

Queensland



BUILDING UNITS AND GROUP TITLES ACT 1994

Act No. 69 of 1994

Queensland



**BUILDING UNITS AND GROUP TITLES
ACT 1994**

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Queensland



Building Units and Group Titles Act 1994

Act No. 69 of 1994

**An Act providing for the establishment and administration of
community titles schemes, and for other purposes**

[Assented to 1 December 1994]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Building Units and Group Titles Act 1994*.

Commencement

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

Dictionary

3. The dictionary¹ in Schedule 3 defines particular words used in this Act.

Relationship between Act and Land Title Act

4.(1) This Act and the *Land Title Act 1994* must be read together as a single Act.

(2) However, if there is an inconsistency between this Act and the *Land Title Act 1994*, this Act prevails to the extent of the inconsistency.

Example of inconsistency—

Under this Act a lot is a lot in a registered plan. Under the *Land Title Act 1994* (section 4), a lot is a separate, distinct parcel of land created on the registration of a plan of survey or the recording of particulars of a deed of grant, and includes a lot within the meaning of this Act. Because of subsection (2), this Act's definition of lot, and not the Land Title Act definition, applies throughout this Act and to this Act's application to the Land Title Act. Thus a lot mentioned in section 25 (Easements for projections) is a lot within the meaning of this Act and not a lot within the meaning of the Land Title Act.

¹ In some Acts, definitions are contained in a dictionary that appears as the last Schedule and forms part of the Act—see *Acts Interpretation Act 1954*, section 14.

PART 2—SUBDIVISION INTO COMMUNITY TITLES

Division 1—Primary plans

Division of land by primary plan

5.(1) Land may be divided into development lots and primary common property by registration of a primary plan.

(2) A primary plan must relate to all the land included in a Land Title Act allotment.

Requirements for primary plan

6.(1) A primary plan must indicate the general purposes for which the lots, to be included in the community titles schemes proposed for the land, are intended to be used.

Example—

The primary plan may provide for the division of land into 4 development lots—

- 1 to be divided by group titles plan into 12 connected townhouses
- 1 to be divided by building units plan into 20 residential units for holiday letting
- 1 to be divided by building units plan into 10 lots for shops and offices
- 1 to be divided by group titles plan into 4 residential lots with stand alone houses.

(2) A primary plan must—

- (a) delineate the development lots and the primary common property into which the land is, in the first instance, to be divided; and
- (b) show the area of each development lot and of the primary common property; and
- (c) state the lot entitlement of each development lot; and
- (d) state the name and address for service of the primary body corporate; and

- (e) state whether secondary bodies corporate are to be formed on the registration of secondary plans; and
 - (f) contain the further information required under the regulations; and
 - (g) be accompanied by the master plan.
- (3) The master plan must—
- (a) provide for the further subdivision of the development lots by secondary plans; and
 - (b) state the number of lots into which each development lot is to be subdivided.
- (4) The master plan may provide for the further division of a development lot into 2 or more development lots.

Application for registration of primary plan

7. An application for registration of a primary plan must be—
- (a) made by the registered owner of the land to which the plan relates; and
 - (b) accompanied by certificates by the local government approving—
 - (i) the division of the land into development lots and primary common property in accordance with the plan; and
 - (ii) the further subdivision of the development lots, subject to the submission of appropriate secondary plans, into lots and common property; and
 - (c) accompanied by a certificate by a licensed valuer certifying—
 - (i) the unimproved value of each of the development lots; and
 - (ii) that the schedule of lot entitlements of the development lots accurately reflects the relative unimproved value of the development lots; and
 - (d) accompanied by a certificate by a licensed surveyor certifying the accuracy of the plan; and

- (e) accompanied by any certificate of title for the land; and
- (f) accompanied by the other documents required under the regulations.

Registration of primary plan

8.(1) If a primary plan and the application for its registration comply with this Act, the Registrar must register the plan by allocating a number to the plan and registering it in the freehold land register.

(2) Before registering the primary plan, the Registrar may inspect the parcel to which the plan relates.

(3) Within 28 days after registering the primary plan, the Registrar must give a copy of the plan to the local government and the body corporate.

Division 2—Subdivision by community titles plans

Subdivision of land by community titles plans

9.(1) Land may be subdivided into lots and common property by registration of a community titles plan.

(2) The community titles plan must relate to—

- (a) all of the land included in a Land Title Act allotment; or
- (b) all of a development lot in a staged development scheme.

Requirements for building units plan

10.(1) A building units plan must indicate the general purposes for which the lots are intended to be used.²

² The body corporate may make by-laws regulating the use and enjoyment of the common property and the lots (section 132(2)(b) (Power to make by-laws)). However, a by-law cannot restrict the commercial use of a lot unless the owner agrees (section 132(3)), cannot restrict the type of residential use to which a lot that is available for residential use may be put (section 132(4)), and cannot prevent or restrict a transmission, transfer, mortgage or other dealing with a lot (section 135(2) (Legal effect of by-laws)).

Examples—

1. The plan may indicate that the lots are to be used for—
 - long-term residence (3 months or more)
 - short-term holiday letting
 - a mixture of long-term residence and holiday letting.
2. The plan may indicate that the lots are to be used for—
 - shops
 - professional offices
 - a mixture of shops and professional offices.

(2) A building units plan must—

- (a) delineate the external surface boundaries of the parcel; and
- (b) define the location of the building by reference to the external surface boundaries; and
- (c) include a drawing of the lots, distinguishing each lot by number; and
- (d) define the boundaries of each lot in the building by reference to structural elements of the building, including, for example, floors, walls and ceilings; and
- (e) state the approximate floor area of each lot; and
- (f) state the lot entitlement of each lot; and
- (g) if there is a party wall between the building to which the plan relates and another building—delineate the party wall easement; and
- (h) state the name of the building; and
- (i) state the address of the body corporate for the service of documents; and
- (j) comply with other requirements prescribed under the regulations.

(3) The position of the boundaries of a lot is fixed on the following basis—

- (a) if the lot is separated from another lot, or the common property, by a floor, wall or ceiling—the boundary is at the centre of the floor, wall or ceiling; and
- (b) if a lot includes a balcony, courtyard, roof garden or other area not bounded, or completely bounded, by floor, walls and ceiling—the boundary is to be in a position—
 - (i) fixed under the regulations; or
 - (ii) if there is no relevant regulation— shown or described on the plan and approved by the Registrar.

Additional requirements for registration

11.(1) A building units plan lodged for registration must be endorsed with, or accompanied by—

- (a) a certificate by a licensed surveyor certifying that—
 - (i) each lot is within the external surface boundaries of the parcel; and
 - (ii) the building is completely within the external surface boundaries of the parcel, or is within the external surface boundaries of the parcel, apart from parts of the building projecting beyond the boundaries for which—
 - (A) an appropriate easement has been granted for the benefit of the parcel; or
 - (B) if the projection is over property under the management of the local government or another public authority— an appropriate licence or consent has been obtained; and
 - (iii) the building is not supported by a building outside the parcel, or the building is supported by a building outside the parcel and an appropriate registered easement of support exists; and
- (b) a certificate by an architect, building designer, or building officer of the local government, certifying that—
 - (i) the building has been substantially completed in accordance with plans and specifications approved by the local government; or

- (ii) the building was built before legislation requiring the local government's approval came into operation³ and—
 - (A) later work for which the local government's approval was required has not been carried out in relation to the building; or
 - (B) later work for which the local government's approval was required has been carried out, and the work has been substantially completed in accordance with plans and specifications approved by the local government; and
- (c) other information and materials required under the regulations.

(2) If the certificate under subsection (1)(b)(ii) cannot be obtained from an architect, building designer, or building officer of the local government, the certificate may be given by the owner of the building.

(3) A person must not make a certificate under this section containing information the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—40 penalty units.

(4) It is enough for a complaint against a person for an offence against subsection (3) to state that the document was false, misleading or incomplete to the person's knowledge.

(5) A local government, or a local government employee, incurs no civil liability for a false, misleading or incomplete certificate made under this section.

³ 1 February 1973.

Requirements for group titles plan

12.(1) A group titles plan must state the general purpose for which the lots are intended to be used.⁴

Example—

The plan may state that the lots are to be used for residential purposes.

(2) A group titles plan must—

- (a) delineate the external surface boundaries of the parcel; and
- (b) delineate the lots and distinguish each lot by number; and
- (c) delineate the common property; and
- (d) state the area of each lot and of the common property; and
- (e) state the lot entitlement of each lot; and
- (f) state the name of the parcel; and
- (g) state the address of the body corporate for the service of documents; and
- (h) comply with the other requirements prescribed under the regulations.

Additional requirements for registration

13. A group titles plan lodged for registration must be endorsed with, or accompanied by—

- (a) a certificate by a licensed surveyor certifying the accuracy of the plan; and
- (b) a certificate by a licensed valuer certifying—
 - (i) the unimproved value of each of the lots; and

⁴ The body corporate may make by-laws regulating the use and enjoyment of the common property and the lots (section 132(2)(b) (Power to make by-laws)). However, a by-law cannot restrict the commercial use of a lot unless the owner agrees (section 132(3)), cannot restrict the kind or residential use to which a lot that is available for residential use may be put (section 132(4)), and cannot prevent or restrict a transmission, transfer, mortgage or other dealing with a lot (section 135(2) (Legal effect of by-laws)).

- (ii) that the schedule of lot entitlements accurately reflects the relative unimproved value of the lots.

Application for registration of community titles plan

14. An application for registration of a community titles plan must be—

- (a) made by the registered owner of the land to which the plan relates; and
- (b) accompanied by a certificate by the local government certifying that the subdivision of land into lots and common property in accordance with the plan has been approved or noted as required under the *Local Government (Planning and Environment) Act 1990*; and
- (c) accompanied by any certificate of title for the land; and
- (d) accompanied by the other documents required under the regulations.

Registration of community titles plan

15.(1) If a community titles plan and the application for its registration comply with this Act, the Registrar must register the plan by allocating a number to the plan and registering it in the freehold land register.

(2) Before registering the community titles plan, the Registrar may inspect the parcel to which the plan relates.

(3) Within 28 days after registering the community titles plan, the Registrar must give a copy of the plan to the local government and the body corporate.

Division 3—Name

Name of building or parcel

16.(1) The name of the building in a registered building units plan is the building's name shown on the plan.

(2) The name of the parcel in a registered plan (other than a building units plan) is the parcels's name shown on the plan.

(3) The Registrar may refuse to register a plan if the name of the building or parcel shown on the plan—

- (a) is the same as the name of the building or parcel shown on another registered plan of the same type; or
- (b) is the same as a name reserved under this Division for a person other than the applicant; or
- (c) is reserved under the *South Bank Corporation Act 1989*⁵ or
- (d) is, in the Registrar's opinion, undesirable.

Reservation of name

17.(1) The Registrar may, on application, reserve a name stated in the application as the name of—

- (a) the building in a proposed building units plan; or
- (b) the parcel in another type of proposed plan.

(2) The Registrar must reserve the name if satisfied the name is acceptable for registration under this Act.

Period of reservation

18.(1) The reservation of a name is for an initial period of 2 years and may be extended by the Registrar for an additional period of 1 year.

(2) The extension may be granted on an application made, within the initial period, by the person for whom the name is reserved.

(3) However, the reservation ends if—

- (a) the person withdraws the reservation; or
- (b) a plan is registered in which the reserved name is given to a building or parcel.

⁵ See Schedule 7, section 9(3A), of the *South Bank Corporation Act 1989*.

Effect of reservation

19. If a name reserved under this Division is proposed for a building or a parcel in a plan or amendment by a person other than the person for whom the name was reserved, the plan or amendment may be registered only if the name is changed.

Division 4—Lot entitlements**Lot entitlements**

20.(1) Each lot created by a plan has a lot entitlement.

(2) The lot entitlement of a lot must be a whole number.

(3) The lot entitlement for each lot must be shown on a schedule forming part of the registered plan.

Change of lot entitlements

21.(1) The lot entitlements of the lots created by a building units plan may be changed—

- (a)** by unanimous resolution of the body corporate; or
- (b)** by order of the Supreme Court made on the application of the owner of a lot; or
- (c)** if the total lot entitlements of the lots subject to the change is not affected—by agreement between the owners of the lots and with the consent of the registered mortgagees and lessees of the lots.

(2) The Supreme Court may make an order for changing lot entitlements under subsection (1)(b) if satisfied the change is just and equitable.

(3) However, a change of lot entitlements does not take effect until the plan is changed by registration of an amendment including the change.

(4) The Registrar may amend a plan to change lot entitlements if the change is necessary to preserve the relative lot entitlements of the lots.

Examples of amendments under subsection (4)—

1. If a lot with a lot entitlement of 1 is divided by an amendment to the plan into 2 lots, each with a lot entitlement of 1, the Registrar may double the lot entitlements of the other lots to preserve the previous relativity.

2. If a development lot in a staged development scheme is subdivided by a secondary plan, and a secondary body corporate is not established on registration of the secondary plan, the Registrar may change the lot entitlements of other development lots, or of lots created by previous secondary plans, to preserve the relativity between the lot entitlements of the development lots.

Division 5—Statutory easements

Easements for support

22. An easement of lateral or subjacent support exists—

- (a) in favour of a lot against another lot capable of providing lateral or subjacent support; and
- (b) in favour of a lot against the common property, if the common property is capable of providing lateral or subjacent support; and
- (c) in favour of the common property against a lot capable of providing lateral or subjacent support.

Easements for services and service infrastructure

23.(1) An easement exists in favour of a lot and against other lots and the common property for supplying services to the lot and establishing and maintaining service infrastructure reasonably necessary for supplying services to the lot.

(2) However, the easement must not interfere unreasonably with the use or enjoyment of the lot or part of the common property against which the easement lies.

(3) An easement exists in favour of the common property and against the lots for supplying services to the common property and establishing and maintaining service infrastructure reasonably necessary for supplying services to the common property.

(4) However, the easement must not interfere unreasonably with the use or enjoyment of the lots against which the easement lies.

Easements for shelter

24. An easement entitling the owner of a lot in a building units scheme to have the lot sheltered by parts of the building necessary to provide shelter exists against the lots or parts of the common property where the relevant parts of the building are situated.

Easements for projections

25. If—

- (a) a building (whether built before or after registration of the plan) is situated on a lot created on registration of a group titles plan; and
- (b) eaves, guttering, awnings, window sills, or other minor parts of the building (as originally built) project beyond the boundaries of the lot;

an easement exists in favour of the lot and against the part of the lot or common property over which the projection lies permitting the projection.

Ancillary rights and obligations

26. Ancillary rights and obligations necessary to make easements effective apply to easements under this Division.

Division 6—The common property

What is common property?

27.(1) A body corporate's common property consists of—

- (a) parts of a parcel (including buildings or other parts of buildings and improvements) that are not within a lot; and
- (b) the service infrastructure.

(2) However, a part of the service infrastructure within a lot, and solely related to supplying services to the lot, is common property only if it is within a boundary structure separating the lot from another lot or from common property.

Ownership of common property

28.(1) The common property is owned by the owners of the lots, as tenants in common, in shares proportionate to the lot entitlements of their respective lots.

(2) An owner's interest in a lot is inseparable from the owner's interest in the common property.

Examples—

1. A dealing affecting the lot affects, without express mention, the interest in the common property.

2. An owner cannot separately deal with or dispose of the owner's interest in the common property.

(3) If the owner of a lot is not the occupier, any right the owner has under this Act or by-laws to the occupation or use of the common property, or the use or enjoyment of the body corporate's facilities, is transferred to the occupier.

(4) If the body corporate is authorised under this Act to enter into a transaction affecting the common property, it may enter into the transaction, and execute documents related to the transaction, in its own name, as if it were the owner of an estate of fee simple in the common property.

Rights and responsibilities for common property

29.(1) The body corporate may sue and be sued for rights and liabilities related to the common property as if the body corporate were the owner and occupier of the common property.

Examples—

1. If a person (including the owner of a lot) damages the common property, the body corporate may sue to recover the loss arising from the damage.

2. If a person is injured while on the common property, an action claiming failure by the occupier to exercise a proper standard of care lies against the body corporate.

(2) If, before registration of a plan, the original owner entered into a contract to have work carried out on the common property, the body corporate is, on registration of the plan, subrogated to—

- (a) the rights of the original owner under the contract; and
- (b) the rights of the contractor against subcontractors.

(3) The rights of the body corporate under subsection (2) cannot be excluded by contract.

Division 7—Changes to registered plan

Changes to registered plan

30. A registered plan may be changed by the registration of an amendment under this Division.

Examples of changes that may be made by amendment—

1. A change to the position of boundaries of a lot or the common property.
2. A change to the name of the building, or the parcel, as shown on the plan.
3. A change to the provision for future development contained in the master plan for a staged development scheme.

Form of amendment

31. An amendment must delineate the new boundaries if it—

- (a) provides for the amalgamation of lots; or
- (b) provides for the conversion of a lot into common property; or
- (c) affects the boundaries of a lot or the common property in another way.

Amendment of plans in staged development scheme

32.(1) An amendment may only be made affecting the boundaries of a lot or the common property in a registered primary or secondary plan in a staged development scheme if—

- (a) the amendment is in accordance with the master plan; or

- (b) the amendment is authorised by unanimous resolution of—
 - (i) the primary body corporate; and
 - (ii) if there are secondary bodies corporate—each secondary body corporate; or
- (c) the amendment is authorised by order of the Supreme Court under subsection (3).

(2) However, if the lots created by registration of a secondary plan in a staged development scheme are subject to a leaseback arrangement, an amendment may only be made to the secondary plan during the term of the leaseback arrangement if—

- (a) the amendment is in accordance with the master plan; or
- (b) the owners of all the lots approve the proposed amendment in writing; or
- (c) the amendment is of temporary duration and will not apply after the end of the leaseback arrangement; or
- (d) the Supreme Court authorises the amendment under subsection (3).

(3) On application by a primary or secondary body corporate or the owner of a lot, the Supreme Court may authorise the amendment of a primary or secondary plan in a staged development scheme if the Court is satisfied the amendment is necessary or appropriate.

(4) However, the Supreme Court may not authorise a change of the lot entitlements of lots created under a group titles plan or primary plan.

Who may make application for registration of amendment to plan

33. An application for registration of an amendment to a registered plan may only be made by—

- (a) the owner of a lot affected by the amendment; or
- (b) the body corporate.

Documents to accompany application for registration

34.(1) This section specifies the documents that must accompany an application for registration of an amendment of a registered plan.

(2) If the amendment affects the boundaries of the common property, the application must be accompanied by the following documents—

- (a) a plan of the amendment;
- (b) a certificate under the body corporate's common seal certifying that the body corporate approved the amendment by unanimous resolution;
- (c) a certificate by the local government certifying that the amendment has been approved or noted as required under the *Local Government (Planning and Environment) Act 1990*.

(3) If the amendment affects the boundaries of a lot, the application must be accompanied by the following documents—

- (a) a plan of the amendment;
- (b) the written agreement of the owner of the lot and the holders of registered mortgages, charges and encumbrances (other than easements);
- (c) any certificates of title for the lot;
- (d) a certificate by the local government certifying that the amendment has been approved or noted as required under the *Local Government (Planning and Environment) Act 1990*;
- (e) if part of the common property is amalgamated with a lot—a stamped instrument of transfer executed by the body corporate as transferor and the owner of the lot as transferee;
- (f) if a lot, or part of a lot, is amalgamated with the common property—a stamped instrument of transfer executed by the owner of the lot as transferor and the body corporate as transferee;
- (g) if a lot or part of a lot is amalgamated with another lot—a stamped instrument of transfer executed by—
 - (i) the owner of the lot or part to be amalgamated as transferor; and

(ii) the owner of the other lot as transferee.

(4) If the amendment changes lot entitlements (whether or not it also affects the boundaries of a lot), the application must be accompanied by the following documents—

(a) 1 of the following—

(i) a certificate under the body corporate's common seal certifying that the body corporate approved the amendment by unanimous resolution;

(ii) a certified copy of the Supreme Court's order under which the change is to be made;

(iii) if the change is made by agreement—a certificate signed by the owners of lots whose agreement is required certifying that they agree to the change and certificates of consent signed by other persons with registered interests in the lots whose consent to the agreement is required;

(b) if the lots are created under a primary plan or a group titles plan—a certificate by a licensed valuer certifying the unimproved value of each lot affected by the change, and that its lot entitlement accurately reflects its unimproved value relative to the total unimproved value of all the lots.

(5) However, a certificate is not required under subsection (4)(b) if the amendment amalgamates 2 or more lots and makes no other changes to their boundaries.

(6) In any case, the application must also be accompanied by the documents required under the regulations.

Changes to the plan by amendment

35.(1) If an amendment of a registered plan and the application for its registration comply with this Act, the Registrar must change the plan by registering the amendment in the freehold land register.

(2) Before registering the amendment, the Registrar may inspect the parcel to which the plan relates.

(3) On registering the amendment, the Registrar—

- (a) must change the particulars of the lots including the lot entitlements recorded in the freehold land register in accordance with the change to the plan; and
- (b) may cancel certificates of title previously issued for lots affected by the change and issue new certificates of title.

(4) Within 28 days after registering an amendment that changes the boundaries of a lot or the common property, changes a lot entitlement, or changes the name of a building or the common property, the Registrar must give a copy of the amendment to the local government and the body corporate.

Division 8—Reinstatement schemes

Reinstatement schemes

36.(1) If a building to which a building units plan relates is damaged, the body corporate, or an owner or registered mortgagee of a lot, may apply to the Supreme Court for approval of a scheme for reinstating the building in whole or part.

(2) The Supreme Court may approve the scheme.

(3) On approving a scheme, the Supreme Court may make orders it considers just and equitable—

- (a) directing how insurance money is to be applied; and
- (b) directing payment by the body corporate or any 1 or more owners of lots; and
- (c) directing changes to the building units plan; and
- (d) requiring the body corporate to compensate the owners of lots extinguished by changes to the plan; and
- (e) dealing with incidental or ancillary matters.

(4) An insurer of the building is a party to an application under this section.

Registration of order directing changes to plan

37. If an application for registration of an order directing changes to a building units plan complies with this Act, the Registrar must change the plan by registering particulars of the order in the freehold land register.

Division 9—Extinguishing registered plans**Extinguishing registered plans**

38.(1) A registered plan may be extinguished if—

- (a) the body corporate by unanimous resolution decides to extinguish the plan; or
- (b) the Supreme Court decides it is just and equitable to extinguish the plan and makes an order for extinguishing it.

(2) If a lessee of a lot is entitled to vote at general meetings of a body corporate and votes in favour of a resolution for extinguishing the plan, the resolution may be implemented only if the owner of the lot agrees in writing.

(3) The Supreme Court may make an order under subsection (1)(b) on application by the body corporate or the owner of a lot.

Application to extinguish registered plan

39.(1) An application for registration of the extinguishment of a plan may only be made by—

- (a) the body corporate; or
- (b) a person on whose application the Supreme Court made an order for extinguishing the plan.

(2) The application must be accompanied by—

- (a) a certified copy of the resolution or order to extinguish the plan; and

- (b) a certificate of the local government certifying that the proposal to extinguish the plan has been approved or noted as required under the *Local Government (Planning and Environment) Act 1990*; and
- (c) appropriate evidence that there is no registrable or short lease to which a lot or the common property is subject; and
- (d) any certificates of title issued for the lots.

Registration of extinguishment

40.(1) If the application for extinguishing the registered plan complies with this Act, the Registrar must extinguish the plan by—

- (a) registering the extinguishment in the freehold land register; and
- (b) cancelling the particulars (other than particulars of easements) recorded in the freehold land register about land included in the plan.

(2) The extinguishment takes effect on the day the Registrar takes the action mentioned in subsection (1).

(3) On extinguishing the registered plan, the Registrar must create a single indefeasible title for a Land Title Act allotment consisting of all the land formerly included in the registered plan by recording the persons who were the registered owners of the lots immediately before the plan was extinguished (the “**joint owners**”) as tenants in common in the shares the lot entitlements of their respective lots bore (immediately before the plan was extinguished) to the total lot entitlement of all the lots.

(4) In addition, if an instrument of transfer by or for the joint owners transferring all or part of the land was lodged with the application, the Registrar must create an indefeasible title for a Land Title Act allotment reflecting the transfer, and, if part of the land is not transferred, for a Land Title Act allotment consisting of the part of the land not transferred, by recording the joint owners as tenants in common in the shares the lot entitlements of their respective lots bore (immediately before the plan was extinguished) to the total lot entitlement of all the lots.

(5) Within 28 days after extinguishing the plan, the Registrar must give notice of the date the plan was extinguished, and the present registered owners of the land, formerly included in the plan, to the local government.

Dissolution of body corporate

41.(1) When a plan is extinguished, the body corporate is dissolved.

