of the building, not being a lot or common property in the leasehold building units plan; and
- (b) the lessor;

shall insure and keep insured the building under a damage policy to the reinstatement or replacement value in their joint names.

(new)

(2) The cost of a premium for a damage policy in respect of a building referred to in subsection (1) shall be apportioned in accordance with the management statement for the building and its site the subject of the leasehold building units plan concerned.

(new)

(3) If a person fails to comply with a requirement under subsection (1) to insure and keep insured a building, any other person who has an obligation to comply with that requirement may either—

- (a) apply to the referee for an order directing the person failing to comply to join that other person in effecting a damage policy in respect of the building; or
- (b) effect a damage policy in respect of the building in the joint names and, in a court of competent jurisdiction, recover as a debt from the person failing to comply with the appropriate apportionment, if any, of the amount of the premium for which that person is liable in accordance with the management statement for the building and its site, the subject of the leasehold units plan concerned.

(new)

Original lessee to pay for damage policy insurance in first year

55C.(1) In respect of a leasehold building units plan, the premiums payable in respect of insurances effected by a body corporate pursuant to sections 55, 55A or 55B and covering the period of one year commencing on the date of registration of the leasehold building units plan shall be paid by the original lessee.

(new)

(2) A body corporate that pays any premium payable by the original lessee under subsection (1) may recover the amount of the premium from the original lessee in any court of competent jurisdiction as a debt due and owing to it.

(new)

(3) Nothing in this section shall prevent an agreement for the acceptance of a transfer of the lease of a lot by an original lessee providing for the payment by the transferee of an amount determined in respect of an amount paid by the original lessee under subsection (1) in accordance with the terms of the agreement.

(new)

Further insurance by body corporate

56.(1) In addition to any insurance effected by a body corporate pursuant to sections 55, 55A and 55B a body corporate shall effect insurance—

- (a) in respect of any occurrence against which it is required by law to insure, including any insurance required to be effected by reason of the provisions of the *Workers' Compensation Act 1990*; and
- (b) in respect of the liability of the body corporate for damage to property, death or bodily injury occurring upon the common property; and
- (c) against the possibility of the lessees becoming jointly liable by reason of a claim arising in respect of any other occurrence against which the body corporate, pursuant to a special resolution, decides to insure.

(amended)

(2) Insurance effected pursuant to subsection (1)(b) shall be for a cover of not less than the amount prescribed under section 56(2) of the Building Units and Group Titles Act or if not prescribed, \$500 000.00.

(amended)

(3) The body corporate may insure any property which it is not required to insure pursuant to this Division and in which it has an insurable interest.

Insurance by lessee

57.(1) Nothing in this Division limits any right of a lessee to effect insurance.

(amended)

(2) Insurance effected by a lessee does not affect, and shall not be taken into consideration in determining, the amount payable to a body corporate under a contract of insurance entered into between it and an insurer pursuant to this Division, notwithstanding anything contained in that contract of insurance.

Insurance by proprietor in case of common walls on group title plan

57A. (not applied)

Insurance of mortgaged lot

58.(1) A contract of insurance may be entered into by a lessee in respect of damage to his or her lot in a sum equal to the amount secured at the date of the contract by mortgage of the lease of the lot and where such a contract is in force—

- (a) subject to the terms and conditions of the contract—
 - (i) a payment to be made under that contract by the insurer in respect of damage shall be made to each mortgagee whose interest is noted thereon in order of his or her respective priority; and
 - (ii) the amount of the payment shall be the amount stated in the contract, the amount of the loss, or an amount sufficient, at the date of the loss, to discharge the mortgage of the lease of the lot, whichever is the least amount; and

- (b) where the amount so paid by the insurer equals the amount necessary to discharge a mortgage of the lease of the lot, the insurer shall be entitled to an assignment of that mortgage; and
- (c) where the amount so paid by the insurer is less than the amount necessary to discharge a mortgage of the lease of the lot, the insurer shall be entitled to secure the amount so paid by a transfer of the bill of mortgage of the lease to the insurer and the mortgagee as tenants in common in undivided shares proportional to the amount paid by the insurer and the balance necessary to discharge the mortgagee's interest.

(amended)

(2) A contract of insurance entered into as referred to in subsection (1) shall not be liable to be brought into contribution with any other such contract of insurance except another such contract of insurance which—

- (a) is in respect of damage to the same lot; and
- (b) relates to the same mortgage debt;

as that referred to in the contract of insurance first mentioned in this subsection.

Rebuilding

59. Subject to any order made under section 25 or 26, where a body corporate receives payment of moneys from an insurer in respect of destruction of or damage to a building or common property including any improvements thereon, those moneys shall, unless the body corporate by unanimous resolution otherwise resolves, forthwith be applied by the body corporate in rebuilding, replacing, repairing or restoring the building or common property including any improvements thereon, as the case may require, so far as the same may lawfully be effected.

Insurable interest of body corporate

60. Notwithstanding any other law relating to insurance, a body corporate shall be deemed to have a sufficient insurable interest in the subject-matter of any contract of insurance entered into by it pursuant to this Division.

Division 7—Rating and Taxation**Interpretation**

61. (not applied)

Valuation of parcel

62. The Valuer-General may upon the registration of a leasehold building units plan, cause a valuation of the parcel to be made under section 39C of the Principal Act showing the body corporate as owner of the parcel and all improvements on the parcel.

(new)

Particulars of lot entitlements to be conclusive

63. For all purposes in relation to the making, levying, imposition, assessment or recovery of rates, charges or taxes in relation to the parcel or any part—

- (a) the particulars shown on the copy of a leasehold building units plan or amendment furnished by the Registrar of Titles pursuant to section 14 shall be conclusive evidence of those particulars; and
- (b) the production by an authority authorised to levy rates, charges or taxes in relation to the parcel or any part of what purports to be the copy of the leasehold building units plan or amendment so furnished shall be prima facie evidence that it is the copy so furnished.

(amended)

Rating of lots

64. Without limiting section 39C of the Principal Act, for all purposes in relation to the making, levying or recovery of rates or charges by the Council pursuant to the Local Government Act 1936 or City of Brisbane Act 1924 in relation to a parcel the following provisions have effect—

- (a) the unimproved value of the parcel shown in the valuation shall be apportioned by the Council between the lots comprised in the parcel in proportion to the lot entitlements of the respective lots as

shown on the registered leasehold building units plan;

- (b) save as is provided in section 67, the body corporate is not liable in respect of the parcel for any rate or charge made and levied by the Council;
- (c) the lessee of each lot comprised in the parcel is deemed to be the owner in fee simple in possession of the lot as if it were a separate parcel of land having an unimproved value equal to that apportioned to it under paragraph (a) and is liable accordingly for any rate or charge made and levied by the Council on the owners of land;
- (d) where part of a parcel is subject to rates or charges or rates and charges levied by the Council in respect of water supply, sewerage, cleansing or garbage services otherwise than on the basis of unimproved value, such rates or charges or rates and charges shall be levied upon the lessee of each lot, in accordance with such basis or bases as may be adopted by the Council pursuant to the *Local Government Act 1936* or *City of Brisbane Act 1924*;

Provided that where a rate or charge cannot be directly related to use of the service within a particular lot, the rate or charge shall be apportioned by the Council between the lots in accordance with the lot entitlements of the respective lots.

(amended)

65. (Omitted)

Recovery of rates and charges

66. Where any rate or charge lawfully levied in respect of a lot by a public authority or the Council is due and payable and the lessee has made default in payment, the Council may recover the rate or charge due and payable in an action for debt in any court of competent jurisdiction from the person who is the lessee of the lot at the time when such action is instituted, and may exercise any other remedy available to the Council under the *Local Government Act 1936* and for the purpose of the exercise of those remedies, all references to the “**land**” in section 27 of that Act shall be read and construed as references to the lessee’s leasehold estate in the lot and

references to estates in fee simple in that section shall be read and construed as a reference to the lessee's leasehold estate.

(amended)

Local authority may recover arrears of rates and charges upon conversion, etc.

67. Upon registration of a leasehold plan of resubdivision or amalgamation or a notice of conversion, the Council may recover any rates and charges outstanding or accrued and unpaid at the time of registration—

- (a) in respect of a lot that becomes common property, from the body corporate;
- (b) in respect of a lot part of which only becomes common property, from the lessee for the time being of the balance of the lot;
- (c) in respect of 1 or more lots that are resubdivided or amalgamated, from the lessee of each lot thereby created in proportion to the lot entitlement that his or her lot bears to the sum of lot entitlements of the lots created thereby.

(amended)

Sufficient compliance with certain provisions of Local Government Act

68. Where a notice required under section 27(11)(iii)(c) or any provision of the Local Government Act 1936 to be affixed to or displayed on land in a manner described under that Act cannot be so affixed to or displayed on a lot, there shall be sufficient compliance with that section or other provision if it is affixed to or displayed on the common property in the manner prescribed in that section or other provision.

(amended)

PART 5—DISPUTES*Division 1—Referee***Appointment of referee**

69. (not applied)

Delegations of powers, etc.

70. A delegation made by a referee under section 70 of the Building Units and Group Titles Act will operate as if it were a delegation made by a referee under this Act.

(new)

*Division 2—Applications for orders***Referee may inspect certain records**

71.(1) Where application is made for an order under this Part, the body corporate has, in relation to a referee and the referee's delegate, the same duties under section 40(1) and (2) as it has under that section in relation to a lessee.

Provided that the body corporate shall not be entitled to payment of any fee prescribed under that section.

(amended)

(2) A body corporate shall not neglect or fail to perform any duty owed by it to a referee or the referee's delegate under subsection (1).

Penalty—\$500.

Applications for orders to be made to referee

72. Application for an order under this Part shall be made to a referee in writing specifying the grounds on which it is made and the order sought

and shall be accompanied by the fee prescribed in respect of the application, if any, and the prescribed deposit, if any.

In this section—

“fee prescribed” and **“prescribed deposit”** means the fee prescribed and prescribed deposit under section 72 of the Building Units and Group Titles Act.

(amended)

Procedure after referee receives application

73.(1) After receipt of an application for an order under this Part, other than an application that pursuant to section 106(8) accompanied a notice of appeal made pursuant to section 106, a referee—

- (a) may require the applicant to provide him or her with such further information in relation to the application as, in the referee’s opinion, may assist the investigation of the application; and
- (b) may refuse to proceed with the application until a requirement made by him or her pursuant to paragraph (a) has been complied with; and
- (c) shall give written notice of the application (setting out the grounds specified therein) to the lessor, the body corporate to which the application relates and to any other person who, in his or her opinion, would be affected if the order sought were made.

Provided that an applicant need not be given a notice under this paragraph; and

- (d) shall, in a notice referred to in paragraph (c), specify the order sought and invite the lessor, the body corporate and any member and any other person to whom the notice is given to make to him or her, within a time specified in the notice, a written submission in respect of the matter to which the application relates; and
- (e) may, by further notice, allow the lessor, the body corporate and each person to whom a notice under paragraph (c) was given a longer time within which to make a submission referred to in paragraph (d); and

- (f) may make such other investigations with respect to the application as he or she thinks fit; and
- (g) may enter upon any parcel to which a dispute relates for the purposes of carrying out any investigation with respect to the application at any reasonable time on notice given to every person who has been notified of the application and to the body corporate.

(amended)

(2) A person shall not obstruct or hinder the referee or the referee's delegates in the exercise of his or her powers under subsection (1)(g).

Penalty—\$500.

Body corporate to display and give certain notices

74. A body corporate given a notice under section 73(1)(c) or (e) shall—

- (a) forthwith cause the notice or a copy to be prominently displayed within the parcel on some part of the common property and if there is no common property on an appropriate place within the parcel visible to the lessees; and
- (b) keep the notice so displayed until the expiration of the time limited by the notice for the making of submissions; and
- (c) forthwith serve a copy of the notice on each person whose name appears on its roll.

(amended)

Division 3—Orders by referee

Orders under this Division

75.(1) A referee shall not make an order, other than an order under section 76(2), until after—

- (a) the expiration of the time specified in the notice given under section 73(1)(c); or

- (b) where a further notice has been given under section 73(1), the expiration of the longer time specified in that notice;

for the making of written submissions with respect to the application seeking the order.

(2) An order made may include such ancillary or consequential provisions as the referee thinks fit.

(3) The referee may order a body corporate, a body corporate manager, a lessee, a person having an estate or interest in a lot or an occupier of a lot to do, or to refrain from doing, a specified act with respect to a parcel.

(amended)

(4) The referee may, by order, dismiss an application for an order.

(5) An application may be withdrawn by the applicant at any time before an order is made.

(6) An application may be amended by the applicant at any time before an order is made provided that the applicant shall satisfy the referee that he or she has served every party to whom the referee has given written notice of the application with a copy of the amendment and advice that he or she is entitled to make within a time specified in the notice further written submissions to the referee. In such a case the referee shall not make an order until after the expiration of the time so specified which shall not be less than the time allowed by him or her for submissions in respect of the original application.

(7) The referee may not, in connection with an application for an order, make any order for the payment of costs.

