



Queensland

# **Resorts and Other Acts Amendment Act 2009**

**Act No. 26 of 2009**





## Queensland

# Resorts and Other Acts Amendment Act 2009

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Queensland

## **Resorts and Other Acts Amendment Act 2009**

**Act No. 26 of 2009**

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**An Act to amend the Iconic Queensland Places Act 2008, the Integrated Resort Development Act 1987, the Liquor Act 1992, the Mixed Use Development Act 1993 and the Sanctuary Cove Resort Act 1985 for particular purposes**

**[Assented to 11 August 2009]**

[s 1]

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**The Parliament of Queensland enacts—**

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Resorts and Other Acts Amendment Act 2009*.

### **2 Commencement**

The following provisions of this Act commence on a day to be fixed by proclamation—

- (a) part 6;
- (b) the schedule, to the extent it amends the *Sanctuary Cove Resort Act 1985*.

## **Part 2 Amendment of Iconic Queensland Places Act 2008**

### **3 Act amended in pt 2 and schedule**

This part and the schedule amend the *Iconic Queensland Places Act 2008*.

### **4 Amendment of s 42 (Application of div 3)**

Section 42, ‘development application for’—  
*omit, insert—*

‘development application, other than a building development application, for’.

---

## **Part 3**                                    **Amendment of Integrated Resort Development Act 1987**

### **5**            **Act amended in pt 3 and schedule**

This part and the schedule amend the *Integrated Resort Development Act 1987*.

### **6**            **Amendment of s 2 (Definitions)**

Section 2, ‘schedule 2’—

*omit, insert—*

‘schedule 7’.

### **7**            **Insertion of new s 3A**

Part 1—

*insert—*

### **‘3A**           **References to standard module**

‘(1) In this Act, the information included in square brackets after a section heading is a reference to a similar section of the *Body Corporate and Community Management (Standard Module) Regulation 2008*.

‘(2) The brackets and information do not form part of this Act.’.

### **8**            **Amendment of s 4 (Application for approval of scheme)**

Section 4—

*insert—*

‘(1B) For subsection (1A), to remove any doubt, it is declared that an application under division 2 to amend an approved scheme by varying the boundaries of the site of the approved scheme is not an application for scheme approval.’.

[s 9]

---

**9 Amendment of s 9 (Application for amendment of approved scheme)**

Section 9—

*insert—*

- ‘(2) To remove any doubt, it is declared that an application may be made under this division to amend an approved scheme by varying the boundaries of the site of the approved scheme.’.

**10 Replacement of ss 10 and 11**

Sections 10 and 11—

*omit, insert—*

**‘10 Members to be notified of proposed amendment**

- ‘(1) Before making the application, the primary thoroughfare body corporate must—
- (a) give a written notice to each of the members of the primary thoroughfare body corporate and each of the members of the principal body corporate stating—
    - (i) the nature of the proposed amendment; and
    - (ii) a description of each lot to which the proposed amendment relates; and
    - (iii) that a member may give the primary thoroughfare body corporate written submissions about the proposed amendment within a stated period (the *notification period*) of at least 30 business days after the notice is given; and
  - (b) place, on the subject land, a notice stating—
    - (i) a brief summary of the nature of the proposed amendment and each lot to which the amendment relates; and
    - (ii) the notification period for giving written submissions about the proposed amendment; and

(iii) the name and contact details of a person authorised by the primary thoroughfare body corporate to give information about the proposed amendment.

‘(2) The notice under subsection (1)(b) must—

- (a) be of a type, and placed on the subject land in the way required, under schedule 2; and
- (b) remain on the subject land during the notification period.

## **‘11 Requirements for application**

‘The application must include—

- (a) a written statement confirming that—
  - (i) a written notice was given to the members under section 10(1)(a), including the days the notice was given; and
  - (ii) a notice was placed on the subject land under section 10(1)(b) and (2), including the period during which the notice was on the land; and
- (b) a copy of the notice given under section 10(1)(a); and
- (c) all written submissions given to the primary thoroughfare body corporate under section 10(1)(a)(iii); and
- (d) other matters, if any, the Minister considers necessary for deciding the application.’.

## **11 Amendment of s 12 (Minister to consider application)**

Section 12—

*insert—*

‘(2) The Minister must give the Governor in Council—

- (a) the application; and

[s 12]

---

- (b) a written notice stating details of the consultation, if any, under subsection (1), including—
  - (i) who the Minister consulted; and
  - (ii) the results of the consultation.’.

## **12 Insertion of new section 13A**

After section 13—

*insert—*

### **‘13A Minor variation of site boundaries**

- ‘(1) This section applies to an application to amend an approved scheme by varying the boundaries of the site of the approved scheme.
- ‘(2) The Governor in Council may approve the amendment only if—
  - (a) the Governor in Council considers—
    - (i) the proposed variation of the site boundaries is of a minor nature; and  

*Example of a variation that may be of a minor nature—*

a variation of part of a site boundary to realign it with a thoroughfare within the site
    - (ii) the total area of the site will not be materially changed because of the variation; and
  - (b) neither the aggregate number of the lots nor the aggregate voting entitlements under the approved scheme will be changed because of the variation; and
  - (c) each affected land owner has given the owner’s written consent to the variation.
- ‘(3) If the Governor in Council approves the amendment, section 8 applies to the local government and chief executive for making an appropriate notation of the approved scheme as amended as if the reference in that section to the approved scheme were a reference to the approved scheme as amended.



‘(4) In this section—

*affected land owner* means an owner of land that is outside the site and is proposed under the application to be within the site.’.

### **13 Amendment of s 27 (The site)**

(1) Section 27(1), ‘The site’—

*omit, insert—*

‘Subject to subsection (2), the site’.

(2) Section 27(3), ‘subsection (2)’—

*omit, insert—*

‘subsection (3)’.

(3) Section 27(2) to (4)—

*renumber* as section 27(3) to (5).

(4) Section 27—

*insert—*

‘(2) If the approved scheme is amended under part 2, division 2 by varying the boundaries of the site, the site of the approved scheme consists of all land within the boundaries of the site set out in the approved scheme as amended.’.

### **14 Amendment of s 44 (Subdivision by building units or group titles plan)**

Section 44—

*insert—*

‘(6) A group titles plan must also be accompanied by a diagram showing the name and numbering, or proposed name and numbering, of each road that is, or is to be, on the primary thoroughfare, or the part of the primary thoroughfare, shown on the plan.’.

[s 15]

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**15 Amendment of s 45 (Approval of building units or group titles plan)**

Section 45(1)(a)—

*insert—*

‘(iii) the diagram mentioned in section 44(6); and’.

**16 Amendment of s 59 (Subdivision of secondary lots within residential precincts)**

Section 59—

*insert—*

‘(8) A group titles plan lodged under subsection (4) must also be accompanied by a diagram showing the name and numbering, or proposed name and numbering, of each road that is, or is to be, on—

(a) the primary thoroughfare, or part of the primary thoroughfare, shown on the plan; and

(b) each secondary thoroughfare, or part of a secondary thoroughfare, shown on the plan.’.

**17 Amendment of s 61 (Approval by local government)**

Section 61(1)(a), after ‘59(5)’—

*insert—*

‘and the diagram mentioned in section 59(8)’.

**18 Amendment of s 101 (Interpretation)**

Section 101, definition *special resolution*, ‘*special resolution means*’—

*omit, insert—*

‘*special resolution*, for a general meeting of a primary thoroughfare body corporate, means’.

**19 Amendment of s 103 (Member's nominee)**

(1) Section 103(1)(a), from 'a body corporate' to 'group titles plan'—

*omit, insert—*

'a subsidiary body corporate'.

(2) Section 103—

*insert—*

'(4) A person appointed under this section by a subsidiary body corporate must represent the subsidiary body corporate—

(a) in the way the subsidiary body corporate directs; and

(b) subject to paragraph (a), in a way that is in the best interests of the subsidiary body corporate.'

**20 Amendment of s 106 (Meetings of primary thoroughfare body corporate)**

Section 106(7), after 'apply'—

*insert—*

'and the application of the *Building Units and Group Titles Act 1980*, schedule 2, part 2 is subject to schedule 3 and schedule 7, definition *ordinary resolution*'.

**21 Amendment of s 113 (Miscellaneous powers of primary thoroughfare body corporate)**

Section 113—

*insert—*

'(f) employ staff to perform its functions.'

**22 Amendment of s 116 (Duties of primary thoroughfare body corporate)**

Section 116(1)(e)—

*omit, insert—*

[s 23]

---

- ‘(e) keep—
- (i) for at least 10 years after their creation or receipt by or for the primary thoroughfare body corporate—
    - (A) minutes of its meetings, including particulars of motions passed at the meetings; and
    - (B) proper books of account for amounts received or paid by the primary thoroughfare body corporate showing the items for which the amounts were received or paid; and
  - (ii) for at least 2 years after their creation or receipt by or for the primary thoroughfare body corporate—voting tally sheets or other records showing votes for motions and election ballots related to its meetings; and’.

**23 Amendment of s 123 (Constitution of executive committee)**

- (1) Section 123(4), ‘3 members’—  
*omit, insert—*  
‘5 members’.
- (2) Section 123(5)—  
*omit, insert—*  
‘(5) If there are more than 5 members of the primary thoroughfare body corporate, the executive committee must consist of at least 5 persons and not more than the number of members of the primary thoroughfare body corporate, as decided by the primary thoroughfare body corporate.’.
- (3) Section 123(6), ‘(if any)’—  
*omit.*
- (4) Section 123(6), ‘more than 3’—  
*omit, insert—*

‘more than 5’.

(5) Section 123(7)—

*omit, insert—*

‘(6A) The election of the chairperson, secretary, treasurer and any other members of the executive committee at a general meeting of the primary thoroughfare body corporate must be conducted under schedule 3.