(2) On dissolution of a body corporate—

- (a) the owners of the lots immediately before the plan was extinguished (the “**former owners**”) become entitled to the property of the body corporate in shares proportionate to their respective lot entitlements; and
- (b) the liabilities of the body corporate are vested jointly and severally in the former owners (but they are entitled to contribution against each other in proportion to their respective lot entitlements).

(3) On the application of an interested person, the Supreme Court may make orders for the custody, management and distribution of the property of the former body corporate.

Effects of extinguishment

42.(1) If a lot was subject to a mortgage immediately before a plan was extinguished—

- (a) the former owner’s interest in the land as tenant in common is subject to the mortgage; and
- (b) if the land is transferred under section 40(4)⁶ before the mortgage is discharged—the transferee’s interest is subject to the mortgage.

(2) If a secondary plan is extinguished, the land formerly included in the plan again becomes an undivided development lot in a staged development scheme.

(3) If a registered plan is extinguished, a liability for a rate or charge that had accrued on a lot before the plan was extinguished is not affected.

⁶ Section 40 (Registration of extinguishment).

PART 3—MANAGEMENT STRUCTURES AND ARRANGEMENTS

Division 1—Body corporate

Establishment of body corporate

43.(1) On registration of a primary plan or community titles plan, a body corporate is established.

(2) However, if a primary plan provides that the proprietors of lots created on the registration of secondary plans are to become members of the primary body corporate, a secondary body corporate is not established on the registration of a secondary plan.

Corporations Law does not apply to body corporate

44. The Corporations Law does not apply to a body corporate established under this Act.

Name of body corporate

45.(1) A body corporate's name is the name shown on the registered plan.

(2) The body corporate may sue and be sued in its corporate name.

(3) The name is to be a composite name consisting of—

- (a)** the word 'Owners'; and
- (b)** the name of the building or the parcel as shown on the plan; and
- (c)** the designation and number of the plan.

Examples—

1. If the name of the building as shown on a registered building units plan is 'Faulty Towers' and the number of the building units plan is 1011, the name of the body corporate would be the 'Owners Faulty Towers Building Units Plan No. 1011'.

2. If the name of the parcel as shown on a registered group titles plan is '22 Seaview Road' and the number of the plan is 1012, the name of the body corporate would be the 'Owners 22 Seaview Road Group Titles Plan No. 1012'.

Address of body corporate

46.(1) A body corporate's address for service is the address recorded on the registered plan.

(2) On the body corporate's application, the Registrar must change the body corporate's address for service by recording the change.

Body corporate's seal

47.(1) A body corporate has a seal.

(2) The body corporate's seal must be kept in the custody directed by the body corporate by ordinary resolution.

(3) The body corporate's seal may be used only as directed or authorised by ordinary resolution.

(4) However, if the body corporate has not resolved how the seal is to be used, the seal may, if authorised by a committee resolution, be attached to a document in the presence of at least 2 committee members, of whom 1 must be the chairperson or secretary.

(5) The committee members present must sign the document as witnesses to the sealing of the document.

Division 2—Membership of body corporate

Membership of body corporate

48.(1) The members of a body corporate consist of the owners (from time to time) of the lots created by the plan.

(2) If a development lot in a staged development scheme is subdivided by a secondary plan, and no secondary body corporate is formed on registration of the secondary plan, the owners of the lots created by registration of the secondary plan are members of the primary body corporate.

(3) If a development lot in a staged development scheme is subdivided by a secondary plan and a secondary body corporate is formed on registration of the secondary plan—

- (a) the owners of the lots created by registration of the secondary plan are not members of the primary body corporate; but
- (b) the secondary body corporate is a member of the primary body corporate.

(4) The secondary body corporate's rights and obligations under this Act, as a member of the primary body corporate, are to be the same as if it were the owner of all of the development lot.

Example—

Suppose that a primary plan creates 4 development lots of which 1 is held by A Pty Ltd, 1 is held by B Pty Ltd, 1 is held by C Pty Ltd and 1 is divided by a group titles plan. In this case, the members of the primary body corporate will be A Pty Ltd, B Pty Ltd, C Pty Ltd and the body corporate formed on registration of the secondary plan.

Division 3—Body corporate's general functions and powers

Body corporate's general functions

49. A body corporate must—

- (a) administer the common property reasonably and for the benefit of the owners of the lots; and
- (b) enforce the by-laws; and
- (c) carry out the other functions given to the body corporate under this Act and the by-laws.

General powers

50.(1) A body corporate has all the powers necessary for carrying out its functions and may, for example—

- (a) enter into contracts; and
- (b) acquire, hold, deal with, and dispose of property; and
- (c) employ staff.

(2) Without limiting subsection (1), the body corporate has the powers given to it under this or another Act.

Body corporate must not carry on business

51.(1) The body corporate must not carry on a business.

Examples—

A body corporate must not carry on business as—

- a letting agent
- a tour operator
- a restaurant business.

(2) However, the body corporate may—

- (a) engage in business activities to the extent necessary for properly carrying out its functions; and
- (b) invest amounts not immediately required for its purposes in the same way as a trustee may invest trust funds.

Division 4—Committee of body corporate**Committee of body corporate**

52.(1) The committee of a body corporate consists of—

- (a) the executive members of the committee, namely, the chairperson, secretary and treasurer of the body corporate; and
- (b) the ordinary members of the committee.

(2) The same person may hold the positions of chairperson, secretary and treasurer, or any 2 of the positions, in conjunction.

(3) The committee must consist of at least 3, but not more than 7, persons.⁷

Election of committee

53.(1) The members of a body corporate's committee are elected annually by ballot of the body corporate.

(2) The election must be by secret ballot unless the body corporate by ordinary resolution resolves that a secret ballot is unnecessary.

(3) A person is eligible to be a member of the committee if the person is an individual and 1 of the following—

- (a) an owner of a lot;
- (b) the lessee of a lot under a leaseback arrangement;
- (c) the nominee of—
 - (i) a corporate owner of a lot; or
 - (ii) a corporate lessee under a leaseback arrangement.

(4) However—

- (a) an individual may be the secretary or treasurer (or both) of a body corporate even though not an owner, or the nominee of an owner, of a lot; or
- (b) if an individual who is an owner of a lot is a member of the committee—a co-owner cannot simultaneously be a member of the committee unless the co-owner is also the owner or a co-owner of another lot.

(5) A secretary or treasurer of the body corporate who is not an owner, or the nominee of a corporate owner, of a lot is a non-voting member.

(6) An election of members of the committee must be held at each annual general meeting of the body corporate unless—

⁷ However, if there are less than 3 owners of the lots, the committee may consist of 1 or 2 individuals (see section 53(7) (Election of committee)).

- (a) when the annual general meeting is held, there are less than 3 owners of lots; or
- (b) a leaseback arrangement is in force.

(7) If there are less than 3 owners of lots—

- (a) the committee consists of the individuals who are owners, or nominees of corporate owners, of lots and they must decide among themselves who is to hold the positions of chairperson, secretary and treasurer (the “**executive positions**”) (and, if they cannot agree, the executive positions are jointly held by all of them); and
- (b) if 1 person owns all the lots—the committee is a committee of 1 consisting of an individual who is the owner or the owner’s nominee and the individual holds all the executive positions on the committee.

(8) If a leaseback arrangement is in force, the committee is a committee of 1 consisting of an individual who is the lessee or the lessee’s nominee and the individual holds all the executive positions on the committee.

Committee members’ proxies

54.(1) A committee member of a body corporate may, by written notice of appointment given to the secretary, appoint another committee member, or a person who is eligible to be a committee member, to act as the member’s proxy in the absence of the member from a meeting of the committee.

(2) However, the secretary or the treasurer may only appoint a proxy with the committee’s approval.

(3) A committee member who is the proxy for another member may, in the absence of the other member, vote both in his or her own right and also by proxy for the absent member.

Term and casual vacancies

55.(1) The term of a member of a body corporate’s committee continues until another person is elected to the position.

(2) However, a committee member's position on the committee becomes vacant if the member—

- (a) dies; or
- (b) becomes ineligible to hold the position; or
- (c) resigns by written notice given to the chairperson or secretary of the body corporate; or
- (d) is absent from 2 consecutive meetings of the committee without the committee's leave; or
- (e) is convicted of an indictable offence; or
- (f) is removed from office by ordinary resolution.

(3) The committee must (even though the number of its members may have fallen below a quorum) appoint an eligible individual to fill a casual vacancy in the position of an executive or ordinary committee member, or call a general meeting of the body corporate for the purpose of filling the vacancy.

(4) If a body corporate ceases to have a properly constituted committee, a referee may, on application by a member of the body corporate, make an order—

- (a) authorising a person named in the order to call a general meeting of the body corporate to elect members to the committee; and
- (b) prescribing the notice to be given of the general meeting; and
- (c) giving other directions that may be necessary for, or incidental to, holding the general meeting or reconstituting the committee.

Immunity from liability

56.(1) A committee member of a body corporate is not civilly liable for an act done, or omission made, honestly and without negligence while acting, or purportedly acting, as a committee member.

(2) If subsection (1) prevents a civil liability attaching to a committee member, the liability attaches instead to the body corporate.

Division 5—Procedures and powers of the committee**Calling of meetings**

57.(1) A meeting of a body corporate's committee may be called by—

- (a) the secretary or, in the secretary's absence, the chairperson; or
- (b) in the absence of both the secretary and the chairperson, another member of the committee acting with the agreement of enough members to form a quorum at a meeting of the committee.

(2) The secretary or, in the secretary's absence, the chairperson must call a meeting within 7 days if asked, in writing, to call a meeting by a number of members of the committee that is enough to form a quorum at a meeting of the committee.

(3) The secretary or chairperson may be presumed to be absent if a notice is given at the address shown in the roll, and no reply is received within 7 days.

Time of meetings

58. A meeting is called by giving written notice of at least 7 days to all other committee members of the time and place of the meeting.

Place of meetings

59. A committee meeting must not be held outside a radius of 15 km from the parcel if a committee member objects by giving written notice of objection to the secretary.

Agenda

60.(1) The notice calling a committee meeting must include an agenda setting out the substance of issues to be considered at the meeting.

(2) However, the committee may also consider any other issues raised at the meeting.

Presiding at meetings

61.(1) The chairperson must preside at all meetings of the committee at which the chairperson is present.

(2) If the chairperson is absent, the member chosen by the members present (with the member's agreement) must preside.

Quorum and voting

62.(1) At a meeting of a body corporate's committee—

- (a) a quorum is at least half the number of voting members (including proxy voting members); and
- (b) a question is decided by a majority of the votes of the voting members present and voting; and
- (c) each voting member has a vote on each question to be decided.

Examples of paragraph (a)—

- 1. If there are 6 voting members of the committee, a quorum is 3.
- 2. If there are 7 voting members of the committee, a quorum is 4.

(2) Without limiting subsection (1), if a quorum is present, a decision supported by a majority of the votes of the voting members present is a decision of the committee.

Voting outside meetings

63.(1) A resolution is a valid resolution of a body corporate's committee, even though it is not passed at a meeting of the committee, if—

- (a) notice of the resolution is given to all committee members or, in an emergency, as many members as it is practicable to contact; and
- (b) at least half of the voting members agree to the resolution.

(2) Unless the resolution is urgently required to deal with an emergency, the notice must be given in writing, and the members' agreement to the proposed resolution must be given in writing but, in an emergency, the notice may be given, and the member's agreement expressed, orally or by another appropriate form of communication.

Minutes

64.(1) The committee must ensure full and accurate minutes of its meetings are taken.

(2) However, the committee may exclude material from the minutes if it is—

- (a) protected by professional legal privilege; or
- (b) defamatory or possibly defamatory.

Power of committee to act for body corporate

65.(1) A decision of a body corporate's committee, other than a decision on a restricted issue, is a decision of the body corporate.

(2) The body corporate may, by ordinary resolution, decide what issues may only be decided by ordinary resolution.

(3) A decision is a decision on a “**restricted issue**” for the body corporate if it is—

- (a) a decision fixing, or changing, a contribution to be levied under this Act (other than a contribution to be levied by a secondary body corporate in a staged development scheme that is necessary to meet a contribution levied by the primary body corporate); or
- (b) a decision to change rights, privileges or obligations of the owners of lots; or
- (c) a decision on an issue reserved for decision by ordinary resolution; or
- (d) a decision on an issue that, under this Act, may only be made by unanimous resolution, resolution without dissent, special resolution or ordinary resolution; or
- (e) a decision to bring a proceeding in a court other than—
 - (i) a proceeding to recover a liquidated debt against the owner of a lot; or
 - (ii) a proceeding under this Act; or

(iii) a counterclaim, third-party proceeding or other proceeding in a proceeding to which the body corporate is already a party;
or

(f) a decision to pay remuneration, allowances or expenses to a member of the committee unless the decision is to reimburse expenses to an extent authorised under the regulations.

(4) If a group of persons, honestly and reasonably believing that they are the committee of a body corporate, makes a decision while purportedly acting as the committee, the decision is taken to be a decision of the committee despite a defect in the election or appointment of 1 or more members of the group.

Carrying out resolutions

66.(1) A resolution of a body corporate’s committee must be exhibited on the body corporate’s notice board for at least 7 days (the “**required period of exhibition**”) before being carried out.

(2) Within the required period of exhibition, a notice signed as required by subsection (3) (“**notice of opposition**”) may be given to the secretary opposing carrying out of the resolution.

(3) The notice of opposition must be signed by or for owners of lots with a total lot entitlement of at least 50% of all the lots.

(4) The committee may carry out the resolution only if—

(a) the notice is exhibited for the required period of exhibition and no notice of opposition is received by the secretary within the period;
or

(b) the resolution is necessary to deal with an emergency and—

(i) the amount required to implement the resolution is within the relevant limit within the meaning of section 109;⁸ or

(ii) a referee authorises the committee to carry out the resolution;
or

(c) the resolution is ratified by ordinary resolution.

⁸ Section 109 (Spending by committee).

(5) If powers of the committee have been delegated to a body corporate manager, the references in this section to a resolution of the committee extend to a decision of the body corporate manager made under the delegated powers.

(6) In a proceeding involving a challenge to the right of the committee to carry out a resolution, or a body corporate manager to carry out a decision made in the exercise of delegated powers, the burden of proving that the resolution or decision was exhibited as required by this section lies on the person asserting the right of the committee or body corporate manager to carry out the resolution or the decision.

Division 6—General meetings

Types of general meetings

67. A general meeting of a body corporate is either an annual general meeting or an extraordinary general meeting.

Calling of general meetings

68. A general meeting of a body corporate may be called by—

- (a) the secretary; or
- (b) another member of the committee authorised by the committee to call the meeting; or
- (c) a person authorised or required to call a general meeting by a referee.

Time of general meetings

69.(1) A general meeting of a body corporate must be called and held at least 21 days after notice of the meeting is given to the owners of the lots.

(2) If it is a requested general meeting⁹, the meeting must be called for and held within 6 weeks after the notice asking for the meeting is given.

⁹ See section 72(1) (Requirement for extraordinary general meetings).

Place of general meetings

70.(1) The place of the proposed general meeting must be within 15 km of the parcel.

(2) However, if the committee notifies the owners of its intention to hold the meeting at a stated place more than 15 km from the parcel, and allows them a reasonable opportunity to object in writing to the proposed place, the meeting may be held at the place unless written objections to the proposed place of meeting are given by or for owners of lots with a total lot entitlement of at least 25% of all the lots.

Requirement for annual general meetings

71. An annual general meeting of a body corporate must be called and held after, but not more than 3 months after—

- (a) the registration of its plan; and
- (b) the end of each of its financial years.

Requirement for extraordinary general meetings

72.(1) A general meeting (“**requested general meeting**”) of the body corporate must be called if a notice asking for a general meeting to consider and decide motions proposed in the notice is—

- (a) signed by or for owners of lots with a total lot entitlement of at least 25% of all the lots; and
- (b) given to the secretary or, in the secretary’s absence, the chairperson, of the body corporate or, if the committee has not yet been elected, the original owner.

(2) The secretary may be presumed to be absent if a notice is given to the secretary at the address shown in the roll, and no reply is received within 7 days.

(3) An extraordinary general meeting of a body corporate may be called even though the body corporate’s first annual general meeting has not yet been held.

Agenda for general meeting

73.(1) A body corporate's committee must prepare an agenda for each general meeting.

(2) The agenda must include—

- (a) motions the committee proposes for consideration at the meeting; and
- (b) if the general meeting is a requested general meeting—the agenda must include the motions proposed in the notice asking for the meeting; and
- (c) if an owner of a lot has, by written notice to the secretary, asked that a particular motion be included on the agenda for the general meeting—
 - (i) the motion; and
 - (ii) if the owner provides an explanatory note (no longer than 100 words) with the notice—the note must accompany the agenda; and
- (d) if a referee authorises or requires the calling of the general meeting—the agenda must include motions specified by the referee; and
- (e) if the general meeting is the first annual general meeting—the agenda must include the business mentioned in section 75;¹⁰ and
- (f) if there has been a previous general meeting—a motion to confirm the minutes of the last meeting.

(3) If the general meeting is an annual general meeting (other than the first annual general meeting), the agenda must also—

- (a) provide for the presentation of the accounts for the financial year; and
- (b) provide for the appointment of an auditor of the body corporate's accounts for the next financial year or for a special resolution that the accounts are not to be audited; and
- (c) provide for the approval of a budget for the financial year; and

¹⁰ Section 75 (First annual general meeting).

- (d) provide for fixing the contributions to be paid by the owners of lots for the financial year; and
- (e) include other issues that are, under this Act, required to be included on the agenda for the annual general meeting.

(4) A motion under subsection (2)(c) may be included on the agenda for an annual general meeting only if the notice is given to the secretary before the end of the body corporate's last completed financial year before the date of the meeting.

(5) If the notice is not received before the end of the financial year, it must be deferred until the body corporate's next general meeting.

Notice of general meeting

74.(1) Written notice of a general meeting of a body corporate must be given to the owner of each lot.

(2) The notice must state the time and place of the proposed general meeting.

(3) The notice of a general meeting must—

- (a) contain an agenda for the meeting setting out the substance of the motions to be considered; and
- (b) be accompanied by—
 - (i) a proxy form; and
 - (ii) if the notice is given to the corporate owner of a lot—a form for nomination of an individual to vote for the corporate owner at general meetings of the body corporate; and
- (c) be accompanied by voting papers—
 - (i) setting out each motion to be considered at the meeting and the name and lot number of the person proposing each motion; and
 - (ii) stating for each motion whether a unanimous resolution, a resolution without dissent, a special resolution or an ordinary resolution is required; and

-
- (iii) enabling a person entitled to vote at the general meeting to record a written vote on each motion to be considered at the meeting;
- (d) contain or be accompanied by explanatory or other materials required under this Act to be contained in or accompany the notice.¹¹
- (4) If the same person is the owner of all the lots, no notice of a general meeting need be given.

Division 7—Annual general meetings

First annual general meeting

75.(1) The original owner of a body corporate must call and hold the first annual general meeting of the body corporate as required by this section.

Maximum penalty—150 penalty units.

(2) The meeting must be called for and held within 3 months after the registration of the plan.

¹¹ The following materials may be required to be contained in or accompany the notice of a general meeting—

- committee election ballot papers (section 53 (Election of committee))
- explanatory notes to a motion (section 73(2) (Agenda for general meeting))
- minutes of previous general meetings (section 89 (Minutes))
- budget (section 99(4) (Budget))
- tender documents (section 110 (Limitation on major spending))
- statement of accounts (section 111 (Accounts))
- auditors certificate, if necessary (section 112 (Audit)).

Additional materials may be required under the regulations.

(3) The agenda for the meeting must include the following items—

- (a) adopting a budget, and fixing of the contributions to be levied against the owners of lots, for the body corporate's first financial year;
- (b) reviewing the policies of insurance taken out for the body corporate and, if appropriate, changing the insurance;
- (c) deciding whether the election of members of the committee should be by open or secret ballot, and electing the chairperson, secretary, and treasurer of the body corporate and the other members of the committee;
- (d) providing for the custody and use of the body corporate's seal;
- (e) deciding what issues are reserved for decision by ordinary resolution;¹²
- (f) deciding whether the body corporate's by-laws should be amended or repealed;
- (g) appointing an auditor to audit the accounts of the body corporate or resolving by special resolution not to appoint an auditor;¹³
- (h) if the meeting is called by order of a referee—to decide issues the referee orders to be placed on the agenda for the meeting.

(4) If the original owner fails to call and hold the first annual general meeting as required by this section, a referee may, on application by the owner of a lot, make an order appointing a person to call the first annual general meeting within a specified time.

(5) The original owner is not relieved of liability for failing to call and hold an annual general meeting because a meeting has been called and held by order of the referee.

¹² See section 65(2) (Power of committee to act for body corporate).

¹³ The body corporate cannot resolve not to appoint an auditor if it is the primary body corporate in a staged development scheme (see section 112(2)(a) (Audit)).

Documents and materials to be handed over to body corporate at first annual general meeting

76.(1) At a body corporate's first annual general meeting, the original owner must give the following to the body corporate—

- (a) a register of assets containing an inventory of the body corporate's assets;
- (b) all plans, specifications, diagrams and drawings of the buildings and improvements (as built) showing water pipes, electric wiring, drainage, ventilation ducts, air conditions systems and other service infrastructure;
- (c) all policies of insurance taken out by the original owner for the body corporate;
- (d) the body corporate's roll and books of account;
- (e) the body corporate's common seal;
- (f) documents in the original owner's possession relevant to the plan, the parcel or the buildings or improvements on it, including—
 - (i) contracts to have building work carried out on the parcel; and
 - (ii) certificates of classification for buildings and fire safety certificates;(but not including certificates of title for individual lots, or documents evidencing rights or obligations of the original owner and not capable of being used for the benefit of the body corporate or another owner of a lot);
- (g) a budget showing the body corporate's estimated spending for the first financial year.

Maximum penalty—150 penalty units.

(2) If documents of the types mentioned in subsection (1) come into the original owner's possession after the body corporate's first annual general meeting, the original owner must hand them over to the body corporate's secretary at the earliest practicable opportunity.

Maximum penalty—150 penalty units.

Division 8—Procedure at general meetings**Presiding at general meetings**

77.(1) The chairperson of a body corporate must preside at all general meetings at which the chairperson is present.

(2) If the chairperson is absent, a person elected (with the person's consent) to preside by the persons present and entitled to vote at the meeting must preside.

Power of presiding person to rule motion out of order

78.(1) The person presiding at a general meeting of a body corporate may rule a motion out of order if—

- (a) the motion, if carried, would conflict with this Act or the by-laws or would be unlawful or unenforceable for another reason; or
- (b) notice of the motion was not given as required under this Act.

(2) The person presiding must give reasons for ruling a motion out of order and the reasons must be recorded in the minutes of the meeting.

(3) The persons present and entitled to vote may reverse the ruling by passing an ordinary resolution disagreeing with the ruling.

Quorum

79.(1) At a body corporate's general meeting, a person is taken to be present at the meeting if the person is voting at the meeting personally or by proxy, representative or written voting paper.

(2) A quorum at a general meeting is at least 25% of the number of voters.

Examples—

1. If there are 8 voters, a quorum is 2.
2. If there are 9 voters, a quorum is 3.

(3) However—

- (a) if the number of voters is at least 3—2 persons must be present personally; or
- (b) if the number of voters is less than 3—only 1 person must be present personally.

(4) If there is not a quorum within 30 minutes of the time set for the start of the meeting, the meeting must be adjourned to the same day and time in the next week.

(5) If at the adjourned meeting a quorum is again not present within 30 minutes of the time set for the start of the adjourned meeting, the persons present form a quorum.

(6) However—

- (a) if the number of voters is at least 3—2 persons must be present personally; or
- (b) if the number of voters is less than 3—only 1 person must be present personally.

Entitlement to vote

80.(1) A person is a “**voter**” for a body corporate’s general meeting if the person is an individual—

- (a) whose name is entered on the body corporate’s roll as—
 - (i) the owner of a lot;¹⁴ or
 - (ii) the representative of the owner of a lot; or
- (b) who is the nominee of the company whose name is entered on the body corporate’s roll as the owner, or the representative of the owner, of a lot.

(2) A person is the “**representative**” of the owner of a lot if the person is—

¹⁴ It should be noted that “**owner**” includes by definition a mortgagee in possession of a lot (see Schedule 3, Dictionary). A mortgagee in possession may displace the right of the owner of the fee simple to vote (see subsection (6)).

- (a) a guardian, trustee, agent or other representative of the owner of the lot who is authorised to act on the owner's behalf; or
- (b) a lessee to whom the owner has transferred the right to vote under a leaseback arrangement;

(3) However, a person may be treated as the owner's representative only if—

- (a) a copy of the instrument under which the person derives the representative capacity is given to the body corporate's secretary; or
- (b) the person otherwise satisfies the secretary of the person's representative capacity.