(8) Subject to section 76(5), an order made by the referee shall not be capable of being varied or revoked by him or her but this subsection does not prevent a subsequent order being made.

Interim orders

76.(1) In this section—

“interim order” means an order made under subsection (2).

(2) Where an applicant for an order under section 77(1) states in his or her application that he or she requests an interim order, the referee may, if satisfied on reasonable grounds that, by reason of the urgent circumstances

of the case, he or she should do so—

- (a) make, under this subsection, any order that may be made under section 77(1) with respect to the application; and
- (b) before the expiration of 3 months from the date on which it takes effect and upon a further request made by the applicant, renew an interim order that is in force by serving notice in accordance with subsection (6) that the order is renewed.

(3) An interim order may be made or renewed notwithstanding—

- (a) that any power or duty of the referee under section 73(1) has not been exercised or performed with respect to the application; or
- (b) where the referee has given written notice of the application under section 73(1)(c), that any time specified under section 73(1)(d) or (e) in that or any further notice has not expired.

(4) An interim order made pursuant to an application for an order under section 77(1) ceases to have effect—

- (a) at the expiration of 3 months from the date on which it takes effect or, where the referee has renewed the interim order, at the expiration of 6 months from the date; or
- (b) where the interim order is revoked by a tribunal under section 107(1)(c) or by the referee under subsection (5), when it is so revoked; or
- (c) where—
 - (i) the referee makes an order under section 77(1) with respect to the application; or
 - (ii) the referee dismisses the application;

before the interim order ceases to have effect under paragraph (a) or (b), when the order is made under section 77(1) or the application is dismissed, as the case may be.

(5) The referee may revoke an interim order and, if he or she does so, shall serve notice in accordance with subsection (6) that the order has been revoked.

(6) A notice of the renewal or revocation of an interim order shall be served—

- (a) except as provided in paragraph (b), on the body corporate for the plan to which the order relates; or
- (b) where the order requires a person to do or refrain from doing so a specified act, on that person.

(7) A person shall not in, or in connection with, a request for an interim order or for the renewal of any such order, make a statement that he or she knows is false or misleading in a material respect.

Penalty for an offence against this subsection \$500.

General powers of referee to make orders

77.(1) A referee may, pursuant to an application of a body corporate, a body corporate manager, a lessee, a person having an estate or interest in a lot or an occupier of a lot in respect of a parcel, make an order on any person entitled to make an application under this subsection or on the chairperson, secretary or treasurer of the body corporate for the settlement of a dispute, or the rectification of a complaint, with respect to the exercise or performance of, or the failure to exercise or perform, a power, authority, duty or function conferred or imposed by this Act in connection with that parcel.

(amended)

(2) Where a body corporate has a discretion as to whether or not it exercises or performs a power, authority, duty or function conferred or imposed on it by this Act, it shall be deemed to have refused or failed to exercise or perform that power, authority, duty or function only if it has decided not to exercise or perform that power, authority, duty or function.

(3) Nothing in this Part authorises the referee to make an order of the kind that may be made by the Court under section 25 or 26.

(4) Nothing in this Part affects the generality of subsection (1), but an order in respect of any matter dealt with in any other section of this Part shall not be made under this section.

(5) With the exception of orders made under sections 79, 82, 91, 93 and 94, nothing in this Part authorises and empowers the referee to make an order affecting the lessor.

(new)

Further powers of referee

78.(1) A referee is empowered to make an order that—

- (a) requires a party to the dispute before him or her to pay money not exceeding the sum of \$1 000 to a person specified in the order;
- (b) requires a party to the dispute before him or her to do, or refrain from doing, some specified act to which the application relates;
- (c) strikes out for want of jurisdiction the dispute before him or her.

(2) An order made by a referee may direct that the order shall be complied with within the time limited in the order.

(3) An order made by a referee that requires the payment of money may be made to take effect instanter or so as to take effect upon default being made in complying with some other order by the referee.

Order with respect to certain consents affecting common property

79. Where, pursuant to an application by the lessor or a lessee for an order under this section, the referee considers that the body corporate for the parcel to which the application relates has unreasonably refused to consent to a proposal by that lessor or that lessee—

- (a) to effect improvements on or alterations to the common property;
or
- (b) to have carried out repairs to any damage to the common property or any other property of the body corporate;

the referee may make an order that the body corporate consent to the proposal.

(amended)

Order with respect to acquisition of personal property

80. Where, pursuant to an application by a lessee for an order under this section, the referee considers that an acquisition, or a proposed acquisition, by the body corporate for the parcel to which the application relates, of personal property is unreasonable, the referee may order—

- (a) that the personal property acquired be sold or otherwise disposed of by the body corporate within a specified time; or
- (b) that the personal property be not acquired.

(amended)

Order to acquire personal property

81. Where, pursuant to an application by a lessee for an order under this section, the referee considers that the body corporate for the parcel to which the application relates has unreasonably refused to acquire personal property, the referee may order the body corporate to acquire the personal property.

(amended)

Order to make or pursue insurance claim

82. Where, pursuant to an application by a lessee or the lessor for an order under this section, the referee considers that the body corporate for the parcel to which the application relates has unreasonably refused to make or pursue an insurance claim in respect of damage to a building or any other property insured by the body corporate under Division 6 of Part 4, the referee may order the body corporate to make or pursue the claim.

(amended)

Order varying certain contributions

83. Where, pursuant to an application by a lessee for an order under this section the referee considers that the body corporate for the parcel to which the application relates has determined an unreasonable amount pursuant to section 38A(4) in respect of a contribution for the purposes of section 32, the referee may, in respect of such contributions as are specified in the order, order that the amount shall not be payable or that the amount payable

be an amount specified by him or her in the order instead of the amount so determined.

(amended)

Order to supply information or documents

84. Where, pursuant to an application for an order under this section, the referee considers that the body corporate for the parcel to which the application relates, or the body corporate manager for that parcel, or the chairperson, secretary or treasurer of that body corporate has wrongfully—

- (a) withheld from the applicant information to which the applicant is entitled under this Act; or
- (b) failed to make available for inspection by the applicant or the applicant's agent a record or document that, under this Act, the applicant is entitled to inspect;

the referee may order that body corporate, body corporate manager, chairperson, secretary or treasurer to supply or make available the information or to make so available the record or document, as the case may require, to the applicant.

Order relating to animal kept contrary to by-laws

85. Where, pursuant to an application by a body corporate, a lessee, a person having an estate or interest in a lot or an occupier of a lot for an order under this section, the referee considers that a person is keeping an animal on a lot or common property in contravention of the by-laws, the referee may order that person to cause the animal to be removed from the parcel within a specified time, and thereafter to be kept away from the parcel, unless the keeping of the animal on the lot or common property, as the case may be, is subsequently authorised pursuant to the by-laws.

(amended)

Order relating to animal kept pursuant to by-laws

86. Where, pursuant to an application by a body corporate, a lessee, a person having an estate or interest in a lot or an occupier of a lot for an order under this section, the referee considers that an animal kept on a lot or the common property in accordance with the by-laws causes a nuisance or

hazard to the lessee or occupier of another lot or unreasonably interferes with the use and enjoyment of another lot or of the common property, the referee may—

- (a) order the person keeping the animal to cause the animal to be removed from the parcel within a specified time, and thereafter to be kept away from the parcel; or
- (b) order the person keeping the animal to take, within a time specified in the order, such action so specified as, in the opinion of the referee, will terminate the nuisance, hazard or unreasonable interference.

(amended)

Order confirming information for roll

87.(1) Where a person fails to provide written confirmation of a notice under section 53 that is required to bear that confirmation and a body corporate, body corporate manager, lessee or other person having or acquiring an estate or interest in a lot applies for an order under this section, the referee may, subject to subsection (2), order the body corporate in respect of the plan concerned to enter the information in the notice in the roll notwithstanding that it does not bear that confirmation.

(amended)

(2) In making an order under subsection (1) the referee may amend in any manner he or she thinks fit the information in the notice to which the order relates.

(3) The referee shall dismiss an application for an order under this section if he or she considers that the rights of any person would be prejudiced if he or she makes the order.

(4) A copy of an order under subsection (1) served on a body corporate shall be deemed to be a notice given to the body corporate under section 53 and information entered on a roll pursuant to such an order shall be deemed to have been entered from a notice bearing written confirmation required by that section.

Order revoking amendment of by-law or reviving repealed by-law

88.(1) Where, pursuant to an application by any person entitled to vote at a meeting of the body corporate (including both a first mortgagee and a mortgagor of a lease of a lot) for an order under this section, the referee considers that, having regard to the interest of all lessees in the use and enjoyment of their lots or the common property, an amendment or repeal of a by-law or addition of a new by-law should not have been made or effected, the referee may order that the amendment be revoked, that the repealed by-law be revived or that the additional by-law be repealed.

(amended)

(2) An order under subsection (1), when recorded under section 112, has effect, subject to any order with respect thereto made by a superior court, as if its terms were a by-law.

(3) The provisions of this section do not apply with respect to a by-law made or deemed to be made pursuant to section 30(7).

Order granting certain licence

89.(1) Pursuant to an application by a lessee for an order under this section, a referee may, subject to this section, order that the applicant, and any occupier of the lot of which the applicant is the lessee, may use specified common property in such a manner, for such purposes, and upon such terms and conditions, if any, as are specified in the order.

(amended)

(2) A referee shall not make an order under subsection (1) unless he or she is satisfied—

- (a)** that the lot of which the applicant is lessee is incapable of reasonable use and enjoyment by the lessee or occupier of the lot unless the order is made; and
- (b)** that the body corporate has refused to grant a licence to use common property in such a manner, for such purposes, and upon such terms and conditions as would enable that lessee or such an occupier reasonably to use and enjoy that lot.

(amended)

(3) An order under subsection (1), when recorded under section 112, has effect, subject to any order with respect thereto made by a superior court, as if its terms were a by-law.

Order invalidating purported by-law

90.(1) Where, pursuant to an application by any person entitled to vote at a meeting of the body corporate (including both a first mortgagee and a mortgagor of a lease of a lot) for an order under this section, a referee considers that a body corporate did not have the power to make a by-law purporting to have been made by it, the referee may make an order declaring the by-law to be invalid.

(amended)

(2) An order under subsection (1), when recorded under section 112, has effect, subject to any order with respect thereto made by a superior court, as if its terms were a by-law repealing the by-law to which the order relates.

Order for variation of contributions or manner of payment thereof

91. Where, pursuant to an application by a lessee, the lessor or by a mortgagee in possession (whether by the mortgagee or another person) for an order under this section, a referee considers that any amount of contributions levied under section 32 or determined under section 38A is inadequate or excessive, or that the manner of payment of contributions is unreasonable, the referee may—

- (a) order variation of the amount; or
- (b) order payment of contributions in a different manner; or
- (c) make both such orders.

(amended)

Order where voting rights denied or due notice of item of business not given

92.(1) Where, pursuant to an application by a person under this section, a referee is satisfied that a particular resolution would not have been passed at a general meeting of a body corporate but for the fact that the applicant—

- (a) was improperly denied a vote on the motion for the resolution; or

- (b) was not given due notice of the item of business pursuant to which the resolution was passed;

the referee may order that the resolution be treated as a nullity on and from the date of the order.

(2) An application for an order under subsection (1) shall be made within the period of 30 days (or such longer period as the referee, in the particular case, allows) after the date of the meeting at which the resolution was passed.

(3) Where—

- (a) an order under subsection (1) is made in respect of a resolution making a by-law amending, adding to or repealing another by-law; and
- (b) the by-law made pursuant to that resolution is in force; and
- (c) the order is recorded as provided by section 112;

the by-laws shall, subject to their having been or being amended, added to or repealed under section 30 and to any order with respect to the order under subsection (1) made by a superior court, have force and effect on and from the date the order is so recorded to the same extent as they would have had if the resolution had not been passed.

Order with respect to insurance

93.(1) Where, pursuant to an application by—

- (a) the lessor; or
- (b) the lessee or registered mortgagee of a lease of a lot; or
- (c) any person having a leasehold interest in a lot;

for an order under this subsection, a referee considers that the amount for which the person or persons referred to in sections 55A and 55B has or have insured a building which is, or part of which is, subject to a leasehold building units plan is not reasonable, the referee may order that person or those persons to vary that amount to a specified amount.

(new)

(2) Where pursuant to an application by—

- (a) the lessor; or

- (b) the lessee or a registered mortgagee of a lease of a lot; or
- (c) any person having an interest in the leasehold of a lot;

for an order under this subsection, a referee considers that the amount for which the body corporate constituted for the leasehold building units plan concerned has insured under section 55 or 56(1)(c) is not reasonable, the referee may order the body corporate to vary that amount to a specified amount.

(new)

(3) Where the persons required by section 55B to insure a building are unable to agree on its replacement value for insurance purposes or on any other matter relating to the apportionment of the premium payable for insuring the building, a referee may, on the application of any of those persons, make an order determining that value or matter.