‘(7) A person is eligible for election as chairperson, secretary or treasurer, or as another member of the executive committee, only if the person—

(a) is an individual who—

(i) is a member of the primary thoroughfare body corporate; or

(ii) has been nominated for election by a member of the primary thoroughfare body corporate; and

(b) does not owe a relevant body corporate debt in relation to a lot or lots owned by the person.’.

## 24 Insertion of new s 123A

After section 123—

*insert—*

### ‘123A Code of conduct for voting members of executive committee

‘(1) The code of conduct in schedule 4 applies to each person (a *voting member*) who is—

(a) a member of the executive committee; and

(b) entitled to vote at general meetings of the primary thoroughfare body corporate.

‘(2) On becoming a voting member of the committee, the person is taken to have agreed to comply with the code of conduct.’.

[s 25]

---

**25 Amendment of s 124 (Vacation of office of member of executive committee)**

(1) Section 124(1)(i)—

*renumber* as section 124(1)(j).

(2) Section 124(1)—

*insert*—

‘(i) if the person is removed from office by ordinary resolution of the primary thoroughfare body corporate under division 5; or’.

**26 Insertion of new s 126A**

After section 126—

*insert*—

**‘126A Conflict of interest of executive committee member [SM, s 53]**

- ‘(1) A member of the executive committee must disclose to a meeting of the committee the member’s direct or indirect interest in an issue being considered, or about to be considered, by the committee if the interest could conflict with the appropriate performance of the member’s duties about the consideration of the issue.
- ‘(2) If a member required under subsection (1) to disclose an interest in an issue is a voting member of the executive committee, the member is not entitled to vote on a motion involving the issue.
- ‘(3) A person who holds the proxy of a member of the executive committee must disclose to a meeting of the executive committee the proxy holder’s direct or indirect interest in an issue being considered, or about to be considered, by the executive committee if the interest could conflict with the appropriate performance of the proxy holder’s duties about the consideration of the issue.

- 
- ‘(4) A proxy holder required under subsection (3) to disclose an interest in an issue must not vote as the proxy on a motion involving the issue.
  - ‘(5) A person who holds the proxy of a member of the executive committee must disclose to a meeting of the executive committee the member’s direct or indirect interest in an issue being considered, or about to be considered, by the executive committee if the proxy holder is aware that the member, if present, would be required under subsection (1) to disclose the interest.
  - ‘(6) A proxy holder required under subsection (5) to disclose an interest in an issue must not vote as the proxy on a motion involving the issue.’

## **27 Insertion of new ss 129A and 129B**

After section 129—

*insert—*

### **‘129A Protection of executive committee members from liability**

- ‘(1) A member of the executive committee is not civilly liable for an act done or omission made in good faith and without negligence in performing the person’s role as a member of the committee.
- ‘(2) In this section—  
*act done or omission made* does not include the publication of defamatory matter as mentioned in section 129B(1).

### **‘129B Protection of body corporate and executive committee from liability for defamation**

- ‘(1) This section applies if—
  - (a) the executive committee publishes required material for a general meeting of the primary thoroughfare body corporate; and
  - (b) the required material contains defamatory matter.

[s 27]

---

‘(2) Each of the following is not liable for defamation because of the publication—

- (a) the primary thoroughfare body corporate;
- (b) the committee, or a member of the committee, other than a member of the committee who submitted the document containing the defamatory matter.

‘(3) In this section—

*member of the committee* includes the body corporate manager acting under a delegation under section 130(2).

*prescribed motion* means any of the following—

- (a) a motion to give a member of the executive committee a notice under section 175B(1);
- (b) a motion mentioned in section 175C(2)(a) to remove a member of the executive committee from office;
- (c) a motion to give a letting agent a code contravention notice;
- (d) a motion to require a letting agent to transfer the letting agent’s management rights for an approved scheme or part of an approved scheme under section 175N;
- (e) a motion to terminate a person’s appointment as a body corporate manager, engagement as a service contractor or authorisation as a letting agent under section 175Y.

*required material*, for a general meeting of the primary thoroughfare body corporate, means any of the following required under this Act to be published for the meeting—

- (a) a prescribed motion submitted other than by or for the committee for the general meeting;
- (b) the substance of a prescribed motion mentioned in paragraph (a);
- (c) notice of a prescribed motion mentioned in paragraph (a) or another document required to accompany the motion, prepared by the submitter of the motion.’.



---

**28 Amendment of s 130 (Primary thoroughfare body corporate manager)**

- (1) Section 130(1), ‘subsection (3)’—

*omit, insert—*

‘subsections (3), (5), (6) and (7)’.

- (2) Section 130(6)—

*renumber* as section 130(8).

- (3) Section 130(5)—

*omit, insert—*

- ‘(5) The term of appointment of the body corporate manager (after allowing for any rights or options of extension or renewal, whether provided for in the instrument of appointment or subsequently agreed to) must not be longer than 3 years.

*Example—*

The appointment of a body corporate manager begins on 1 January 2009 and is for a term of 3 years. The appointment can not end later than 31 December 2011.

- ‘(6) If the term of appointment purports to be longer than 3 years, it is taken to be 3 years.

- ‘(7) To remove any doubt, it is declared that at the end of the term of appointment of a person as the body corporate manager—

(a) the appointment expires; and

(b) the person can not act again as the body corporate manager without a new appointment.’.

**29 Insertion of new pt 8, div 1A**

Part 8—

*insert—*

[s 29]

---

**‘Division 1A            Proxies for principal bodies  
                              corporate at general meetings of  
                              primary thoroughfare bodies  
                              corporate**

**‘133A Application of div 1A**

‘This division applies to the appointment and use of a proxy to represent a principal body corporate that is a member of a primary thoroughfare body corporate at a general meeting of the primary thoroughfare body corporate.

**‘133B Appointment [SM, s 107]**

- ‘(1) Subject to subsection (2), the principal body corporate may appoint a proxy to act for the body corporate at the general meeting.
- ‘(2) The appointment of a proxy is effective only if the principal body corporate or the holder of the proxy gives, by hand, post or facsimile, a properly completed proxy form to the secretary of the primary thoroughfare body corporate before—
- (a) the start of the meeting where the proxy is to be exercised; or
  - (b) if the primary thoroughfare body corporate has fixed an earlier time by which proxies must be given (that can not, however, be earlier than 24 hours before the time fixed for the meeting)—the earlier time.

**‘133C Form of proxy [SM, s 108]**

‘A proxy under this division—

- (a) must be in the approved form; and
- (b) must be in the English language; and
- (c) can not be irrevocable; and

- 
- (d) can not be transferred by the holder of the proxy to a third person; and
  - (e) lapses at the end of the primary thoroughfare body corporate's financial year or at the end of a shorter period stated in the proxy; and
  - (f) may be given by any person who has the right to vote at a general meeting; and
  - (g) subject to the limitations contained in this division, may be given to any individual; and
  - (h) must appoint a named individual.

#### **'133D Use of proxy [SM, s 109]**

- '(1) A member of the primary thoroughfare body corporate who is the proxy for the principal body corporate may vote both in the member's own right and also as proxy of the principal body corporate.
- '(2) A vote by proxy must not be exercised on behalf of the principal body corporate at the general meeting—
  - (a) if the person appointed to represent the principal body corporate under section 103(1) is personally present at the meeting, unless the person consents at the meeting; or
  - (b) on a particular motion, if a written or electronic vote has been exercised on the motion on behalf of the principal body corporate; or
  - (c) on a ballot for the election of a member of the executive committee, or for otherwise choosing a member of the executive committee; or
  - (d) for voting for a special resolution prohibiting, wholly or partly, the use of proxies at executive committee meetings or general meetings; or
  - (e) for voting for a majority resolution; or
  - (f) on a motion approving—

[s 29]

---

- (i) the appointment, engagement or authorisation of a person as the body corporate manager, a service contractor or a letting agent; or
    - (ii) the amendment or termination of an appointment, engagement or authorisation mentioned in subparagraph (i); or
  - (g) on a motion decided by secret ballot.
- ‘(3) A proxy may be exercised by—
- (a) the proxy holder voting in a show of hands at a general meeting; or
  - (b) the proxy holder completing a written or electronic vote on a motion before the start of, or at, the general meeting.

### **‘133E Special provisions about proxy use [SM, s 110]**

- ‘(1) The principal body corporate can not be prevented by contract from exercising a vote at the general meeting, and can not be required by contract to make someone else the body corporate’s proxy for voting at the general meeting.
- ‘(2) A proxy can not be exercised for the principal body corporate by—
- (a) the original owner of an initial lot or secondary lot; or
  - (b) a body corporate manager for—
    - (i) the primary thoroughfare body corporate; or
    - (ii) the principal body corporate; or
    - (iii) a subsidiary body corporate of the primary thoroughfare body corporate or principal body corporate; or
  - (c) an associate of a person mentioned in paragraph (a) or (b), unless the associate is 1 of the proprietors constituting a subsidiary body corporate of the principal body corporate.

---

**‘133F Offence [SM, s 111]**

‘A person must not exercise a proxy, or otherwise purport to vote on behalf of the principal body corporate, at the general meeting of the primary thoroughfare body corporate knowing that the person does not have the right to exercise the proxy or otherwise vote on behalf of the principal body corporate.

Maximum penalty—100 penalty units.’

**30 Amendment of s 138 (Interpretation)**

(1) Section 138—

*insert—*

‘***nominee***, of a member of a principal body corporate, see section 140(1).’

(2) Section 138, definition *special resolution*, ‘*special resolution means*’—

*omit, insert—*

‘***special resolution***, for a general meeting of a principal body corporate, means’.

**31 Replacement of s 140 (Member’s nominee)**

Section 140—

*omit, insert—*

**‘140 Member’s nominee**

‘(1) This section applies to a member of a principal body corporate for appointing a person (a ***nominee***) to represent and vote on behalf of the member at meetings of the principal body corporate.