(4) A company may make a nomination under subsection (1)(b) by giving the secretary written notice of nomination, under the common seal of the company, stating the name and address of the nominee or the names and addresses of 2 alternative nominees, 1 of whom is to act in the absence of the other.

(5) The company may change the nomination by giving the secretary written notice of a fresh nomination, under the common seal of the company, stating the name and address of the new nominee or the new alternative nominees.

(6) If a mortgagee in possession claims, by written notice to the secretary, the right to vote for the lot, the mortgagee's right to vote displaces the right of the person entitled to the fee simple interest in the lot or a person who derives a right to vote from the person entitled to the fee simple interest in the lot.

(7) A person is not entitled to vote for a particular lot on a motion (other than a motion for which a unanimous resolution or resolution without dissent is required) if the owner of the lot has not paid a contribution, or an instalment of a contribution, owing, at the time of the meeting, by the owner to the body corporate.

Exercise of vote

81.(1) A voter for a body corporate's general meeting may vote personally, by proxy or by casting a written vote.

(2) A written vote is cast by completing the voting papers as required by the accompanying instructions and giving them to the secretary (personally, by post or by facsimile) before the start of the meeting.

Proxies

82.(1) A proxy is given by giving a properly completed proxy form (personally, by post or by facsimile) to the secretary of the body corporate before—

- (a) the start of the general meeting at which the proxy is to be exercised; or
- (b) if the body corporate has fixed an earlier time by which proxies must be given (which cannot, however, be earlier than 24 hours before the time fixed for the meeting)—the earlier time.

(2) A proxy—

- (a) must be in the form approved by the chief executive and in the English language; and
- (b) must be in a document separate from a contract; and
- (c) cannot be made on terms under which the proxy is irrevocable; and
- (d) cannot be transferred by the holder of the proxy to a third person; and
- (e) lapses at the end of the body corporate's financial year or at the end of the shorter period stated in the proxy.

(3) A proxy vote—

- (a) cannot be exercised when the person who gave the proxy is personally present at a general meeting of the body corporate; and
- (b) cannot be exercised on a motion if the person who gave the proxy has exercised a written vote on the motion.

(4) The owner of a lot cannot be prevented by contract from exercising a vote at a general meeting of a body corporate and cannot be required by contract to make someone else the owner's representative or proxy for voting at general meetings of the body corporate.

(5) A vote cannot be exercised for someone else by—

- (a) the original owner, a body corporate manager or a service contractor; or
- (b) an associate of the original owner, a body corporate manager or a service contractor; or
- (c) a person or an associate of a person who has an interest in a contract or proposed contract under which a body corporate manager or service contractor is remunerated.

(6) However—

- (a) a leaseback arrangement may provide for the transfer of the owner's right to vote to the lessee (who may be the original owner); and
- (b) a contract under which the original owner sells a lot may make the original owner the purchaser's representative for voting on issues prescribed under the regulations for a period stated in the contract (which must end no later than 2 years from the date of registration of the plan).

(7) A person must not exercise a proxy knowing that he or she is not entitled to exercise it.

Maximum penalty for subsection (7)—100 penalty units.

Voting at general meeting

83.(1) Voting by persons present at a general meeting must be by show of hands, or by giving completed voting papers to the person presiding, unless—

- (a) a ballot is required by this Act or the by-laws; or
- (b) the person presiding decides a ballot is necessary to ensure an accurate count of votes; or
- (c) a poll is demanded by a person entitled to vote at the meeting.

(2) At a general meeting of the body corporate—

- (a) each person entitled to vote is entitled to 1 vote for each lot of which the person, or the owner represented by the person, is the owner; or
- (b) if a person entitled to vote at the meeting demands a poll— each person entitled to vote at the meeting is entitled, on the poll, to a number of votes equivalent to the lot entitlement of the lot, or the total lot entitlement of all the lots, of which the person, or the owner represented by the person, is the owner.

(3) If 2 or more co-owners of a lot are present at a general meeting of the body corporate, the chairperson may require them to elect 1 to vote for all but, in the absence of an election—

- (a) if more than 1 vote on a motion, and they vote in the same way—the votes have the same value as if the lot were owned by a single owner and the owner had voted the same way as the co-owners; and
- (b) if more than 1 vote on a motion, and they vote in different ways—no vote is counted either for or against the motion.

(4) However, on a poll, co-owners may vote separately and the value of a co-owner's vote is a proportion of the lot entitlement of the lot equivalent to the co-owner's proportionate interest in the lot.

(5) If the votes cast for and against a motion are equal, the motion does not pass.

(6) A general meeting of the body corporate may pass a resolution on a motion only if the motion is—

- (a) included as an item of business on the general meeting's agenda; and
- (b) set out in the voting papers accompanying the notice of the meeting.

Appointment of returning officer

84. A body corporate may appoint a returning officer to decide questions about eligibility to vote and voting entitlements, and to count the votes.

Secretary to have available for inspection body corporate roll etc.

85. The secretary of a body corporate must have available for inspection at a general meeting of the body corporate—

- (a) the body corporate's roll; and
- (b) a list of the persons entitled to vote at the meeting.

Amendment of motions at general meetings

86.(1) A motion may be amended at a general meeting of a body corporate by the persons present, and entitled to vote, at the meeting.

(2) However, an amendment cannot be made that changes the subject matter of the motion.

(3) In counting the votes cast for and against a motion to amend a motion, or an amended motion, all persons who are not present personally or by representative or proxy at the meeting, but would, if present, be entitled to vote, must be taken to have voted against the motion.

Presiding person's declaration of voting results

87.(1) The person presiding at a general meeting of a body corporate must declare the result of voting on motions and elections at the meeting.

(2) When declaring the result of voting, the person presiding must state the number of votes cast for and against the motion.

(3) The number of votes cast for and against each motion must be recorded in the minutes of the general meeting or in a voting tally sheet kept with the minutes.

Amendment or revocation of resolution of general meeting

88. If a unanimous resolution, resolution without dissent, special resolution or ordinary resolution is required under this Act for a particular purpose, a resolution passed for the purpose may only be amended or revoked by a resolution of the required type.

Minutes

89.(1) The body corporate must ensure that full and accurate minutes are taken of its general meetings.

(2) A copy of the minutes of the last general meeting must accompany the notice of a general meeting.

PART 4—MANAGEMENT AND SERVICE CONTRACTS***Division 1—Appointment of body corporate managers and service contractors*****Appointment of body corporate manager or service contractor**

90.(1) A body corporate may, by contract (a “**body corporate management contract**”), appoint a body corporate manager.

(2) The body corporate may, by contract (a “**service contract**”), appoint a service contractor.

(3) A contract for the appointment of a letting agent must be separate from, and cannot be combined with or affected by, another type of contract.

(4) A body corporate management contract—

- (a)** may delegate to the body corporate manager some or all the powers of the committee, chairperson, secretary and treasurer; but
- (b)** does not prevent the committee or the relevant officer of the body corporate from exercising a delegated power.

Authority to enter into or amend contract

91.(1) A body corporate may enter into a body corporate management contract or a service contract only if the terms of the contract are approved by ordinary resolution.

(2) A body corporate management contract or a service contract may be amended only if the amendment is approved by ordinary resolution.

(3) A person, or an associate of a person, who stands to gain a financial benefit from making or amending a body corporate management contract or a service contract is not entitled to exercise a proxy vote on a proposed resolution approving the terms of, or the amendment, of the contract.

(4) If a person is solicited to appoint someone else as the person's proxy to allow the proxy to exercise a vote in the interests of a person (the "**other person**") who stands to gain a financial benefit from making or amending a body corporate management contract or service contract, the person appointed as proxy is taken to be an associate of the other person.

Form of contract

92. A body corporate management contract or service contract must be in writing and must—

- (a) state the term of the appointment (including when the term begins and when it ends); and
- (b) state the functions the body corporate manager or service contractor is required or authorised to carry out; and
- (c) state the basis on which remuneration or charges for the body corporate manager or service contractor is to be worked out; and
- (d) if the contract is entered into before the body corporate has held its first annual general meeting after the end of its third financial year—set out the terms of section 95.¹⁵

Examples of paragraph (c)—

1. A body corporate manager's remuneration could be worked out on the basis of an amount per lot.

2. A body corporate manager's charges could be worked out on the basis of a stated amount per photocopied page, a stated amount per telephone enquiry and a stated amount for wages costs for additional committee or general meetings.

¹⁵ Section 95 (Discretionary termination of early appointments of body corporate manager or service contractor).

Term of appointment

93.(1) The term of appointment of a body corporate manager or service contractor under a body corporate management or service contract must not be longer than 10 years (after allowing for any rights or options of renewal).¹⁶

(2) A term must run from a date within 6 months after the making of the resolution approving the terms of the contract.

Division 2—Transfer**Transfer**

94.(1) The interest of a body corporate manager in a body corporate management contract, or a service contractor in a service contract, with a body corporate may be transferred if the body corporate approves the transfer.¹⁷

(2) If the transfer is to take effect before the appointment of the body corporate manager or service contractor has been reviewed under section 95¹⁸, the agreement or arrangement for the transfer must set out the terms of that section.

(3) In deciding whether to approve a proposed transfer, the body corporate may have regard to—

- (a) the character of the proposed transferee and any associates; and
- (b) the financial standing of the proposed transferee; and
- (c) the proposed terms of the transfer; and

¹⁶ 'Renewal' of a contract that would make the term longer than 10 years must be by way of a fresh contract.

¹⁷ The approval may be given by resolution in committee or in general meeting.

¹⁸ Section 95 (Discretionary termination of early appointments of body corporate manager or service contractor)

- (d) the competence, qualifications and experience of the proposed transferee and any associates, and the extent to which the transferee and any associates has received or will receive training.

(4) The body corporate must decide whether to approve the proposed transfer within 30 days after the applicant for approval gives it the information reasonably necessary to decide the application for approval.

(5) The approval may be given on condition that the transferee enters into a deed of covenant to comply with the terms of the body corporate management contract or service contract.

(6) The body corporate must not—

- (a) unreasonably withhold approval to the transfer of the interest in the body corporate management contract or service contract; or
- (b) require or receive a fee or other consideration for approving the transfer (other than reimbursement for legal expenses reasonably incurred by the body corporate in relation to the application for its approval).

(7) In this section—

“associates” means—

- (a) if a body corporate manager or service contractor or proposed body corporate manager or service contractor is a company—its directors, substantial shareholders and principal staff; or
- (b) if a body corporate manager or service contractor or proposed body corporate manager or service contractor is in partnership—the partners and principal staff of the partnership.

“transfer” includes a transaction under which a controlling interest in a company or partnership is transferred from a particular person or group of persons to someone else.

Division 3—Terminating body corporate management contracts and service contracts

Discretionary termination of early appointments of body corporate manager or service contractor

95.(1) If a body corporate manager or service contractor (other than a letting agent) of a body corporate is appointed within 3 years after registration of the plan, the body corporate—

- (a) must review the appointment at its first annual general meeting held after the end of its third financial year; and
- (b) despite the term of appointment, may terminate the appointment by ordinary resolution.

(2) If the review of the appointment is not included on the agenda of the relevant annual general meeting, a referee may, on the application of an interested person, order that a general meeting be called to review the appointment and the general meeting called on the referee's order may, despite the term of appointment, terminate the appointment by ordinary resolution.

(3) The original owner may vote on a resolution under this section for termination of an appointment only in the original owner's right as the owner of lots in the scheme and not for other owners.

(4) No action lies against the body corporate for exercising the statutory right of termination under this section.

Termination of body corporate management contract or service contract

96.(1) A body corporate may terminate a body corporate management contract or service contract if the body corporate manager or service contractor—

- (a) is convicted of an indictable offence involving fraud or dishonesty; or
- (b) is convicted on indictment of an assault or an offence involving an assault; or

- (c) engages in misconduct, or is grossly negligent, in carrying out, or failing to carry out, the functions required under the contract; or
- (d) fails to carry out contractual duties, and persists in the failure for 14 days or more after the body corporate, by written notice, requires the body corporate manager or service contractor to carry out the duties; or
- (e) carries on a business involving the supply of services to the body corporate, or to owners or occupiers of lots, without holding a licence or other authority required by law; or
- (f) transfers, or accepts the transfer of, an interest in the contract without the body corporate's approval.

(2) Subsection (1) does not prevent the termination of a body corporate management contract or service contract by agreement.

Division 5—Use of common property

Use of common property by service contractor

97.(1) A body corporate may, by ordinary resolution, authorise a service contractor to use a particular part of the common property for particular purposes necessary to enable the contractor to perform contractual obligations under the contract.

Example—

A body corporate might authorise a letting agent to use a particular part of the common property as a reception area or a caretaker to use a shed on the common property for storage of tools and garden implements.

(2) The body corporate may give the authority only if the use of the part of the common property for the purpose would not interfere to an unreasonable extent with the use and enjoyment of a lot or the common property by an occupier.

(3) The authority—

- (a) is taken to be a term of the service contract; and
- (b) gives the service contractor a right to exclusive occupation of the part of the common property; and

- (c) must not be amended or terminated without the service contractor's agreement during the term of the service contract but terminates if the contract comes to an end or is terminated.

(4) However, the service contractor's right to exclusive occupation is subject to the body corporate's right to authorise access to, or use of, the part of the common property by others if the extent of the access or use does not unreasonably interfere with the performing of the contractual duties by the service contractor.

(5) A service contractor may acquire rights to occupy part of the common property for the contractor's contractual duties only by authorisation under this section.

Notices to be given to the Registrar

98.(1) If a body corporate gives an authority under this Division or changes the area to which an authority under this Division applies, the body corporate must give the Registrar written notice containing the particulars required under the regulations and, if required under the regulations, a plan of the area.

(2) If an authorisation under this Division terminates or is terminated, the body corporate must give to the Registrar written notice containing the particulars required under the regulations.

PART 5—FINANCIAL MANAGEMENT

Division 1—Budget

Budget

99.(1) A body corporate must, by ordinary resolution, adopt a budget for each financial year.

(2) The budget must—

- (a) contain estimates for the financial year of necessary and reasonable spending from the administrative fund¹⁹ to cover—
 - (i) the cost of maintaining the common property and other property held by or for the body corporate; and
 - (ii) the cost of insurance; and
 - (iii) other expenditure of a recurrent nature; and
- (b) allow for raising a reasonable capital amount to provide for necessary and reasonable spending from the sinking fund for the financial year covering—
 - (i) anticipated expenditure of a capital or non-recurrent nature; and
 - (ii) the periodic replacement of items of a major capital nature; and
 - (iii) other expenditure that should reasonably be met from capital; and
- (c) fix the amount to be raised by way of contribution to cover the estimated recurrent expenditure mentioned in paragraph (a) and the capital provision mentioned in paragraph (b).

(3) The original owner must prepare a proposed budget for adoption by the body corporate at its first annual general meeting, and the committee must prepare a proposed budget for adoption by the body corporate at each later annual general meeting.

(4) A copy of the proposed budget must accompany the notice of the annual general meeting.

Division 2—Levies

Contributions to be levied on owners

100.(1) A body corporate must, by ordinary resolution—

¹⁹ See section 105 (Administrative and sinking funds).

- (a) fix, on the basis of its budget for a financial year, the contributions to be levied on the owner of each lot for the financial year; and
- (b) decide the number of instalments in which the contributions are to be paid; and
- (c) fix the date on or before which payment of each instalment is required.

(2) If a liability arises for which no provision, or inadequate provision, has been made in the budget, the body corporate must, by ordinary resolution—

- (a) fix a special contribution to be levied on the owner of each lot towards the liability; and
- (b) decide whether the contribution is to be paid in a single amount or in instalments and, if in instalments, the number of instalments; and
- (c) fix the date on or before which payment of the single amount or each instalment is required.

(3) The contributions levied on the owner of each lot must be proportionate to the lot entitlement of the lot.²⁰

(4) If a development lot in a staged development scheme has been subdivided into lots and common property by a secondary plan, the secondary body corporate is liable to levies under this section as if it were the owner of the development lot.

(5) The owner of a development lot in a staged development scheme is not liable to the component of a contribution referable to the primary body corporate's sinking fund if—

- (a) the development lot has not yet been subdivided by a secondary plan; and

²⁰ But see sections 138 (Insurance where buildings and improvements in group titles scheme mutually dependent for support on party wall) and 139 (Insurance where buildings in group titles scheme are not supported by party wall).

- (b) planning approval has not yet been given for, and work has not yet begun on, the building of roads, paths, buildings or recreational facilities on the development lot.

(6) If a lot is leased under a leaseback arrangement, the lessee is liable to levies under this section as if the lessee were the owner of the lot.

Discounts for timely payment

101.(1) A body corporate may, by ordinary resolution, fix a discount to be given to owners of lots if a contribution, or instalment of contribution, is received by the body corporate by the date for payment fixed in notices of contribution given to the owners.

(2) The discount cannot be more than 20% of the amount to be paid.

Example—

Suppose that—

- a contribution of \$100 is payable in 4 instalments of \$25 and the body corporate has fixed a discount of 10% for payment by the date for payment in the accounts given to the owners;
- an account requiring payment of an instalment of \$25 by 31 March is given to the owner of a lot;
- the instalment is paid on 25 March.

In this case, the owner is entitled to a discount of \$2.50 on the instalment.

Penalties for late payment

102.(1) A body corporate may, by ordinary resolution, fix a penalty to be paid by owners of lots if a contribution, or instalment of contribution, is not received by the body corporate by the date for payment fixed in notices of contribution given to the owners.

(2) The penalty must consist of simple interest at a stated rate (of not more than the percentage fixed under the regulations) for each month the contribution or instalment is in arrears.

Example—

Suppose that—

- a contribution of \$400 is payable in 4 instalments of \$100 and the body corporate has fixed a penalty interest rate of 5% per month;
- an account requiring payment of an instalment of \$100 by 31 March is given to the owner of a lot;
- the instalment is not paid until 27 June.

In this case, the instalment has been in arrears for 2 complete months and a penalty of \$10 is payable.

Notice of contribution payable

103. At least 30 days before the payment of a contribution, or instalment of a contribution, is required, a body corporate must give the owner of each lot written notice of the amount of—

- (a) the total amount of the contribution levied on the owner; and
- (b) the amount of the contribution, or instalment of contribution, of which payment is currently required; and
- (c) the date (the “**date for payment**”) on or before which the contribution, or instalment of contribution, must be paid; and
- (d) any discount to which the owner is entitled for payment of the contribution, or instalment of contribution, by the date for payment; and
- (e) any penalty to which the owner is liable for each month payment is in arrears; and
- (f) if the owner is in arrears in payment of contribution or penalty—the arrears.

Payment and recovery of contributions

104.(1) If a contribution, or instalment, is not paid by the date for payment, a body corporate may recover the amount of the contribution or instalment, together with any penalty, as a debt.

(2) A liability to pay a contribution, instalment or penalty is enforceable jointly and severally against the person who was the owner of the lot when the contribution or instalment became payable and a person (including a mortgagee in possession) who becomes an owner of the lot before the contribution, instalment or penalty is paid.

(3) If there are 2 or more owners of a lot, they are jointly and severally liable to pay a contribution, instalment or penalty under this Act.

(4) If an owner is liable for a contribution, or instalment of contribution, and a penalty, an amount paid by the owner must be paid first towards the penalty and then in reduction of the outstanding contribution or instalment of contribution.

(5) If the body corporate is satisfied there are special reasons, in a particular case, for allowing a discount of contribution, or waiving a penalty, the body corporate may allow the discount or waive the penalty in whole or part.

Division 3—Administrative and sinking funds

Administrative and sinking funds

105.(1) A body corporate must establish and keep an administrative fund and a sinking fund.

(2) The body corporate must pay into its administrative fund any amount received by the body corporate that is not required under subsection (3) to be paid into its sinking fund.

(3) The body corporate must pay into its sinking fund—

- (a) the amount raised by way of contribution to cover anticipated spending of a capital or non-recurrent nature (including the periodic renewal or replacement of major items of a capital nature and other spending that should be reasonably met from capital); and
- (b) amounts received under policies of insurance for destruction of items of a major capital nature; and
- (c) interest from investment of the sinking fund.

(4) The administrative and sinking funds may be invested in authorised trustee investments.

(5) All amounts received by the body corporate for the credit of the administrative and sinking funds must be paid into an account kept solely in the name of a body corporate at a financial institution.²¹

(6) All payments from the administrative or sinking fund must be made from the account.

Application of administrative and sinking funds

106.(1) The sinking fund may be applied towards—

- (a) spending of a capital or non-recurrent nature; and
- (b) the periodic replacement of major items of a capital nature; and
- (c) other spending that should reasonably be met from capital.

(2) All other spending of the body corporate must be met from the administrative fund.

Examples—

1. The cost of repainting the common property or replacing airconditioning plant would be paid from the sinking fund.
2. The cost of insurance would be paid from the administrative fund.

Special provision for certain staged development schemes

107.(1) If a staged development scheme is established on the basis that secondary bodies corporate are not to be formed on the registration of secondary plans, the primary body corporate must establish separate administrative and sinking funds for each development lot.²²

²¹ Financial institution is a bank, building society or credit union—see section 36 of the *Acts Interpretation Act 1954*, definition “financial institution”.

²² See section 43(2) (Establishment of body corporate).

(2) If a separate administrative or sinking fund exists for a particular development lot, income related to the particular development lot must be paid into the fund and spending related to the particular development lot must be paid out of the fund.

(3) If spending is not related to a particular development lot, the spending must be divided between the funds in proportion to the lot entitlements of the development lots for which they are established.

(4) The body corporate may amalgamate separate administrative funds or separate sinking funds established under this section only if—

- (a) the funds relate to development lots that have been divided by secondary plans of the same type; and
- (b) there is no original owner of a development lot affected by the proposed amalgamation who holds lots with a lot entitlement of more than half the total lot entitlement of the lots created on registration of the secondary plans; and
- (c) a majority of the owners of the lots in each development lot affected by the amalgamation are in favour of the amalgamation.

Division 4—Borrowing

Power to borrow

108.(1) The body corporate may, by ordinary resolution, borrow amounts on security agreed between the body corporate and the person from whom the amounts are borrowed.

(2) However—

- (a) the body corporate may not give a mortgage or charge over the common property; and
- (b) the body corporate's borrowing power is subject to restrictions imposed under the regulations.

Division 5—Control of spending**Spending by committee**

109.(1) In this section—

“relevant limit” is—

- (a) an amount worked out by multiplying the number of lots shown on the plan by the amount prescribed under the regulations; or
- (b) an amount fixed by special resolution of the body corporate within limits fixed under the regulations.

(2) The committee may only carry out a proposal involving spending above the relevant limit if—

- (a) the spending is specifically authorised by ordinary resolution; or
- (b) the owners of all the lots have given written consent; or
- (c) a referee is satisfied that the spending is required to meet an emergency and authorises it; or
- (d) the spending is necessary to comply with—
 - (i) a statutory order or notice given to the body corporate; or
 - (ii) the order of a referee; or
 - (iii) the judgment or order of a court.

(3) For this section, if a series of proposals forms a single project, the cost of carrying out any 1 of the proposals is taken to be more than the relevant limit if the cost of the project, as a whole, is more than the relevant limit.

(4) Subsection (2) is subject to section 110.²³

²³ Section 110 (Limitation on major spending).

Limitation on major spending

110.(1) In this section—

“**relevant limit**” means an amount worked out by multiplying the number of lots shown on the plan by the amount prescribed under the regulations.

(2) If—

- (a) a motion proposes the carrying out of work, or the acquisition of personal property or services; and
- (b) the cost of carrying the proposal into effect is more than the relevant limit;

owners must be given copies of at least 2 quotations or tenders for carrying out the work or supplying the personal property or services.

(3) If the motion is proposed by the committee, the committee must obtain the quotations or tenders and, in other cases, the person proposing the motion must obtain the quotations or tenders and give them to the secretary.

(4) Copies of the quotations or tenders or, if voluminous, summaries of the quotations or tenders (with a note of where the complete documents may be inspected) must accompany the notice of the meeting at which the motion is to be considered.

(5) If for exceptional reasons it is not practicable to obtain 2 quotations or tenders, a single quotation or tender must be obtained and accompany the notice of meeting.

Example—

If the goods to be acquired by the body corporate are obtainable from only 1 source, a quotation for supplying the goods must be obtained from the source and circulated with the notice of meeting. The fact that the goods with the necessary characteristics are only obtainable from a single source would be an exceptional reason for not obtaining 2 quotations for the supply of the goods.

Division 6—Accounts and audit**Accounts**

111.(1) A body corporate must—

- (a) keep proper accounting records; and
- (b) prepare for each financial year a statement of accounts showing—
 - (i) the assets and liabilities of the body corporate at the end of the financial year; and
 - (ii) the income and spending (or receipts and payments) of the body corporate for the financial year.