(new)

(4) A referee may, pursuant to an application under section 55B(3), make an order requiring a person referred to in section 55B(2) to join with the applicant in insuring the building to which the application relates.

(new)

(5) An order under subsection (4) may be made against a person even though that person is not the body corporate constituted for, a lessee of a lot comprised in or the lessor under a leasehold building units plan.

(new)

Order appointing body corporate manager to exercise or perform certain powers, etc.

94.(1) Where—

- (a) in consequence of the making of an order under this Part a duty is imposed on a body corporate; or
- (b) a duty is otherwise imposed by this Act on a body corporate; or
- (c) a duty is imposed by this Act on the chairperson, secretary or treasurer of a body corporate or of the committee of a body corporate or on that committee; or
- (d) a judgment debt is owed by a body corporate;

a referee may—

- (e) in the case referred to in paragraph (a)—on the application of the person who obtained the order so referred to; or
- (f) in the case referred to in paragraph (b) or (c)—on the application of a person having an estate or interest in a lot the subject of the leasehold building units plan concerned; or
- (g) in the case referred to in paragraph (d)—on the application of the judgment creditor;

by order appoint a body corporate manager (being a person who has consented in writing to the appointment) to perform that duty and any other duty specified in the order or to pay that judgment debt, as the case may require.

(amended)

(2) A referee who appoints a body corporate manager under subsection (1) may also order that the body corporate manager shall have and may exercise and perform—

- (a) all of the powers, authorities, duties and functions of the body corporate for the parcel to which the order relates or of the chairperson, secretary or treasurer of that body corporate or the committee of that body corporate; or
- (b) any 1 or more of those powers, authorities, duties or functions specified in the order; or
- (c) all of those powers, authorities, duties and functions except those specified in the order.

(3) Where a referee makes an order under subsection (1), no person other than the body corporate manager appointed by the order may, while that body corporate manager holds office as such, exercise or perform any power, authority, duty or function which the body corporate manager is authorised to exercise or perform by that order or an order under subsection (2).

(4) The appointment of a body corporate manager under this section may be made upon such terms and conditions (including terms and conditions relating to his or her remuneration by the body corporate and the duration of his or her appointment) as the referee specifies in the order making the appointment.

Order varying anniversary of first annual general meeting of body corporate

94A. Where, pursuant to an application by a body corporate for an order under this section, the referee considers that it is reasonable so to do, he or she may order that a date specified in the order and occurring after the order is made shall, for the purposes of this Act, be taken to be the anniversary of the first annual general meeting of the body corporate whereupon each subsequent anniversary of that date shall for the purposes of this Act be taken to be an anniversary of the first annual general meeting of the body corporate in place of the anniversary of the date on which the first annual general meeting was in fact held.

Order revoking resolution dispensing with audit

94B. Where a body corporate has resolved that the accounts of the body corporate relating to any financial period should not be audited, a referee may, pursuant to an application by a lessee for an order under this section, if he or she considers that the accounts of the body corporate should be subjected to such an audit, order the body corporate to appoint a person registered as a public accountant under the *Public Accountants Registration Act 1946* who consents to the appointment to audit the accounts of the body corporate for the relevant period.

(amended)

Copy of order to be served

95.(1) An order by a referee shall be made in writing and a copy of the order, certified by the referee to be a true copy, shall be served by the referee on—

- (a) the body corporate for the parcel to which the order relates; and
- (b) the applicant for the order; and
- (c) any person to whom notice of the application has been given pursuant to section 73(1); and
- (d) any person who, by the order, is required to do, or to refrain from doing, a specified act.

(2) The copy of the order duly certified shall be accompanied by a statement setting out the reasons for the referee's decision.

Division 4—Tribunals

Appointment of Tribunal

96.(1) Every stipendiary magistrate and acting stipendiary magistrate shall by virtue of his or her appointment to that office and without any further or other appointment whatsoever constitute a tribunal for the purposes of this Act while he or she continues to be a stipendiary magistrate or an acting stipendiary magistrate.

(2) If a tribunal which has begun an investigation into a matter under this Division ceases to be a stipendiary magistrate or an acting stipendiary magistrate by reason of the expiration of the period of, or his or her retirement from his or her appointment as stipendiary magistrate or acting stipendiary magistrate, he or she shall continue to be a tribunal for the purpose of determining that matter.

Tribunal may investigate as appropriate

97.(1) Before making an order under this Part a tribunal shall make a thorough investigation without regard to legal forms or solemnities.

(2) A tribunal is not bound to apply the rules of evidence and, after informing itself in such manner as the tribunal thinks fit, may make an order under this Part with or without any hearing and, where a hearing is held, whether or not it is conducted formally.

(3) Notwithstanding subsection (2), a tribunal shall conduct a hearing where any person entitled or required to appear before the tribunal on the hearing of the application or appeal so appears.

General provisions in relation to orders on appeal

98.(1) An order made by a tribunal may include such ancillary or consequential provisions as the tribunal thinks fit.

(2) For the purpose of securing compliance with an order on appeal, a tribunal may order a body corporate, the chairperson, secretary or treasurer of a body corporate or its committee, a body corporate manager or lessee or other person having an estate or interest in a lot or an occupier of a lot to do or refrain from doing a specified act with respect to a parcel.

(amended)

(3) A tribunal may, by order, dismiss an appeal.

Representation before a tribunal

99. A person may appear before the tribunal on the hearing of the appeal, or be represented by counsel or a solicitor, or by an agent authorised in writing, who may examine witnesses and address the tribunal on behalf of that person.

Adjournment of appeal

100.(1) A tribunal may from time to time adjourn the hearing of an appeal to such times and places and for such purposes as the tribunal considers necessary.

(2) The tribunal shall cause notice of the adjournment and of the time and place to which the hearing of the appeal is adjourned to be given to any person served with a notice pursuant to section 106(7) who is not present or represented at the time the hearing is adjourned.

Continuity of hearing

101.(1) The hearing of an appeal shall at all times during its continuance be conducted by the same tribunal.

(2) Subject to section 96, if a hearing is interrupted before an order is made therein by the death, incapacity or removal of the stipendiary magistrate or acting stipendiary magistrate constituting the tribunal and the appellants desire to have the appeal determined the appeal shall be heard de novo by a tribunal constituted at the same place by another stipendiary magistrate or acting stipendiary magistrate.

Copy of order to be served

102.(1) An order made by a tribunal under this Part shall be made in writing and the tribunal shall cause to be sent to the referee—

- (a) the order; and
- (b) the records of the tribunal relating to the appeal including records forwarded to it by the referee when referring that appeal to the tribunal.

(2) Where an order has been sent to the referee under subsection (1), he or she shall serve a copy of the order, certified by him or her to be a true copy, on—

- (a) the body corporate for the parcel to which the order relates; and
- (b) the lessor; and
- (c) the applicant for the order and the appellant; and
- (d) any person who was given notice under section 106(7) of the time and place for the determination of the appeal; and
- (e) any person who, by the order, is required to do, or to refrain from doing, a specified act.

(amended)

Witness may be summoned before tribunal

103.(1) Upon the request of a person to whom a notice has been given under section 106(7), or the agent of any such person, a tribunal under its hand may summon any person to attend the tribunal at the time and place specified in the summons and then and there to give evidence and to produce books, documents or writings in his or her custody or control which he or she is required by the summons to produce.

(2) The fee payable for the issue of a summons is the amount prescribed under section 103(2) of the Building Units and Group Titles Act.

(amended)

(3) A person served with a summons under subsection (1) shall not, without reasonable excuse, disobey the summons.

Penalty—In the case of a corporation, \$1 000;

In any other case, \$500 or imprisonment for a term of 6 months or both such fine and imprisonment.

(4) A person is not bound to produce any books, documents or writings not specified or otherwise sufficiently described in the summons or which he or she would not be bound to produce upon a subpoena for production in the Court.

(5) A summons under subsection (1) need not be obeyed by a person unless the person has tendered his or her reasonable expenses for attending the tribunal in accordance with the summons.

Tribunal may administer oath

104.(1) A tribunal may administer an oath or affirmation to a person appearing as a witness before it, whether or not he or she has appeared in answer to a summons, and may examine the witness upon oath or affirmation.

(2) A person appearing as a witness before a tribunal—

- (a) shall not refuse to be sworn or to make an affirmation; and
- (b) shall not refuse to answer any question relevant to any proceedings before the tribunal put to him or her by the tribunal or by any person entitled to appear before the tribunal in those proceedings; and
- (c) shall not knowingly give false testimony in any evidence given by him or her to the tribunal.

Penalty—\$500 or imprisonment for 6 months or both such fine and imprisonment.

(3) A witness before a tribunal has—

- (a) the same protection; and
- (b) in addition to the penalties provided by this Act, the same liabilities;

as he or she would have had if he or she had been a witness before the Court instead of the tribunal.

Contempt of tribunal

105.(1) A person shall not wilfully insult or disturb a tribunal, or interrupt the proceedings of a tribunal, or by writing or speech use words which are false or defamatory of a tribunal or otherwise commit any wilful contempt of a tribunal.

Penalty—\$500 or imprisonment for 6 months or both such fine and imprisonment.

(2) A tribunal has, in relation to a contravention of subsection (1) committed in the face of the tribunal, all the powers of a Magistrates Court under section 40 of the *Justices Act 1886*.

(amended)

Division 5—Appeals

Appeal against order of referee

106.(1) Where a referee makes an order under this Part—

- (a) the applicant for the order; or
- (b) a person who, in connection with the application for the order, duly made written submissions to the referee; or
- (c) being an order requiring a person to do or refrain from doing a specified act, that person;

may appeal to a tribunal against the order of the referee by lodging a written notice of appeal with the referee, accompanied by the prescribed fee, not later than 21 days after the order takes effect.

In this subsection—

“prescribed fee” means the fee prescribed under section 106(1) of the Building Units and Group Titles Act.

(amended)

(2) A person may appeal under this section against an order made by a referee under section 76(2) only on the grounds that the referee acted unreasonably by making the order.

(3) A notice of appeal lodged under subsection (2) shall specify—

- (a) the name and address of the appellant; and
- (b) the order appealed against; and
- (c) the grounds of the appeal; and
- (d) any other matter prescribed.

(4) The tribunal to which an appeal lies under this section is the tribunal to which, pursuant to subsection (5), the referee forwards the notice of appeal.

(5) Where a notice of appeal is lodged under subsection (1), the referee shall forward to the tribunal that, in the referee's opinion, is nearest to the parcel to which the order appealed against relates—

- (a) the notice of appeal; and
- (b) his records relating to the order appeal against; and
- (c) the notices referred to in subsection (6).

(6) The notices that the referee is required by subsection (5)(c) to forward are notices that shall be addressed to each of the following addressees—

- (a) the appellant; and
- (b) each person (other than the appellant) entitled under subsection (1) to appeal against the order; and
- (c) each person (other than a person referred to in provision (a) or (b)) on whom pursuant to section 95 a true copy of the order against which the appeal has been lodged has been served by the referee; and
- (d) the body corporate for the parcel to which the order appealed against relates, unless it is the appellant.

Each notice shall be accompanied by a copy of the notice of appeal and shall specify the tribunal which is to hear the appeal.

(7) The tribunal to which documents are forwarded under subsection (5) shall cause—

- (a) the notices referred to in subsection (6) to be completed by specifying therein—
 - (i) the place at which the tribunal specified in the notices is to determine the appeal; and
 - (ii) a time and day for the determination of the appeal to which the documents relate; and
- (b) each notice to be sent by registered post to the addressee so that it would, in the ordinary course of post, be received by the addressee not less than 7 days before the day specified in the notice pursuant to paragraph (a)(ii).

(8) Where a notice of appeal is accompanied by an application for an order under this subsection—

- (a) the referee, before he or she forwards to a tribunal the documents referred to in subsection (5); or
- (b) the tribunal to which he or she has sent those documents;

may, by order, stay the operation of the order appealed against and, where he, she or it does so, forward notice of the order made under this subsection to the persons referred to in subsection (6).

Determination of appeal from order of referee

107.(1) In the determination of an appeal from an order of the referee, a tribunal—

- (a) if the tribunal thinks it is proper to do so, may admit evidence other than the evidence before the referee when he or she made the order; and
- (b) where the order was made otherwise than under section 76(2), may, by order, affirm, vary or revoke the order appealed against or substitute the tribunal's order for the order appealed against; and
- (c) where the order was made under section 76(2), may dismiss the appeal or, by order, revoke the order appealed against; and
- (d) shall not make any order as to costs.

(2) An order made under subsection (1)(b) has effect, and the provisions of this Act other than section 106 apply to it, in all respects as if it were an order made under the provision of this Act under which the order appealed against was made.

(3) With the exception of an appeal by the lessor from an order of the referee, nothing in this Part authorises or empowers the tribunal to make an order affecting the lessor.

(new)

Appeal to court on question of law

108.(1) An appeal lies to the Court from an order made by a tribunal under section 107 on the ground that the order is erroneous in law but on no other ground.