‘(2) A subsidiary body corporate of the principal body corporate—

(a) must appoint a nominee at its annual general meeting;  
and

(b) otherwise, may appoint a nominee from time to time.

[s 31]

---

- ‘(3) A member of the principal body corporate, other than a subsidiary body corporate, may appoint a nominee from time to time.
- ‘(4) Subject to section 140A, a nominee appointed by a subsidiary body corporate must be a member of the subsidiary body corporate.
- ‘(5) The appointment of a nominee has no effect until written notice of the appointment is received by the secretary of the principal body corporate.
- ‘(6) A nominee appointed by a subsidiary body corporate must represent the subsidiary body corporate—
  - (a) in the way the subsidiary body corporate directs; and
  - (b) subject to subparagraph (a), in a way that is in the best interests of the subsidiary body corporate.
- ‘(7) The appointment of a nominee for a member ends when the first of the following happens—
  - (a) the end of 1 year after the appointment;
  - (b) the secretary of the principal body corporate receives written notice of—
    - (i) the cancellation of the nominee’s appointment; or
    - (ii) the appointment of another nominee for the member.
- ‘(8) A written notice under subsection (5) or (7)(b) must be signed—
  - (a) for an appointment or cancellation made by a subsidiary body corporate—by the chairperson and secretary of the subsidiary body corporate; or
  - (b) otherwise—by the member.

**‘140A When original owner can not be nominee for subsidiary body corporate**

- ‘(1) This section applies if more than 50% of the lots created by the registration of a group titles plan or building units plan

---

subdividing a secondary lot are no longer owned by the original owner of the secondary lot.

- ‘(2) The subsidiary body corporate created by the registration of the plan can not appoint as its nominee—
- (a) the original owner; or
  - (b) an associate (an *ineligible associate*) of the original owner who is not 1 of the proprietors constituting the subsidiary body corporate.
- ‘(3) If the original owner or an ineligible associate of the original owner is already a nominee for the subsidiary body corporate—
- (a) a general meeting of the subsidiary body corporate must be held within 2 months; and
  - (b) if it is not sooner ended, the owner’s or associate’s appointment as the nominee ends at the next general meeting of the subsidiary body corporate.’.

**32 Amendment of s 143 (Meetings of principal body corporate)**

Section 143(7), after ‘apply’—

*insert—*

‘and the application of the *Building Units and Group Titles Act 1980*, schedule 2, part 2 is subject to schedule 3 and schedule 7, definition *ordinary resolution*’.

**33 Amendment of s 148 (Miscellaneous powers of principal body corporate)**

Section 148—

*insert—*

‘(e) employ staff to perform its functions.’.

[s 34]

---

**34 Amendment of s 151 (Duties of principal body corporate)**

Section 151(1)(e)—

*omit, insert—*

‘(e) keep—

- (i) for at least 10 years after their creation or receipt by or for the principal body corporate—
  - (A) minutes of its meetings, including particulars of motions passed at the meetings; and
  - (B) proper books of account for amounts received or paid by the principal body corporate showing the items for which the amounts were received or paid; and
- (ii) for at least 2 years after their creation or receipt by or for the principal body corporate—voting tally sheets or other records showing votes for motions and election ballots related to its meetings; and’.

**35 Amendment of s 158 (Constitution of executive committee)**

(1) Section 158(4), ‘3 members’—

*omit, insert—*

‘5 members’.

(2) Section 158(6)—

*omit, insert—*

‘(6) If there are more than 5 members of the principal body corporate, the executive committee must consist of at least 5 persons and not more than the number of members of the principal body corporate, as decided by the principal body corporate.’.

(3) Section 158(7), ‘(if any)’—

*omit.*

(4) Section 158(7), ‘more than 3’—



*omit, insert—*

‘more than 5’.

(5) Section 158(8)—

*omit, insert—*

‘(7A) The election of the chairperson, secretary, treasurer and any other members of the executive committee at a general meeting of the principal body corporate must be conducted under schedule 3.

‘(8) A person is eligible for election as chairperson, secretary or treasurer, or as another member of the executive committee, only if the person—

(a) is an individual who is—

(i) a member of the principal body corporate; or

(ii) a nominee of a member of the principal body corporate; and

(b) does not owe a relevant body corporate debt in relation to a lot or lots owned by the person.’.

### **36 Insertion of new s 158A**

After section 158—

*insert—*

#### **‘158A Code of conduct for voting members of executive committee**

‘(1) The code of conduct in schedule 4 applies to each person (a *voting member*) who is—

(a) a member of the executive committee; and

(b) entitled to vote at general meetings of the principal body corporate.

‘(2) On becoming a voting member of the executive committee, the person is taken to have agreed to comply with the code of conduct.’.

[s 37]

---

**37 Amendment of s 159 (Vacation of office of member of executive committee)**

(1) Section 159(1)(i)—

*renumber* as section 159(1)(j).

(2) Section 159(1)—

*insert—*

‘(i) if the person is removed from office by ordinary resolution of the principal body corporate under division 5; or’.

**38 Insertion of new s 161A**

After section 161—

*insert—*

**‘161A Conflict of interest of executive committee member [SM, s 53]**

- ‘(1) A member of the executive committee must disclose to a meeting of the committee the member’s direct or indirect interest in an issue being considered, or about to be considered, by the committee if the interest could conflict with the appropriate performance of the member’s duties about the consideration of the issue.
- ‘(2) If a member required under subsection (1) to disclose an interest in an issue is a voting member of the committee, the member is not entitled to vote on a motion involving the issue.
- ‘(3) A person who holds the proxy of a member of the committee must disclose to a meeting of the committee the proxy holder’s direct or indirect interest in an issue being considered, or about to be considered, by the committee if the interest could conflict with the appropriate performance of the proxy holder’s duties about the consideration of the issue.
- ‘(4) A proxy holder required under subsection (3) to disclose an interest in an issue must not vote as the proxy on a motion involving the issue.

- 
- ‘(5) A person who holds the proxy of a member of the committee must disclose to a meeting of the committee the member’s direct or indirect interest in an issue being considered, or about to be considered, by the committee if the proxy holder is aware that the member, if present, would be required under subsection (1) to disclose the interest.
- ‘(6) A proxy holder required under subsection (5) to disclose an interest in an issue must not vote as the proxy on a motion involving the issue.’.

### **39 Insertion of new ss 164A and 164B**

After section 164—

*insert—*

#### **‘164A Protection of executive committee members from liability**

- ‘(1) A member of the executive committee is not civilly liable for an act done or omission made in good faith and without negligence in performing the person’s role as a member of the committee.
- ‘(2) In this section—
- act done or omission made* does not include the publication of defamatory matter as mentioned in section 164B(1).

#### **‘164B Protection of body corporate and executive committee from liability for defamation**

- ‘(1) This section applies if—
- (a) the executive committee publishes required material for a general meeting of the principal body corporate; and
  - (b) the required material contains defamatory matter.
- ‘(2) Each of the following is not liable for defamation because of the publication—
- (a) the principal body corporate;

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- (b) the committee, or a member of the committee, other than a member of the committee who submitted the document containing the defamatory matter.

‘(3) In this section—

*member of the committee* includes the body corporate manager acting under a delegation under section 165(2).

*prescribed motion* means any of the following—

- (a) a motion to give a member of the executive committee a notice under section 175B(1);
- (b) a motion mentioned in section 175C(2)(a) to remove a member of the executive committee from office;
- (c) a motion to give a letting agent a code contravention notice;
- (d) a motion to require a letting agent to transfer the letting agent’s management rights for an approved scheme or part of an approved scheme under section 175N;
- (e) a motion to terminate a person’s appointment as a body corporate manager, engagement as a service contractor or authorisation as a letting agent under section 175Y.

*required material*, for a general meeting of the principal body corporate, means any of the following required under this Act to be published for the meeting—

- (a) a prescribed motion submitted other than by or for the executive committee for the general meeting;
- (b) the substance of a prescribed motion mentioned in paragraph (a);
- (c) notice of a prescribed motion mentioned in paragraph (a) or another document required to accompany the motion, prepared by the submitter of the motion.’.

#### **40 Amendment of s 165 (Principal body corporate manager)**

(1) Section 165(1), ‘subsection (3)’—

*omit, insert—*

‘subsections (3), (5), (6) and (7)’.

(2) Section 165(6)—

*renumber* as section 165(8).

(3) Section 165(5)—

*omit, insert*—

‘(5) The term of appointment of the body corporate manager (after allowing for any rights or options of extension or renewal, whether provided for in the instrument of appointment or subsequently agreed to) must not be longer than 3 years.

*Example*—

The appointment of a body corporate manager begins on 1 January 2009 and is for a term of 3 years. The appointment can not end later than 31 December 2011.

‘(6) If the term of appointment purports to be longer than 3 years, it is taken to be 3 years.

‘(7) To remove any doubt, it is declared that at the end of the term of appointment of a person as the body corporate manager—

(a) the appointment expires; and

(b) the person can not act again as the body corporate manager without a new appointment.’.

#### **41 Insertion of new pt 8, divs 3A and 3B**

Part 8—

*insert*—

### **‘Division 3A Proxies for general meetings of principal bodies corporate**

#### **‘168A Application of div 3A**

‘This division applies to the appointment and use of a proxy to represent a member of a principal body corporate at a general meeting of the principal body corporate.