(2) The statement of accounts may be prepared on a cash or accrual basis.

(3) The statement of accounts must include the corresponding figures for the previous financial year (unless the statement is for the body corporate's first financial year).

(4) A copy of the statement of accounts must accompany the notice of the next annual general meeting.

Audit

112.(1) A body corporate must have its statement of accounts for each financial year audited unless the body corporate resolves by special resolution in the terms prescribed under a regulation not to have it audited.

(2) However—

- (a) the primary body corporate in a staged development scheme cannot resolve not to have the statement of accounts audited; and
- (b) even though a body corporate has resolved not to have its statement of accounts for a particular financial year audited, the body corporate may, by ordinary resolution, resolve to have its accounting records for a particular period, or for a particular project, audited and appoint an auditor for the purpose.

(3) A member of the committee of the body corporate, a body corporate manager, or an associate of a member of the committee or a body corporate manager, cannot be appointed to audit the accounting records or the statement of accounts of the body corporate.

(4) On finishing an audit of the body corporate's statement of accounts for a financial year, the auditor must give a certificate—

- (a) stating whether the statement of accounts gives a true and fair view of the body corporate's financial affairs; and
- (b) if not—identifying the deficiencies in the statement.

(5) A copy of the auditor's certificate must accompany the notice of the next annual general meeting.

PART 6—PROPERTY MANAGEMENT

Division 1—Body corporate's responsibilities

Body corporate's duties about common property etc.

113.(1) A body corporate must—

- (a) administer, manage and control its common property reasonably and for the benefit of lot owners; and
- (b) establish and maintain (where appropriate) suitable lawns and gardens on the common property; and
- (c) maintain the common property in good order and condition;²⁴ and

²⁴ The common property includes service infrastructure. However, a part of the service infrastructure within a lot and solely related to supplying services to the lot is common property only if it is within a boundary structure separating the lot from another lot or from common property (see section 27 (What is common property?)).

- (d) maintain its property that is not part of the common property in good order and condition; and
- (e) maintain in good order and condition—
 - (i) protective barriers on or near the boundary of a lot and common property; and
 - (ii) doors, windows and associated fittings situated in a boundary wall separating a lot from common property.

Examples of protective barriers mentioned in paragraph (e)(i)—

- railings
- parapets
- balustrades.

(2) However—

- (a) the body corporate is not responsible for maintaining fixtures or fittings installed by the occupier of a lot if they were installed for the occupier's own benefit; and
- (b) if a separate and distinct part of the service infrastructure consists of equipment of a type prescribed under the regulations, and relates only to supplying services to a particular lot—the owner of the lot is responsible for maintaining the equipment in good order and condition.

Example—

Suppose airconditioning plant is installed on the common property, but relates only to supplying services to a particular lot. In this case, the owner of the lot would be responsible for maintaining the airconditioning equipment.

Body corporate's responsibility in building units scheme

114. A body corporate in a building units scheme must ensure that parts of the buildings of a type prescribed under the regulations are, and remain, structurally sound and in good order and condition.

Mail box and notice board

115.(1) A body corporate must—

- (a) maintain a mail box clearly showing the body corporate's name in a suitable position at or near the street alignment of the parcel; or
- (b) make suitable alternative arrangements for the receipt of mail.

(2) The body corporate must maintain a notice board for the display of notices and other material of interest to the owners or occupiers in a suitable position on the common property.

Division 2—Acquisition and disposal of common property

Acquisition of land by body corporate

116.(1) If authorised by unanimous resolution, a body corporate may acquire land contiguous to the parcel in fee simple to incorporate it with the common property.

(2) However—

- (a) a body corporate cannot acquire a lot in its own community titles scheme; and
- (b) if a leaseback arrangement is in force—the body corporate may exercise its power of acquisition under this section while the leaseback arrangement continues in force only if all the owners agree in writing to the proposed acquisition.

(3) An application to register the acquisition of title to land by the body corporate under this section must be accompanied by—

- (a) if the land is acquired by transfer—the instrument of transfer; and
- (b) a copy of the resolution authorising acquisition of the land, and its incorporation with the common property, certified under the body corporate's common seal.

(4) On registration of the acquisition, the land merges with the common property.

Disposal of interest in common property

117.(1) The body corporate may—

- (a) if authorised by unanimous resolution—sell or otherwise dispose of part of the common property; or
- (b) if authorised by resolution without dissent—grant or amend a lease over part of the common property.

(2) A secondary body corporate may sell, otherwise dispose of, or grant a lease over, part of the common property only if—

- (a) the primary body corporate, authorised by unanimous resolution, also agrees to the transaction; and
- (b) the transaction is not contrary to the master plan.

(3) If a leaseback arrangement is in force the body corporate may grant a lease over all the common property to the lessee under the leaseback arrangement for the duration of the leaseback arrangement, but may enter into another transaction under this section only if all the owners of lots agree in writing to the proposed transaction.

(4) However—

- (a) a body corporate may sell or otherwise dispose of part of the common property only if the transaction is approved as a subdivision under the *Local Government (Planning and Environment) Act 1990*; and
- (b) the body corporate may lease part of the common property only if—
 - (i) the transaction is approved by the local government and, if it is a subdivision within the meaning of the *Local Government (Planning and Environment) Act 1990*, is approved as a subdivision under that Act; and
 - (ii) the lease does not interfere with access to a lot, or to a part of the common property over which exclusive rights have been given by by-law; and
 - (iii) is not common property to which section 97 applies.²⁵

(5) An instrument to give effect to a transaction under this section may be registered only if accompanied by—

²⁵ Section 97 (Use of common property by service contractor).

- (a) a certificate under the body corporate's seal certifying that the transaction has been authorised as required by this section; and
- (b) a certificate of the local government certifying that the transaction has been approved or noted as required under the *Local Government (Planning and Environment) Act 1990*; and
- (c) if the transaction is a subdivision—plan of subdivision under the *Land Title Act 1994*.

Division 3—Easements

Easements

118.(1) If authorised by unanimous resolution, a body corporate may—

- (a) grant an easement over the common property, or accept the grant of an easement for the benefit of the common property; or
- (b) surrender an easement for the benefit of the common property, or accept the surrender of an easement over the common property.

(2) A secondary body corporate may grant or surrender an easement only if the primary body corporate, authorised by unanimous resolution, also agrees.

(3) The Registrar must register the grant or surrender of an easement over or affecting the common property on lodgment of—

- (a) a copy of the resolution (or resolutions) certified under the common seal of the relevant body corporate; and
- (b) if the Registrar considers necessary—a plan of the easement; and
- (c) other documents required by the Registrar.

(4) If a leaseback arrangement is in force, the body corporate may grant or surrender an easement under this section only if all owners of lots agree, in writing, to the grant or surrender of the easement.

Division 4—Improvements to common property**Improvements to the common property by the body corporate**

119.(1) A body corporate may make improvements to the common property if—

- (a) the cost of the improvements, or, if the improvements together with associated improvements form a single project for improvement of the common property, the cost of the entire project, is within the limit fixed under the regulations and the improvements are authorised by ordinary resolution; or
- (b) the improvements are authorised by resolution without dissent; or
- (c) a referee decides on application by the body corporate or the owner of a lot that the improvements are reasonably necessary for the health, safety or security of persons who use the common property and authorises the improvements.

(2) If a leaseback arrangement is in force, the body corporate may make improvements to the common property under this section only if all owners of lots agree, in writing, to the proposed improvements.

Improvements to common property by owners

120.(1) A body corporate may, if asked by the owner of a lot, authorise the owner to make an improvement to the common property for the benefit of the owner's lot.

(2) A major improvement must be authorised by resolution without dissent, but a minor improvement may be authorised by the body corporate.

(3) However, if a staged development scheme involves the formation of secondary bodies corporate, the primary body corporate may authorise an improvement to the primary common property under this section only if each secondary body corporate, by resolution without dissent, agrees.

(4) An authority may be given under this section on conditions the body corporate considers appropriate.

- (5) The owner of a lot who is given an authority under this section—²⁶
- (a) must comply with conditions of the authority; and
 - (b) must maintain the improvement made under the authority in good order and condition, unless excused by the body corporate.

Improvements to common property in staged development scheme

121. Improvements to the primary or secondary common property in a staged development scheme must be consistent with the primary plan.

Division 5—Amenities and services

Acquisition of amenities for benefit of owners

122.(1) A body corporate may—

- (a) acquire a leasehold interest in land for the use and enjoyment of the owners or occupiers of lots; or
- (b) acquire a licence or concession related to land for the use and enjoyment of the owners or occupiers of lots, or surrender a licence or concession related to land previously acquired by the body corporate; or
- (c) enter into an agreement with another body corporate under which the owners or occupiers of lots in both schemes may share the use and enjoyment of facilities established on the common property of either.

Examples—

1. The body corporate may under subsection (1)(b) acquire rights to establish or use moorings for vessels.
2. The body corporate may enter into an agreement with another body corporate under subsection (1)(c) under which the owners or occupiers of lots are entitled to use a tennis court on the common property of the other body corporate.

²⁶ Under section 34A of the *Acts Interpretation Act 1954* a reference to a person having an interest in land includes a reference to the person's personal representatives, successors and assigns.

(2) However, a body corporate—

- (a) cannot acquire an interest in a lot in its own community titles scheme; and
- (b) may exercise its powers under this section only if authorised by—
 - (i) if the proposal is to enter into a lease, licence, concession or agreement involving an annual cost to the body corporate more than the amount prescribed under the regulations—unanimous resolution; or
 - (ii) in other cases—resolution without dissent; and
- (c) if a leaseback arrangement is in force— may exercise its powers under this section only if all owners of lots agree, in writing, to the proposed exercise of powers.

Acquisition of personal property

123.(1) A body corporate may acquire personal property for the general use and enjoyment of the owners and occupiers of lots.

(2) However, if the cost of acquisition is more than the amount prescribed under the regulations, the body corporate may acquire the property only if authorised by resolution without dissent.

Supply of services by body corporate

124.(1) A body corporate may supply services of a type authorised under the regulations for the benefit of owners and occupiers of lots.

(2) The body corporate may, by agreement with a person for whom services are supplied, charge for the services.

Division 6—Power to act for owners and occupiers

Body corporate may carry out work required of owners and occupiers

125.(1) A body corporate may carry out work an owner or occupier of a lot is required, but fails, to carry out under—

- (a) section 131;²⁷ or
- (b) a notice given under another Act or a Commonwealth Act; or
- (c) a by-law; or
- (d) a referee's order; or
- (e) the order of a court.

(2) The body corporate may recover the reasonable cost of carrying out work under subsection (1) from the owner of the lot as a debt.

(3) If a staged development scheme involves the formation of secondary bodies corporate, the primary body corporate may carry out work on a development lot for which a secondary plan has been registered only if—

- (a) the secondary body corporate agrees; or
- (b) the need to carry out the work arises from non-compliance with a by-law of the primary body corporate.

Body corporate's power to take action to remedy defective building work

126.(1) If building work carried out for the owner of a lot is defective and, because of the defect, the support or shelter of another lot, or the common property is, or is likely to be, adversely affected, the body corporate may bring a proceeding under the *Queensland Building Services Act 1991* or another law to have the defect remedied.

(2) If the body corporate brings the proceeding, the body corporate is subrogated to the contractual and other rights of the person for whom the building work was carried out.

Division 7—Power to enter lot

Power of entry

127.(1) A person authorised by the body corporate may enter a lot, and remain on the lot while it is reasonably necessary—

²⁷ Section 131 (Maintenance of lots).

- (a) to inspect the lot and find out whether work the body corporate is authorised or required to carry out is necessary; or
- (b) to carry out work the body corporate is authorised or required to carry out.

(2) The power of entry may be exercised—

- (a) in an emergency—at any time; and
- (b) in other cases—after at least 7 days notice of the intended entry has been given to—
 - (i) the owner of the lot; or
 - (ii) if the owner is not in occupation of the lot—the occupier of the lot.

(3) A person must not obstruct an authorised person who is exercising or attempting to exercise powers under this section.

Maximum penalty for subsection (3)—20 penalty units.

PART 7—CONDUCT OF OCCUPIERS

Interference with easements of support or shelter

128. An occupier of a lot must not interfere, or permit interference with, support or shelter provided for another lot or the common property.

Interference with services

129. An occupier of a lot must not, either within or outside the lot, interfere or permit interference with the service infrastructure or services in a way that may affect the supply of the services to another lot or the common property.

Nuisances

130. An occupier of a lot must not use, or permit the use of, the lot or the common property in a way that—

- (a) causes a nuisance or hazard; or
- (b) interferes unreasonably with the use or enjoyment of the common property by anyone else who is lawfully on the common property.

Maintenance of lots

131.(1) The owner of a lot must keep the lot in good order and condition.

(2) An occupier of a lot must keep the external parts of the lot in a clean and tidy condition.

(3) The owner of a lot must keep the service infrastructure within the boundaries of the lot, and not part of the common property, in good order and condition and, if it is in need of replacement, must replace it.²⁸

(4) If the owner of a lot leases the lot under a leaseback arrangement, the lessee has the obligations of the owner under this section while the leaseback arrangement is in force.

PART 8—BY-LAWS**Power to make by-laws**

132.(1) A body corporate's first by-laws are the by-laws set out in Schedule 1 as in force when the plan is registered.

²⁸ All of the service infrastructure is common property unless it is a part within a lot and solely related to supplying services to the lot. However, if a part of the service infrastructure is in a boundary structure separating the lot from another lot or from common property, it is also common property even though solely related to supplying services to the lot (see section 27 (What is common property?)).

(2) The body corporate may, by special resolution, make by-laws—

- (a) for the administration, management and control of the common property; and
- (b) to regulate the use and enjoyment of the common property and lots; and
- (c) to amend or repeal a by-law of the body corporate.

(3) A by-law—

- (a) may allocate a particular lot for a particular commercial purpose and prohibit the use of other lots for the same commercial purpose; but
- (b) may restrict the commercial uses to which a lot may be put in other ways only if the owner of the lot agrees in writing to the restriction.

(4) If a lot may lawfully be used for residential purposes, the by-laws cannot restrict the type of residential use.

Example—

A by-law cannot prevent the owner of a lot established for long-term residence from letting the lot for short-term holiday accommodation.

(5) A by-law (other than an exclusive use by-law) must not impose a monetary liability on the owner or occupier of a lot.

Exclusive use by-laws

133.(1) The body corporate may, by resolution without dissent, make a by-law (an “**exclusive use by-law**”) giving the owner of a lot exclusive rights to the use and enjoyment of, or other special rights in relation to, the common property or part of the common property.

(2) An exclusive use by-law must—

- (a) specifically identify or define the part of the common property to which the by-law applies; or
- (b) set apart a particular part of the common property for allocation to the owners of lots by a person (who may be the original owner or the original owner’s agent) authorised to make the allocation or provide for another method of allocation to the owners of lots.

(3) An exclusive use by-law may give rights to the owner of a lot only if the owner agrees in writing before—

- (a) the by-law is made; or
- (b) the allocation to the owner of the part of the common property to which the rights relate.

(4) If the owner to whom the rights are in the first instance given agrees in writing, an exclusive use by-law may impose conditions (which may include conditions requiring the owner to make a payment or periodic payments to the body corporate or the owners of other lots or both).

(5) An exclusive use by-law is taken, in the absence of other specific provision in the by-law for maintenance, to make the owner of the lot responsible for the maintenance of the part of the common property to which the by-law applies.

(6) The owner of a lot to whom rights are given by an exclusive use by-law may, by agreement, exchange the rights for similar rights given by an exclusive use by-law on the owner of another lot.

(7) The parties to a transaction for the exchange of rights under subsection (6) must give the body corporate written notice of the transaction.

(8) Within 3 months after receiving notice of the transaction, the body corporate must apply to the Registrar to have the transaction recorded (and the exchange does not take effect until the transaction is recorded).

(9) The parties to a transaction for the exchange of rights under this section are jointly and severally liable to the body corporate for the costs of recording the transaction (and the body corporate may recover the costs as a debt from the parties or either of them).

(10) An exclusive use by-law is enforceable by or against the owner of the lot to whom the rights are given.

(11) An exclusive use by-law may authorise the owner who has the benefit of the by-law to make specific improvements to the part of the common property to which the by-law applies (which may consist or include the installation of particular fixtures or the making of particular changes to the relevant part of the common property).

(12) However, in the absence of a specific provision authorising improvements, the by-law does not itself authorise the owner to make improvements or changes to the common property.

(13) If the by-law does not itself authorise the improvements, the body corporate's authorisation is required under section 120.²⁹

(14) If an exclusive use by-law imposes a monetary liability—

- (a) the liability may be recovered as a debt; and
- (b) the liability is enforceable jointly and severally against the person who was the owner of the lot when the liability arose and a successor in title.

Registration and commencement of by-laws

134.(1) If a body corporate makes a by-law, the body corporate must, within 3 months after passing the resolution for making the by-law, lodge a written notice with the Registrar—

- (a) setting out the text of the by-law; and
- (b) stating the nature of the resolution by which the by-law was made; and
- (c) stating the date when the resolution for making the by-law was passed.

(2) If the notice is not given within the 3 months, the by-law lapses.

(3) A by-law comes into force on the day the Registrar records the by-law or a later date stated in the by-law.

(4) However—

- (a) the Registrar is not obliged to, but may, examine a by-law for validity; and
- (b) it must not be presumed that a by-law has been validly made because the Registrar records it as a by-law; and
- (c) the validity or enforceability of a by-law, as recorded by the Registrar, is not guaranteed by the State; and

²⁹ Section 120 (Improvements to common property by owners).

- (d) the by-laws recorded by the Registrar must be endorsed with a caution to that effect.

Legal effect of by-laws

135.(1) A by-law is binding on—

- (a) the body corporate; and
- (b) the owner of a lot; and
- (c) the occupier of a lot; and
- (d) an invitee of the owner or occupier of the lot.

(2) However—

- (a) if a by-law is inconsistent with this Act or another law, the by-law is invalid to the extent of the inconsistency; and
- (b) a by-law cannot prevent or restrict a transmission, transfer, mortgage or other dealing with a lot; and
- (c) a by-law must not discriminate between types of occupiers.

Examples—

1. A by-law cannot prevent the owner of a lot from leasing or mortgaging a lot.
2. A by-law cannot prevent the sale of a lot to a person under or over a particular age.
3. A by-law cannot prevent a tenant from using a pool on the common property.

(3) If, in a staged development scheme, there is an inconsistency between a by-law made by a primary body corporate and a by-law made by a secondary body corporate, the by-law made by the primary body corporate prevails.

(4) If a by-law is made when a leaseback arrangement is in force, the by-law lapses when the leaseback arrangement comes to an end unless all owners agreed in writing to the making of the by-law.

Guide dogs

136.(1) A person is entitled to be accompanied by a guide dog while on a lot or the common property and, if the person is the owner or an occupier of a lot, is entitled to keep a guide dog on the lot.

(2) A by-law cannot exclude or restrict a right given by this section.

PART 9—INSURANCE**Insurance of lots and common property**

137.(1) The body corporate must insure, to full replacement value—

- (a) the common property; and
- (b) for a building units scheme—the building.

(2) A policy of insurance taken out under this section—

- (a) must cover—
 - (i) damage from fire, storm, tempest, explosion or other risks prescribed under the regulations; and
 - (ii) costs incidental to the reinstatement or replacement of the buildings, including the cost of removing debris and the fees of architects or other professional advisers; and
- (b) must provide for the reinstatement of property to its condition when new.

(3) Despite any provision of the insurance policy, the body corporate (and not the owner of a lot) is liable to pay an amount payable, by way of excess, under an insurance policy taken out by the body corporate under this section and any contribution that has to be made to the cost of reinstatement or repair because the insurance is not for the full replacement value of the insured property.

Insurance where buildings and improvements in group titles scheme mutually dependent for support on party wall

138.(1) If there is a common wall between buildings on separate lots created by a group titles plan, the body corporate must insure the buildings and improvements on the lots to their full replacement value.

(2) The policy of insurance—

(a) must cover—

- (i) damage from fire, storm, tempest, explosion or other risks prescribed under the regulations; and
- (ii) costs incidental to the reinstatement or replacement of the buildings, including the cost of removing debris and the fees of architects or other professional advisers; and

(b) must provide for the reinstatement of the buildings and improvements to their condition when new; and

(c) must state the estimated value of the buildings and improvements on each lot; and

(d) may give effect, in whole or part, to a voluntary group titles insurance scheme.

(3) The owner of each lot is liable to reimburse the body corporate for the proportion of the premium fairly reflecting—

(a) the proportion of the total value of the buildings and improvements covered by the policy represented by buildings on the owner's lot; and

(b) the proportion of the total risks covered by the policy attributable to buildings on the owner's lot or activities carried on, or proposed to be carried on, in the buildings or elsewhere on the owner's lot.

Example of paragraph (a)—

In a group titles townhouse complex—

- lot 1 has a building valued at \$200 000
- lot 2 has a larger building valued at \$300 000
- lot 3 has the largest building with substantial improvements (pergola, rooftop solarium and pool) valued in total at \$400 000.

Each owner's share of the body corporate's policy premium of \$2 700 will reflect the differences. Thus, each owner's reimbursement liability will be—

- \$600 for lot 1 ($\frac{2}{9}$ of \$2 700)
- \$900 for lot 2 ($\frac{3}{9}$ of \$2 700)
- \$1 200 for lot 3 ($\frac{4}{9}$ of \$2 700).

Example of paragraph (b)—

In a commercial community titles scheme, the buyer of a lot starts a small manufacturing business requiring the use and storage of flammable chemicals. The insurance premium for the body corporate policy is increased by the insurer because of the increased risk of damage through fire. The owner's reimbursement liability for the insurance premium will include the amount of the increase.

(4) The reimbursement for which the owner of a lot is liable may be recovered by the body corporate as part of the owner's annual contribution to the administrative fund.

Insurance where buildings in group titles scheme are not supported by party wall

139.(1) If the body corporate created on registration of a group titles plan is authorised by by-law to take out insurance under this section, the body corporate may establish an insurance scheme (a “**voluntary group titles insurance scheme**”) under which it takes out insurance over buildings and improvements on the lots for the owners of the lots.

(2) Taking part in the insurance scheme is optional, and the owner of a lot who wants to take part in the scheme must—

- (a) notify the body corporate of the estimated value of the buildings and improvements to be insured; and
- (b) comply with other requirements under the by-law or policy of insurance.

(3) The insurance policy taken out under the scheme must state the estimated value of the buildings and improvements on each lot covered by the policy, as notified to the body corporate by the owner of the lot.

(4) The owner of a lot who takes part in the insurance scheme is liable to reimburse the body corporate for the proportion of the premium fairly reflecting—

- (a) the proportion of the total value of the buildings and improvements insured under the scheme represented by the buildings and improvements on the owner's lot; and
- (b) the proportion of the total risks covered by the policy attributable to buildings and improvements on the owner's lot or activities carried on, or proposed to be carried on, in buildings or elsewhere on the owner's lot.

Examples of paragraphs (a) and (b)—

See examples to section 138(3)(a) and (b).

(5) The reimbursement for which the owner of a lot is liable may be recovered by the body corporate as part of the owner's annual contribution to the administrative fund.

Public risk insurance

140. A body corporate must maintain public risk insurance (covering accidental death, personal injury and property damage) over the common property for an amount equal to, or more than, a minimum prescribed under the regulations.

Responsibility of original owner

141.(1) The original owner must take out and maintain, for the body corporate, the policies of insurance required under the following sections for the first year after registration of the plan—

- section 137 (Insurance of lots and common property)
- section 138 (Insurance where buildings and improvements in group titles scheme mutually dependent for support on party wall)
- section 140 (Public risk insurance).

Maximum penalty—150 penalty units.

(2) If the original owner fails to take out the insurance required under subsection (1), the body corporate may recover the cost of taking out the necessary insurance as a debt owing to the body corporate by the original owner.

(3) This section does not prevent the original owner from recouping the cost of the insurance for the balance of the period for which it was taken out from purchasers of the lots under the agreements for purchase.

Further insurance

142.(1) If a body corporate is required by the *Workers' Compensation Act 1990* or another law to have insurance, the body corporate must take out, and maintain, the necessary policies of insurance.

(2) A body corporate may insure against loss from dishonesty, negligence or other wrongful conduct.

(3) The body corporate may insure against risks for which it is not required to insure under this Part or another law.

Mortgagees

143.(1) An insurer must, on application by a mortgagee of a lot, note the mortgagee's interest on an insurance policy about the lot taken out by the body corporate under this Part.

(2) If the mortgagee's interest is noted on the insurance policy, any claim the owner has to an amount payable under the policy is subordinated to the mortgagee's claim to have the mortgage debt discharged.