(2) The persons who may appeal under subsection (1) are—

(a)—

- (i) the appellant to the tribunal; and
- (ii) where he or she was not the appellant to the tribunal, the applicant for the original order made by the referee; and
- (iii) any person who, in connection with the application for the original order, duly made written submissions to the referee; and
- (iv) where an order requires a person to do or refrain from doing any act, that person;

(b) in any case where the body corporate for the parcel to which the appeal relates is not included in paragraph (a) that body corporate.

Appeal does not lie from tribunal except as provided in this Division

109. Except as provided by this Division, an appeal does not lie from an order made by a tribunal.

Division 6—Miscellaneous**Refund of prescribed deposit**

110. Upon the final determination of an application made under this Part, the prescribed deposit which accompanied the application shall, unless the referee, the tribunal or the Court making that determination otherwise directs on the ground that the application was vexatious or frivolous in its nature, be refunded to the applicant.

Effect of certain orders

111.(1) The terms of an order made under section 79, 80, 81, 83, 91 or 92 (other than section 92(3)(a)) or under section 93 or an order made under section 77 in which the referee declares that it is to have effect as a decision of a body corporate shall be deemed to be a resolution passed by the body corporate in respect of the leasehold building units plan to which the order relates.

(amended)

(2) Upon service upon it by the referee of a copy of an order referred to in subsection (1), the body corporate shall cause the terms of the order to be recorded in its minute book.

(3) Except in the case of a unanimous resolution or a resolution without dissent, a resolution passed by a body corporate has no force or effect if it purports to rescind or amend a resolution deemed by subsection (1) to have been passed by the body corporate.

(4) Where an order referred to in subsection (1) specifies a period during which a resolution passed by the body corporate has no force or effect if it purports to alter the effect of that order, such a resolution has no force or effect if it is passed during that period—

- (a) unless it is a unanimous resolution or a resolution without dissent; or
- (b) unless, upon an application made as referred to in subsection (5), a referee makes an order under this paragraph authorising the submission to a general meeting of the body corporate of a motion for that resolution.

(5) An application for an order under subsection (4)(b)—

- (a) may be made by any person who, if the application for the order referred to in subsection (1) were made at the time the application referred to in this subsection is made, would be entitled to make the application for the order referred to in subsection (1); and
- (b) shall specify the order sought; and
- (c) shall be made to the referee in writing specifying the grounds on which it is made; and
- (d) shall be accompanied by the prescribed fee and the prescribed deposit, if any.

In this subsection—

“prescribed fee” and **“prescribed deposit”** means the fee and deposit prescribed respectively under section 111(5) of the Building Units and Group Titles Act.

(amended)

(6) An application referred to in subsection (5) shall be dealt with in all respects as if it were an application for an order under this Part.

Recording on plan of effect of certain orders

112.(1) Where an order is made under section 88, 89 or 90 or under section 92 (being an order referred to in section 92(3)(a)), a body corporate shall—

- (a) lodge in the office of the Registrar of Titles—
 - (i) if no appeal is lodged against the order or, if an appeal is lodged but the order is not revoked, a copy of the order, certified by the referee as a true copy; and
 - (ii) if upon appeal the order is varied by the tribunal, a copy of the order of the tribunal, certified by the referee as a true copy; and
- (b) pay the prescribed fee;

and the Registrar of Titles shall record the order on the registered leasehold building units plan to which the order relates.

In this subsection—

“prescribed fee” means the fee prescribed under section 112(1) of the Building Units and Group Titles Act.

(amended)

(2) The body corporate shall lodge a copy of the relevant order as provided in subsection (1) forthwith—

- (a) upon the expiration of the time allowed for an appeal against the referee’s order; or
- (b) if an appeal is lodged upon the determination of that appeal;

whichever is the later.

Penalty for contravention of certain orders

113.(1) A person shall not contravene an order made under this Part, not being an order made under section 76(2), to do or refrain from doing a specified act.

Penalty—8 penalty units and, subject to subsection (2), a further penalty not exceeding 2 penalty units for every day during which the contravention continues.

(2) The maximum amount that may be recovered in any prosecution for an offence under subsection (1) is the maximum amount for which a personal action may be commenced from time to time in a Magistrates Court whether on a balance of account or after an admitted set-off or otherwise.

(3) A person shall not contravene an order under section 76(2) to do or refrain from doing a specified act.

Penalty—20 penalty units.

(4) Proceedings for an offence under subsection (1) or (2) of contravening an order may only be taken by the applicant for the order or body corporate concerned.

(5) In proceedings under this section—

- (a) the imposition of a penalty operates as a judgment under the *Magistrates Courts Act 1921* against the defendant and in favour of the prosecutor for the amount of the penalty; and

- (b) an order for a person to pay an amount of costs operates as a judgment for that amount under that Act against that person and in favour of the person whose costs are ordered to be paid.

(amended)

(6) A penalty imposed under this section or costs referred to in subsection (5)(b) shall not be enforceable or recoverable except as provided in subsection (5).

(7) Any costs awarded against a defendant in proceedings under this section shall include the amount of the fee paid on filing the application for the order contravened.

(8) A document purporting to be a copy of an order made by a referee or a tribunal shall be admissible in evidence and shall, until the contrary is proved, be deemed to be an order made by the referee or tribunal, as the case may be.

Protection of referee and tribunal

114. No action shall lie against a referee, including the referee's delegate, or a tribunal on account of any proceeding taken, any publication made or anything done under the authority of this Act or taken, made or done bona fide purportedly under the authority of this Act.

Enforcement of orders for payment of money

115.(1) The person to whom payment is to be made under an order that requires the payment of money may enforce the order by filing in the office of the Registrar of the Magistrates Court at a place appointed for holding Magistrates Courts in the Magistrates Court District wherein the person required by the order to make payment resides or has a place of business or wherein the person to whom payment is to be made resides—

- (a) a copy of the order certified by the referee to be a true copy; and
- (b) his affidavit, taken by a justice, as to the amount not paid under the order and, where the order is to take effect upon any default, as to the making of that default;

whereupon the order shall be deemed to be a judgment that requires payment of money duly made by a Magistrates Court pursuant to the *Magistrates Courts Act 1921* and may be enforced accordingly.

(amended)

(2) No court fees shall be payable under subsection (1) up to and including entry of judgment.

(3) It shall be competent to a person to file a copy of an order pursuant to subsection (1) once only and a second or subsequent filing purportedly pursuant to that subsection shall be ineffectual.

(4) The *Limitation of Actions Act 1974* applies in respect of a decision of a referee and in respect of the enforcement of any order made by the referee as it applies in respect of any judgment.

(amended)

Time at which order takes effect

116. Except—

- (a) where express provision is otherwise made by this Act; or
- (b) to the extent that a referee or tribunal specifies an order under this Part;

an order takes effect when a copy of the order, certified by the referee to be a true copy, is served—

- (c) where the order requires a person to do or refrain from doing a specified act, on that person; or
- (d) in any other case on the body corporate for the parcel to which the order relates.

Inquiries

117.(1) The referee shall, upon inquiry having been made to him or her by a person in writing in or to the effect of the prescribed form and upon payment of the fee prescribed in respect of the inquiry —

- (a) by notice in writing, inform that person whether or not—
 - (i) any application (being an application that has not been finally disposed of at a date and time specified in the notice) has been received by the referee for an order under this Act with respect to the parcel to which the inquiry relates; or

- (ii) any order has been made under this Act within the period of 6 years prior to the inquiry with respect to that parcel, being an order of a class prescribed for the purposes of this subparagraph and specified in the inquiry; and
- (b) where any such application has been received by the referee or any such order has been so made, provide in that notice particulars of the application or order, as the case may be.

(2) In subsection (1)—

“fee prescribed” means the fee prescribed under section 117 of the Building Units and Group Titles Act.

(new)

Referee or tribunal not to have jurisdiction where title to land in question

118. Notwithstanding any other provision of this Part, a referee or tribunal shall not have jurisdiction under this Part in any case in which the title to land is in question otherwise than for the purpose of determining any matter before the referee or tribunal, as the case may be, and any determination made by the referee or tribunal shall not have any force or effect except as provided by this Act.

PART 6—GENERAL

Other rights and remedies not affected by this Act

119.(1) Nothing in this Act derogates from any rights or remedies that the lessor, lessee of mortgagee of a lease of a lot or a body corporate may have in relation to any lot or the common property apart from this Act.

(amended)

(2) Where the court in which any proceedings to enforce any rights or remedies referred to in subsection (1) is of the opinion that, having regard to the subject-matter of the proceedings, the taking of the proceedings was not, in the circumstances of the case, warranted by reason that Part 5 makes adequate provision for the enforcement of those rights or remedies, the

court shall order the plaintiff to pay the defendant's costs in such amount as may be determined by the court. This subsection does not apply to the lessor.

(amended)

(3) The determination or partial determination of a lease by the operation of Parts 2 and 3 does not affect any right or remedy that may be exercised otherwise than in relation to a lot or common property by the mortgagee under a mortgage affecting the lease before it was determined or partially determined or by a caveator claiming an estate or interest in that lease.

(new)

Reservation of name

120.(1) A person may make an application in the prescribed manner and form, accompanied by the prescribed fee, to the Registrar of Titles for the reservation of a name set out in the application as the name of a building or a stratum parcel in a proposed leasehold building units plan.

In this subsection—

“prescribed fee” means the fee prescribed under section 120(1) of the Building Units and Group Titles Act.

(amended)

(2) If the Registrar of Titles is satisfied as to the bona fides of the application and that the proposed name is a name with which the plan could be registered without contravention of section 9 the Registrar of Titles shall reserve the proposed name in the manner prescribed for a period of 2 years from the date of the lodging of the application.

(3) If, at any time during the period for which a name is reserved, an application, accompanied by the prescribed fee, is made to the Registrar of Titles for an extension of that period and the Registrar of Titles is satisfied as to the bona fides of the application, he or she may extend that period for a further period of 1 year.

In this subsection—

“prescribed fee” means the fee prescribed under section 120(3) of the Building Units and Group Titles Act.

(amended)

(4) During a period for which a name is reserved in respect of a proposed leasehold building units plan, another leasehold building units plan or building units plan within the meaning of the Building Units and Group Titles Act shall not be registered under this Act whether originally or on change of name, under the reserved name.

(amended)

(5) The reservation of a name under this section in respect of a proposed plan does not in itself entitle a plan to be registered by that name.

(6) An applicant for the reservation of a name who, during the period for which that name is reserved—

- (a) lodges the leasehold building units plan in respect of which that name is reserved; or
- (b) decides not to proceed with the registration of the leasehold building units plan in respect of which that name is reserved; or
- (c) decides not to register the leasehold building units plan in the name so reserved;

shall notify the Registrar of Titles to that effect and—

- (d) in the case of paragraph (a) the Registrar of Titles shall note his or her records accordingly; and
- (e) in the case of paragraph (a) or (c), the name shall cease to be reserved.

(amended)

Body corporate is representative of lessees in proceedings

121.(1) Where the lessees of the lots the subject of a leasehold building units plan are jointly entitled to take proceedings against any person or are liable to have proceedings taken against them jointly (any such proceedings being proceedings for or with respect to common property), the proceedings may be taken by or against the body corporate and any judgment or order given or made in favour of or against the body corporate in any such proceedings shall have effect as if it were a judgment or order given or made in favour of or against the lessees.

(amended)

(2) Where a lessee is liable to make a contribution to another lessee in respect of a judgment debt arising under a judgment referred to in subsection (1), the amount of that contribution shall bear to the judgment debt the same proportion as the lot entitlement of the lot of the first mentioned lessee bears to the aggregate lot entitlement.

(amended)

Limited right of action by body corporate

121A. A body corporate shall not institute proceedings against any person other than a lessee without first obtaining the approval therefor of the body corporate by special resolution.

(amended)

Body corporate's power to take proceedings as agent for lessee in case of structural defects

122.(1) Where—

- (a) the condition of any lot in a parcel affects or is likely to affect the support or shelter provided by that lot for another lot in the same building or the common property; and
- (b) the lessee of the lot in that condition has neglected or refused within a reasonable time to take any proceedings under the *Builders' Registration and Home-owners' Protection Act 1979* or for the purpose of exercising any other right or enforcing any other remedy available to him or her to have that condition rectified,

the body corporate may, as agent for the lessee of the lot in that condition but at its own expense, take any of the proceedings referred to in paragraph (b).

(amended)

(2) A person proposing to take proceedings under subsection (1) shall, before taking those proceedings, notify in writing the other person entitled to take the same proceedings and shall specify in the notice the circumstances that have given rise to that intention.

(new)

Dividing fences

123. (not applied)

Costs in proceedings by lessees against body corporate

124.(1) In any proceedings brought by 1 or more lessees against the body corporate, the court may order that any moneys (including costs) payable by the body corporate pursuant to an order of the court made in those proceedings shall be paid, only in respect of such lots as are specified in the order and in such proportions as may be so specified, by the body corporate out of contributions levied for the purpose.