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**‘168B Appointment [SM, s 107]**

- ‘(1) Subject to subsections (2) to (5), a person entitled to vote at the general meeting may appoint a proxy to act for the person at the general meeting.
- ‘(2) The principal body corporate may by special resolution prohibit the use of proxies—
  - (a) for particular things described in the special resolution; or
  - (b) altogether.
- ‘(3) An appointment under subsection (1) has effect subject to the operation of a special resolution under subsection (2).
- ‘(4) A person must not hold—
  - (a) if there are 20 or more lots for which there are voting entitlements for the meeting—proxies greater in number than 5% of the lots; or
  - (b) if there are fewer than 20 lots for which there are voting entitlements for the meeting—more than 1 proxy.
- ‘(5) The appointment of a proxy is effective only if the person or the holder of the proxy gives, by hand, post or facsimile, a properly completed proxy form to the secretary of the principal body corporate before—
  - (a) the start of the meeting where the proxy is to be exercised; or
  - (b) if the principal body corporate has fixed an earlier time by which proxies must be given (that can not, however, be earlier than 24 hours before the time fixed for the meeting)—the earlier time.

**‘168C Form of proxy [SM, s 108]**

- ‘A proxy under this division—
  - (a) must be in the approved form; and
  - (b) must be in the English language; and

- 
- (c) can not be irrevocable; and
  - (d) can not be transferred by the holder of the proxy to a third person; and
  - (e) lapses at the end of the principal body corporate's financial year or at the end of a shorter period stated in the proxy; and
  - (f) may be given by any person who has the right to vote at a general meeting; and
  - (g) subject to the limitations contained in this division, may be given to any individual; and
  - (h) must appoint a named individual.

#### **'168D Use of proxy [SM, s 109]**

- '(1) A member of the principal body corporate (*member A*) who is the proxy for another member of the principal body corporate (*member B*) may vote both in member A's own right and also as proxy of member B.
- '(2) If at least 1 co-owner of a lot is present at the meeting, a proxy given by another co-owner of the lot is of no effect.
- '(3) A vote by proxy must not be exercised at the general meeting—
  - (a) if the member who gave the proxy is personally present at the meeting, unless the member consents at the meeting; or
  - (b) on a particular motion, if the person who gave the proxy has exercised a written or electronic vote on the motion; or
  - (c) on a ballot for the election of a member of the executive committee, or for otherwise choosing a member of the executive committee; or
  - (d) for voting for a special resolution prohibiting, wholly or partly, the use of proxies at executive committee meetings or general meetings; or

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- (e) for voting for a majority resolution; or
  - (f) on a motion approving—
    - (i) the appointment, engagement or authorisation of a person as the body corporate manager, a service contractor or a letting agent; or
    - (ii) the amendment or termination of an appointment, engagement or authorisation mentioned in subparagraph (i); or
  - (g) on a motion decided by secret ballot.
- ‘(4) A proxy may be exercised by—
- (a) the proxy holder voting in a show of hands at a general meeting; or
  - (b) the proxy holder completing a written or electronic vote on a motion before the start of, or at, the general meeting.

### **‘168E Special provisions about proxy use [SM, s 110]**

- ‘(1) A member of the principal body corporate can not be prevented by contract from exercising a vote at the general meeting, and can not be required by contract to make someone else the member’s proxy for voting at the general meeting.
- ‘(2) A proxy can not be exercised for someone else by—
- (a) the original owner of a secondary lot; or
  - (b) a body corporate manager for—
    - (i) the primary thoroughfare body corporate; or
    - (ii) the principal body corporate; or
    - (iii) a subsidiary body corporate of the primary thoroughfare body corporate or principal body corporate; or
  - (c) an associate of a person mentioned in paragraph (a) or (b), unless the associate is 1 of the proprietors



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constituting a subsidiary body corporate of the principal body corporate.

**‘168F Offence [SM, s 111]**

‘A person must not exercise a proxy, or otherwise purport to vote on behalf of another person, at the general meeting of the principal body corporate knowing that the person does not have the right to exercise the proxy or otherwise vote on behalf of the other person.

Maximum penalty—100 penalty units.

**‘Division 3B           Accounts and audit**

**‘168G Application of div 3B**

‘This division applies to a principal body corporate for preparing a statement of accounts under section 151(1)(f).

**‘168H Accounts [SM, s 154]**

- ‘(1) The statement of accounts may be prepared on a cash or accrual basis.
- ‘(2) If the accounts are prepared on a cash basis, they must include disclosure of the following—
  - (a) the total amounts paid to the fund established under section 151(1)(i) and the account established under section 151(1)(k);
  - (b) total contributions in arrears;
  - (c) balances for all financial institution accounts and investments;
  - (d) all outstanding receipts and payments.
- ‘(3) If the accounts are prepared on an accrual basis, they must show the assets and liabilities of the principal body corporate

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at the end of the financial year for which the accounts are prepared.

- ‘(4) The statement of accounts must include—
- (a) the corresponding figures for the previous financial year; and
  - (b) disclosure of all remuneration, allowances or expenses paid to members of the executive committee, identifying the total amounts paid to each member during the financial year under the following categories—
    - (i) remuneration or allowances;
    - (ii) expenses, split up into travelling, accommodation, meal and other expenses.
- ‘(5) A copy of the statement of accounts must accompany the notice of the annual general meeting first happening after the end of the financial year for which the accounts are prepared.

**‘168I Audit [SM, s 155]**

- ‘(1) The principal body corporate must have its statement of accounts for each financial year of the body corporate audited by an auditor.
- ‘(2) The auditor to be appointed must be agreed to by ordinary resolution of the principal body corporate.
- ‘(3) The motion for agreeing to the auditor to be appointed—
- (a) must be included in the agenda for the general meeting at which the motion is to be considered; and
  - (b) must include the name of the auditor proposed to be appointed.
- ‘(4) Also, the body corporate may, by ordinary resolution—
- (a) resolve to have its accounting records audited for a particular period or a particular project; and
  - (b) appoint an auditor for the audit.

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- ‘(5) A member of the executive committee, the body corporate manager, or an associate of a member of the executive committee or body corporate manager, can not be appointed to audit the accounting records or the statement of accounts of the principal body corporate.
- ‘(6) On finishing an audit of the principal 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 principal body corporate’s financial affairs; and
  - (b) if the statement of accounts does not give a true and fair view of the principal body corporate’s financial affairs—identifying the deficiencies in the statement.
- ‘(7) A copy of the auditor’s certificate must accompany the notice of the next annual general meeting held after the certificate is given.
- ‘(8) In this section—
- auditor*** means—
- (a) a person who is a registered company auditor; or
  - (b) a person who—
    - (i) is a member of—
      - (A) CPA Australia and entitled to use the letters ‘CPA’ or ‘FCPA’; or
      - (B) the Institute of Chartered Accountants in Australia and entitled to use the letters ‘CA’ or ‘FCA’; or
      - (C) the National Institute of Accountants and entitled to use the letters ‘MNIA’, ‘FNIA’, ‘PNA’ or ‘FPNA’; and
    - (ii) has a total of 2 years auditing experience, whether or not continuous.’.

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**42 Amendment of s 173 (Application of div 3 to expanded principal body corporate)**

- (1) Section 173, heading, ‘div 3’—  
*omit, insert—*  
**‘particular provisions’.**
- (2) Section 173, ‘Division 3 applies’—  
*omit, insert—*  
**‘Divisions 3, 3A, 3B and 5 apply’.**

**43 Insertion of new pt 8, div 5 and new pt 8A**

Part 8—  
*insert—*

**‘Division 5 Removal from office of voting members of executive committees for breach of code of conduct**

**‘175A Application of div 5**

‘This division applies to a primary thoroughfare body corporate or principal body corporate for removing a voting member of its executive committee for a breach of the code of conduct.

**‘175B Notice for breach of code of conduct [SM, s 34]**

- ‘(1) If the body corporate believes a voting member of its executive committee has breached the code of conduct for the member, the body corporate may decide, by ordinary resolution, to give the member a written notice stating each of the following—
- (a) that the body corporate believes the member has breached a stated provision of the code of conduct;

- 
- (b) details sufficient to identify the breach in not more than 600 words;
  - (c) that the member may give any other member of the body corporate, within the stated period of at least 21 days after the member is given the notice, a written response to the notice in not more than 600 words;
  - (d) that, if asked by the member, the body corporate will pay the member all postage charges and copying expenses reasonably incurred by the member in giving a written response under paragraph (c) to any other member of the body corporate;
  - (e) that the body corporate is to consider a motion to remove the member from office for the breach at the next general meeting of the body corporate called after the period mentioned in paragraph (c) ends.
- ‘(2) If asked by the member, the body corporate must pay the member all postage charges and copying expenses reasonably incurred by the member in giving a written response under subsection (1)(c) to any other member of the body corporate.

**‘175C Removal of voting member at general meeting  
[SM, s 35]**

- ‘(1) This section applies if—
- (a) the body corporate gives a voting member of its executive committee a notice under section 175B(1); and
  - (b) the period mentioned in section 175B(1)(c) for the notice has ended.
- ‘(2) The body corporate must—
- (a) include on the agenda of the next general meeting of the body corporate, called after the period mentioned in section 175B(1)(c) ends, a motion to remove the member from office for breaching the code of conduct; and

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- (b) attach to the agenda a copy of—
  - (i) the notice; and
  - (ii) if the body corporate has received a response from the member under section 175B(1)(c)—the response.
- ‘(3) The member may be removed from office, by ordinary resolution of the body corporate, at the next general meeting.

## ‘Part 8A                      **Conduct of body corporate managers, service contractors and letting agents**

### ‘Division 1                      **Preliminary**

#### ‘175D Definitions for pt 8A

‘In this part—

*caretaking service contractor*, for an approved scheme or part of an approved scheme, means a service contractor for the approved scheme or part who is also—

- (a) a letting agent for the approved scheme or part; or
- (b) an associate of the letting agent.

*letting agent authorisation*, for a letting agent, means an authorisation given by a primary thoroughfare body corporate or principal body corporate to the letting agent to conduct a letting agent business for an approved scheme or part of an approved scheme.