(3) However, the mortgagee is not entitled to the amount if it is to be applied by the body corporate to the repair, reinstatement or replacement of damaged property.³⁰

(4) The owner of a lot may take out a policy of insurance insuring a mortgagee against damage to the lot.

(5) If a policy of insurance is taken out under subsection (4)—

- (a) a payment to be made under the policy for damage to the lot must be made to the mortgagee whose interest is noted in the policy; and
- (b) if there are 2 or more mortgagees whose interests are noted in the policy—they are to be paid in order of priority; and

³⁰ See section 145 (Use of insurance money).

- (c) if the amount paid to a mortgagee is enough to discharge the mortgage debt—the insurer is entitled to a transfer of the mortgage and, if not, the insurer is subrogated to the rights of the mortgagee under the mortgage to the extent of the payment; and
- (d) the policy affects the liability of an insurer under another insurance policy for the same property only if the other policy is of the same type.

Insurance by owners

144. If the owner of a lot in a building units scheme takes out insurance insuring the owner or a mortgagee against damage to or destruction of a building or improvement on the lot, the amount payable under the policy must not be taken into account in deciding the amount payable under an insurance policy for the same property taken out by the body corporate under this Part.

Example—

The owner of a lot might, on having kitchen renovations carried out, have the improvements insured to make sure they are adequately insured to their full replacement value even though the building is covered by an insurance policy taken out by the body corporate. If the improvements are damaged or destroyed, the insurance payable under the body corporate's policy might be taken into account in deciding the amount of the insurance payable under the owner's policy, but the amount payable under the owner's policy could not be taken into account to reduce the amount payable under the body corporate's policy.

Use of insurance money

145.(1) If a body corporate receives an amount of insurance money for damage to property (other than an amount paid under a voluntary group titles insurance scheme), the body corporate must apply the amount as soon as practicable to the repair, reinstatement or replacement of the damaged property.

(2) However, the amount must not be applied to the repair, reinstatement or replacement of the property if the work would, apart from this section, be unlawful.

(3) If, because of the damage, the plan is to be completely or partly extinguished, and an order of the Court under this Act, or a unanimous resolution of the body corporate, requires the application of the amount for a purpose other than the repair, reinstatement or replacement of the damaged property, the amount must be applied as follows—

- (a) first, the amount must be applied towards the discharge of mortgages noted on the insurance policy (but the amount applied towards mortgages over a particular lot cannot be more than the proportion of the total insurance money attributable to the lot);
- (b) the balance of the amount must be applied as required by the order or resolution.

(4) If the body corporate receives an amount of insurance money for damage to property under a voluntary group titles insurance scheme, the amount must be paid, subject to the prior claim of a mortgagee whose interest is noted on the insurance policy, to the owner of the damaged property to which the payment relates.

PART 10—VALUATION, RATING AND TAXING

How lot is to be regarded for rating or taxing purposes

146. Each lot is a separate lot or piece of land for a law imposing rates, taxes, levies or charges on land.

Valuation

147.(1) The chief executive (valuations) is not required to value lots separately but may value the parcel as an undivided whole and as if it were owned by a single owner.

(2) For the valuation, and objection and appeal against the valuation, the body corporate is taken to be the owner of the parcel and must be shown in the valuation as the owner.

Rates, levies and charges

148.(1) Rates, levies and charges payable to a local government based on the unimproved value of land subject to the rate, levy or charge are to be based, for a lot, on an unimproved value worked out by apportioning the unimproved value of the parcel between the lots in proportion to the lot entitlement of each lot.

(2) The body corporate is not liable for a rate, levy or charge on the common property based on the unimproved value of land.

(3) However, the body corporate is liable for charges for water, gas, sewerage, cleansing and other services supplied to the common property.

Example—

The body corporate is liable for charges made by the local government for water supplied for gardens or a swimming pool on the common property.

(4) The body corporate may, by arrangement with the local government, take on liability for owners or occupiers of lots for services supplied by the local government for the benefit of owners or occupiers.

(5) If an arrangement is in force under subsection (4)—

- (a) the body corporate must satisfy the liability out of the owners' contributions under this Act; and
- (b) the local government cannot separately charge the owners or occupiers for services to which the arrangement relates.

Effect of amendment on liability to rates

149. If a liability to pay rates, levies or charges on a lot arises and, before the amount of the liability is paid, the registered plan is changed so that the lot or part of the lot is incorporated with another lot or common property, the liability is enforceable against the person who was the owner of the lot when the liability arose and—

- (a) if the lot or part of the lot is incorporated with another lot—the owner of the other lot; and
- (b) if the lot or part of the lot is incorporated with common property—the body corporate.

Apportionment of statutory charge

150.(1) If a public entity (including a local government) carries out work on common property and a statutory charge would, if the land forming the parcel were a single undivided allotment, be a charge on the land—

- (a) the charge attaches to each lot in the proportion the lot entitlement of the lot bears to the total lot entitlement of all lots in the scheme (the “**appropriate proportion**”); and
- (b) a lot may be discharged from the charge by payment of the appropriate proportion of the total amount of the charge.

(2) However, if the land subject to the charge is included in a staged development scheme, and a development lot has been further subdivided by a secondary plan, the proportion of the charge attributable to the development lot attaches to each lot created by the secondary plan in the proportion the lot entitlement of the lot bears to the total lot entitlement of all lots in the scheme.

PART 11—RECORDS*Division 1—Notices***Notice of transfer etc.**

151.(1) If—

- (a) a person becomes the owner of a lot by transfer, transmission, or in another way; or
- (b) a leasehold interest in a lot is created by lease or sub-lease for a term of 6 months or more, or a leasehold interest with 6 months or more to run is transferred; or
- (c) the owner of a lot engages a letting agent or real estate agent to act for the owner;

the owner of the lot must give written notice to the body corporate.

Maximum penalty—20 penalty units.

(2) The notice must contain the information required under the regulations.

Notice of intention not to proceed to enforce mortgage

152.(1) If a mortgagee in possession of a lot decides not to enforce the mortgage, the mortgagee must immediately give written notice of the decision to the body corporate.

Maximum penalty—20 penalty units.

(2) On giving the notice, the mortgagee ceases to be a mortgagee in possession of the lot and is no longer taken to be an owner of the lot.

Body corporate may require information to be given

153.(1) This section applies if a body corporate suspects, on reasonable grounds that a person should have, but has not, given a notice under this Division (the “**earlier notice**”).

(2) The body corporate may, by written notice given to the person, require the person to give it, within a stated reasonable time (of at least 28 days), a written notice containing the information that—

- (a) it reasonably requires to decide whether the person should have given the earlier notice; and
- (b) if the person should have given the earlier notice—the information required to have been included in the earlier notice.

(3) The person must comply with the notice unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—20 penalty units.

Body corporate to keep notices

154. A body corporate must keep, under the regulations, notices given to it under this Division.

Division 2—Records to be maintained**Roll**

155.(1) A body corporate must prepare and keep a roll containing the information required by this section.

(2) The roll must contain—

- (a) the name and address for service of the original owner as shown on the registered plan; and
- (b) the lot entitlement of each lot; and
- (c) the name and address of the current owner of the lot; and
- (d) if the owners of a lot are joint tenants, a statement to that effect, and, if they are tenants in common, a statement of the proportionate share of each; and
- (e) if the original owner, or the owner of a lot, is a company—the relevant Australian Company Number.

(3) On receipt of written notice under Division 1, the body corporate must enter in the roll the information contained in the notice.

(4) If the corporate owner of a lot gives written notice to the body corporate of the appointment of an individual to be its nominee to vote for it at general meetings of the body corporate, or of a change of its nominee, the body corporate must record the name of the nominee, or the new nominee, in the roll.

(5) If a staged development scheme is established on the basis that secondary bodies corporate are formed on the registration of secondary plans, the primary body corporate need not include in its roll information about lots into which land included in the scheme has been subdivided by a secondary plan.

Register of assets

156. A body corporate must keep a record of all moveable property—

- (a) acquired by the body corporate at a cost more than the amount prescribed under the regulations; or
- (b) acquired by the body corporate by way of gift.

Register of body corporate management and service contracts

157.(1) A body corporate must keep a register of body corporate management contracts and service contracts.

(2) The register must contain—

- (a) the name and address of the body corporate manager or service contractor; and
- (b) a statement of the duties the body corporate manager or service contractor is required to perform; and
- (c) a statement of the basis on which the body corporate manager or service contractor is remunerated; and
- (d) other information required under the regulations.

Register of transactions affecting the common property

158.(1) A body corporate must keep a register for recording—

- (a) each transaction authorising a service contractor to use a particular part of the common property;³¹ and
- (b) each transaction authorising the owner of a lot to make improvements to the common property.³²

(2) The register must contain the information and materials required under the regulations.

Register of by-laws

159.(1) A body corporate must keep a register of its by-laws.

³¹ See section 97 (Use of common property by service contractor).

³² See section 120 (Improvements to common property by owners).

(2) The register must contain—

- (a) the text of the by-laws and any amending by-laws; and
- (b) an up-to-date consolidated text of the by-laws (“**consolidated by -laws**”).

(3) Within 7 days after receiving a written request from a person accompanied by the fee prescribed under the regulations, the body corporate must give the person a copy of the consolidated by-laws.

(4) Within 14 days after receiving a written request from an occupier of the lot, the owner of the lot must give the occupier a copy of the consolidated by-laws.

(5) A copy of the consolidated by-laws provided by the body corporate or the owner of a lot under this section must be endorsed with the caution required under the regulations.

Documents to be kept

160.(1) A body corporate must keep copies of its accounting records and statements of account for each financial year.

(2) The body corporate must keep copies of—

- (a) notices given in relation to the scheme by a public authority, local government or other local authority; and
- (b) orders made against the body corporate, or in relation to the scheme, by a judicial or administrative authority.

(3) The body corporate must keep a copy of each policy of insurance taken out by it.

(4) The body corporate must keep a copy of each management contract and each service contract entered into by it.

(5) The body corporate must keep a copy of each agreement between it and the owner of a lot about giving of rights, or the imposing of conditions, under an exclusive use by-law.

(6) The body corporate must keep a copy of each agreement under which the body corporate authorises a service contractor to use a particular part of the common property or authorises access to, or use of, the relevant part of the common property by someone else.

(7) The body corporate must keep copies of correspondence sent or received by the body corporate.

(8) The body corporate must keep—

- (a) the minutes of all meetings of its committee and all its general meetings of the body corporate; and
- (b) other materials related to meetings of the committee or general meetings required under the regulations.

(9) Documents required to be kept under this section may be disposed of if authorised under the regulations.

Information to be given to interested persons etc.

161.(1) In this section—

“interested person”, for a body corporate, means—

- (a) the owner, or a mortgagee, of a lot; or
- (b) a person who has signed a contract to purchase a lot; or
- (c) another person who satisfies the body corporate that the person has a proper interest in the information sought; or
- (d) the agent of a person mentioned in paragraph (a), (b) or (c).

(2) Within 7 days after receiving a written request from an interested person accompanied by the fee prescribed under the regulations, the body corporate must—

- (a) permit the person to inspect the body corporate’s records; or
- (b) give the person a copy of a record kept by the body corporate.

(3) However, the body corporate may withhold a record from inspection, and need not give a copy of a record, if—

- (a) the record contains defamatory material; or
- (b) the record contains material privileged from disclosure.

(4) The body corporate must, within 7 days after receiving a written request from an interested person accompanied by the fee prescribed under the regulations, issue a certificate certifying—

- (a) the amount of the annual contributions (or, if the annual contributions have not yet been fixed at the first annual general meeting, the estimated annual contributions) to be paid by the owner to the body corporate; and
- (b) whether there is any outstanding liability from the owner of the lot to the body corporate and, if so, the nature and amount of the liability; and
- (c) the nature and effect of any agreement between the owner and the body corporate; and
- (d) if there is a body corporate management contract or service contract currently in force—the terms of the contract or the information about the contract required to be included in the register of body corporate management contracts and service contracts,³³ and state the estimated cost of the contract to the body corporate and the proportion of the cost to borne by the owner of the lot.

(5) A person who obtains a certificate under subsection (4) may rely on the certificate against the body corporate as conclusive evidence of matters stated in the certificate.

(6) Within 14 days after receiving a written request, accompanied by the fee prescribed under the regulations, from an interested person who proposes to sell a lot, the body corporate must issue a certificate containing the information available from the body corporate's records required for a vendor's statement under Part 12.³⁴

Access to records

162.(1) A body corporate must allow all members of its committee reasonable access (without payment of a fee) to the body corporate's records.

³³ See section 157(2) (Register of body corporate management and service contracts).

³⁴ Part 12 (Sale of lots) (see in particular section 163 (Statement to be given by seller to buyer)).

(2) A body corporate must, if asked by a referee, allow the referee access (without payment of a fee) to the body corporate's records within 24 hours after the request is made.

Maximum penalty—20 penalty units.

(3) However, the body corporate is not required to allow a person access to records under this section if a legal proceeding between the body corporate and the person have started or are threatened and the records are privileged from disclosure.

PART 12—SALE OF LOTS

Statement to be given by seller to buyer

163. The seller of a lot or a proposed lot (including the original owner or a mortgagee exercising a power of sale) must give a person who proposes to buy the lot a statement under this section before the intending buyer enters into a contract to buy the lot.

Contents of statement

164.(1) A statement under this Part must—

- (a) state the names and addresses of the seller and intending buyer; and
- (b) identify the lot or proposed lot and, if the owner has, or may acquire, rights over a part of the common property under an exclusive use by-law—
 - (i) identify the part; and
 - (ii) state the conditions on which the rights have been given or may be acquired; and
- (c) describe the improvements to the lot and, if the owner of the lot has, or may acquire, rights over improvements on a part of the common property under an exclusive use by-law—
 - (i) describe the improvements; and

- (ii) state whether the improvements were carried out with the body corporate's permission and, if so, the conditions on which the improvements were permitted; and
- (d) state the total number of lots in the scheme (or proposed scheme); and
- (e) contain, or be accompanied by, particulars of the lot entitlement (or proposed lot entitlement) and the total lot entitlement (or total proposed lot entitlement) of all the lots; and
- (f) if the original owner is the seller—state whether the body corporate has incurred liabilities that remain unpaid and, if so, include an estimate of the amount of the liabilities; and
- (g) state the name of the body corporate (or proposed body corporate) and the name and address of the secretary (or, if the body corporate has not yet been formed, the name and address of the person who will be the secretary on formation of the body corporate); and
- (h) include the body corporate's last budget or, if the body corporate has not yet adopted a budget, a proposed budget for the body corporate's first financial year; and
- (i) contain, or be accompanied by, the body corporate's consolidated by-laws (or, if the plan has not yet been registered, the proposed by-laws) endorsed with the caution required under the regulations; and
- (j) state—
 - (i) whether a proceeding about the lot or common property is currently before a court and, if so, the nature of the proceeding; and
 - (ii) whether an application about the lot or common property is currently before a referee and, if so, the nature of the application; and

- (iii) whether a referee's order about the relevant scheme has been made under this Act or the former Act within the last 6 years and, if so, the nature and effect of the order;³⁵ and
- (k) if the scheme has been exempted from particular provisions of this Act—include particulars of the exemption; and
- (l) include a certificate under section 161(4) issued within the last month and certified under the body corporate's seal.³⁶

Statement must be signed and dated

165. A statement under this Part must be signed by the seller, or a person authorised to sign it for the seller, and must include a note of the date it was given to the intending buyer.

Information taken to be included in statement

166. A statement under this Part is taken to include information if the statement has attached to it—

- (a) a photocopy of the page of a register in which the information is included, certified under the body corporate's seal to be a true copy of the record of the information; or
- (b) a photocopy of a reply by a referee to an application for information about applications to, and orders made by, referees about the relevant scheme;³⁷ or
- (c) a certificate under section 161(4).

³⁵ See section 204 (Referee must give certain information on application).

³⁶ Section 161 (Information to be given to interested persons etc.).

³⁷ See section 204 (Referee must give certain information on application).

Inaccuracies and changes of circumstances

167. If, before settlement of a contract for the purchase of the lot (or proposed lot) the seller becomes aware of an inaccuracy in a statement under this Part, or a change in circumstances to which the statement relates, the seller must give the intending buyer, before settlement, a notice (“**supplementary notice**”) correcting the inaccuracy or drawing attention to the change of circumstances.

Statement etc. to form part of contract

168. A statement under this Part and any material accompanying it form part of the contract to buy the lot (or proposed lot) and, if a supplementary notice is given, the notice also forms part of the contract.

Buyer may rely on information

169. A buyer may rely on information given to the buyer under this Part as if the seller had warranted its accuracy.

Avoidance of contract for noncompliance with Part

170.(1) A person who enters into a contract to buy a lot or proposed lot may, by giving notice of avoidance to the seller, avoid the contract if the person is materially prejudiced by the seller’s failure to comply with this Part.

(2) In deciding whether the buyer has been materially prejudiced by the seller’s failure to comply with this Part, the buyer must be taken to have been aware before the date of settlement of information given to the buyer or the buyer’s agent by or for the seller before the day of settlement.

(3) The notice of avoidance must be given within 30 days after the buyer (or the buyer’s agent) becomes aware of the failure.

(4) A contract to buy a lot or proposed lot from the original owner may be avoided even though it is an executed contract, but the right to avoid the contract is lost if notice of avoidance is not given within 6 months after title to the lot passes to the buyer under the contract.

Consequences of avoidance

171.(1) If a contract is avoided under this Part, the seller must repay to the buyer any amount paid for or towards the purchase of the lot.

(2) If an executed contract is avoided and title to the lot has been transferred under the contract from the original owner to the buyer, the buyer must take the necessary steps to re-transfer the title to the original owner on receiving repayment of the purchase money.

(3) The original owner is liable for the reasonable costs of the transfer.

Restriction on powers of attorney in favour of original owner

172.(1) If a person who buys a lot from the original owner gives the original owner a power of attorney to act for the buyer, the power may only be exercised in a way, and for purposes, disclosed in a written statement given to the buyer before the power is given.

(2) The statement must include a detailed description of the circumstances in which the power may be exercised.

PART 13—EXEMPTIONS**Exemptions**

173.(1) A body corporate may, by unanimous resolution—

- (a) exempt the community titles scheme from the operation of particular provisions of the Act; or
- (b) vary or revoke a previous exemption under this section.

(2) A resolution under this section may only relate to provisions identified under the regulations as provisions from which a community titles scheme may be exempted under this section.

(3) If 1 or more of the owners are absentee owners, a resolution may only be passed under this section if a referee is satisfied the resolution is in the best interests of all owners and authorises it.

(4) In this section—

“**absentee owner**” means an owner who does not live or carry on business on the lot.

PART 14—DISPUTES

Division 1—Referees

Appointment of referees

174.(1) A referee is appointed under the *Public Service Management and Employment Act 1988*.

(2) A person may hold the office of referee as well as another position under the *Public Service Management and Employment Act 1988*.

Delegation

175.(1) A referee may delegate powers under this Act.

(2) However, a delegation may only be made to—

(a) a person who is an officer or employee under the *Public Service Management and Employment Act 1988*; or

(b) a person prescribed under the regulations.

Protection of referee

176. In performing official functions, a referee has the same privileges and immunities from liability as a Magistrate exercising the jurisdiction of a Magistrates Court.

Division 2—Applications to referee**How to make application to referee**

177.(1) An application for a referee's order—

- (a) must be made in writing to the referee; and
- (b) must state the nature of the order sought; and
- (c) must state the name and address of the person against whom the order is sought or who would, if the order were made, be affected by the order (the “**affected person**”); and
- (d) must state in detail the grounds on which the order is sought.

(2) If the application is for a declaratory or other order affecting the occupiers generally or a particular class of the occupiers, the application may identify the affected persons as the occupiers generally or by reference to the class instead of including their names and addresses.

(3) If the application is for an order—

- (a) declaring a meeting of the committee or a general meeting of a body corporate void for irregularity; or
- (b) declaring that a resolution is a valid resolution of a body corporate or its committee; or
- (c) declaring a resolution of a body corporate or its committee void;

the application must be made within 3 months after the meeting (but the referee may, for good reason, extend the time for bringing the application).

(4) After receiving an application, the referee may require the applicant to give further information or materials and decline to proceed with the application until the further information or materials are given.

(5) The right to make an application to a referee may be limited under the regulations.

Notice of application to be given

178.(1) The referee must give written notice of the application to the affected person and the body corporate.

(2) The notice must—

- (a) include a copy of the application; and
- (b) invite the affected person, the body corporate and its members to make written submissions or further written submissions to the referee about the application within a stated time.

(3) A further submission may only be made by a person who has already made a submission.

(4) As soon as practicable after it receives the notice, the body corporate must—

- (a) display the notice on its notice board (and keep the notice on display while submissions may be made); and
- (b) give a copy of the notice to each person whose name appears on the roll as the owner of a lot.

(5) If the application is for a declaratory order or other order affecting the occupiers generally or a particular class of the occupiers, the notice given under subsection (4) is adequate notice to the affected persons and the referee need not give written notice to the affected persons individually.

(6) The referee may extend the time for making submissions or further submissions by a further notice given in the same way and to the same persons as the original notice.

(7) If the referee is satisfied there is a good reason for dispensing with a requirement under this section, the referee may dispense with the requirement on conditions the referee considers appropriate.

Amendment or withdrawal of application

179.(1) The applicant may, with the referee's permission, amend the application before or after the referee begins the investigation.

(2) The referee has a discretion to give or withhold permission and, if the referee gives permission, the referee may impose conditions.

Example—

If the amendment substantially affects the nature of the application or the remedy sought, the referee may permit the amendment on conditions providing for further written notice of the amended application, on terms decided by the referee, to be given to the affected person and the body corporate and allowing a further opportunity to make written submissions on the amended application.

(3) The application may be withdrawn by the applicant at any time before the application is decided by the referee.

Inspection of applications and submissions

180.(1) A referee must, on application by a person with a proper interest in the issues raised by the application—

- (a) allow the person to inspect the application, submissions made in response to the application and any further submissions; or
- (b) give the person copies of the application or submissions.

(2) A person has proper interest in inspecting or obtaining copies of an application or submissions if the person is—

- (a) the applicant or an affected person; or
- (b) the body corporate or a member of its committee; or
- (c) a person who has made a submission on the application.

(3) An application under this section must be in writing and accompanied by the fee prescribed under the regulations.

Division 3—Investigation by referee**Investigation by referee**

181.(1) A referee must investigate an application under this Part to decide whether it would be appropriate to make an order on the application.

(2) However, the referee may dismiss an application without investigation, or may end an investigation and dismiss the application if it appears that—

- (a) the referee does not have jurisdiction to deal with the application;
or
- (b) the application is frivolous, vexatious or misconceived.

Investigative powers of referee

182.(1) A referee may—

- (a) interview persons the referee considers may be able to help in resolving issues raised by the application; and
- (b) enter and inspect the common property, and after reasonable notice to an occupier, enter and inspect a lot.

(2) An executive member of the body corporate's committee or another person who has access to the body corporate's records must, if asked by a referee, produce records of the body corporate for inspection by the referee, and allow the referee to make copies of the records.

Maximum penalty—20 penalty units.

(3) A person must not obstruct a referee in the conduct of an investigation.

Maximum penalty—20 penalty units.

Division 4—Mediation by referee

Mediation by referee

183.(1) If an application is made to a referee, the referee may mediate between the parties in an attempt to resolve the issues in dispute by agreement.

(2) For the mediation, the referee may—

- (a) call a conference of the parties to explore the possibility of resolving issues in dispute by agreement; and
- (b) propose ways of resolving the issues in dispute.

(3) A party may, by agreement with the other parties, be represented at a conference, or in another proceeding in which the referee is acting as a mediator, by a lawyer, body corporate manager or other person but, if agreement is not reached, none of the parties may be represented.

(4) If an applicant does not cooperate with the referee in the referee's attempt to resolve the issues in dispute by agreement, the referee may—

- (a) refuse to act further on the application until the applicant complies with the referee's requirements; or
- (b) notify the applicant of a time by which the referee requires the applicant to comply with the referee's requirements and, if the applicant fails to comply, dismiss the application.

(5) Evidence of anything said or done during a mediation by a referee is inadmissible in a proceeding if the mediation fails.

(6) If the issues in dispute are settled by agreement between the parties, the referee may make an order to give effect to the terms of the agreement.

(7) If the issues in dispute are not settled by agreement between the parties, the referee involved in the mediation must refer the application to another referee to resolve the issues in dispute.

Division 5—Referee's orders

Orders generally

184.(1) A referee may, on application under this Part, make an order (including a declaratory order) to resolve a dispute or complaint about—

- (a) a claimed or anticipated contravention of this Act or the by-laws; or
- (b) the exercise of rights or powers, or the performance of duties, under this Act or the by-laws.