(amended)

(2) Where a court makes an order under subsection (1) the body corporate shall, for the purpose of paying the moneys ordered to be paid by it, levy contributions in accordance with the terms of the order and shall pay the moneys out of the contributions paid pursuant to that levy. The provisions of section 32 with such modifications as may be necessary apply to and in respect of contributions levied under this subsection in the same way as those provisions apply to contributions levied under that section.

Apportionment of statutory charges

125.(1) Where by reason of any Act or of anything done under the authority of any Act, any expenditure by a public authority or the Council would, if the parcel were not the subject of a leasehold building units plan, be a charge on the land comprised in that parcel, that expenditure is a charge on the lease of each lot for an amount bearing to the whole of that expenditure the same proportion as the lot entitlement of that lot bears to the aggregate lot entitlement.

(amended)

(2) The lessee or mortgagee of a lease of a lot the subject of a charge referred to in subsection (1) may pay to the authority entitled to the charge the amount of the charge and thereupon—

- (a) the lease of the lot and the appurtenant beneficial interest in the lease of the common property are freed from the charge; and
- (b) the authority has no legal rights against the lessee, the lease of the lot or appurtenant beneficial interest in the lease of the common property in respect of the subject-matter of the charge.

(amended)

Notice of application for order under section 25 or 26

126.(1) The Court may, in respect of any proceedings on an application for an order under section 25 or 26, make either or both of the following orders—

- (a) order that public notice, by advertisement or otherwise, be given of the proceedings; or
- (b) order that service of notice of the application upon any person be dispensed with.

(2) Subject to the *Supreme Court Act 1921*, the Court shall not make an order referred to in subsection (1)(b) in respect of any person unless the Court is satisfied that—

- (a) that person cannot be found in Queensland; or
- (b) it is uncertain whether that person is living; or
- (c) service cannot be effected upon that person without expenses disproportional to the value, if any, of his or her interest.

(amended)

Service of documents on body corporate, lessees and others

127.(1) A summons or other legal process may be served on a body corporate by leaving it with the chairperson or secretary of the body corporate or with any member of the committee.

(2) A document other than a document referred to in subsection (1) may be served on a body corporate—

- (a) by leaving it with any person referred to in subsection (1) or in the receptacle provided by the body corporate in accordance with section 37(1)(d); or

- (b) by post on the body corporate at its address recorded on the registered plan or at the address of the parcel.

(3) Subject to this Act, a notice or other document required or authorised by this Act to be served by a referee, a tribunal, a body corporate, a committee or the secretary of a committee on a lessee, sublessee, mortgagee of a lot or occupier of a lot may be served—

- (a) by leaving it with some person apparently of or about the age of 16 years—
 - (i) where the person to be served is an occupier of the lot, at the lot; or
 - (ii) where an address for the service of notices on the person to be served is recorded in the roll, at the address so recorded; or
- (b) by post on the person to be served, where an address for the service of notices on that person is recorded in the roll, at the address so recorded; or
- (c) in the case of a lessee, in any manner authorised by the by-laws for the service of notices on lessees.

(amended)

(4) Notice under section 44(5) may be served on a person—

- (a) personally or by post; or
- (b) by leaving it with a person apparently of or above the age of 16 years at the place of residence or place of business of the first mentioned person.

Powers of entry by Public Authority or the Council

128. A Public Authority or the Council which is authorised by any Act to enter upon part of a parcel for the purpose of exercising any power conferred on it may enter upon any other part of that parcel if it is necessary to do so in order to exercise that power.

(amended)

Powers of entry of referee in certain cases

129.(1) Where a referee believes on reasonable grounds that—

- (a) an offence against any provision of this Act; or
- (b) a breach of the by-laws,

has been or is being committed upon any part of a parcel, the referee may, at any reasonable time on reasonable notice given to an occupier of that part of the parcel enter upon that part for the purpose of ascertaining whether that offence or breach has been or is being committed.

(2) When exercising his or her power under subsection (1), the referee may, if he or she thinks fit, be accompanied by—

- (a) the chairperson, secretary or treasurer of the body corporate or other member of the committee; or
- (b) the body corporate manager, if any, of the parcel concerned.

(3) A person shall not obstruct or hinder—

- (a) the referee, in the exercise of his or her power under subsection (1); or
- (b) a person accompanying the referee in pursuance of subsection (2).

Penalty—\$200.00.

Voting rights

130.(1) Any powers of voting conferred by or under this Act may be exercised—

- (a) in the case of a lessee who is an infant, by his or her guardian;
- (b) in the case of a lessee who is for any reason unable to control his or her property, by the person who for the time being is authorised by law to control that property;
- (c) in the case of a lessee or a registered mortgagee which is a corporation, by the company nominee.

(amended)

(2) Where the Court upon the application of the body corporate or of any lessee or of any registered mortgagee is satisfied that there is no person able to vote in respect of a lot or that the person able to vote in respect of a lot cannot be found, the Court—

- (a) in cases where a unanimous resolution is required by this Act, shall; and
- (b) in its discretion in any other case, may, appoint the Public Trustee or some other fit and proper person for the purpose of exercising such powers of voting under this Act as the Court shall determine.

(amended)

(3) The Court may order service of notice of an application under subsection (2) on such persons as it thinks fit or may dispense with service of such notice.

(4) On making an appointment under subsection (2) the Court may make such order as it thinks necessary or expedient to give effect to the appointment including an order as to the payment of costs of the application, and may vary an order so made.

(5) The powers of the Court under this section may be exercised by the Registrar in the first instance, who may refer the application to a judge and who shall so refer it at the request of the applicant or any respondent.

(6) In this section and in section 132—

“Registrar” means the Registrar of the Court at Brisbane, Rockhampton or Townsville, as the case may be, and includes a deputy registrar.

Voting rights of first mortgagees

131. Where a lessee’s interest in the lease of a lot is subject to a registered first mortgage notice of which has been given pursuant to section 53 to the body corporate, the power of voting conferred upon a lessee by or under this Act—

- (a) where a unanimous resolution is required, shall be exercised by the mortgagee and shall not be exercised by the lessee;
- (b) in other cases, may be exercised by the lessee unless the mortgagee, or where a mortgagee is a corporation, the company nominee of the corporation, is present personally or by proxy whereupon the mortgagee, or as the case may be, the company nominee may exercise the power of voting personally or by proxy and, if the mortgagee or company nominee does so, the lessee shall not exercise that power.

(amended)

Procedure upon application to court

132.(1) Every application to the Court under this Act shall be by summons at chambers unless otherwise provided by rules of court made.

(amended)

(2) On an application, notice shall be served on such persons as the Court thinks fit or the Court may dispense with such notice.

(3) The Court may, if it thinks fit, adjourn an application into court and thereupon may give such directions as to all matters, including filing of pleadings as may appear necessary and proper for a final hearing of the application.

(4) The Court may delegate to the Registrar all or any of its powers under this Act.

(5) The power to make rules of the Supreme Court includes power to make rules regarding the practice and procedure of the Court under this Act.

Offences

133.(1) Any person (including a body corporate but excluding the lessor) who contravenes or fails to comply with any provision of this Act, other than Schedule 3, commits an offence against this Act and, if no penalty is expressly provided for that offence, shall be liable on conviction to a penalty not exceeding \$500.

(amended)

(2) An offence against this Act shall be prosecuted in a summary way under the *Justices Act 1886*.

(amended)

Regulations

134. (not applied)

SCHEDULE 1

(not applied)

SCHEDULE 2

MEETINGS OF, AND VOTING AT MEETINGS OF, BODY CORPORATE

PART 1—FIRST ANNUAL GENERAL MEETING

Interpretation

1. In this Part—

“**business**” means the items in the agenda referred to in section 29(2);

“**meeting**” means the first annual general meeting of a body corporate.

Inspection of roll by original lessee

2.(1) For the purposes of preparing the notices referred to in clause 3, an original lessee, whether or not he or she has ceased to be a lessee of a lot, or his or her agent authorised in writing is entitled to inspect the roll without making payment or written application.

(amended)

(2) If the lessor convenes the first annual general meeting under section 29(1)(b) then the lessor or its agent authorised in writing is entitled to inspect the roll without making payment or written application.

(new)

Notice and contents of meeting

3. (1) Notice of the meeting shall be served on each person who is a lessee or first mortgagee of a lease of a lot, as ascertained from the roll, at least 14 days before the meeting and shall—

- (a) set forth the date and time when and the place where the meeting is to be held and set forth as the agenda of the meeting the items referred to in section 29(2) and if an item referred to in section 29(2A) is to be moved, that item and any other appropriate items; and
- (b) inform each person to whom the notice is addressed that he or she or, where the notice is addressed to a corporation, a company nominee of the corporation, may vote at the meeting—
 - (i) in the case of a lessee of a lot the lease of which is subject to a mortgage shown on the roll, only in accordance with section 131; and
 - (ii) except in the case of a motion requiring a unanimous resolution or resolution without dissent, only if all contributions levied and payable on the lot, and any other moneys recoverable under this Act by the body corporate from the person to whom the notice has been addressed at the date of the notice (being contributions levied on him or her, or moneys recoverable from him or her, in respect of the lot of which he or she is the lessee or first mortgagee) have been duly paid before the commencement of the meeting; and
 - (iii) either in person at the meeting or by proxy given in writing to the secretary of the body corporate before a time specified in the notice (being a time not later than the time for the holding of the meeting).

(amended)

(2) (not applied)

(3) Where it is served on a first mortgagee of a lease of a lot, notice of the meeting shall include the name of the lessee of the lot and the addresses of the lot.

(amended)

(4) A meeting shall not be held at any place outside a radius of 15 kilometres—

(a) in any case, from the parcel; or

(b) in the case of a stratum parcel, from the site on which is erected the building, part of which is comprised in the leasehold building units plan;

if, prior to the commencement of the meeting, 25% of the persons entitled to vote at the meeting object to that place by notice in writing to the secretary of the committee.

(amended)

(5) Nothing in this clause requires an original lessee or the lessor to serve on itself notice of a meeting.

(new)

Restrictions on submitting motions

4.(1) A motion shall not be submitted to the meeting unless it relates to the business of the meeting.

(2) A person is not entitled to move a motion at a meeting or to nominate a person for election as the chairperson, secretary or treasurer of the body corporate or a member of the committee unless he or she is entitled to vote on that motion or in that election.

(3) For the purposes of subclause (2), a lessee who but for the existence of a mortgage over the lease of the lot would be entitled to vote on a motion or in an election or a company nominee of any such lessee that is a corporation shall be deemed to be entitled to vote on that motion or in that election.

(amended)

Persons entitled to vote at meetings

5.(1) Subject to section 131, a person is entitled to vote at a meeting in respect of any lot only if he or she is the lessee of that lot as shown on the roll or, where the lessee so shown is a corporation, the company nominee of that corporation as shown on that roll.

(amended)

(2) Notwithstanding any other provision of this clause, a first mortgagee of a lease of a lot as shown on the roll, or, where the first mortgagee is a corporation, the company nominee, as shown on that roll, of that corporation is entitled to cast a vote at a meeting in respect of that lot in accordance with section 131.

(amended)

(3) Notwithstanding section 53(11) colessees or comortgagees shall only be entitled to cast a vote by a person duly appointed in writing as a proxy by them jointly and if notice of the person's appointment has been given to the secretary of the body corporate before the commencement of the meeting.

(amended)

(4) Only the lessee entitled to the first of 2 or more successive estates in a lot is, subject to this Part, entitled to cast a vote at a meeting.

(amended)

(5) A lessee who is the trustee of the leasehold estate in a lot is, subject to this Part, entitled to cast a vote at a meeting and the persons beneficially interested in the trust are not entitled to cast a vote.

(amended)

(6) Notwithstanding any other provision of this Act, a person shall not be entitled to cast a vote at a meeting except in respect of a motion for a resolution which to be effective must be passed by unanimous resolution or resolution without dissent unless—

- (a) all contributions levied land due and payable at least 30 days before the meeting in respect of the lot in respect of which he or she is entitled to vote; and
- (b) any other moneys recoverable under this Act by the body corporate from the person at the date of the notice given under clause 3(1), have been duly paid before the commencement of the meeting.

(7) The voting rights conferred by this clause are subject to sections 53(11) and (12).

Quorum

6.(1) Business shall not be considered at a meeting unless the number of persons present at that meeting either personally or by proxy and entitled to vote constitutes a quorum.

(2) Except as provided in subclause (3), one-fourth of the persons entitled to vote on any matter at a meeting constitutes a quorum for considering that matter.

(3) Where there is no quorum, as provided in subclause (2), for considering any matter at a meeting within one-half hour after that matter arises for consideration at that meeting, the meeting shall stand adjourned to the same day in the next week at the same place and time and if there is no quorum, as provided in subclause (2), for considering that matter arises for consideration, the number of persons present personally or by proxy and entitled to vote constitutes a quorum for considering that matter.

Motions out of order

7. The chairperson of a meeting may rule a motion out of order if he or she considers that the motion, if carried, would conflict with this Act or the by-laws or would otherwise be unlawful or unenforceable.

Method of casting votes

8. Except as provided in clause 5(3), a vote may be cast at a meeting by a person entitled to vote, either personally or by the person's proxy duly appointed in writing.