*management rights*, of a letting agent for an approved scheme or part of an approved scheme, means—

- (a) the letting agent business for the approved scheme or part, including the letting agent’s authorisation; and

- 
- (b) the business conducted by the letting agent under a service contract for the approved scheme or part, including the service contract; and
  - (c) the letting agent's interest in a lot used for conducting a business mentioned in paragraph (a) or (b); and
  - (d) any right of the letting agent to use and occupy a part of the common property for a business mentioned in paragraph (a) or (b).

**reviewable terms**, for a service contract, means the terms of the contract that provide for—

- (a) the functions and powers of the relevant letting agent as a service contractor; or
- (b) the remuneration payable to the relevant letting agent as a service contractor.

**review advice**, about a service contract, means written advice about whether the contract's reviewable terms—

- (a) are currently fair and reasonable; and
- (b) if the reviewable terms are not currently fair and reasonable—how the reviewable terms should be changed to ensure they are fair and reasonable.

**service contract** means a contract entered into with a person for the engagement of the person as a service contractor for an approved scheme or part of an approved scheme.

### **'175E Meaning of *financier* for a letting agent's contract**

- '(1) A person is a ***financier*** for a contract under which a letting agent is authorised by a body corporate if the letting agent and the person give written notice signed by each of them to the body corporate that the person is a financier for the contract.
- '(2) A person stops being a ***financier*** for the contract if the person gives the body corporate a written notice withdrawing the notice given under subsection (1).

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- ‘(3) A notice under subsection (2) may be given without the letting agent’s agreement.
- ‘(4) However, a person is a *financier* for the contract only if—
  - (a) the person is a financial institution; or
  - (b) the person, in the ordinary course of the person’s business, supplies, or might reasonably be expected to supply, finance for business acquisitions, using charges over contracts as the whole or part of the person’s security for supplying the finance; or
  - (c) at the time the person supplied finance for a business acquisition using a charge over the contract as the whole or part of the person’s security, the person was a person to whom paragraph (b) would have applied.

#### ‘175F Meaning of *letting agent* and *letting agent business*

- ‘(1) A person is a *letting agent* for an approved scheme or part of an approved scheme if the person is authorised by the primary thoroughfare body corporate or principal body corporate to conduct a letting agent business for the approved scheme or part.
- ‘(2) A person conducts a *letting agent business* for an approved scheme or part of an approved scheme if—
  - (a) the person conducts, subject to the *Property Agents and Motor Dealers Act 2000*, the business of acting as the agent of the owners of 1 or more lots included in the approved scheme or part; and
  - (b) the owners choose to use the person’s services for securing, negotiating or enforcing (including collecting rents or tariffs for) leases or other occupancies of lots included in the approved scheme or part.
- ‘(3) It is not relevant to the identification of a person as a letting agent under this section that the person also conducts an ancillary business or other activity.



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*Examples of ancillary businesses or activities—*

video hire, linen hire, agency for tour operator

### **‘175G Meaning of *service contractor* for approved scheme or part**

‘A person is a *service contractor* for an approved scheme or part of an approved scheme if—

- (a) the person is engaged by the primary thoroughfare body corporate or principal body corporate to supply services to the body corporate for the benefit of the common property or lots included in the approved scheme or part; and
- (b) the person is not an employee of the primary thoroughfare body corporate or principal body corporate; and
- (c) the services do not include administrative services; and
- (d) the term of the engagement is at least 1 year.

*Examples of services that might be provided by a service contractor—*

caretaking services, pool cleaning services

## **‘Division 2                    Codes of conduct**

### **‘175H Code of conduct for body corporate manager and caretaking service contractor**

‘(1) The code of conduct in schedule 5 applies to—

- (a) a body corporate manager appointed by a primary thoroughfare body corporate or principal body corporate in performing obligations under the person’s appointment; and
- (b) a caretaking service contractor engaged by the primary thoroughfare body corporate or principal body corporate for an approved scheme or part of an approved scheme

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in performing obligations under the person's engagement.

- '(2) Compliance with the provisions of the code is taken to be a condition of the instrument of appointment or the contract providing for the person's engagement.
- '(3) If there is an inconsistency between a provision of the code and a provision in the instrument of appointment or contract, the provision of the code prevails.
- '(4) In this section—  
*instrument of appointment*, in relation to a person's appointment as a body corporate manager, includes a contract or other document relating to the appointment.

### **'175I Code of conduct for letting agent**

'The code of conduct in schedule 6 applies to a letting agent authorised by a primary thoroughfare body corporate or principal body corporate to conduct a letting agent business for an approved scheme or part of an approved scheme.

## **'Division 3 Required transfer of management rights for contravention of code of conduct**

### **'Subdivision 1 Preliminary**

#### **'175J Application of div 3**

- '(1) This division applies for transferring the management rights of a letting agent authorised by a primary thoroughfare body corporate or principal body corporate to conduct a letting agent business for an approved scheme or a part of an approved scheme.
- '(2) However, this division does not apply to a letting agent for conducting a letting agent business or a part of a letting agent

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business for an approved scheme or part of an approved scheme for which a serviced strata arrangement or scheme under the Corporations Act is in operation.

### **‘175K Effect of div 3 on other provisions**

‘The provisions of a letting agent authorisation or service contract providing for its transfer or termination are void to the extent the provisions are inconsistent with this division.

## **‘Subdivision 2 Transfer of management rights**

### **‘175L Code contravention notice**

- ‘(1) The body corporate must, if required by an ordinary resolution decided by secret ballot, give the letting agent a signed notice under this section (a *code contravention notice*).
- ‘(2) The code contravention notice must state—
  - (a) that the body corporate believes the letting agent has contravened, or is contravening, a provision of the code of conduct for—
    - (i) letting agents; or
    - (ii) body corporate managers and caretaking service contractors; and
  - (b) the provision the body corporate believes has been, or is being, contravened; and
  - (c) details sufficient to identify the contravention; and
  - (d) a reasonable period within which the letting agent must remedy the contravention; and
  - (e) that the body corporate may, without further notice, give the letting agent a transfer notice if—
    - (i) the letting agent does not comply with the code contravention notice; or

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- (ii) the body corporate reasonably believes the letting agent, after being given the notice, has contravened a provision of a code mentioned in paragraph (a).

### **‘175M Grounds for requiring transfer**

‘The body corporate may require the transfer of the letting agent’s management rights under this division only if the requirement is based on either of the following grounds—

- (a) the letting agent failed to comply with a code contravention notice;
- (b) the body corporate reasonably believes the letting agent, after being given the notice, contravened a provision of the code of conduct for—
  - (i) letting agents; or
  - (ii) body corporate managers and caretaking service contractors.

### **‘175N Requirement for transfer**

‘The letting agent must transfer the letting agent’s management rights for the approved scheme or part if—

- (a) a ground under section 175M exists for the body corporate to require the transfer; and
- (b) the body corporate—
  - (i) by majority resolution decided by secret ballot requires the transfer; and
  - (ii) gives written notice of the requirement (the *transfer notice*) to the letting agent.

### **‘175O Transfer—letting agent’s choice of transferee**

‘(1) The letting agent must transfer the management rights—

- (a) within the following period after the transfer notice is given to the letting agent—

- 
- (i) if section 175T does not apply—9 months;
    - (ii) if section 175T applies—11 months; and
  - (b) to a person, other than an associate of the letting agent, chosen by the letting agent and approved by the body corporate.
- ‘(2) For deciding whether to approve a person under subsection (1)(b), the body corporate—
- (a) must act reasonably and as quickly as practicable; and
  - (b) may have regard only to the person’s—
    - (i) character; and
    - (ii) financial standing; and
    - (iii) competence, qualifications and experience.
- ‘(3) However, the body corporate must not—
- (a) unreasonably withhold approval of the person; or
  - (b) require or receive a fee or other consideration for approving the person, other than reimbursement for legal expenses reasonably incurred by the body corporate in relation to a request for the approval.
- Maximum penalty for subsection (3)—50 penalty units.
- ‘(4) If the letting agent transfers the management rights to a person who is not approved by the body corporate, the transfer is of no effect.

### **‘175P Giving financier copy of transfer notice**

‘When the body corporate gives the transfer notice to the letting agent, the body corporate must give a copy of it to each person who is a financier for the contract under which the letting agent is authorised as the letting agent.

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**‘175Q Transfer—body corporate’s choice of transferee**

- ‘(1) If the letting agent does not transfer the management rights as required under section 175O, the letting agent must transfer the management rights—
  - (a) to a replacement letting agent chosen by the executive committee of the body corporate and named in a written notice given by the committee to the letting agent; and
  - (b) at the price stated in the notice; and
  - (c) within the period, of at least 2 months after the notice is given, stated in the notice.
  
- ‘(2) The price stated must be 1 of the following—
  - (a) the average of 2 valuations, obtained by the body corporate from 2 independent registered valuers, stating the value of the management rights;
  - (b) the highest bid for the management rights, excluding a bid by the letting agent or an associate of the letting agent, made at an auction—
    - (i) conducted at the request of the body corporate; and
    - (ii) of which at least 60 days notice was given;
  - (c) the highest amount tendered, excluding by tender by the letting agent or an associate of the letting agent, for the management rights after reasonable efforts made by the body corporate to market the management rights for at least 60 days.
  
- ‘(3) The letting agent must pay the body corporate, from the proceeds of the sale, the reasonable costs incurred by the body corporate under subsection (2).

*Note—*

If the letting agent does not transfer the management rights as required under this section, it is a ground for giving the letting agent a remedial action notice under section 175Y.