(2) An order may require a person to act, or prohibit a person from acting, in a particular way.

Particular orders

185. A referee may, for example—

- (a) if satisfied a body corporate has unreasonably refused its agreement to a proposal by the owner of a lot to make improvements on, or changes to, the common property—order the body corporate to agree to, or to ratify, the proposal on stated terms; or
- (b) order a body corporate—
 - (i) to acquire stated personal property the referee considers necessary for the use or convenience of the owners or occupiers of lots within a stated time; or
 - (ii) not to acquire stated personal property, or to dispose of stated personal property, within a stated time; or
- (c) order a body corporate to take action under an insurance policy to recover an amount or to have repairs carried out; or
- (d) if satisfied a contribution, or the way it is to be paid under this Act, is unreasonable—make an order reducing or increasing the contribution to a reasonable amount or providing for its payment in a different way; or
- (e) if satisfied the applicant has been wrongfully denied access to, or a copy of, information or documents—order the body corporate to give stated information to the applicant, to make particular information available for inspection by the applicant, or to give copies of stated documents to the applicant; or
- (f) if satisfied an animal is being kept on the common property or a lot contrary to a by-law—order the person in charge of the animal to remove it and keep it away; or
- (g) if satisfied an animal kept on the common property or a lot under the by-laws is causing a nuisance or a hazard or unduly interfering with the use or enjoyment of a lot or common property by others—order the person in charge of the animal—
 - (i) to take stated action to remedy the nuisance, hazard or interference; or
 - (ii) to remove the animal and keep it away; or

- (h) order a body corporate to amend its records in a stated way; or
- (i) if satisfied a by-law (other than an exclusive use by-law) is, having regard to the interests of all owners and occupiers, oppressive or unreasonable—
 - (i) make an order repealing the by-law; and
 - (ii) if the by-law amends or repeals an earlier by-law and it is appropriate to restore the earlier by-law—restore the earlier by-law; or
- (j) if satisfied a by-law is void because of an irregularity or deficiency of power—make an order declaring the by-law void; or
- (k) declare a meeting of the committee or a general meeting of a body corporate void for irregularity; or
- (l) make an order declaring void a resolution purportedly passed at a meeting of the committee or a general meeting of a body corporate; or
- (m) make an order declaring that a resolution purportedly passed at a meeting of the committee or a general meeting of a body corporate is a valid resolution of the committee or the general meeting; or
- (n) if satisfied the owner of a lot reasonably requires a licence over part of the common property for the proper enjoyment of the lot, and the body corporate has unreasonably refused to grant the licence—order the body corporate to grant a licence to the owner on terms (which may require a payment or periodic payments to the body corporate) over a stated part of the common property; or
- (o) if satisfied a body corporate has failed to take out insurance required under this Act, or the amount of the insurance is inadequate—order the body corporate to take out insurance or to increase the amount of insurance; or
- (p) order a body corporate to call a general meeting of its members to deal with stated business or to change the time of the annual general meeting; or

- (q) order a body corporate to have its accounts, or accounts for a stated period, audited by an auditor nominated in the order or appointed by the body corporate.

Orders affecting by-law etc. to be lodged with Registrar

186. If—

- (a) a referee makes an order affecting a by-law or granting or affecting a licence; or
- (b) a court makes an order affecting a by-law or granting or affecting a licence on appeal from a referee;

the body corporate must lodge a copy of the order with the Registrar within 3 months after the date of the order.

Interim orders

187.(1) A referee may make an interim order if satisfied, on reasonable grounds, that an interim order is necessary because of the nature or urgency of the circumstances to which an application relates.

Examples—

1. The referee may stop the body corporate from carrying out work on common property until a complaint about the irregularity of proceedings has been investigated and resolved.
2. The referee may stop a general meeting deciding or acting on a particular issue until it has been investigated and resolved.

(2) An interim order may be made even though notice of the application has not been given or the persons affected by the order have not had an opportunity to make submissions about the application.

(3) An interim order—

- (a) has effect for a period (not longer than 3 months) stated in the order but may be renewed (on the request of the applicant) by the referee until a final order is made; and
- (b) may be cancelled by a later order made by the referee; and
- (c) if it does not lapse and is not cancelled earlier—lapses when a final order is made by the referee.

(4) However, if an appeal is started against an interim order, the order continues in force until the appeal is decided or withdrawn.

Order to repair damage or pay compensation

188.(1) If the referee is satisfied that an applicant for an order has suffered damage to property because of a contravention of this Act or the by-laws, the referee may order the person responsible for the contravention—

- (a) to carry out stated repairs, or have stated repairs carried out, to the damaged property; or
- (b) to pay compensation of an amount fixed by the referee.

Example—

Suppose a water proofing membrane in the roof of a building in a building units scheme leaks and there is damage to wall paper and carpets in a lot. If the membrane is part of the common property and the leak results from a failure on the part of the body corporate to maintain it in good order and condition, a referee could, on application of the lot's owner, order the body corporate to have the damage repaired or to pay appropriate compensation.

(2) The order cannot be made if the cost of carrying out the repairs or the amount of the compensation would be more than a limit prescribed under the regulations.

Appointment of administrator

189.(1) On application by an interested person, the referee may make an order appointing an administrator to perform—

- (a) obligations of a body corporate, its committee, or a member of its committee under—
 - (i) this Act or the by-laws; or
 - (ii) an order of a court or referee; or
- (b) other obligations of a body corporate.

(2) The administrator has the powers given to the administrator under the order.

(3) Without limiting subsection (2), the power may include power to levy a special contribution against the owners of lots to meet the cost of complying with obligations to which the order relates and the costs of the administration.

(4) The order may—

- (a) withdraw all or particular stated powers from the body corporate (and any delegate of the body corporate) or from stated officers of the body corporate until the administrator has taken the necessary steps to secure compliance with the obligations;
- (b) require officers or delegates of the body corporate to take stated action to help the work the administrator is required to perform;
- (c) fix the administrator's remuneration;
- (d) empower the administrator to fix a special contribution to be levied under subsection (3).

(5) The administrator's remuneration is to be paid out of the funds of the body corporate.

(6) This section does not apply to the enforcement of a monetary obligation unless it is a judgment debt.

Change of body corporate's financial year

190. On application by a body corporate, a referee may change the body corporate's financial year and the dates when later financial years begin.

Ancillary provisions

191.(1) A referee's order may contain ancillary and consequential provisions the referee considers necessary or appropriate.

(2) A referee's order may fix the time when the order takes effect, or within which the order must be complied with.

(3) If a referee's order does not fix the time when it takes effect, it takes effect when served on the person against whom it is made or, if it is not made against a particular person, when it is served on the body corporate.

(4) A referee's order may provide that it is to have effect as a unanimous resolution, resolution without dissent, special resolution or ordinary resolution.

Limitation on powers of referee

192. A referee does not have power to resolve a question about title to land.

Division 6—Enforcement of orders

Notice of order to be given

193.(1) A referee must give a copy of an order made under this Part to—

- (a) the applicant; and
- (b) the body corporate; and
- (c) the person against whom the order is made; and
- (d) a person who made a written submission to the referee in response to the referee's invitation.

(2) The copy of the order must be certified by the referee as a true copy of the order and must be accompanied by a statement of the referee's reasons for the decision.

(3) If the order is a declaratory or other order affecting the occupiers of the lots generally or a particular class of the occupiers, the referee need not give a copy of the order to each affected person individually, but must give notice in a way that ensures, as far as reasonably practicable, it comes to the attention of all occupiers or all members of the class.

Enforcement of orders for payment of amounts

194.(1) This section applies if the following are filed with the registrar of a Magistrates Court—

- (a) a copy of a referee's order for the payment of an amount, certified by the referee to be a true copy;

(b) a sworn statement by the person in whose favour the order is made stating the amount outstanding under the order.

(2) The registrar must register the order in the Magistrates Court.

(3) The order may be enforced as if it were a judgment of the Magistrates Court in the exercise of its civil jurisdiction.

Enforcement of other orders

195. A person who contravenes a referee's order (other than an order for the payment of an amount) commits an offence.

Maximum penalty—400 penalty units.

Division 7—Appeals from referee

Right to appeal to Magistrates Court

196.(1) An interested person who is dissatisfied with a referee's order or decision may appeal against it to a Magistrates Court.

(2) However—

(a) if an order reflects the terms of an agreed settlement—an appeal does not lie against the order; and

(b) an appeal only lies against an interim order on the ground that the referee acted unreasonably in making the order.

How to start appeal

197.(1) An appeal to a Magistrates Court is started by giving to the referee a notice of appeal stating the grounds of the appeal.

(2) The appeal must be started within 6 weeks after the date of the referee's order or decision, but the Magistrate's Court may extend the period for starting the appeal on application by a prospective appellant (which may be made *ex parte*).

(3) On receiving the notice of appeal, the referee must send to the registrar of the Magistrates Court—

- (a) the notice of appeal; and
- (b) a copy of the referee's order or decision, the referee's reasons, and other materials in the referee's possession relevant to the order or decision.

(4) The registrar of the Magistrates Court must give a copy of the notice of appeal to—

- (a) the appellant; and
- (b) the body corporate, if the body corporate is not the appellant; and
- (c) any person required by the order to do, or refrain from doing, a particular act; and
- (d) any other person who made a written submission to the referee on the application.

Stay of operation of orders and decisions

198.(1) The referee or Magistrates Court may stay the order or decision appealed against to secure the effectiveness of the appeal.

(2) A stay—

- (a) may be given on conditions the referee or Court considers appropriate; and
- (b) operates for the period stated by the referee or Court; and
- (c) may be revoked or amended by—
 - (i) if given by the referee—the referee or the Court; and
 - (ii) if given by the Court—the Court.

(3) The period of a stay cannot extend past the time the Court decides the appeal.

(4) The starting of an appeal affects an order or decision, or the carrying out of an order or decision, only if the order or decision is stayed.

Hearing procedures

199.(1) An appeal is by way of rehearing, unaffected by the order or decision appealed against.

(2) The Magistrates Court is not bound by the rules of evidence on an appeal and, subject to the requirements of natural justice—

- (a) may inform itself as it considers appropriate; and
- (b) must conduct the hearing with a minimum of formality.

(3) A party to an appeal may appear personally or by a lawyer or representative authorised in writing to represent the party on the appeal.

(4) The procedure for an appeal to the Magistrates Court is (to the extent it is not dealt with in this Division) to be in accordance with—

- (a) the rules under the *Magistrates Courts Act 1921*; or
- (b) in the absence of relevant rules, directions of the Court.

Powers of Magistrates Court on appeal

200.(1) In deciding an appeal, a Magistrates Court may—

- (a) confirm or amend the order or decision under appeal; or
- (b) set aside the order and substitute another order or decision.

(2) The Court may amend or substitute an order or decision only if the referee would have had jurisdiction to make the amended or substituted order or decision.

(3) The Court cannot make an order for the costs of an appeal.

Division 8—Appeals from Magistrates Court

Appeal to District Court on questions of law only

201.(1) An interested person who is dissatisfied with a decision of a Magistrates Court under this Part may appeal to a District Court, but only on a question of law.

(2) An appeal must be started within 6 weeks after the date of the decision of the Magistrates Court.

Division 9—Miscellaneous**False or misleading information**

202.(1) A person must not—

- (a) state anything to a referee the person knows is false or misleading in a material particular; or
- (b) omit from a statement made to a referee anything without which the statement is, to the person's knowledge, misleading in a material particular.

Maximum penalty—

- (a) if the statement is made in, or in support of, an application for an interim order—60 penalty units;
- (b) in other cases—40 penalty units.

(2) It is enough for a complaint against a person for an offence against subsection (1)(a) or (b) to state that the statement made was false or misleading to the person's knowledge.

False or misleading documents

203.(1) A person must not give a referee a document containing information the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—

- (a) if the document was given in, or in support of, an application for an interim order—60 penalty units; or
- (b) in other cases—40 penalty units.

(2) Subsection (1) does not apply to a person who, when giving the document—

- (a) informs the referee, to the best of the person's ability, how it is false, misleading or incomplete; and
- (b) if the person has, or can reasonably obtain, the correct information—gives the correct information to the referee.

(3) It is enough for a complaint against a person for an offence against subsection (1) to state that the document was false, misleading or incomplete to the person's knowledge.

Referee must give certain information on application

204. On receiving a written application accompanied by the fee prescribed under the regulations, a referee must inform the applicant in writing—

- (a) whether a referee's order has been made within the previous 6 years under this Part or a corresponding previous law about a particular community titles scheme and, if so, the nature and effect of the order; and
- (b) whether there is an undisposed application about a particular community titles scheme and, if so, the nature of the application.

Magistrates Court in which proceeding lies

205. A proceeding under this Part for enforcement of a referee's order, or by way of appeal, must be taken in the Magistrates Court for the Magistrates Court district in which the parcel of the relevant scheme is situated.

Rules

206. The power under the *Magistrates Courts Act 1921* to make rules for the Magistrates Courts includes power to make rules for—

- (a) the registration of a referee's order in a Magistrates Court and its enforcement as an order of the Court; and
- (b) appeals to a Magistrates Court under this Part.

PART 15—MISCELLANEOUS

Associates

207.(1) A person is associated with someone else if—

- (a) a relationship of a type to which this section applies exists between them; or
- (b) a series of relationships of a type to which this section applies can be traced between them through another person or other persons.

(2) This section applies to relationships of the following types—

- (a) marriage or de facto relationship;
- (b) the relationship of ascendant and descendant (including the relationship of parent and child) or the relationship of persons who have a parent or grandparent in common;
- (c) partnership;
- (d) the relationship of employer and employee;
- (e) a fiduciary relationship;
- (f) the relationship of persons, 1 of whom is accustomed or under an obligation (whether formal or informal) to act in accordance with the directions, instructions or wishes of the other;
- (g) the relationship of a company and executive officer of the company;
- (h) the relationship of company and a person who is in a position to control or substantially influence the company's conduct.

Protection of persons dealing with body corporate

208. If a person, honestly and without actual notice of an irregularity, enters into a transaction with a member of a body corporate's committee or a person who has apparent authority to bind a body corporate, the transaction is valid and binding on the body corporate.

Body corporate to be taken to be owner of parcel for certain Acts etc.

209.(1) The body corporate is taken to be the owner of the parcel for the following Acts—

- *Dividing Fences Act 1953*
- *Land Act 1962.*

(2) However, for the *Dividing Fences Act 1953* the owners of adjoining lots are taken to be the owners of adjoining land.

Legal proceedings

210.(1) A body corporate may start a proceeding in a court only if the proceeding is authorised by special resolution.

(2) However, a body corporate does not need a special resolution to—

- (a) bring a proceeding for the recovery of a liquidated debt against the owner of a lot; or
- (b) bring a proceeding under this Act to a District Court, other than an appeal against a referee's order; or
- (c) bring a counterclaim, third-party proceeding or other proceeding, in a proceeding to which the body corporate is already a party.

Representation in planning proceedings

211.(1) A body corporate may represent the owners of lots in a proceeding under the *Local Government (Planning and Environment) Act 1990*.

(2) However, this section does not prevent an owner who wants to be separately represented in the proceeding from exercising a right to be separately represented.

Liability of owners to judgment debts of body corporate

212.(1) In a proceeding by or against a body corporate, a court may order that an amount payable under a judgment or order against the body corporate be paid by the owners of particular lots in proportions fixed by the court.

(2) If an order is sought under subsection (1) against the owner of a lot who is not a party to the proceeding, the owner must be joined as a party.

Service of legal process etc.

213.(1) A notice, legal process or other document is served personally on a body corporate if served personally on the secretary or, in the absence of the secretary, another member of the committee of the body corporate.

(2) The address for service of a body corporate is the body corporate's address as shown in the relevant registered plan.

(3) The address for service of the owner of a lot is the owner's address as recorded in the body corporate's roll or, if no address is recorded, the address of the lot.

(4) The address for service of the original owner is the original owner's address as shown in the relevant registered plan.³⁸

Exercise of statutory powers of entry

214. A person proposing to exercise a statutory power to enter or remain on land or premises in relation to a lot may also enter or remain on the common property in exercising the power.

Prevention of contracting out

215. A person cannot waive, or limit the exercise of, rights under this Act.

Procedures of Supreme Court in proceedings under this Act

216.(1) An application to the Supreme Court under this Act must, subject to the rules of the Supreme Court, be made by summons.

(2) An application under this Act must be heard by the Supreme Court sitting in chambers unless the Court directs that the hearing be in open court.

³⁸ Section 39 of the *Acts Interpretation Act 1954* also makes provision for service.

(3) The Supreme Court may make orders about the service of process and the notice to be given of applications.

Examples—

1 The Court may order that notice of an application be given by advertisement or in another specified way.

2. The Court may make an order dispensing with service of an application.

(4) The power to make rules of the Supreme Court includes power to make rules about the practice and procedure of the Court in proceedings under this Act.

Fees

217.(1) The fees prescribed under the regulations are payable under this Act.

(2) A referee may, for proper reason, remit a fee payable on an application to the referee under this Act.

Chief executive may approve forms

218. The chief executive may approve forms for use under this Act.

References to body corporate managers and service contractors

219. In this Act, a reference to a person as a body corporate manager or service contractor includes a reference to the person's personal representatives, successors and assignees.

Facsimile

220. For this Act, a facsimile must show the details of transmission.

Regulation making power

221.(1) The Governor in Council may make regulations under this Act.

(2) A regulation may impose a penalty of not more than 20 penalty units for an offence against a regulation.

PART 16—TRANSITIONAL PROVISIONS

Certain arrangements to continue

222.(1) If—

- (a) a written agreement or arrangement was made before the commencement; and
- (b) the agreement or arrangement is a prescribed arrangement within the meaning of the former Act;

the provisions of the former Act about prescribed arrangements continue to apply, and this Act does not apply, to the agreement or arrangement until it expires, is terminated or is amended.

(2) However, the provisions of this Act, and not the former Act, apply to a body corporate management contract, service contract or contract engaging a letting agent entered into on or after 24 October 1994 unless subsection (3) applies to the contract.

(3) Despite subsection (2), if—

- (a) a written agreement or arrangement was made before the commencement; and
- (b) the agreement or arrangement was made in contemplation of the registration of a plan; and
- (c) the agreement or arrangement was disclosed in a contract between the original owner and a prospective buyer of a lot (who is not an associate of the original owner) before the commencement; and
- (d) if the plan had been registered under the former Act—the agreement or arrangement would have been a prescribed arrangement within the meaning of the former Act; and
- (e) the plan is registered and the agreement or arrangement takes effect within 3 years after the commencement;

the provisions of the former Act apply or continue to apply, and this Act does not apply, to the agreement or arrangement.

(4) The provisions of the former Act about prescribed arrangements continue to apply under this section with any changes prescribed under the regulations.

Saving of existing community titles schemes etc.

223.(1) A plan registered under the former Act is taken to be a plan registered under this Act.

(2) A body corporate formed under the former Act is taken to be, without change to its corporate identity or its corporate name, a body corporate under this Act.

(3) If a plan was lodged for registration under the former Act, proceedings for registration of the plan continue under the provisions of the former Act.

(4) A name reserved under the former Act is taken to be a name reserved under this Act as if this Act had been in operation when the reservation was made.

(5) A person holding office as the chairperson, secretary, treasurer or a member of the committee of a body corporate immediately before the commencement continues, subject to this Act, in the corresponding office under this Act as if elected or appointed to the office under this Act.

(6) A procedural step taken towards the calling of a general meeting of a body corporate or a meeting of its committee before the commencement is validly taken if it is in accordance with the law then in force.

(7) Subsections (5) and (6) and this subsection expire 2 years after commencement.

(8) If an original owner entered into a contract before the commencement for the sale of a proposed lot, sections 49 and 49A of the former Act apply to the contract even though the lot is not created until a plan is registered after the commencement.

(9) If a disclosure of information was made to the prospective buyer of a lot before the commencement under section 40 of the former Act, the owner of the lot (if not the original owner) is not required to disclose information under Part 12.³⁹

(10) A body corporate is taken to have had power on and from 4 May 1994 to enter into a contract engaging a letting agent.

(11) Subsections (3) to (10) are laws to which section 20A of the *Acts Interpretation Act 1954* applies.

(12) Subsections (3), (4), (8) to (11) and this subsection expire 5 years after commencement.

Saving of by-laws

224.(1) In this section—

“**statutory by-law**” means a by-law set out in Schedule 3 to the *Building Units and Group Titles Act 1980* or a corresponding previous enactment.

(2) If, immediately before the commencement, the by-laws of a body corporate were the statutory by-laws, (and the body corporate had made no by-law for the amendment or repeal of statutory by-laws), the body corporate’s by-laws are, on the commencement, taken to be replaced by the by-laws in Schedule 1.

(3) If, immediately before the commencement, the by-laws of a body corporate were in part statutory by-laws—

- (a) the statutory by-laws are, on the commencement, taken to be replaced by the corresponding by-laws in Schedule 1; and
- (b) if the body corporate did not have by-laws on a subject covered by the by-laws in Schedule 1—the by-laws in Schedule 1 on the relevant subjects become, on the commencement, by-laws of the body corporate.

³⁹ Part 12 (Sale of lots).

(4) If—

- (a) a by-law had been made by the body corporate itself, and the by-law was in force immediately before the commencement; and
- (b) the by-law could have been made under this Act if this Act had been in force when the by-law was made;

the by-law continues in force (subject to amendment or repeal under this Act) as a by-law of the body corporate.

(5) However, if the by-law was made before 1 April 1992 and had not been recorded on the registered plan before the commencement, the body corporate must have the by-law recorded by lodging with the Registrar, before 1 January 1996, a notice of the by-law containing the information required by section 134(1).⁴⁰

(6) If a body corporate fails to have a by-law (other than an exclusive use by-law) recorded as required by subsection (5)—

- (a) the by-law expires; and
- (b) if there is a by-law in Schedule 1 corresponding to the lapsed by-law—the lapsed by-law is replaced by the corresponding by-law in Schedule 1.

(7) If a by-law was made within 3 months before the commencement, but was not recorded by the Registrar before the commencement, the by-law may be recorded by the Registrar on application made within 3 months after the date of the resolution for making the by-law and—

- (a) the by-law commences on the day when it is recorded, or a later day fixed in the by-law, as if it had been made under this Act; but
- (b) if an application for recording the by-law is not made within the time allowed by this subsection—the by-law expires.

(8) Subsections (5) to (7) are laws to which section 20A of the *Acts Interpretation Act 1954* applies.

(9) Subsections (5) to (8) and this subsection expire 2 years after commencement.

⁴⁰ Section 134(1) (Registration and commencement of by-laws).

(10) If, immediately before the commencement, a by-law authorised a service contractor to use a particular part of the common property for particular purposes necessary to enable the contractor to perform contractual obligations under the contract, the body corporate is taken, on the commencement, to have given the contractor the authority under section 97 on the conditions stated in the by-law immediately before the commencement.

Saving of special rights

225. If—

- (a) a body corporate had, before the commencement, given rights over a part of the common property to the owner of a lot; and
- (b) the rights are of a type that could be given by an exclusive use by-law under this Act;

the rights are taken to have been given by an exclusive use by-law under this Act.

Investigations by referee under former Act etc.

226.(1) This section applies if an investigation or proceeding by or in relation to a referee was started, but not finished, under the former Act.

(2) The investigation or proceeding may be finished under this Act as if it had been started under it.

(3) The provisions of this Act apply to the investigation or proceeding with any changes prescribed under the regulations.

References to former Acts

227.(1) This section applies to references in provisions of Acts enacted before its commencement.

(2) A reference to any of the following Acts is taken to be a reference to this Act—

- *Building Units Titles Act 1965*
- *Group Titles Act 1973*

- *Building Units and Group Titles Act 1980.*

PART 17—REPEAL AND AMENDMENTS

Repeal

228. The following Act is repealed—
Building Units and Group Titles Act 1980 No. 42.

Amendments—Sch 2

229. The Acts mentioned in Schedule 2 are amended.

SCHEDULE 1**BY-LAWS**

section 132

Noise

1. The occupier of a lot must not create noise likely to interfere with the peaceful enjoyment of a person lawfully on another lot or the common property.

Vehicles

2.(1) The occupier of a lot must not, without the body corporate's written approval—

- (a) park a motor vehicle, or allow a vehicle to stand, on the common property; or
- (b) permit an invitee to park a motor vehicle, or allow a vehicle to stand, on the common property.

(2) An approval under subsection (1) must state the period for which it is given.

(3) However, the body corporate may cancel the approval by giving 7 days written notice to the occupier.

Obstruction

3. The occupier of a lot must not obstruct the lawful use of the common property by someone else.

Damage to lawns etc.

4.(1) The occupier of a lot must not, without the body corporate's written approval—

SCHEDULE 1 (continued)

- (a) damage a lawn, garden, tree, shrub, plant or flower on the common property; or
- (b) use a part of the common property as a garden.