Chairperson to preside

9. The chairperson of the body corporate, if present, shall preside at the meeting and, in his or her absence, the persons present and entitled to vote at the meeting may elect one of their number to preside at the meeting and the person so elected shall, while he or she is so presiding, be deemed to be the chairperson of the body corporate.

Chairperson to have available names of persons entitled to vote

10. The chairperson at a meeting shall have available for inspection, before submitting a matter to a vote at the meeting, a list of the names of the persons who are entitled to vote on that matter.

Counting of votes on election of chairperson, secretary, treasurer and committee

11. Each person entitled to vote on an election of the chairperson, secretary and treasurer of the body corporate and other members of the committee has 1 vote in respect of each lot in respect of which he or she is entitled to vote.

Counting of votes

12.(1) Subject to this clause, a motion submitted at a meeting shall be decided according to the number of votes cast for and against the motion, whether personally or by proxy, each person entitled to vote having 1 vote in respect of each lot in respect of which he or she is entitled to vote.

(2) If—

- (a)** a poll is demanded by any person entitled to vote at a meeting on a motion submitted at that meeting, whether or not the motion has been decided in accordance with subclause (1), and the demand is made by that person personally at the meeting; or
- (b)** a motion submitted at the meeting is for a resolution which, if it is to be effective, is required by this Act to be a special resolution, the motion shall be decided according to the value, ascertained in accordance with subclause (3), of the votes cast for and against the motion, whether personally or by proxy.

(3) For the purposes of subclause (2) the value of a vote cast on a motion submitted at a meeting by a person entitled to vote in respect of a lot is equal to the lot entitlement of that lot.

(4) Any 1 colessee or comortgagee may demand a poll and on any poll each colessee or comortgagee shall be entitled to such part of the vote applicable to a lot as is proportional to his or her interest in the lease of the lot. A joint proxy (if any) on a poll shall have a vote proportional to the

interests in the lease of the lot of such of the colessees or comortgagees as do not vote personally or by individual proxy.

(amended)

(5) A poll shall be taken in such manner as the chairperson thinks fit.

(6) A demand for a poll may be withdrawn by the person who made it.

(7) In the case of equality in the votes whether on a show of hands or on a poll the chairperson of the meeting shall be entitled to a casting vote in addition to his or her original vote whether or not he or she has exercised that original vote.

Chairperson's declaration of vote

13. The declaration of the chairperson of the result of the voting on any motion submitted at a meeting, otherwise than on a poll, shall be conclusive without proof of the votes recorded for or against the motion.

Amendment or revocation of certain resolutions

14. A unanimous resolution, resolution without dissent or special resolution of a body corporate may not be amended or revoked at a meeting except by a subsequent unanimous resolution, resolution without dissent or special resolution, as the case may be.

Appointment of proxy

15. An instrument appointing a proxy shall be in writing under the hand of the person making the appointment or the person's attorney, and may be either general or for a particular meeting. A proxy need not be a lessee.

(amended)

SCHEDULE 2**PART 2—MEETINGS OTHER THAN FIRST ANNUAL
GENERAL MEETING****General meetings of body corporate**

1.(1) (Omitted)

(2) A general meeting of a body corporate (in this clause referred to as an “**extraordinary general meeting**”), which is not an annual general meeting, shall be held whenever it is convened by the committee.

(2A) All business shall be deemed special which is transacted at an annual general meeting (with the exception of the consideration of accounts and the election of the chairperson, secretary and treasurer of the body corporate and other members of the committee) or at an extraordinary general meeting.

(3) Without limiting the power of a committee under subclause (2)—

- (a) the secretary of a committee or, in his or her absence, any member of the committee shall convene an extraordinary general meeting of the body corporate as soon as practicable after he or she receives a requisition for an extraordinary general meeting signed by 1 or more persons entitled to vote in respect of 1 or more lots, the lot entitlement or the sum of the lot entitlements of which is at least one-fourth of the aggregate lot entitlement; and
- (b) where a member of the committee other than the secretary receives a requisition to convene an extraordinary general meeting of the body corporate under this subclause, he or she may give, on behalf of the committee, the notice required to be given under subclause (4).

(4) Notice of a general meeting of a body corporate shall—

- (a) be served on each lessee of a lot and first mortgagee of a lease of a lot, as ascertained from the roll, at least 7 days before the meeting;

- (b) set forth the date and time when and the place where the meeting is to be held;
- (c) where it is so served on a first mortgagee of a lease of a lot, include the name of the lessee of the lot and the addresses of the lot;
- (d) set forth the business of the meeting and therein, in respect of each motion to be considered by the meeting, specify whether the motion to be carried requires a resolution, special resolution, resolution without dissent or unanimous resolution; and
- (e) where it is so served pursuant to a requisition referred to in subclause (3)(a), specify a date for the convening of the extraordinary general meeting to which it relates that is not later than 1 month after the date on which the secretary or member, as the case may be, of the committee received the requisition.

(4AA) Nothing in subclause (4)(a) requires a lessee to serve on himself or herself notice referred to therein.

(amended)

(4A) A general meeting of a body corporate shall not be held at any place outside a radius of 15 kilometres—

- (a) in any case, from the parcel; or
- (b) in the case of a stratum parcel, from the site on which is erected the building, part of which is comprised in the leasehold building units plan;

if prior to the commencement of the meeting, 25% of the persons entitled to vote at the meeting object to that place by notice in writing to the secretary of the committee.

(amended)

(5) Every notice for an annual general meeting shall—

- (a) be accompanied by a copy of the statement of the accounts of the body corporate last prepared by the body corporate in accordance with section 38D(1)(c) and, where the accounts of the body corporate for that period are required by this Act to be audited a copy of a certificate by the auditor certifying whether the statement of accounts—

- (i) is in agreement with the accounts; and
- (ii) in his or her opinion fairly sets out the financial transactions for the period to which it relates and shows a true and fair view of the state of affairs at the close of that period;
- (b) include a form of motion for adoption of those accounts;
- (ba) include a form of motion for the appointment of a person registered as a public accountant under the Public Accountants Registration Act 1946 to audit the accounts of the body corporate for the next ensuing financial year;
- (c) when necessary, be accompanied by a ballot-paper for the election of candidates as chairperson, secretary and treasurer of the body corporate and as other members of the committee; and
- (d) if no nomination is received for any such position prior to the closing date, contain advice that the position will be filled from nominations received from the floor of the meeting.

(amended)

(5A) The notice for an annual general meeting may include a motion that the accounts of the body corporate relating to the next ensuing financial year shall not be audited.

Provided that such a motion shall not be carried except by a special resolution.

If the motion is so carried the motion referred to in subclause (5)(ba) shall not be proceeded with.

Nothing in this subclause shall prevent a body corporate resolving by ordinary resolution that the accounts of the body corporate relating to any period specified in the resolution shall be audited.

(6) Every notice for an annual general meeting or an extraordinary general meeting shall—

- (a) include—
 - (i) a form of motion to confirm the minutes of the last general meeting; and
 - (ii) where the notice is for a meeting required to be convened by a person appointed under the proviso to section 43(2)(b) for

the purpose of appointment of members of a committee, a form of motion for election of those members, form of motion for the election of a committee; and

(iii) a form of each other motion which—

(A) relates to the striking of a special monetary levy on all lessees of lots; or

(B) seeks to alter the rights, privileges or obligations of lessees of lots; or

(C) seeks to alter the annual monetary contribution of lessees of lots;

to be considered at the meeting; and

(b) be accompanied by—

(i) a voting-paper in respect of each motion referred to in paragraph (a) to be considered and determined at the meeting for use by a person entitled to vote if the person wishes to cast his or her vote in writing; and

(ii) a copy of the minutes of the last general meeting; and

(c) inform each person to whom the notice is addressed that he or she or, where the notice is addressed to a corporation, a company nominee of the corporation may vote in respect of each motion and, where relevant, on election of the chairperson, secretary and treasurer of the body corporate and other members of the committee—

(i) in the case of a lessee of a lot the lease of which is subject to a mortgage shown on the roll, only in accordance with section 131; and

(ii) except in the case of a motion requiring a unanimous resolution or a resolution without dissent, only if all contributions levied in respect of the lot and due and payable at least 30 days before the meeting, and any other moneys recoverable under this Act by the body corporate from the person to whom the notice is addressed at the date of the notice (being contributions levied on him or her, or moneys recoverable from him or her, in respect of the lot of which

he or she is the lessee or first mortgagee of the lease) have been duly paid before the commencement of the meeting; and

(iii) either—

- (A) in person at the meeting; or
- (B) by a person appointed in writing given to the secretary of the body corporate before a time specified in the notice (being a time not later than the time for the holding of the meeting) as a proxy; or
- (C) in respect of some or all of the motions set out in the notice by casting his or her vote on the voting-paper referred to in paragraph (b) accompanying the notice; or
- (D) in respect of the election of the chairperson, secretary or treasurer of the body corporate and other members of the committee, by furnishing to the secretary of the body corporate the ballot-paper given to him or her in accordance with subclause (5)(c) indicating his or her vote thereon.

(amended)

(6A) A person is not entitled to submit a motion for inclusion in the agenda of a meeting, to move a motion at the meeting or to nominate a person for election as the chairperson, secretary or treasurer of the body corporate or a member of the committee unless he or she is entitled to vote on that motion or in that election.

(6B) For the purposes of subclause (6A), a lessee who but for the existence of a mortgage over the lease of the lot or his or her failure to pay any contribution levied or other amount recoverable by the body corporate, would be entitled to vote on a motion or in an election or a company nominee of any such lessee that is a corporation shall be deemed to be entitled to vote on that motion or in that election.

(amended)

(7) A motion shall not be submitted at a general meeting unless notice of the motion has been given in accordance with this clause.

(8) A reference in subclause (7) to a motion includes a reference to a motion to amend a motion unless there is no vote cast in writing, as referred to in clause 5(b), in respect of the motion sought to be amended.

(9) The chairperson of a general meeting may with the consent of the meeting adjourn any general meeting from time to time and from place to place but no business shall be transacted at an adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(10) No business shall be raised at a meeting unless that business is set forth in the notice of the meeting.

Persons entitled to vote at general meetings

2.(1) Subject to section 131, a person is entitled to vote in respect of any lot on any motion submitted at a general meeting of a body corporate or on an election of the chairperson, secretary and treasurer of the body corporate and other members of the committee only if he or she is the lessee of that lot as shown on the roll or, where the lessee so shown is a corporation, the company nominee of that corporation as shown on that roll.

(amended)

(2) Notwithstanding any other provision of this clause, a first mortgagee of the lease of a lot, as shown on the roll, or, where the first mortgagee is a corporation, the company nominee, as shown on that roll, of that corporation is entitled to vote in respect of that lot on any motion submitted at a general meeting of a body corporate or on an election of the chairperson, secretary and treasurer of the body corporate and members of the committee in accordance with section 131.

(amended)

(3) Notwithstanding section 53(11), colessees or comortgagees including, where a colessee or comortgagee is a corporation, the company nominee of that corporation as shown on the roll shall only be entitled to cast a vote by a person duly appointed in writing as a proxy by them jointly and if notice of his or her appointment has been given to the secretary of the body corporate before the commencement of the meeting at which the vote is cast or by furnishing to the secretary of the body corporate a voting-paper referred to in clause 1(6)(b) indicating their joint vote on that motion or, where relevant, a ballot-paper, duly completed, referred to in clause 1(5)(c).

(amended)

(4) Only the lessee entitled to the first of 2 or more successive estates in a lot or, where that lessee is a corporation, the company nominee of that corporation as shown on the roll is, subject to this Part, entitled to cast a

vote on a motion submitted at a general meeting of a body corporate or on an election of the chairperson, secretary and treasurer of the body corporate and other members of the committee.

(amended)

(5) A lessee who is the trustee of the leasehold estate in a lot or, where that lessee is a corporation, the company nominee of that corporation as shown on the roll is, subject to this Part, entitled to cast a vote on a motion submitted at a general meeting of a body corporate or on an election of the chairperson, secretary and treasurer of the body corporate and other members of the committee and the persons beneficially interested in the trust are not entitled to cast such a vote.

(amended)

(6) Notwithstanding any other provision of this Act, at a general meeting of the body corporate a person shall not be entitled to vote in respect of—

- (a) any motion other than a motion which to be effective must be passed by unanimous resolution or resolution without dissent; or
- (b) the election of the chairperson, secretary or treasurer of the body corporate or the other members of the committee;

unless—

- (c) all contributions levied and due and payable at least 30 days before the meeting in respect of the lot in respect of which he or she is entitled to vote; and
- (d) any other moneys recoverable under this Act by the body corporate from the person or the lessee of the lot at the date of the notice given under clause 1(4);

have been duly paid before the commencement of the meeting.

(amended)

(7) The voting rights conferred by this clause are subject to section 53(11) and (12).