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### **‘175R Terms of service contract on transfer**

- ‘(1) This section applies to a service contract (the *transferred service contract*) transferred to a person (the *transferee*) under section 175O or 175Q.
- ‘(2) Unless the body corporate and transferee agree otherwise, the terms of the transferred service contract are—
  - (a) the terms applying to the service contract under subsection (3); or
  - (b) if subsection (3) does not apply—the terms applying to the service contract immediately before the transfer (the *existing terms*).
- ‘(3) The terms of the transferred service contract are the existing terms as changed under a review advice about the contract if—
  - (a) the review advice states how the contract’s reviewable terms should be changed to ensure they are fair and reasonable; and
  - (b) the body corporate gave the letting agent a copy of the review advice as required under section 175V(1).

### **‘Subdivision 3 Replacement of letting agent authorisation and service contract**

#### **‘175S Replacement of letting agent authorisation and service contract in particular circumstances**

- ‘(1) This section applies if the remainder of the term of the letting agent’s authorisation (the *transferred authorisation*), including any rights or options of extension or renewal, is less than 7 years when transferred to a person (the *transferee*) under this division.

*Example—*

A letting agent’s authorisation is given for a term of 5 years with 4 rights of renewal of 5 years each and 5 years have expired. The remainder of the term is therefore 20 years and this section does not apply.

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- ‘(2) On the transfer—
- (a) the transferred authorisation and any service contract (the *transferred service contract*) forming part of the transferred management rights terminate; and
  - (b) the body corporate must—
    - (i) authorise the transferee to conduct a letting agent business for the approved scheme or part; and
    - (ii) if a service contract formed part of the transferred management rights—engage the transferee as a service contractor.
- ‘(3) The authorisation and engagement must be given for a term of 9 years starting immediately after the transfer.
- ‘(4) Subject to subsection (3)—
- (a) the authorisation must be given on the terms applying to the transferred authorisation immediately before the transfer; and
  - (b) unless the body corporate and transferee agree otherwise, the engagement must be given on—
    - (i) the terms applying to the transferred service contract under subsection (5); or
    - (ii) if subsection (5) does not apply—the terms applying to the transferred service contract immediately before the transfer (the *existing terms*).
- ‘(5) The engagement must be given on the existing terms of the transferred service contract as changed under a review advice about the contract if—
- (a) the review advice states how the contract’s reviewable terms should be changed to ensure they are fair and reasonable; and
  - (b) the body corporate gave the letting agent a copy of the review advice as required under section 175V(1).



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## **‘Subdivision 4      Reviewing terms of letting agent’s service contract**

### **‘175T Reviewing terms of service contract**

- ‘(1) This section applies if—
- (a) the letting agent’s management rights include a service contract; and
  - (b) when the body corporate passes the majority resolution mentioned in section 175N, the body corporate also passes, by ordinary resolution, a motion (a *review motion*) that a review advice about the service contract be obtained.
- ‘(2) Within 1 month after the review motion is passed, the body corporate must obtain the review advice from an independent appropriate person.

*Example of an independent appropriate person—*

a person who, in the ordinary course of the person’s business, has knowledge of the functions and powers of service contractors and the remuneration for performing the functions and powers

- ‘(3) The review advice must be based on the review criteria stated in section 175U.
- ‘(4) This section applies to the contract even if the contract also provides for either or both of the following—
- (a) the letting agent’s engagement as a body corporate manager;
  - (b) the letting agent’s authorisation as a letting agent.

### **‘175U Review criteria**

- ‘(1) The review criteria are each of the following—
- (a) the appropriateness of the reviewable terms for achieving a fair and reasonable balance between the interests of the body corporate and the service contractor;

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- (b) whether the reviewable terms impose conditions that—
    - (i) are unreasonably difficult to comply with; or
    - (ii) are not necessary and reasonable for the protection of the legitimate interests of the body corporate or the service contractor;
  - (c) the consequences of complying with, or contravening, the reviewable terms and whether the consequences are unfairly harsh or beneficial to the body corporate or the service contractor;
  - (d) whether the reviewable terms are appropriate for the approved scheme;
  - (e) the term of the engagement as service contractor and the period of the term remaining.
- ‘(2) The review criterion mentioned in subsection (1)(d) is to be applied having regard, in particular, to the nature, features and characteristics of the approved scheme.

#### **‘175V Giving copy of review advice to letting agent and prospective buyer of management rights**

- ‘(1) Within 14 days after obtaining the review advice, the body corporate must give a copy of it to the letting agent.
- ‘(2) If requested by a prospective buyer of the letting agent’s management rights, the body corporate must give a copy of the review advice to the prospective buyer.

#### **‘Subdivision 5 Disputes about transfer of management rights**

##### **‘175W CCT jurisdiction**

‘A dispute about the transfer, under this division, of a letting agent’s management rights may be dealt with by the Commercial and Consumer Tribunal under the *Commercial and Consumer Tribunal Act 2003*.

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## **‘Division 4                    Disputes about contractual matters**

### **‘175X   CCT jurisdiction**

- ‘(1) This section applies to a dispute about a claimed or anticipated contractual matter about—
- (a) the appointment or engagement of a person as a body corporate manager or caretaking service contractor for an approved scheme or part of an approved scheme; or
  - (b) the authorisation of a person as a letting agent for an approved scheme or part of an approved scheme.
- ‘(2) A party to the dispute may apply under the *Commercial and Consumer Tribunal Act 2003* for an order of the Commercial and Consumer Tribunal to resolve the dispute.

## **‘Division 5                    Termination of appointment, engagement or authorisation**

### **‘175Y   Termination for failure to comply with remedial action notice [SM, s 131]**

- ‘(1) A primary thoroughfare body corporate or principal body corporate may terminate a person’s appointment as a body corporate manager or engagement as a service contractor if the person or, if the person is a corporation, a director of the corporation—
- (a) engages in misconduct, or is grossly negligent, in carrying out functions required under the appointment or engagement; or
  - (b) fails to carry out duties under the appointment or engagement; or
  - (c) contravenes—
    - (i) for a body corporate manager—the code of conduct for body corporate managers and caretaking service contractors; or

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- (ii) for a service contractor who is a caretaking service contractor—the code of conduct for body corporate managers and caretaking service contractors or the code of conduct for letting agents.
- ‘(2) Also, the body corporate may terminate a person’s authorisation as a letting agent if—
  - (a) the person or, if the person is a corporation, a director of the corporation—
    - (i) engages in misconduct, or is grossly negligent, in carrying out obligations, if any, under the authorisation; or
    - (ii) fails to carry out duties under the authorisation; or
    - (iii) contravenes the code of conduct for letting agents or, for a caretaking service contractor, the code of conduct for body corporate managers and caretaking service contractors; or
  - (b) the person—
    - (i) has been given a transfer notice requiring transfer of the person’s management rights; and
    - (ii) has not transferred the management rights as required under section 175Q.
- ‘(3) The body corporate may act under subsection (1) or (2) only if—
  - (a) the body corporate has given the manager, contractor or agent a remedial action notice; and
  - (b) the manager, contractor or agent fails to comply with the remedial action notice within the period stated in the notice; and
  - (c) the termination is approved by ordinary resolution of the body corporate; and
  - (d) for the termination of a person’s engagement as a caretaking service contractor or authorisation as a

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letting agent—the motion to approve the termination is decided by secret ballot.

‘(4) In this section—

**remedial action notice** means a written notice stating each of the following—

- (a) that the body corporate believes the person to whom the notice is given has acted—
  - (i) for a body corporate manager or service contractor—in a way mentioned in subsection (1); or
  - (ii) for a letting agent—in a way mentioned in subsection (2);
- (b) details of the action sufficient to identify—
  - (i) the misconduct or gross negligence the body corporate believes has happened; or
  - (ii) the duties the body corporate believes have not been carried out; or
  - (iii) the provision of the code of conduct the body corporate believes has been contravened; or
  - (iv) if subsection (2)(b) applies, the contravention of the code contravention notice or the relevant provision of the code of conduct that was the ground for requiring the transfer of the person’s management rights under section 175M;
- (c) that the person must, within the reasonable period of at least 14 days stated in the notice—
  - (i) remedy the misconduct or gross negligence; or
  - (ii) carry out the duties; or
  - (iii) remedy the contravention;
- (d) that if the person does not comply with the notice in the stated period, the body corporate may terminate the person’s appointment, engagement or authorisation as a

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body corporate manager, service contractor or letting agent.’.

**44 Amendment of s 177 (Minor non-compliance with development control by-laws)**

(1) Section 177(1), ‘that member of’—

*omit, insert—*

‘an affected person with’.

(2) Section 177(2), ‘is’—

*omit, insert—*

‘must be’.

(3) Section 177—

*insert—*

‘(4) In this section—

***affected person*** means any of the following—

(a) the member of the principal body corporate making the request under subsection (1);

(b) the proprietor, mortgagee in possession, lessee or occupier of the land or lot to which the request relates.’.

**45 Replacement of s 179A (Dealing with disputes)**

Section 179A—

*omit, insert—*

**‘Division 1 Resolution of particular disputes**

**‘179A Dealing with particular disputes under Building Units and Group Titles Act 1980**

‘(1) Subject to subsection (2), a dispute about the operation of this Act or the rights and obligations of persons under this Act

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may be dealt with under the *Building Units and Group Titles Act 1980*, part 5.

- ‘(2) However, this section—
- (a) does not apply to a dispute or matter mentioned in section 175W, 175X or 179B; and
  - (b) is subject to section 179C.

**‘179B Dealing with matter relating to development control by-law**

- ‘(1) The Commercial and Consumer Tribunal may deal with a matter relating to—
- (a) the application of a development control by-law for an approved scheme to a person mentioned in subsection (2)(b) or (c); or
  - (b) a contravention or alleged contravention of a development control by-law for an approved scheme.
- ‘(2) Each of the following persons may apply to the tribunal to deal with a matter under subsection (1) if the person has standing to make the application—
- (a) the principal body corporate for the approved scheme;
  - (b) a subsidiary body corporate of the principal body corporate;
  - (c) a proprietor or occupier of, or a person having an estate or interest in, a lot in a residential precinct in the approved scheme.
- ‘(3) For subsection (2), a person has standing to make the application if the person is directly and materially affected by the matter to which the application relates.