(2) An approval under subsection (1) must state the period for which it is given.

(3) However, the body corporate may cancel the approval by giving 7 days written notice to the occupier.

Damage to common property

5.(1) An occupier of a lot must not, without the body corporate's written approval, mark, paint, drive nails, screws or other objects into, or otherwise damage or deface a structure that forms part of the common property.

(2) However, an occupier may install—

- (a) a locking or safety device to protect the lot against intruders; or
- (b) a screen to prevent entry of animals or insects;

if the device is soundly built and is consistent with the colour, style and materials of the building.

(3) The owner of a lot must keep a device installed under subsection (2) in good order and repair.

Behaviour of invitees

6. An occupier of a lot must take reasonable steps to ensure that the occupier's invitees do not behave in a way likely to interfere with the peaceful enjoyment of another lot or the common property.

Leaving of rubbish etc. on the common property

7. The occupier of a lot must not leave rubbish or other materials on the common property in a way or place likely to interfere with the enjoyment of the common property by someone else.

SCHEDULE 1 (continued)

Appearance of lot

8.(1) The occupier of a lot must not, without the body corporate's written approval, make a change to the external appearance of the lot unless the change is minor and does not detract from the amenity of the lot and its surrounds.

(2) The occupier of a lot must not, without the body corporate's written approval—

- (a) hang washing, bedding, or other cloth articles; or
- (b) display a sign, advertisement, placard, banner, pamphlet or similar article;

if it is visible from another lot or the common property, or from outside the parcel.

Storage of flammable materials

9.(1) The occupier of a lot must not, without the body corporate's written approval, store a flammable substance on the common property.

(2) The occupier of a lot must not, without the body corporate's written approval, store a flammable substance on the lot unless the substance is used or intended for use for domestic purposes.

(3) However, this section does not apply to the storage of fuel in—

- (a) the fuel tank of a motor vehicle, boat, or internal combustion engine; or
- (b) a tank kept on a motor vehicle or boat in which the fuel is stored in accordance with the requirements of the law regulating the storage of flammable liquid.

Garbage disposal

10.(1) Unless the body corporate provides some other way of garbage disposal, the occupier of a lot must keep a receptacle for garbage in a clean and dry condition and adequately covered on the lot, or on a part of the common property designated by the body corporate for the purpose.

SCHEDULE 1 (continued)

(2) The occupier of a lot must—

- (a) comply with all local government local laws about disposal of garbage; and
- (b) ensure that the occupier does not, in disposing of garbage, adversely affect the health, hygiene and comfort of the occupiers of other lots.

Keeping of animals

11.(1) The occupier of a lot must not, without the body corporate's written approval—

- (a) bring an animal onto, or keep an animal on, the lot or the common property; or
- (b) permit an invitee to bring an animal onto, or keep an animal on, the lot or the common property.

(2) The occupier must obtain the body corporate's written approval before bringing, or permitting an invitee to bring, an animal onto the lot or the common property.⁴¹

⁴¹ However, section 136 of the Act provides as follows—

'Guide dogs

136.(1) A person is entitled to be accompanied by a guide dog while on a lot or the common property and, if the person is the owner or an occupier of a lot, is entitled to keep a guide dog on the lot.

(2) A by-law cannot exclude or restrict a right given by this section.'

The *Guide Dogs Act 1972* defines a guide dog as a dog trained at an approved institution and used as a guide by a blind person or as an aid by a deaf person.

SCHEDULE 2**AMENDMENT OF ACTS**

section 229

AUCTIONEERS AND AGENTS ACT 1971**1. Section 5(1), definition “land”, ‘a building units plan registered under the *Building Units and Group Titles Act 1980*’—***omit, insert—*‘a plan registered under the *Building Units and Group Titles Act 1994*’.**2. Section 42(2)—***omit, insert—*

‘(2) If an applicant wants to carry on business as a real estate agent restricted to the letting of lots in a building divided into lots by a plan registered under the *Building Units and Group Titles Act 1994* or the *South Bank Corporation Act 1989*, and in which the applicant resides or will (if granted a licence) reside, the committee must exempt the applicant from the educational and other qualifications prescribed under subsection (1A)(b), and may grant the applicant a licence, if the applicant—¹

- (a) is not ineligible because of the requirements mentioned in subsections (1)(b), (c) and (e) and (1A)(a); and
- (b) has an office in the building from which the applicant will carry on business if granted a licence, or satisfies the committee that the applicant will have the office before the applicant begins to carry on business; and

¹ The applicant may, but need not, be a body corporate manager within the meaning of the *Building Units and Group Titles Act 1994* or the *South Bank Corporation Act 1989*.

SCHEDULE 2 (continued)

- (c) satisfies the committee that the body corporate (within the meaning of the *Building Units and Group Titles Act 1994*) approves of the applicant carrying on the business.

‘(2A) The validity of a licence granted under this section before 4 May 1994² cannot be questioned on the ground that an agreement purportedly made between the licensee and the body corporate of a building units scheme before 4 May 1994² authorising the licensee to carry on business in a building within the scheme is invalid because the body corporate did not then have power to enter into the agreement.’.

FIRE SERVICE ACT 1990**1. Section 105, definition of “prescribed property”—**

omit, insert—

- ‘ **“prescribed property”** means land (whether or not occupied) that is within an urban district and is—
- (a) a parcel of land separately held by an owner (other than a parcel divided by a plan under the *Building Units and Group Titles Act 1994* or a parcel of which a portion is classified by the local government as a separate parcel for this Part); or
 - (b) if the land is divided by a plan under the *Building Units and Group Titles Act 1994*—a lot created by the division of the land but not the common property; or
 - (c) if portion of a parcel of land separately held by an owner is classified by the local government for the area in which the land is situated as a separate parcel for this Part—the portion of the land classified as a separate parcel;

² This is the date as from which the deficiency of power was rectified (see section 171(9) of the *Building Units and Group Titles Act 1994*).

SCHEDULE 2 (continued)

but does not include land vested in the Corporation of the Under Secretary for Community Services or property prescribed under the regulations.’.

INTEGRATED RESORT DEVELOPMENT ACT 1987**1. Section 2, definitions “building units plan” and “group titles plan”—**

omit.

2. Section 2—

insert—

‘ **“building units plan”** means a building units plan under the *Building Units and Group Titles Act 1994*.

“group titles plan” means a group titles plan under the *Building Units and Group Titles Act 1994*.

“primary plan” means a primary plan under the *Building Units and Group Titles Act 1994*.’.

3. Sections 47 to 50—

omit, insert—

‘Certain plans taken to be primary plans

‘47. If a group titles plan was registered before the commencement of the *Building Units and Group Titles Act 1994*, and the plan was accompanied by a statement identifying a lot proposed to be further subdivided by building units plan, the group titles plan is taken to be a primary plan under that Act.’.

SCHEDULE 2 (continued)

4. Section 59—

omit, insert—

‘Subdivision of secondary lots within residential precincts

‘**59.(1)** A secondary lot within a residential precinct may only be subdivided by a primary plan, building units plan or group titles plan.

‘**(2)** However—

- (a) for the later registration of a primary plan, building units plan or group titles plan, a secondary lot within a residential precinct may be subdivided by a plan of subdivision, which may include a lot or lots forming a secondary thoroughfare; and
- (b) the provisions of this Act about the subdivision of initial lots, and the effect of the subdivision of initial lots, apply to a subdivision under paragraph (a) as if a secondary lot subject to the subdivision were an initial lot and each lot created by the subdivision (other than a lot forming a secondary thoroughfare) becomes a secondary lot.

‘**(3)** If before the commencement of the *Building Units and Group Titles Act 1994*, a group titles plan was accompanied by a statement containing a proposal to subdivide a lot by a building units plan, the group titles plan is taken to be a primary plan.

‘**(4)** Each lot shown on a primary plan, building units plan or group titles plan must have access to a dedicated road directly or indirectly through—

- (a) the primary thoroughfare; or
- (b) a secondary thoroughfare; or
- (c) the common property shown on the plan.’.

5. Section 62(3)—

omit.

SCHEDULE 2 (continued)

6. Sections 63 to 66—

omit.

7. Section 75(2)—

omit, insert—

‘(2) Subsection (1) does not affect easements belonging to and affecting lots in a plan created under the *Building Units and Group Titles Act 1994*.’.

8. Section 101, definition of “proprietor”—

omit.

9. Section 101—

insert—

‘**“proprietor”** of land means—

- (a) the person registered or entitled to immediate registration as the owner of the land under the *Land Title Act 1994*; or
- (b) if the land is subdivided by a primary plan, group titles plan or building units plan under the *Building Units and Group Titles Act 1994*— the body corporate established on registration of the plan.’.

10. Section 106(6) to (9)—

omit, insert—

‘(6) The *Building Units and Group Titles Act 1994* applies as if the primary thoroughfare body corporate were the primary body corporate under a primary plan.’.

SCHEDULE 2 (continued)

11. Section 106(12), '(10) or (11)'—*omit, insert—*

'(7) or (8)'.

12. Section 106(13), 'subsections (6) to (9)'—*omit, insert—*

'subsection (6)'.

13. Section 106(13), '(10) or (11)'—*omit, insert—*

'(7) or (8)'.

14. Section 106(14), '(10)'—*omit, insert—*

'(7)'.

15. Section 106(10) to (14)—*renumber* as section 106(7) to (11).**16. Section 116(5)—***omit.***17. Section 123(12) to (15)—***omit.*

SCHEDULE 2 (continued)

18. Section 123(16)—

renumber as section 123(12).

19. Section 138, definition “proprietor”—

omit, insert—

‘**“proprietor”** of an initial lot or a secondary lot means—

- (a) the person registered or entitled to immediate registration as the owner of the lot under the *Land Title Act 1994*; or
- (b) if a secondary lot is subdivided by a primary plan, group titles plan or building units plan under the *Building Units and Group Titles Act 1994*— the body corporate established on registration of the plan.’.

20. Section 143(6) to (9)—

omit, insert—

‘**(6)** The *Building Units and Group Titles Act 1994* applies as if the principal body corporate were the primary body corporate under a primary plan.’.

21. Section 143(12), ‘(10) or (11)’—

omit, insert—

‘(7) or (8)’.

22. Section 143(13), ‘subsections (6) to (9)’—

omit, insert—

‘subsection (6)’.

SCHEDULE 2 (continued)

23. Section 143(13), ‘(10) or (11)’—

omit, insert—

‘(7) or (8)’.

24 Section 143(14), ‘(10)’—

omit, insert—

‘(7)’.

25. Section 143(10) to (14)—

renumber as section 144(7) to (11).

26. Section 151(5)—

omit.

27. Section 158(13) to (16)—

omit.

28. Section 176(8)—

omit, insert—

‘(8) A by-law made by a body corporate incorporated on registration of a building units plan or group titles plan for land within a residential precinct that is inconsistent with the development control by-laws has, to the extent of the inconsistency, no effect.’.

SCHEDULE 2 (continued)

LAND SALES ACT 1984**1. Section 6(1), definitions “building units plan”, “group titles plan” and “registered lot”—**

omit.

2. Section 6(1)—

insert—

‘ **“building units plan”** means a building units plan under the *Building Units and Group Titles Act 1994*.

“group titles plan” means a group titles plan under the *Building Units and Group Titles Act 1994*.

“registered lot” means a lot shown on a plan registered under the *Building Units and Group Titles Act 1994* or *South Bank Corporation Act 1989*.’.

3. Section 21(4)—

omit, insert—

‘(4) Despite subsection (3), if a prospective seller is required to give a statement under subsection (1) and also under Part 12 of the *Building Units and Group Titles Act 1994*, the prospective seller may give a single written statement that complies with Part 12 of that Act and includes the particulars mentioned in subsection (1).’.

LAND TAX ACT 1915**1. Section 11B(4)—**

omit, insert—

SCHEDULE 2 (continued)

‘(4) In this section, “body corporate”, “building units plan”, “common property”, “group titles plan”, “lot”, “lot entitlement”, “parcel” and “registered plan” have the meanings given by the *Building Units and Group Titles Act 1994*.’.

2. Section 11D(6)—

omit, insert—

‘(6) In this section, “lot”, “lot entitlement” and “parcel” have the meanings given by the *Building Units and Group Titles Act 1994*.’.

LAND TITLE ACT 1994**1. Section 4, definition “lot”—**

omit.

2. Section 4—

insert—

‘**“lot”** means a separate, distinct parcel of land created on—

- (a) the registration of a plan of survey; or
- (b) the recording of particulars of a deed of grant; or
- (c) the division of land by registration or amendment of a plan under the *Building Units and Group Titles Act 1994*;’.

3. Section 53—

omit.

SCHEDULE 2 (continued)

LOCAL GOVERNMENT ACT 1993**1. Section 4, definition of “community titles Act”—**

omit.

2. Section 4—

insert—

‘**“community titles Act”** means—

- the *Building Units and Group Titles Act 1994*
- the *Integrated Resort Development Act 1987*
- the *Mixed Use Development Act 1993*
- another Act prescribed under the regulations.’.

LOCAL GOVERNMENT (PLANNING AND ENVIRONMENT) ACT 1990**1. Section 1.4(1), definitions “access”, “adjoining allotment”, “owner” and “subdivision”—**

omit.

2. Section 1.4(1)—

insert—

‘**“access”** means the practical way of entry for persons and vehicles onto an allotment—

- (a) from a constructed road adjoining the allotment; or
- (b) if permitted by a local government under section 5.12—by way of an easement; or

SCHEDULE 2 (continued)

- (c) if the allotment is a lot created by registration or amendment of a plan under the *Building Units and Group Titles Act 1994*—by way of the common property from a constructed road adjoining the parcel.

“adjoining allotment”, for a particular allotment, means—

- (a) an allotment that has a common boundary with the allotment (whether the boundary is measurable or not); or
- (b) if the allotment has a common boundary with land included in a plan registered under the *Building Units and Group Titles Act 1994*, and is not itself included in the plan—the parcel.

“owner”, for an allotment, means—

- (a) if the allotment is a lot created by registration or amendment of a plan under the *Building Units and Group Titles Act 1994*—the body corporate; or
- (b) if the allotment is being purchased from the State for an estate in fee simple under the *Land Act 1962*—the purchaser;

and includes, in appropriate cases, the State.

“parcel”, for land included in a plan registered under the *Building Units and Group Titles Act 1994*, means all of the land included in the plan.

“plan of survey” includes a plan under the *Building Units and Group Titles Act 1994*.

“subdivision” means the division of land into parts by way of—

- (a) sale, transfer or partition; or
- (b) an agreement, dealing or instrument (other than a lease for a term of 5 years or less without a right of renewal) under which different parts of the land become immediately available for separate disposition or occupation; or
- (c) the creation of an indefeasible title under the *Land Title Act 1994* for a part of the land; or
- (d) the excision of land from an allotment for dedication to the State; or

SCHEDULE 2 (continued)

- (e) the registration of a plan under the *Building Units and Group Titles Act 1994*; or
- (f) the amendment of a registered plan under the *Building Units and Group Titles Act 1994* that changes the boundaries of a lot or the common property (including an amendment that results in the amalgamation of lots or the amalgamation of a lot with common property); or
- (g) the sale or a lease (other than a lease for a term of 5 years or less without a right of renewal) of part of the common property included in a plan registered under the *Building Units and Group Titles Act 1994* (but no other dealing with the common property authorised under that Act).’.

3. Section 1.4(1), definition “adjoining owner”, after paragraph (a)—

insert—

- ‘(ab)if the adjoining allotment is the parcel included in a plan registered under the *Building Units and Group Titles Act 1994*—the body corporate formed on registration of the plan;’.

4. Section 1.4(1), definition “allotment”, paragraph (b)—

omit, insert—

- ‘(b) a lot created by registration or amendment of a group registered plan under the *Building Units and Group Titles Act 1994*; or
- (c) a part of the common property included in a plan registered under the *Building Units and Group Titles Act 1994* subject to a lease (other than a lease for a term of 5 years or less without a right of renewal);’.

5. Section 5.1(3)(i)—

omit, insert—

SCHEDULE 2 (continued)

‘(i) the length of road frontage to each of the proposed allotments or, if the allotments are to be created by registration or amendment of a plan under the *Building Units and Group Titles Act 1994*, the length of road frontage to the parcel;’.

6. Section 5.8(2)—

omit, insert—

‘**5.8(2)** If there is no planning scheme in force over the land to which an application under section 5.1 relates, a local government must not approve an allotment with an area less than 400m² unless—

- (a) the allotments are created under the Building Units and Group Titles Act 1994; or
- (b) the allotments are to be transferred to the local government or State or are to be used for public utilities.’.

7. Section 5.9—

insert—

‘**(11)** This section does not apply to the staged subdivision of land in a staged development scheme under the *Building Units and Group Titles Act 1994*.’.

8. Section 5.11(3)(b)—

omit, insert—

- ‘(b) whether it is proposed to resubdivide the parcel under the *Building Units and Group Titles Act 1994*;’.

9. Section 5.11—

insert—

‘**(13)** This section—

SCHEDULE 2 (continued)

- (a) does not apply to the amalgamation of lots, or lots and common property, under the *Building Units and Group Titles Act 1994*; but
- (b) applies to the extinguishment of a plan registered under the *Building Units and Group Titles Act 1994* resulting in the formation of a single undivided allotment of 2 or more undivided allotments (but does not apply to the extinguishment of a building units plan under that Act).

‘(14) If a proposal for the extinguishment of a plan registered under the *Building Units and Group Titles Act 1994* would result in the formation of a single undivided allotment, an application for the local government’s approval of the proposal must be approved but relevant and appropriate conditions may be imposed under subsection (5).’.

10. After section 5.12—

insert—

‘Special provisions about subdivision of buildings under the Building Units and Group Titles Act 1994

‘5.13(1) The local government’s approval is not required under this Part for—

- (a) the subdivision of land under the *Building Units and Group Titles Act 1994* by—
 - (i) registration of a building units plan; or
 - (ii) amendment of a registered building units plan that does not affect the external boundaries of the parcel; or
- (b) extinguishment of a registered building units plan.

‘(2) However, a person proposing the subdivision of land by registration or amendment of a building units plan, or the extinguishment of a building units plan, as mentioned in subsection (1), must submit full details of the proposal to the local government for noting and the local government must issue a certificate certifying that the proposal has been noted.

SCHEDULE 2 (continued)

‘(3) If the local government does not issue its certificate within 40 days after the proposal is submitted for noting, the person submitting the proposal may appeal to the Court as if the local government had refused to note the proposal.’.

MIXED USE DEVELOPMENT ACT 1993

1. Section 3, definitions “building units plan” and “group titles plan”—

omit.

2. Section 3—

insert—

‘ “**building units plan**” means a building units plan under the *Building Units and Group Titles Act 1994*.

“**group titles plan**” means a group titles plan under the *Building Units and Group Titles Act 1994*.’.

3. Section 4—

omit, insert—

‘**Words and expressions used in Building Units and Group Titles Act**

‘4. Words and expressions used in the *Building Units and Group Titles Act 1994* have the same respective meanings in this Act.’.

4. Part 5, Div 5 (ss 78–85)—

omit, insert—

‘Division 5—Subdivision of community development lot by plans of group subdivision

SCHEDULE 2 (continued)

‘Community titles plans

‘78. If a community development lot created by the registration of—

- (a) a community plan; or
- (b) a community plan of amalgamation; or
- (c) a community plan of subdivision;

cannot be subdivided by a precinct plan under Division 6 or a stratum plan under Part 6, it may be subdivided by a primary plan, building units plan or group titles plan under the *Building Units and Group Titles Act 1994*.’.

5. Part 5, Div 10 (ss 101–107)—

omit, insert—

Division 10—Subdivision of precinct development lot or balance precinct development lot by plans of group subdivision

‘Subdivision by plans of group subdivision

‘101.(1) A precinct development lot may be subdivided only—

- (a) under Division 8 or 9; or
- (b) by a primary plan, building units plan or group titles plan under the *Building Units and Group Titles Act 1994*.

‘(2) A balance precinct development lot may be subdivided by a primary plan, building units plan or group titles plan under the *Building Units and Group Titles Act 1994*.

‘(3) Each lot must have access to a dedicated road directly or through—

- (a) the community thoroughfare; or
- (b) a precinct thoroughfare; or
- (c) the common property.’.

SCHEDULE 2 (continued)

6. Section 115(2)(a)—

omit, insert—

‘(a) easements belonging to and affecting lots under the *Building Units and Group Titles Act 1994*.’

7. Section 126(3)—

omit, insert—

‘(3) This section does not affect an implied easement belonging to and affecting the lots in a building units plan under the *Building Units and Group Titles Act 1994*.’

8. Section 127(3)—

omit, insert—

‘(3) Subsection (2) does not affect an implied easement belonging to and affecting lots in a building units plan under the *Building Units and Group Titles Act 1994*.’

9. Section 128(2)—

omit, insert—

‘(2) Subsection (1) does not affect an implied easement belonging to and affecting the lots in a building units plan under the *Building Units and Group Titles Act 1994*.’

10. Section 130(2)—

omit, insert—

‘(2) The *Building Units and Group Titles Act 1994* applies to land subdivided under this section.’

SCHEDULE 2 (continued)

11. Section 132(4), ‘Division 7 of Part 4 of the *Building Units and Group Titles Act 1980*’—

omit, insert—

‘Part 10 of the *Building Units and Group Titles Act 1994*’.

12. Section 172(8) to (11)—

omit, insert—

‘(8) The *Building Units and Group Titles Act 1994* applies, with any changes prescribed under the regulations, to meetings of a body corporate under this section.

‘(9) The provisions of the *Building Units and Group Titles Act 1994*, in their application to a meeting of a body corporate under this section, are to be read as if—

- (a) a reference to the total lot entitlement of all the lots were a reference to—
 - (i) for a community body corporate—the total of all voting entitlements stated in the approved scheme; and
 - (ii) for a precinct body corporate—the total of all voting entitlements for the community development lot; and
- (b) a reference to a body corporate were a reference to a community body corporate or precinct body corporate; and
- (c) a reference to the by-laws were a reference to the body corporate’s by-laws; and
- (d) a reference to the committee were a reference to the body corporate’s executive committee; and
- (e) a reference to a lot were a reference to a community development lot, precinct development lot or balance precinct development lot; and

 SCHEDULE 2 (continued)

- (f) a reference to the lot entitlement were a reference to—
 - (i) for a community body corporate—the voting entitlement of a member; and
 - (ii) for a precinct body corporate—the voting entitlement applying to a precinct development lot or balance precinct development lot; and
- (g) a reference to the original owner were a reference to—
 - (i) for a community body corporate—the original applicant; and
 - (ii) for a precinct body corporate—the proprietor of the community development lot; and
- (h) a reference to an owner were a reference to a proprietor within the meaning given by this Act; and
- (i) a reference to the roll were a reference to the body corporate roll; and
- (j) any precinct body corporate were the proprietor of a parcel of land within the site and its voting entitlements were the voting entitlements of the parcel.’.

12. Section 172(14), ‘(11)’—*omit, insert—*

‘(9)’.

13. Section 172(14), ‘(15)’—*omit, insert—*

‘(13)’.

14. Section 172(17), ‘(12) or (15)’—*omit, insert—*

‘(10) or (13)’.

SCHEDULE 2 (continued)

15. Section 172(18), '(17)'—

omit, insert—

'(15)'.

16. Section 172(19) and (20), '(13)—

omit, insert—

'(11)'.

17. Section 172(12) to (20)—

renumber as section 172(10) to (18).

18. Section 185(15)(b)—

omit, insert—

'(b) the provisions of the *Building Units and Group Titles Act 1994* (as applied by section 172) about the election of the person.'

19. Section 186(7)—

omit, insert—

'(7) For subsection (5), if—

- (a) there is no member of the executive committee; or
- (b) the members of the executive committee—
 - (i) do not appoint a person to fill the vacancy; and
 - (ii) have not called a meeting of the body corporate to appoint a person to fill the vacancy;

SCHEDULE 2 (continued)

a referee under the *Building Units and Group Titles Act 1994* may, on application by a member of the body corporate or a mortgagee of a lot, appoint a person to call and hold a meeting of the body corporate within a stated time to appoint persons to fill any vacancies.’.

20. Section 186(10)—

omit, insert—

‘(10) Without limiting subsection (9), the referee may also give the following directions—

- (a) that the person appointed to call a meeting of the body corporate may preside at the meeting and, while the person is presiding, the person is taken to be the chairperson of the body corporate;
- (b) that notice of the meeting may be given in the way stated in the direction;

(even though the direction may be inconsistent with the provisions of the *Building Units and Group Titles Act 1994* (as applied by section 172)).’.

21. Section 204(3)(b)—

omit, insert—

- ‘(b) a by-law made by a body corporate under the *Building Units and Group Titles Act 1994*.’.