Quorum

3.(1) A motion submitted at a general meeting of a body corporate shall not be considered at that meeting and an election of the chairperson, secretary and treasurer of the body corporate and other members of the committee shall not be held at a meeting of the body corporate unless the

number of persons present at that meeting either personally or by proxy and entitled to vote, together with the number of voters whose votes are cast in writing on that motion or election, constitute a quorum for considering that motion or holding that election.

(2) Except as provided in subclause (3), one-fourth of the persons entitled to vote on a motion or on an election of chairperson, secretary and treasurer of that body corporate and other members of the committee constitute a quorum for considering that motion or holding that election.

(3) Where there is no quorum, as provided in subclause (2), for considering any motion or holding an election of chairperson, secretary and treasurer of the body corporate and other members of the committee at a general meeting of a body corporate within one-half hour after that motion or business arises for consideration at that meeting, the meeting shall stand adjourned to the same day in the next week at the same place and time and if there is no quorum, as provided in subclause (2), for considering that motion or holding that election at the adjourned meeting within one-half hour after that motion or business arises for consideration, the number of persons present personally or by proxy and entitled to vote, together with the number of voters whose votes are cast in writing on that motion or on that election, constitute a quorum for considering that motion or business.

(4) A general meeting of a body corporate is, subject to this clause, validly held notwithstanding that the only person present at the meeting is the chairperson of the body corporate.

Motions out of order

4. At a general meeting of a body corporate the chairperson may rule that a motion submitted at the meeting is out of order if—

- (a) he considers that the motion, if carried, would conflict with this Act, the Principal Act, the by-laws, management statement or would otherwise be unlawful or unenforceable;
- (b) except in respect of a motion to amend a motion, clause 1(7) has not been complied with respect to the motion; or
- (c) in respect of a motion to amend a motion, there is any vote cast in writing, as referred to in clause 5(b), in respect of the motion sought to be amended.

(amended)

Method of casting votes

5. Except as provided in clause 2(3), a vote on a motion submitted at a general meeting of a body corporate or on an election of the chairperson, secretary and treasurer of the body corporate and other members of the committee may be cast—

- (a) by the person entitled to vote, either personally or by the person's proxy duly appointed in writing; or
- (b) by furnishing to the secretary of the body corporate a voting-paper referred to in clause 1(6)(b) indicating the vote of the person entitled to vote on that motion or a ballot-paper, duly complete, referred to in clause 1(5)(c), as the case may be.

Withdrawal of voting-paper

6. Notwithstanding that a person entitled to vote at a general meeting of a body corporate has cast a vote on a motion submitted at that meeting or on an election of the chairperson, secretary and treasurer of the body corporate and other members of the committee by indicating his or her vote on that motion on a voting-paper referred to in clause 1(6)(b) or ballot-paper referred to in clause 1(5)(c), if the person attends that meeting either personally or by another person holding a proxy, he or she may before commencement of the business of the meeting notify the chairperson or secretary of the body corporate that he or she withdraws that voting-paper or ballot-paper and, where he or she does so—

- (a) for the purpose of determining whether there is a quorum for consideration of any such motion or for the holding of any such election at the meeting, the person's voting-paper or ballot-paper, as the case may be, shall be disregarded; and
- (b) for the purpose of counting the votes on that motion or that election, the person's voting-paper or ballot-paper shall be disregarded; and
- (c) the person or the person's proxy duly appointed in writing may vote on that motion or that election at the meeting in the same manner as if he or she had not furnished that voting-paper or ballot-paper.

Chairperson to preside

7. The chairperson of a body corporate shall preside at a general meeting of the body corporate at which he or she is present and, in his or her absence from any such meeting, the persons present at that meeting and entitled to vote on motions submitted at that meeting may elect a person present at the meeting to preside at that meeting and the person so elected shall, while he or she is so presiding, be deemed to be the chairperson of the body corporate.

Scrutineers

8. At a general meeting, the chairperson may appoint persons as scrutineers who shall be entitled to inspect all voting-papers and ballot-papers furnished to the secretary of the body corporate under clause 5(b) and relating to business at that meeting.

Chairperson to have available names of persons entitled to vote

9. The chairperson at a general meeting of the body corporate shall have available for inspection, before submitting a motion to the meeting or the holding of the election of the chairperson, secretary and treasurer of the body corporate and other members of the committee, a list of the names of the persons who are entitled to vote on that motion or at that election.

Counting of votes on election of chairperson, secretary, treasurer and committee

10. Each person entitled to vote on an election of the chairperson, secretary and treasurer of a body corporate and other members of the committee has 1 vote in respect of each lot in respect of which he or she is entitled to vote.

Counting of votes on motions

11.(1) Subject to this clause, a motion submitted at a general meeting of a body corporate shall be decided according to the number of votes cast for and against the motion, whether personally, by proxy or in writing, each

person entitled to vote having 1 vote in respect of each lot in respect of which he or she is entitled to vote.

(2) If—

- (a) a poll is demanded by any person entitled to vote at a general meeting of a body corporate on a motion submitted at that meeting, whether or not the motion has been decided in accordance with subclause (1), and the demand is made by that person personally at the meeting or on the voting-paper on which he or she votes in respect of that motion; or
- (b) a motion submitted at such a meeting is for a resolution which, if it is to be effective, is required by this Act to be a special resolution;

the motion shall be decided according to the value, ascertained in accordance with subclause (3), of the votes cast for and against the motion, whether personally, by proxy or in writing.

(3) For the purposes of subclause (2) the value of a vote cast on a motion submitted at a general meeting of a body corporate by a person entitled to vote in respect of a lot is equal to the lot entitlement of that lot.

(3A) (Omitted)

(4) Any 1 colessee or comortgagee may demand a poll and on any poll each colessee or comortgagee shall be entitled to such part of the vote applicable to a lot as is proportional to the interest in the lease of the lot. A joint proxy (if any) on a poll shall have a vote proportional to the interests in the lease of the lot of such of the colessees or comortgagees as do not vote personally or by individual proxy.
(amended)

(5) A poll shall be taken in such manner as the chairperson thinks fit.

(6) A demand for a poll may be withdrawn by the person who made it.

(7) In the case of equality in the votes whether on a show of hands or in a poll the chairperson of the meeting shall be entitled to a casting vote in addition to his or her original vote whether or not he or she has exercised that original vote.

Chairperson's declaration of vote

12. The declaration of the chairperson of the result of the voting on any motion submitted at a general meeting of the body corporate, otherwise than on a poll, shall be conclusive without proof of the votes recorded for or against the motion.

Requisition for motion to be included on agenda for general meeting

13.(1) Any person entitled to vote at a general meeting of a body corporate may by notice in writing served on the secretary of the committee require inclusion in the agenda of the next general meeting of the body corporate (other than a meeting in respect of which notices have already been given under clause 1(4)) of a motion set out in the first mentioned notice and the secretary shall comply with the notice.

(2) For the purposes of subclause (1), a lessee who but for the existence of a mortgage over the lease of the lot or his or her failure to pay any contribution levied or other amount recoverable by the body corporate would be entitled to vote at a general meeting of the body corporate or a company nominee of any such lessee that is a corporation shall be deemed to be entitled to vote at that meeting.

(amended)

Amendment or revocation of resolution

14. A unanimous resolution, resolution without dissent or special resolution of a body corporate may not be amended or revoked except by a subsequent unanimous resolution, resolution without dissent or special resolution, as the case may be.

Duties of original lessee until officers elected

15. Until the offices of chairperson, secretary and treasurer of the body corporate are filled the powers, authorities, duties and functions conferred or imposed on the holders of those offices—

- (a) shall be exercised and performed by the original lessee or by his or her agent duly authorised in writing; or

- (b) if the lessor exercises or intends to exercise its rights under section 29(1)(b), may be performed by the lessor or its agent duly authorised in writing.

(amended)

Meetings of body corporate before first annual general meeting

16.(1) Until the first annual general meeting of the body corporate, the original lessee or the body corporate may convene an extraordinary general meeting and shall do so on receipt of a requisition signed by 1 or more persons entitled to vote in respect of 1 or more lots, the lot entitlement or the sum of the lot entitlements of which is at least one-fourth of the aggregate lot entitlement.

(amended)

(2) The provisions of this Part (other than clause 1(1), (2), (2A), (3) and (5)) apply to and in respect of a meeting referred to in subclause (1) so far as those provisions are not inconsistent with, or incapable of applying to, such a meeting.

Appointment of proxy

17. An instrument appointing a proxy shall be in writing under the hand of the person making the appointment or the person's attorney, and may be either general or for a particular meeting. A proxy need not be a lessee.

(amended)

SCHEDULE 3

BY-LAWS

Noise

1. A lessee or occupier of a lot shall not upon the parcel create any noise likely to interfere with the peaceful enjoyment of the lessee or occupier of another lot or of any person lawfully using common property.

(amended)

Vehicles

2. Save where a by-law made pursuant to section 30(7) authorises him or her so to do, a lessee or occupier of a lot shall not park or stand any motor or other vehicle upon common property except with the consent in writing of the body corporate.

(amended)

Obstruction

3. A lessee or occupier of a lot shall not obstruct lawful use of common property by any person.

(amended)

Damage to lawns, etc. on common property

4. A lessee or occupier of a lot shall not—

- (a) damage any lawn, garden, tree, shrub, plant or flower being part of or situated upon common property; or
- (b) except with the consent in writing of the body corporate, use for his or her own purposes as a garden any portion of the common property.

(amended)

Damage to common property

5. A lessee or occupier of a lot shall not mark, paint, drive nails or screws or the like into, or otherwise damage or deface, any structure that forms part of the common property except with the consent in writing of the body corporate, but this by-law does not prevent a lessee or person authorised by the lessee from installing—

- (a) any locking or other safety device for protection of his or her lot against intruders; or
- (b) any screen or other device to prevent entry of animals or insects upon his or her lot.

Provided that the locking or other safety device or, as the case may be, screen or other device is constructed in a workman-like manner, is maintained in a state of good and serviceable repair by the lessee and does not detract from the amenity of the building.

(amended)

Behaviour of invitees

6. A lessee or occupier of a lot shall take all reasonable steps to ensure that his or her invitees do not behave in a manner likely to interfere with the peaceful enjoyment of the lessee or occupier of another lot or of any person lawfully using common property.

(amended)

Depositing rubbish, etc., on common property

7. A lessee or occupier of a lot shall not deposit or throw upon the common property any rubbish, dirt, dust or other material likely to interfere with the peaceful enjoyment of the lessee or occupier of another lot or of any person lawfully using the common property.

(amended)

Appearance of building

8. A lessee or occupier of a lot shall not, except with the consent in writing of the body corporate, hang any washing, towel, bedding, clothing or other article or display any sign, advertisement, placard, banner,

pamphlet or like matter on any part of his or her lot in such a way as to be visible from outside the building.

(amended)

Storage of flammable liquids, etc.

9. A lessee or occupier of a lot shall not, except with the consent in writing of the body corporate, use or store upon his or her lot or upon the common property any flammable chemical, liquid or gas or other flammable material, other than chemicals, liquids, gases or other material used or intended to be used for domestic purposes, or any such chemical, liquid, gas or other material in a fuel tank of a motor vehicle or internal combustion engine.

(amended)

Garbage disposal

10. A lessee or occupier of a lot shall—

- (a) save where the body corporate provides some other means of disposal of garbage, maintain within his or her lot, or on such part of the common property as may be authorised by the body corporate, in a clean and dry condition and adequately covered, a receptacle for garbage;
- (b) comply with all Council by-laws and ordinances relating to the disposal of garbage;
- (c) ensure that the health, hygiene and comfort of the lessee or occupier of any other lot is not adversely affected by his or her disposal of garbage.

(amended)

Keeping of animals

11. Subject to section 30(12), a lessee or occupier of a lot shall not, without the approval in writing of the body corporate, keep any animal upon his or her lot or the common property.

(amended)

SCHEDULE 4

PROVISIONS APPLYING TO COMMITTEES AND OFFICE BEARERS

Committee's power to employ agents and servants

1. Subject to sections 46, 48 and 50, a committee may employ for and on behalf of the body corporate such agents and servants as it thinks fit in connection with the exercise and performance of the powers, authorities, duties and functions of the body corporate.

Notice-board

2. A committee shall cause a notice-board to be affixed to some part of the common property and if there is no common property, on an appropriate place within the parcel, visible to the lessees.
(amended)

Meetings and delegation of powers and duties

3. The committee may—

- (a) subject to clauses 4 and 5, meet together for the conduct of business, adjourn and otherwise regulate its meetings as it thinks fit;
- (b) subject to any restriction imposed or direction given at a general meeting delegate to 1 or more of its members such of its powers and duties as it thinks fit and at any time revoke such delegation.

Meeting at request of members

4. The secretary of the body corporate or in the secretary's absence, any member of the committee, at the request of not less than one-third of the members of the committee, shall convene a meeting of the committee within the period of time, if any, specified in the request or, if not so specified, within 7 days of the making of the request.

Place of meeting

5. A meeting of the committee shall not be held at any place outside a radius of 15 kilometres—

- (a) in any case, from the parcel; or
- (b) in the case of a stratum parcel, from the site on which is erected the building, part of which is comprised in the leasehold building units plan;

if, prior to the commencement of the meeting, any person entitled to vote at the meeting objects to that place by notice in writing to the secretary of the committee.