*Example—*

A proprietor of a lot in a residential precinct in an approved scheme alleges the amenity of the lot has been, or will be, adversely affected by

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development authorised under a development control by-law in an adjoining residential precinct in the scheme.

‘(4) This section is subject to section 179C.

### **‘179C Internal dispute resolution processes to be used before application**

‘(1) This section applies to—

- (a) a referee for deciding an application for an order under the *Building Units and Group Titles Act 1980*, part 5 relating to a dispute about a matter mentioned in section 179A; and
- (b) the Commercial and Consumer Tribunal for deciding an application about a matter mentioned in section 179B.

‘(2) The referee or tribunal must not decide the application unless the referee or tribunal is satisfied the applicant has made reasonable attempts to resolve the dispute or matter by using internal dispute resolution processes.

*Examples of internal dispute resolution processes—*

- the parties to a dispute communicating with each other
- the applicant writing to the executive committee for the relevant principal body corporate
- the applicant causing a motion to be presented for consideration at a general meeting of the relevant principal body corporate

## **‘Division 2 Other matters**

### **‘179D Associates**

‘(1) For this Act, 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.



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- ‘(2) This section applies to relationships of the following types—
- (a) marriage or de facto partnership;
  - (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) business 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 corporation and executive officer of the corporation;
  - (h) the relationship of a corporation and a person who is in a position to control or substantially influence the corporation’s conduct.
- ‘(3) Despite subsection (2)(e) and (f), the owner of an initial lot, secondary lot or a lot on a group titles plan or building units plan and a letting agent for an approved scheme or part of an approved scheme are not associated merely because of their relationship as owner and letting agent.
- ‘(4) In this section—
- executive officer*, of a corporation, means a person who is concerned with, or takes part in, the corporation’s management, whether or not the person is a director or the person’s position is given the name of executive officer.’.

## 46 Insertion of new pt 12

After section 183—

*insert—*

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## **‘Part 12                      Transitional provisions for Resorts and Other Acts Amendment Act 2009**

### **‘Division 1                      Preliminary**

#### **‘184      Definitions for pt 12**

‘In this part—

*commencement* means the commencement of this section.

*effective day* means the day that is 6 months after the commencement.

### **‘Division 2                      Bodies corporate**

#### **‘185      Existing number of committee members may continue until effective day**

‘(1) This section applies if—

- (a) a primary thoroughfare body corporate or principal body corporate has more than 5 members; and
- (b) the number (the *existing number*) of members of the executive committee of the body corporate is less than 5.

‘(2) Despite section 123(5) or 158(6), the executive committee may continue to consist of the existing number of members.

‘(3) This section stops applying at the beginning of the effective day.

#### **‘186      Deferred application of particular provisions**

‘The following provisions do not apply until the effective day—

- (a) sections 123A and 158A and schedule 4;

(b) part 8, divisions 1A, 3A, 3B and 5.

*Editor's note—*

- sections 123A (Code of conduct for voting members of executive committee) and 158A (Code of conduct for voting members of executive committee) and schedule 4 (Code of conduct for voting members of executive committees)
- part 8, divisions 1A (Proxies for principal bodies corporate at general meetings of primary thoroughfare bodies corporate), 3A (Proxies for general meetings of principal bodies corporate), 3B (Accounts and audit) and 5 (Removal from office of voting members of executive committees for breach of code of conduct)

**‘187 Application of code of conduct for existing voting members of executive committees**

- ‘(1) This section applies to a person who, before the effective day, was a voting member of the executive committee of a primary thoroughfare body corporate or principal body corporate.
- ‘(2) The code of conduct for voting members of the executive committee applies to the person only in relation to acts done or omissions made on or after the effective day.

**‘188 Auditing accounts for first annual general meeting after effective day**

- ‘(1) This section applies if—
- (a) before the effective day—
- (i) a principal body corporate authorised a person to prepare a statement of accounts under section 151(1)(f) for adoption at the body corporate’s annual general meeting; and
- (ii) the person started to prepare the statement of accounts; and
- (b) the annual general meeting has not happened.
- ‘(2) Section 168I does not apply for auditing the statement of accounts for the period to which the authorisation relates.

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**‘189 End of appointment of original owner of secondary lot as nominee for subsidiary body corporate**

- ‘(1) This section applies if—
- (a) before the commencement—
    - (i) a subsidiary body corporate under a building units or group titles plan appointed as its nominee, under section 140, the original owner of the secondary lot subdivided by the plan or an ineligible associate of the original owner; and
    - (ii) the original owner ceased to own more than 50% of the lots; and
  - (b) immediately before the commencement, the original owner or associate was still the nominee for the subsidiary body corporate.
- ‘(2) Despite section 140A, the original owner’s or associate’s appointment as the nominee for the subsidiary body corporate ends when the first of the following happens—
- (a) the beginning of the effective day;
  - (b) the secretary of the principal body corporate receives a written notice under section 140(7)(b) of—
    - (i) the cancellation of the appointment; or
    - (ii) the appointment of another nominee for the subsidiary body corporate.
- ‘(3) In this section—
- ineligible associate* see section 140A(2)(b).
- subsidiary body corporate*, under a building units or group titles plan subdividing a secondary lot within a residential precinct, means the body corporate created by the registration of the plan.

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## **‘Division 3                      Body corporate managers, service contractors and letting agents**

### **‘190      Deferred application of particular provisions**

‘The following provisions do not apply until the effective day—

- (a) part 8A, divisions 2, 3, 4 and 5;
- (b) schedules 5 and 6.

*Editor’s note—*

- Part 8A (Conduct of body corporate managers, service contractors and letting agents), divisions 2 (Codes of conduct), 3 (Required transfer of management rights for contravention of code of conduct), 4 (Disputes about contractual matters) and 5 (Termination of appointment, engagement or authorisation)
- schedules 5 (Code of conduct for body corporate managers and caretaking service contractors) and 6 (Code of conduct for letting agents)

### **‘191      Application of code of conduct for existing managers and contractors**

‘(1) This section applies to a person who, before the effective day—

- (a) was appointed as the body corporate manager of a primary thoroughfare body corporate or principal body corporate; or
- (b) was engaged as a caretaking service contractor for an approved scheme or part of an approved scheme.

‘(2) The code of conduct for body corporate managers and caretaking service contractors applies to the person only in relation to acts done or omissions made on or after the effective day.

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**‘192 Application of code of conduct for existing letting agents**

- ‘(1) This section applies to a person who, before the effective day, was a letting agent for an approved scheme or part of an approved scheme.
- ‘(2) The code of conduct for letting agents applies to the person only in relation to acts done or omissions made on or after the effective day.

**‘193 Existing term of appointment for body corporate manager**

- ‘(1) This section applies if—
  - (a) before the commencement, a body corporate manager was appointed for—
    - (i) a primary thoroughfare body corporate under section 130; or
    - (ii) a principal body corporate under section 165; and
  - (b) the term of the appointment has not ended.
- ‘(2) The term of the appointment ends on the day provided for in the instrument of appointment.
- ‘(3) For subsection (2), the term of the appointment provided for in the instrument of appointment includes rights or options of extension or renewal provided for in the instrument of appointment.
- ‘(4) This section applies despite sections 130(5) and (6) and 165(5) and (6).’.

**47 Amendment of sch 2 (Dictionary)**

- (1) Schedule 2—

*insert—*

‘*associate*, of a person, means someone else with whom the person is associated under section 179D.

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**body corporate**, for schedule 3, see schedule 3, section 1.

**body corporate manager**—

- (a) of a primary thoroughfare body corporate—means a person appointed by the body corporate under section 130; or
- (b) of a principal body corporate—means a person appointed by the body corporate under section 165.

**candidate**, for schedule 3, see schedule 3, section 1.

**caretaking service contractor** see section 175D.

**code contravention notice** see section 175L(1).

**code of conduct** means—

- (a) for a voting member of the executive committee of a primary thoroughfare body corporate or principal body corporate—the code in schedule 4; or
- (b) for a body corporate manager or caretaking service contractor—the code in schedule 5; or
- (c) for a letting agent—the code in schedule 6.

**Commercial and Consumer Tribunal** means the tribunal of that name established under the *Commercial and Consumer Tribunal Act 2003*.

**eligibility category**, for schedule 3, see schedule 3, section 1.

**executive committee**, for schedule 3, see schedule 3, section 1.

**executive member**, for schedule 3, see schedule 3, section 1.

**financial year**—

- (a) for a primary thoroughfare body corporate, means a period in relation to which the body corporate is required under section 116(1)(f) to prepare a statement of accounts; or
- (b) for a principal body corporate, means a period in relation to which the body corporate is required under section 151(1)(f) to prepare a statement of accounts.

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***financier***, for a letting agent's contract, see section 175E.

***Integrated Planning Act*** means the *Integrated Planning Act 1997*.

***letting agent*** see section 175F(1).

***letting agent authorisation*** see section 175D.

***letting agent business*** see section 175F(2).

***majority resolution***, for a duly convened general meeting of a primary thoroughfare body corporate or principal body corporate, means a resolution on a motion—

- (a) for which only 1 written vote may be exercised, other than by proxy, for each lot mentioned in the relevant body corporate roll; and
- (b) that is passed only if the votes counted for the motion are more than 50% of the lots for which persons are entitled to vote on the motion.