22. Section 210(3)—

omit, insert—

‘(3) A development control by-law or activity by-law prevails to the extent of any inconsistency with a by-law made by a body corporate under the *Building Units and Group Titles Act 1994*.’.

SCHEDULE 2 (continued)

23. Section 219, definitions “common property” and “resolution without dissent”—

omit.

24. Section 219—

insert—

‘**“common property”** means the common property created by registration of a plan under the *Building Units and Group Titles Act 1994*.

“resolution without dissent” has the meaning given by the *Building Units and Group Titles Act 1994*.’.

25. Section 221(2)(b)—

omit, insert—

‘(b) the Registrar of Titles has recorded the by-law under Part 8 of the *Building Units and Group Titles Act 1994*.’.

26. Section 221(3)(d)—

omit, insert—

‘(d) the *Building Units and Group Titles Act 1994* applies, with changes prescribed under the regulations, to the restricted property area and the body corporate; and’.

27. Section 222—

omit, insert—

‘Application of Building Units and Group Titles Act

‘222. The *Building Units and Group Titles Act 1994* applies, subject to this Part, to a redevelopment of Bretts Wharf Hamilton.’.

SCHEDULE 2 (continued)

MORTGAGES (SECONDARY MARKET) ACT 1984**1. Section 4, definition of “land”, paragraph (a)—**

omit, insert—

- ‘(a) lots and common property into which land is divided by a plan registered under the *Building Units and Group Titles Act 1994*, or the corresponding law of another State or a Territory;’.

**REGISTRATION OF PLANS (H.S.P. (NOMINEES)
PTY. LIMITED) ENABLING ACT 1980****1. Section 3, ‘the *Building Units and Group Titles Act 1980*’—**

omit, insert—

‘the *Building Units and Group Titles Act 1994*’.

2. Section 4(a)—

omit, insert—

- ‘(a) the terms defined in the *Building Units and Group Titles Act 1994* have the meanings given by that Act;’.

3. Section 4(b), definitions “building”, “local government” “lower plan” and “road”—

omit.

4. Section 4(b)—

insert—

SCHEDULE 2 (continued)

‘ **“building”** means the building built on parcel 1, or the building built on parcel 2, of which the plans have been approved by the local government.

“local government” means the Council of the City of Gold Coast.

“road” means a State-controlled road under the *Transport Infrastructure Act 1993* or a road within the meaning of the *Local Government Act 1993*.’.

5. Section 4(b), definition “lower plan”, paragraph (v)(B)—

omit, insert—

‘(B) the provisions of the *Building Units and Group Titles 1994* about building units plans to the extent they are consistent with this Act;’.

6. Section 4(b), definition “upper plan”, paragraph (v)(B)—

omit, insert—

‘(B) the provisions of the *Building Units and Group Titles 1994* about building units plans to the extent they are consistent with this Act;’.

7. Section 5(1)(b)—

omit, insert—

‘(b) for a lower plan—have a sheet attached containing a schedule of the easements mentioned in section 7 (including a diagram or diagrams drawn to scale identifying the location and extent of the easements signed by the chief executive officer of the local government and certified by a licensed surveyor under the *Surveyors Act 1977*).’.

SCHEDULE 2 (continued)

8. Section 5(6), ‘the *Building Units and Group Titles Act 1980*’—

omit, insert—

‘the *Building Units and Group Titles Act 1994*’.

9. Section 5(7)—

omit, insert—

‘(7) On registration of a lower plan, a part of a lot included in the plan may be leased without the local governments’s approval.’.

10. Section 6—

omit, insert—

‘Support and services

‘**6.(1)** For parcels 1 and 2, the easements of support implied between the owners of lots under the *Building Units and Group Titles Act 1994* are also implied—

- (a) in favour of the body corporate of the upper plan and the owners of lots included in the upper plan; and
- (b) as against the body corporate of the lower plan and the owners of lots included in the lower plan;

as if the parcels included in the upper plan and the lower plan were lots in a community titles scheme.

‘**(2)** For parcels 1 and 2, the easements (other than easements of support and shelter) implied under the *Building Units and Group Titles Act 1994* are also implied—

- (a) between the bodies corporate of the upper plan and the lower plan as if both parcels were lots in a community titles scheme; and
- (b) between the owners of lots in both plans as if the lots were included in a single community titles scheme.

SCHEDULE 2 (continued)

‘(3) A body corporate or the owner of a lot must not exercise rights given by an easement under this section in a way that unreasonably interferes with the use or enjoyment of a lot or common property by others.’.

11. Section 7, ‘proprietor’—

omit, insert—

‘owner’.

12. Section 10, ‘proprietors’—

omit, insert—

‘owners’.

13. Section 10, ‘proprietor’—

omit, insert—

‘owner’.

14. Section 13, ‘Division 7 of Part IV of the *Building Units and Group Titles Act 1980*’—

omit, insert—

‘Part 10 of the *Building Units and Group Titles Act 1994*’.

15. Section 14—

omit, insert—

‘Regulation making power

‘14. The Governor in Council may make regulations under this Act.’.

SCHEDULE 2 (continued)

**REGISTRATION OF PLANS (STAGE 2) (H.S.P.
(NOMINEES) PTY. LIMITED) ENABLING ACT 1984****1. Section 2, ‘the *Building Units and Group Titles Act 1980*’—**

omit, insert—

‘the *Building Units and Group Titles Act 1994*’.

2. Section 3(a)—

omit, insert—

‘(a) the terms defined in the *Building Units and Group Titles Act 1994* have the meanings given by that Act;’.

3. Section 3(b), definitions “building”, “local government” and “road”—

omit.

4. Section 3(b)—

insert—

‘ **“building”** means the building built on parcel 1, or the building built on parcel 2, for which the plans have been approved by the local government.

“local government” means the Council of the City of Gold Coast.

“road” means a State-controlled road under the *Transport Infrastructure Act 1993* or a road within the meaning of the *Local Government Act 1993*.’.

5. Section 3(b), definition “lower plan”, paragraph (v)(B)—

omit, insert—

SCHEDULE 2 (continued)

‘(B) the provisions of the *Building Units and Group Titles 1994* about building units plans to the extent they are consistent with this Act;’.

6. Section 3(b), definition of “upper plan”, paragraph (v)(B)—

omit, insert—

‘(B) the provisions of the *Building Units and Group Titles 1994* about building units plans to the extent they are consistent with this Act;’.

7. Section 4(1)(b)—

omit, insert—

‘(b) for a lower plan—have a sheet attached containing a schedule of the easements mentioned in section 7 (including a diagram or diagrams drawn to scale identifying the location and extent of the easements signed by the chief executive officer of the local government and certified by a licensed surveyor under the *Surveyors Act 1977*).’.

8. Section 4(5), ‘the *Building Units and Group Titles Act 1980*’—

omit, insert—

‘the *Building Units and Group Titles Act 1994*’.

9. Section 4(6)—

omit, insert—

‘(6) On registration of a lower plan, a part of a lot included in the plan may be leased without the local government’s approval.’.

SCHEDULE 2 (continued)

10. Section 5—*omit, insert—***‘Support and services**

‘5.(1) The easements of support implied between the owners of lots under the *Building Units and Group Titles Act 1994* are also implied—

- (a) in favour of the body corporate of the upper plan and the owners of lots included in the upper plan; and
- (b) as against the body corporate of the lower plan and the owners of lots included in the lower plan;

as if the parcels included in the upper plan and the lower plan were lots in a community titles scheme.

‘(2) For parcels 1 and 2, the easements (other than easements of support and shelter) implied under the *Building Units and Group Titles Act 1994* are also implied—

- (a) between the bodies corporate of the upper plan and the lower plan as if both parcels were lots in a community titles scheme; and
- (b) between the owners of lots in both plans as if the lots were included in a single community titles scheme.

‘(3) For—

- (a) the upper plan of parcel 3 and the lower plan of parcel 2; and
- (b) the upper plan of parcel 3 and the lower plan of parcel 1; and
- (c) the lower plan of parcel 3 and the lower plan of parcel 2; and
- (d) the lower plan of parcel 3 and the lower plan of parcel 1;

the easements (other than easements of support and shelter) implied under the *Building Units and Group Titles Act 1994* are also implied as if each of the bodies corporate, and each owner of a lot, were the owner of a lot in a single community titles scheme.

‘(4) A body corporate or the owner of a lot must not exercise rights given by an easement under this section in a way that unreasonably interferes with the use or enjoyment of a lot or common property by others.

SCHEDULE 2 (continued)

‘(5) In this section—

“**lower plan of parcel 1**” means the lower plan 1 registered under the *Registration of Plans (H.S.P. (Nominees) Pty. Limited) Enabling Act 1980*.

“**lower plan of parcel 2**” means the lower plan 2 registered under the *Registration of Plans (H.S.P. (Nominees) Pty. Limited) Enabling Act 1980*.’.

11. Section 6, ‘proprietor’—

‘owner’.

12. Section 9, ‘proprietors’—

omit, insert—

‘owners’.

13. Section 9, ‘proprietor’—

omit, insert—

‘owner’.

14. Section 12, ‘Division 7 of Part IV of the *Building Units and Group Titles Act 1980*’—

omit, insert—

‘Part 10 of the *Building Units and Group Titles Act 1994*’.

SCHEDULE 2 (continued)

RETIREMENT VILLAGES ACT 1988**1. Section 6, definitions “prescribed period” and “retirement village land”—**

omit.

2. Section 6—

insert—

“prescribed period” means—

- (a) for a retirement village that is a community titles scheme under the *Building Units and Group Titles Act 1994*—the financial year of the body corporate established for the scheme under that Act; and
- (b) for other retirement villages—the period of 1 year ending 3 months before the annual meeting is to be held.

“retirement village land” means all the land used or to be used for the retirement village and, if the land is divided by a plan under the *Building Units and Group Titles Act 1994*, the lots and the common property into which the land is divided.’.

3. Section 49(1), ‘Building Units and Group Titles Act 1980–1988’—

omit, insert—

‘Building Units and Group Titles Act 1994’.

SANCTUARY COVE RESORT ACT 1985**1. Section 4, definitions “building units plan”, “group titles plan” and “Minister”—**

omit.

SCHEDULE 2 (continued)

2. Section 4—

insert—

‘**“building units plan”** means a building units plan under the *Building Units and Group Titles Act 1994*.

“group titles plan” means a group titles plan under the *Building Units and Group Titles Act 1994*. ‘.

3. Section 14(1B), ‘the *Building Units and Group Titles Act 1980*’—

omit, insert—

‘the *Building Units and Group Titles Act 1994*’.

4. Section 15(2B), ‘the *Building Units and Group Titles Act 1980*’—

omit, insert—

‘the *Building Units and Group Titles Act 1994*’.

5. Section 15(2D)—

omit, insert—

‘(2D) The lot entitlement of a lot on a group titles plan shown as secondary thoroughfare is zero and the proprietor of the lot is not a member of the body corporate established on registration of the plan.’.

6. Section 15(3) to (9)—

omit, insert—

‘(3) If, when a group titles plan subdividing a secondary lot within the Harbour, River and Waterfront Residential Zone of the General Residential Zone was submitted to the Albert Shire Council for approval, the plan was accompanied by a statement by or for the proprietor of the secondary lot that it is proposed to subdivide the group title lots to be created by registration of the plan by building units plans, the group titles plan is taken to be a primary plan under the *Building Units and Group Titles Act 1994*.’.

SCHEDULE 2 (continued)

7. Section 19—

omit, insert—

‘Lot entitlements

‘**19.(1)** If a secondary lot is subdivided or resubdivided by a building units plan or group titles plan under the *Building Units and Group Titles Act 1994*, the total lot entitlement of the lots created for residential purposes must not—

- (a) be more than the maximum number of lots stated for the secondary lot in the schedule that accompanied the plan of survey under which the secondary lot was created; and
- (b) must not be less than 90% of the maximum number.

‘**(2)** The lot entitlement of lots created by a group titles plan does not need to be related to the unimproved value of the lots.’.

8. Section 22, definition “proprietor”—

omit.

9. Section 22—

insert—

‘**“proprietor”** of an initial lot or secondary lot means—

- (a) the person registered or entitled to immediate registration as the owner of the lot under the *Land Title Act 1994*; or
- (b) if a secondary lot is subdivided by primary plan, group titles plan or building units plan under the *Building Units and Group Titles Act 1994*— the body corporate established on registration of the plan.’.

10. Section 27(5) to (5C)—

omit, insert—

SCHEDULE 2 (continued)

‘(5) The *Building Units and Group Titles Act 1994* applies as if the company were the primary body corporate under a primary plan within the meaning of that Act.’.

11. Section 33(5)—

omit.

12. Section 41(10) to (13)—

omit.

13. Section 65, definition “proprietor”—

omit.

14. Section 65—

insert—

‘**“proprietor”** of land means—

- (a) the person registered or entitled to immediate registration as the owner of the land under the *Land Title Act 1994*; or
- (b) if the land is subdivided by primary plan, group titles plan or building units plan under the *Building Units and Group Titles Act 1994*— the body corporate established on registration of the plan.’.

15. Section 70(5) to (5C)—

omit, insert—

‘(5) The *Building Units and Group Titles Act 1994* applies as if the primary thoroughfare body corporate were the primary body corporate under a primary plan within the meaning of that Act.’.

SCHEDULE 2 (continued)

16. Section 77(5)—

omit.

17. Section 85(10) to (13)—

omit.

18. Section 95(8)—

omit, insert—

‘(8) A by-law made by a body corporate established on registration of a building units plan or group titles plan for land within a residential zone that is inconsistent with the development control by-laws is, to the extent of the inconsistency, of no effect.’.

19. Section 96A(7)—

omit, insert—

‘(7) A by-law made by a body corporate established on registration of a building units plan or group titles plan for land within a residential zone, or a secondary thoroughfare by-law, that is inconsistent with the residential zone activities by-laws is, to the extent of the inconsistency, of no effect.’.

STAMP ACT 1894

1. Schedule 1, paragraph (4)(b)(xiii) under the heading CONVEYANCE OR TRANSFER, ‘transferring a lot under a building units plan or a group titles plan registered under the *Building Units and Group Titles Act 1980–1984* where’—

omit, insert—

‘transferring a lot created by registration of a plan under the *Building Units and Group Titles Act 1994* where’.

SCHEDULE 2 (continued)

STATE HOUSING ACT 1945**1. Section 4A—**

omit, insert—

‘Application of Act to community titles schemes

‘4A.(1) This Act applies to a community titles scheme under the *Building Units and Group Titles Act 1994* in the same way as to other land held in fee simple.

‘(2) A reference in this Act to **“subdivision”** or **“re-subdivision”** of land extends to subdivision or resubdivision of land by registration or amendment of a plan under the *Building Units and Group Titles Act 1994*.’.

2. Section 23B(4), ‘pursuant to the *Building Units and Group Titles Act 1980–1984*’—

omit, insert—

*‘under the *Building Units and Group Titles Act 1994*’.*

3. Section 23B(5) ‘pursuant to the *Building Units and Group Titles Act 1980–1984*’—

omit, insert—

*‘under the *Building Units and Group Titles Act 1994*’.*

SCHEDULE 3**DICTIONARY**

section 3

“associate” of a person means someone else with whom the person is associated under section 207.

“audit” means an audit by—

- (a) a registered company auditor; or
- (b) a person with qualifications and experience in accountancy approved under the regulations.

“body corporate” means the body corporate formed under this Act or the former Act on registration of a plan.

“body corporate management contract” see section 90(1).

“body corporate manager” of a body corporate means a person (other than an employee of the body corporate) engaged under a contract with the body corporate to supply administrative services for the body corporate, its committee or executive members of its committee.

“boundary structure” means a wall, floor or ceiling separating a lot from another lot or common property.

“building” includes a fixed structure.

“building designer” means a person who holds qualifications in building design prescribed under the regulations.

“building officer” of a local government means an employee of the local government—

- (a) employed as a building surveyor or building inspector; or
- (b) performing duties usually performed by a building surveyor or building inspector.

SCHEDULE 3 (continued)

“building units plan” means a plan—

- (a) dividing a building shown on the plan into lots and common property; and
- (b) showing the remainder of the land to which the plan relates as common property;

and includes a secondary building units plan.

“building units scheme” means the community titles scheme created under this Act on registration of a building units plan.

“caretaker” of a body corporate means a person (other than an employee of the body corporate) engaged under a contract with the body corporate for a term of 1 year or more to look after property of the body corporate.

“ceiling” does not include a false ceiling.

“common property” see section 27.

“community titles plan” means a building units plan or group titles plan, and includes a secondary plan and any amendment of a community titles plan.

“community titles scheme” means the complex of lots and common property, together with the system of administration and management, created under this Act on registration of a plan.

“company” means an incorporated body of any type.

“conviction” includes a plea of guilty or a finding of guilt by a court even though a conviction is not recorded.

“corporate owner” of a lot means a company that is the owner of a lot.

“damage” to property includes destruction of the property.

“date for payment” see section 103(c).

“de facto relationship” means the relationship between 2 persons who, although they are not married to each other, live in a relationship like the relationship between a married couple.

SCHEDULE 3 (continued)

“development lot” means an area delineated in a primary plan as a development lot and allocated for further subdivision by a secondary plan.

“exclusive use by-law” see section 133(1).

“executive member” of a body corporate’s committee means the chairperson, secretary or treasurer of the body corporate.

“executive officer” of a company means a person who is concerned with, or takes part in, the company’s management, whether or not the person is a director or the person’s position is given the name of executive officer.

“executive position” see section 53(7)(a).

“financial year” of a body corporate means—

- (a) the period from the registration of its plan until the end of the month immediately before the month when the first anniversary of the date of registration falls and each successive period of 1 year from the end of the first financial year; or
- (b) if a referee changes a financial year of the body corporate—the period fixed by the referee as the financial year and each successive period of 1 year from the end of the financial year.

“former Act” means the *Building Units and Group Titles Act 1980*, and includes the *Building Units Titles Act 1965* and *Group Titles Act 1973*.

“group titles plan” means a plan (other than a primary plan or a building units plan) dividing land into lots and common property, and includes a secondary group titles plan.

“group titles scheme” means the community titles scheme created under this Act on registration of a group titles plan.

“guide dog” has the meaning given by the *Guide Dogs Act 1972*.⁴²

“guttering” includes a drainpipe.

⁴² The *Guide Dog Act 1972* defines a guide dog as a dog trained at an approved institution and used as a guide by a blind person or as an aid by a deaf person.

SCHEDULE 3 (continued)

“improvement” includes—

- (a) the erection of a building; and
- (b) a structural change.⁴³

“Land Title Act allotment” means a separate, distinct parcel of land (other than a lot created on registration of a plan under this Act or the former Act) for which indefeasible title exists under the *Land Title Act 1994*.

“leaseback arrangement” means an arrangement under which—

- (a) the owners of lots in a community titles scheme (other than the lessee under the arrangement) lease the lots to the original owner or someone else; and
- (b) all lots in the scheme (apart from lots owned by the lessee under the arrangement) are subject to registrable leases to the lessee under the arrangement.

“letting agent” of a body corporate means a person engaged under a contract with the body corporate for a term of 1 year or more to act as the agent of owners of lots, who choose to use the person’s services, in securing tenants, negotiating leases, collecting rents and enforcing the leases.

“licensed surveyor” means a surveyor registered under the *Surveyors Act 1977*.

“lot” means a lot in a registered plan.

“maintenance” of property includes renewal or replacement if repair is not reasonably practicable.

“major improvement” means any improvement other than a minor improvement.

“minor improvement” means an improvement declared under the regulations to be a minor improvement.

⁴³ Change includes addition—see section 36 of the *Acts Interpretation Act 1954*, definition “change”.

SCHEDULE 3 (continued)

“mortgage” includes a charge on a lot, or an interest in a lot, for securing money or money’s worth.

“mortgagee in possession” of a lot means a mortgagee who takes steps to enforce a mortgage of the lot and has notified the body corporate of the intention to enforce the mortgage (whether or not the mortgagee has actually gone into possession of the lot), but does not include a mortgagee who has notified the body corporate of a decision not to proceed with enforcement of the mortgage.⁴⁴

“non-recurrent expenditure” means any expenditure other than recurrent expenditure.

“obstruct” includes hinder, resist and attempt to obstruct.

“occupier” of a lot means—

- (a) a resident owner or resident lessee of the lot, or someone else who lives on the lot; or
- (b) a person who occupies the lot for business purposes or works on the lot in carrying on a business from the lot.

“order” includes an order dismissing an application.

“ordinary resolution”, for a body corporate, means a resolution passed at a general meeting of the body corporate by a simple majority of the votes cast on the motion for the resolution.

“original owner” of a parcel means the person registered in the freehold land register as the person entitled to the fee simple interest in the parcel immediately before registration of the plan, and includes a mortgagee in possession of the parcel.

“owner” of a lot means the person registered, or entitled to be registered, as the owner of the lot, and includes—

- (a) a mortgagee in possession of the lot; and

⁴⁴ See section 152 (Notice of intention not to proceed to enforce mortgage).

SCHEDULE 3 (continued)

- (b) if 2 or more persons are registered, or entitled to be registered, as the owner of the lot—each of the persons.⁴⁵

“parcel” means all of the land included in a plan, and includes a development lot divided by the secondary plan.

“party” to a proceeding before a referee means—

- (a) the applicant; and
- (b) the body corporate; and
- (c) the person against whom an order is sought in the proceeding.

“plan” means a community titles plan, and includes a primary plan.

“primary common property” means the common property formed when land is divided into development lots and common property by a primary plan.

“primary plan” means a plan dividing land into development lots and primary common property, and includes any amendment of a primary plan.

“real estate agent” means a real estate agent within the meaning of the *Auctioneers and Agents Act 1971*.

“recurrent expenditure” means expenditure normally made annually or more frequently.

“referee” see section 174.

“referee’s order” includes an order made on appeal from a referee.

“registrable lease” means a lease that is capable of registration under the *Land Title Act 1994*.

“Registrar” means the Registrar of Titles.

⁴⁵ Each co-owner is an **“owner”** of the lot for the purposes of the Act and is therefore entitled to the rights of ownership (eg. the right to submit motions for consideration at general meetings of the body corporate) and is liable (jointly and severally with other owners) for the obligations of ownership (eg. the obligation to pay contributions to the body corporate). However, certain rights of ownership (eg. the right to vote at general meetings of the body corporate) are not multiplied by the existence of 2 or more owners.

SCHEDULE 3 (continued)

“representative” of the owner of a lot see section 80(2) and (3).

“requested general meeting” see section 72(1).

“resolution without dissent”, for a body corporate, means a resolution passed at a general meeting of the body corporate without dissenting vote.

“restricted issue” see section 65(3).

“scheme” means a community titles scheme.

“secondary building units plan” means a building units plan dividing a building on a development lot created by registration of a primary plan.

“secondary common property” means the common property formed when a development lot is divided into lots and common property on registration of a secondary plan.

“secondary group titles plan” means a group titles plan dividing a development lot created by registration of a primary plan.

“secondary plan” means a secondary building units plan or secondary group titles plan, and includes any amendment of a secondary plan.

“service contract” see section 90(2).

“service contractor”, for a body corporate, means—

- (a) a letting agent; or
- (b) a caretaker; or
- (c) another type of contractor (other than an employee of the body corporate) engaged under a contract with the body corporate for a term of 1 year or more to supply services for the benefit of the common property or lots.

“service infrastructure” means cables, wires, pipes, sewers, drains, ducts, plant and equipment by which the lots or common property are supplied with—

- (a) water reticulation or supply; or
- (b) gas reticulation or supply; or
- (c) electricity supply; or

SCHEDULE 3 (continued)

- (d) air conditioning; or
- (e) a telephone service; or
- (f) a computer data or television service; or
- (g) sewer systems; or
- (h) drainage; or
- (i) systems for the removal or disposal of garbage or waste; or
- (j) other systems or services designed to improve the amenity, or enhance the enjoyment, of the lots or common property.

“short lease” has the same meaning as in the *Land Title Act 1994*.

“special resolution”, for a body corporate, means a resolution passed at a general meeting of the body corporate if—

- (a) the resolution is passed by a simple majority of the votes cast on the motion for the resolution; and
- (b) the number of votes cast against the motion is not more than 25% of the total number of lots in the scheme; and
- (c) the votes cast against the motion are for lots representing not more than 25% of the total lot entitlement of all lots in the scheme.

“staged development scheme” means the complex of development lots and primary common property, together with the system of administration and management, created under this Act on registration of a primary plan.

“unanimous resolution”, for a body corporate, means a resolution passed at a general meeting of the body corporate by the unanimous votes of all persons entitled to vote on the motion for the resolution.

“voluntary group titles insurance scheme” see section 139(1).

“voter” see section 80(1).

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