(amended)

Notice of committee meetings

6. For not less than 24 hours ending immediately before a committee holds a meeting the secretary or member of the committee convening the meeting shall cause a notice of intention to hold the meeting, containing the agenda for the meeting, to be displayed on the notice-board.

Voting in writing by members of a committee

7. Where—

- (a) clause 6 has been complied with in relation to any meeting; and
- (b) the committee has caused to be served on each member of the committee a copy of any motion for a proposed resolution to be submitted at that meeting; and
- (c) any such resolution has been approved in writing by a majority of the members of the committee;

the resolution shall, subject to section 45(3), be valid as if it had been duly passed at a duly convened meeting of the committee, notwithstanding that the meeting was not held.

Minute of certain resolutions to be included in committee's minutes

8. The committee shall cause to be included in its minutes a minute of all resolutions passed pursuant to clause 7.

Acts, etc., of committee valid notwithstanding vacancies

9. Any act or proceeding of a committee done in good faith, notwithstanding that at the time when the act or proceeding was done, taken or commenced there was—

- (a) a vacancy in the office of a member of the committee; or
- (b) a defect in the appointment, or a disqualification of a member;

as valid as if the vacancy, defect or disqualification did not exist and the committee were fully and properly constituted.

Powers and duties of secretary

10. The powers and duties of a secretary of a body corporate include—

- (a) the preparation and distribution of minutes of meetings of the body corporate and the submission of a motion for confirmation of the minutes of any meeting of the body corporate at the next such meeting; and
- (b) the giving on behalf of the body corporate and of the committee of the notices required to be given under this Act; and
- (c) the maintenance of the roll; and
- (d) the supply of information on behalf of the body corporate in accordance with section 40(1)(a) and (b); and
- (e) the answering of communications addressed to the body corporate; and
- (f) the calling of nominations of candidates for election as chairperson, secretary and treasurer of the body corporate and other members of the committee; and

- (g) subject to sections 29(1) and (6) and 43(2A) and clause 3(b), the convening of meetings of the body corporate and of the committee.

(amended)

Powers and duties of treasurer

11. The powers and duties of a treasurer of a body corporate include—

- (a) the notifying of lessees of any contributions levied pursuant to this Act; and
- (b) the receipt, acknowledgement and banking of and the accounting for any money paid to the body corporate; and
- (c) the preparation of any certificate applied for under section 40(1)(c); and
- (d) the keeping of the books of account referred to in section 38D(1)(b) and the preparation of the statement of accounts referred to in section 38D(1)(c).

(amended)

SCHEDULE 5**RIGHTS AND OBLIGATIONS IMPLIED IN CERTAIN
EASEMENTS****Interpretation****1.(1) In this Schedule—**

“pipes” includes cables, tubes, wires and conduits of all kinds;

“service” has the same meaning as in section 17(1).

(new)

(2) For the purposes of this Schedule, a reference to a person entitled to the benefit of a right of vehicular or personal access or of an easement for a specified service—

- (a) where a stratum parcel is the dominant tenement, is a reference to—
 - (i) a lessee of a lot within the parcel; or
 - (ii) the body corporate of the leasehold building units plan; or
 - (iii) any person authorised by either of them; or
 - (iv) any person who is, under any Act, entitled to immediate possession of the lot or former lot; or
- (b) where a stratum parcel is the servient tenement, is a reference to—
 - (i) the lessor under the leasehold building units plan concerned; or
 - (ii) any person entitled to an estate or interest in possession in the dominant tenement; or
 - (iii) any person authorised by either of them.

(new)

Right of vehicular access

2. Each person entitled to the benefit of a right of vehicular access has at all times an unrestricted right—

- (a) to pass and repass, with or without vehicles, machinery, implements and other equipment of every kind, over the roadways, ramps and land over which the right of access is created; and
- (b) to carry out an inspection of those roadways and ramps and that land.

(new)

Right of personal access

3. Each person entitled to the benefit of a right of personal access has at all times an unrestricted right—

- (a) to pass and repass, without vehicles but with or without hand tools, hand implements and other equipment capable of being carried by hand, over the stairs, escalators, lifts, passages, corridors, shafts and other areas over which the right of access is created; and
- (b) to carry out an inspection of those stairs, escalators, lifts, passages, corridors, shafts and other areas.

(new)

Obligations relating to rights of access

4.(1) Where a right of vehicular or personal access is created over or appurtenant to a stratum parcel, the roadways, ramps, land, stairs, escalators, lifts, passages, corridors, shafts and other areas to which the right relates shall be maintained in good order and repaired—

- (a) by the body corporate concerned, the lessor or another person indicated, in the instrument by which the right is created or in any instrument in an approved form by which the instrument is varied, as having responsibility for those matters; or

- (b) where any such instrument does not indicate who is responsible for those matters, by the person or, if more than 1, jointly by the persons entitled to an estate or interest in possession in the dominant tenement.

(new)

(2) Where a body corporate, the lessor or other person—

- (a) has failed to carry out a responsibility imposed by subclause (1); and
- (b) at least 7 days have passed since that failure first arose;

any other of them may take all lawful steps necessary to ensure that the responsibility is carried out.

(new)

Easements for services

5.(1) Each person entitled to the benefit of an easement for a specified service has at all times an unrestricted right—

- (a) (except when it is necessary to halt the service for any essential maintenance or repairs relating to the service) to the passage of the service, to any extent consistent with the rights of other persons having the same or similar rights, along or through any existing line of pipes or any existing apparatus that is for the time being within the burdened land; and
- (b) to carry out an inspection of the pipes or apparatus to which the easement relates; and
- (c) in order to maintain the efficiency of any such pipes or apparatus—
 - (i) to enter the part of the burdened land in respect of which the easement is created by such route as is reasonable in the circumstances; and
 - (ii) to remain there for such reasonable time as may be necessary for the purpose of replacing, inspecting, cleaning, repairing, maintaining or renewing the pipes or apparatus or any part of the pipes or apparatus and of making such excavations as may be reasonably necessary;

subject to the conditions that—

- (iii) the burdened land is disturbed as little as possible; and
- (iv) any excavated surface is restored as nearly as possible to its original state; and
- (v) any other damage attributable to the operations referred to in this clause is repaired.

(new)

(2) In this clause, a reference to burdened land—

- (a) where a stratum parcel is the dominant tenement, is a reference to so much of—
 - (i) the building, part of which is subject to the leasehold building units plan; and
 - (ii) the site of that building;
 as is not part of the parcel; or
- (b) where a stratum parcel is the servient tenement, is a reference to the parcel.

(new)

Obligations relating to an easement for the provision of services

6.(1) Where an easement for services is created over or appurtenant to a stratum parcel, the pipes or apparatus to which the easement relates shall be maintained in good order and repaired—

- (a) by the body corporate concerned, the lessor or another person, indicated in the instrument by which the easement is created or in any instrument in the approved form, by which that easement is varied, as having responsibility for those matters; or
- (b) where any such instrument fails to indicate who is responsible for those matters, by the person or, if more than 1, jointly by the persons entitled to an estate or interest in possession in the dominant tenement.

(new)

(2) Where a body corporate, the lessor or other person—

- (a) has failed to carry out a responsibility imposed by subclause (1); and
- (b) at least 7 days have passed since that failure first arose;

any of them may take all lawful steps necessary to ensure that the responsibility is carried out.

(new)

Sharing of costs of maintenance and repair

7.(1) The costs of maintenance and repair in respect of a right of vehicular or personal access or an easement for services to which this Schedule applies shall be borne by the lessor, body corporate or other person concerned—

- (a) in the proportions specified in the instrument by which the easement was created or, where the proportions so specified have been varied, those proportions as varied; or
- (b) where no such proportions are so specified—in equal proportions.

(new)

(2) Where a person (whether or not the body corporate or the lessor) incurs costs referred to in subclause (1), the person may demand in writing the amount that the body corporate, the lessor or other person referred to in that subclause is liable to contribute to those costs.

(new)

(3) A demand made under subclause (2) must be accompanied by receipts or invoices or copies of receipts or invoices which evidence the expenditure to which the demand relates.

(new)

(4) Where the body corporate, the lessor or other person fails to comply with any such demand within 7 days after it has been made, the amount demanded may be recovered in a court of competent jurisdiction as a debt due to the body corporate, lessor or other person.

(new)

Ancillary rights and powers

8. All easements to which this Schedule applies shall carry with them such ancillary rights and powers as may be necessary to render them effective.

(new)

SCHEDULE 6

COMPENSATION PAYABLE ON TERMINATION OF LEASEHOLD BUILDING UNITS PLAN

For the purposes of sections 24E(1)(c) and 26(7)(e), the formula is—

$$A = B - (C - D)$$

where—

“**A**” represents the value, at the date of termination of the leasehold building units plan concerned, of the improvements attributable to a lot;

“**B**” represents the market value, at that date, of the lot, being the value of the lot at that date calculated on the basis that the lot—

- (a) is held for an estate in fee simple in possession; and
- (b) may be used, whether or not only with the consent of the local authority for any purpose the use of the lot for which is not at that date prohibited;

$$C = E \times \frac{U_1}{U_n}$$

where—

“**E**” represents the site value, at that date, of the parcel the subject of that leasehold building units plan, being the value of the land included in that parcel at that date calculated on the basis that the land—

- (a) is held for an estate in fee simple in possession; and
- (b) may be used for the purpose of a site for the building or part of the building subject to the leasehold building units plan;

but excluding the value at that date of all improvements within the parcel;

“**U₁**” represents the unit entitlement of the lot; and

“**U_n**” represents the aggregate unit entitlement for that leasehold building units plan; and

“**D**” represents the part of factor “**B**”, if any, attributable to the value,

at that date, of improvements to the lot effected by the lessor.
(new)

‘SCHEDULE 8

section 13A

‘COUNCIL LAND VESTED IN CORPORATION

- (a) Freehold held by Council
 - Lots 1 to 4 on RP 81435
 - Lots 1 to 3 on RP 1419
 - Lot 293 on Plan B 3139
 - Lot 92 on Plan B 118250
- (b) Reserve land with Council as Trustee
 - R 1744 Lot 7 on Plan SL 11015 GG 1956.3.163
 - R 689 Lot 5 on Plan SL 11015 GG 1956.3.161.

‘SCHEDULE 9

section 22B

‘PROVISIONS NOT TO APPLY AFTER DEVELOPMENT COMPLETION DATE

Section 17(1)(a) and (b)

Sections 18 to 22A inclusive

Section 24

Sections 27 to 30 inclusive

Sections 34 to 37 inclusive’.

SCHEDULE 2

AMENDMENT OF ACTS**PART 1—AMENDMENT OF THE AUCTIONEERS
AND AGENTS ACT 1971****Amended Act**

1. The *Auctioneers and Agents Act 1971* is amended as set out in this Part.

Amendment of s. 5 (Interpretation)

2. Section 5 (definition “**land**”)—

at the end, *insert*—

‘and includes land as defined in section 4 of the South Bank Corporation Act 1989 including a lot shown on a leasehold building units plan under that Act and that which will become a lot upon registration of a leasehold building units plan under that Act’.

Amendment of s. 42 (Real estate agents’ licences)

3. Section 42(2)—

omit ‘, wishes to carry on business’,

insert ‘or a body corporate manager within the meaning of the *South Bank Corporation Act 1989*, wishes to carry on business’.

**PART 2—AMENDMENT OF THE BUILDING UNITS
AND GROUP TITLES ACT 1980**

Amended Act

4. The *Building Units and Group Titles Act 1980* is amended as set out in this Part.

Amendment of s. 9

5. Section 9(3)(b)—

omit, insert—

‘(b) a plan shall not be registered if the name of the building or the name of the parcel, as the case may be, endorsed thereon is currently endorsed on—

(i) a registered leasehold building units plan under the *South Bank Corporation Act 1989*; and

(ii) a registered building units plan;

or is reserved pursuant to—

(iii) section 120 of this Act; or

(iv) section 120 of Schedule 7 of the *South Bank Corporation Act 1989*.’.

Amendment of s. 120 (Reservation of name)

6. Section 120(4)(a)—

omit, insert—

‘(a) in respect of a proposed building units plan, another building units plan or a leasehold building units plan within the meaning of the *South Bank Corporation Act 1989*; or’.

Amended Act

7. The *Land Sales Act 1984* is amended as set out in this Part.

Amendment of s. 6 (Interpretation)

8.(1) Section 6—

insert—

‘ **“leasehold building units plan”** means a leasehold building units plan within the meaning of the *South Bank Corporation Act 1989*;’.

(2) Section 6 (definition **“plan”**)—

omit, insert—

‘ **“plan”** includes a building units plan, a group titles plan and a leasehold building units plan;’.

(3) Section 6 (definition **“registered lot”**)—

omit, insert—

‘ **“registered lot”** means a lot shown on a plan registered under the *Building Units and Group Titles Act 1980* or the *South Bank Corporation Act 1989*;’.