***management rights***, of a letting agent for an approved scheme or part of an approved scheme, see section 175D.

***nominee***, for a member of a principal body corporate, see section 140(1).

***ordinary member***, for schedule 3, see schedule 3, section 1.

***ordinary resolution***, for a duly convened general meeting of a primary thoroughfare body corporate or principal body corporate, means a resolution that is passed by the members of the body corporate whose voting entitlements total more than 50% of the total of all voting entitlements recorded in the relevant body corporate roll.

***original owner***, of an initial or secondary lot that has been subdivided by a building unit or group titles plan, means the person who was the registered owner of the lot immediately before it was subdivided by the plan.

***relevant body corporate debt*** means a following amount owed by a person to a subsidiary body corporate—

- (a) a contribution or instalment of a contribution;



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- (b) a penalty for not paying a contribution or instalment of a contribution by the date for payment;
- (c) another amount associated with the ownership of a lot.

*Examples of another amount—*

- an annual payment for parking under an exclusive use by-law made by the subsidiary body corporate
- an amount owing to the subsidiary body corporate for lawn mowing services arranged by the subsidiary body corporate on behalf of the person

***reviewable terms***, for a service contract, see section 175D.

***review advice***, about a service contract, see section 175D.

***service contract*** see section 175D.

***service contractor***, for an approved scheme or part of an approved scheme, see section 175G.

***special resolution***—

- (a) for a general meeting of a primary thoroughfare body corporate, see section 101; or
- (b) for a general meeting of a principal body corporate, see section 138.

***subject land***, in relation to an application for amendment of an approved scheme under part 2, division 2, means each precinct, or other land within the site, to which the application relates.

***subsidiary body corporate***—

- (a) of, or in relation to, a primary thoroughfare body corporate, means any of the following bodies corporate that are members of the primary thoroughfare body corporate—
- (i) the principal body corporate;
  - (ii) a body corporate created by the registration of a building units plan or group titles plan; or
- (b) of, or in relation to, a principal body corporate, means a body corporate created by the registration of a building

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units plan or group titles plan that is a member of the principal body corporate.

*transfer notice*, for part 8A, see section 175N(b)(ii).

*voting member*—

- (a) of the executive committee of a primary thoroughfare body corporate—see section 123A(1); or
  - (b) of the executive committee of a principal body corporate—see section 158A(1).’
- (2) Schedule 2—  
*renumber* as schedule 7.

#### **48 Insertion of new schs 2–6**

After schedule 1—

*insert*—

### **‘Schedule 2 Requirements for notices of proposed scheme amendments**

section 10(2)

#### **‘1 Requirements for placing notice on subject land**

- ‘(1) This section applies for placing a notice under section 10(1)(b) on subject land.
- ‘(2) The notice must be—
  - (a) placed on, or within 1.5m of, the road frontage for the land; and
  - (b) mounted at least 300mm above ground level; and
  - (c) positioned so that it is visible from the road; and
  - (d) made of weatherproof material; and
  - (e) not less than 1200mm x 900mm.

- ‘(3) The lettering on the notice must be—
- (a) for lettering in a heading—at least 50mm in height and in a bold style; or
  - (b) for lettering in a subheading—at least 25mm in height and in a bold style; or
  - (c) for lettering not mentioned in paragraphs (a) and (b)—at least 25mm in height, of regular weight and in sentence case.
- ‘(4) Each sentence in the notice must start on a new line.
- ‘(5) If the land has more than 1 road frontage, a notice must be placed on each road frontage for the land.
- ‘(6) The primary thoroughfare body corporate must maintain the notice from the day it is placed on the land until the end of the notification period stated in the notice.
- ‘(7) In this section—
- road frontage***, for subject land, means—
- (a) the boundary between the land and any road adjoining the land; or
  - (b) if the only access to the land is across other land—the boundary between the other land and any road adjoining the other land at the point of access.

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## **‘Schedule 3      Election of executive committee members of body corporate**

sections 123(6A) and 158(7A)

### **‘1      Definitions for sch 3**

‘In this schedule—

*body corporate* means a primary thoroughfare body corporate or principal body corporate.

*candidate* see section 4(3)(a).

*eligibility category*, for a candidate, means the category of person mentioned in section 123(7) or 158(8) to which the candidate belongs.

*executive committee* means the executive committee of a primary thoroughfare body corporate or principal body corporate.

*executive member*, of an executive committee, means the chairperson, secretary or treasurer of the committee.

*ordinary member*, of an executive committee, means a member, other than an executive member, of the committee.

### **‘2      Election of members of executive committee [SM, s 15]**

- ‘(1) Unless otherwise provided under this schedule, the election of a member of the executive committee of a body corporate must be by ballot.

*Note—*

See, for example, section 7 (Election of ordinary members of executive committee).

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- ‘(2) A ballot for membership of the executive committee must be a secret ballot unless the body corporate decides by ordinary resolution that the election be held by open ballot.
  - ‘(3) The value of any vote able to be cast for a lot included in an approved scheme or a part of an approved scheme for choosing a member of the executive committee is the same as the value of the vote able to be cast for each other lot included in the approved scheme or part.

**‘3 Nomination procedures for election of executive committee other than at first annual general meeting [SM, s 16]**

- ‘(1) This section states how individuals are nominated for election at the body corporate’s annual general meeting, other than the first annual general meeting, as a voting member of the executive committee.
- ‘(2) The secretary must serve a notice on each member of the body corporate—
  - (a) inviting nomination for the members of the executive committee; and
  - (b) stating that a nominated person is not eligible to be a voting member of the executive committee if, when the members of the executive committee are chosen, the person owes a relevant body corporate debt in relation to a lot or lots owned by the person.
- ‘(3) The notice must be given at least 3 weeks before, but not earlier than 6 weeks before, the end of the body corporate’s financial year.
- ‘(4) Nominations must comply with section 4 and must be given to the secretary by the end of the body corporate’s financial year.
- ‘(5) As soon as practicable after receiving a nomination under this section from a candidate for election, the secretary must forward written notice to the candidate acknowledging the nomination has been received.

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#### **‘4 Requirements for nominations [SM, s 18]**

- ‘(1) Each member of the body corporate may nominate 1 person for election as a voting member of the executive committee.
- ‘(2) A nomination must be made by written notice and—
  - (a) if the nomination is from a member of the body corporate who is an individual nominating himself or herself—must be signed and dated by the member; or
  - (b) if the nomination is from a member of the body corporate other than a member to whom paragraph (a) applies—
    - (i) must be signed and dated by the nominated person; and
    - (ii) must be countersigned by the appropriate authorising person.
- ‘(3) A nomination must contain each of the following details—
  - (a) the family name and either the first given name or other name or abbreviation by which the nominated person (the *candidate*) is generally known;
  - (b) the position or positions the candidate is nominated for;
  - (c) the eligibility category for the candidate;
  - (d) if the candidate is not a member of the body corporate or a person appointed by a subsidiary body corporate under section 103 or 140—
    - (i) the candidate’s residential or business address; and
    - (ii) the name of the member who nominated the candidate;
  - (e) details of any payment to be made to, or to be sought by, the candidate from the body corporate for the candidate carrying out the duties of a member of the executive committee.

*Example of a payment—*

payment of the candidate’s expenses for travelling to executive committee meetings

‘(4) In this section—

*appropriate authorising person*, for a nomination from a member of the body corporate, means—

- (a) if the member is an individual—the member; or
- (b) if the member is a subsidiary body corporate—the person appointed by the member under section 103 or 140; or
- (c) if the member is a corporation other than a subsidiary body corporate—a director, secretary or other nominee of the corporation.

**‘5 Conduct of elections for executive committee by secret ballot [SM, s 21]**

‘(1) This section states how a secret ballot under this schedule must be held.

‘(2) After nominations close, the secretary must prepare ballot papers for each of the following for which a ballot is required—

- (a) chairperson;
- (b) secretary;
- (c) treasurer;
- (d) the ordinary members of the executive committee.

‘(3) Each ballot must be conducted separately.

‘(4) However, the separate ballots mentioned in subsection (3) may, but need not, appear on the one document.

‘(5) For each ballot, the secretary must, if satisfied the nominations comply with this schedule, state the names of the properly nominated candidates in alphabetical order of family name, showing—

- (a) after each name, a blank space for voting purposes; and
- (b) the eligibility category for each candidate; and

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- (c) if a candidate is not a member of the body corporate or a person appointed by a subsidiary body corporate under section 103 or 140—
    - (i) the candidate's residential or business address; and
    - (ii) the name of the member who nominated the candidate; and
  - (d) details of any payment to be made to, or to be sought by, a candidate from the body corporate for the candidate carrying out the duties of an executive committee member.
- '(6) The secretary must forward, with the notices for the annual general meeting—
- (a) the ballot papers; and
  - (b) an envelope marked 'ballot paper'; and
  - (c) either of the following—
    - (i) a separate particulars envelope;
    - (ii) a particulars tab that forms part of the ballot paper envelope but that a person may detach without unsealing or otherwise opening the ballot paper envelope.
- '(7) To vote, a person must—
- (a) for a ballot for the position of chairperson, secretary or treasurer—place a mark in the space opposite the name of the candidate the person wishes to vote for; and
  - (b) for a ballot for the ordinary members' positions—place a mark in each of the spaces opposite the names of however many candidates the person wishes to vote for; and
  - (c) place the ballot paper in the ballot paper envelope supplied by the secretary and seal it; and
  - (d) if a separate particulars envelope is supplied—place the sealed ballot paper envelope in the separate envelope and seal it; and



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- (e) complete the separate particulars envelope or particulars tab by signing and dating the envelope or tab, and inserting the following information on the envelope or tab—
    - (i) the name of the member for whom the vote is exercised;
    - (ii) the name of the person having the right to vote for the member;
    - (iii) the basis for the person’s right to vote; and
  - (f) give the completed particulars envelope with the ballot paper envelope enclosed, or the ballot paper envelope with the completed particulars tab attached, to the secretary, or forward the envelope to the secretary so that the secretary receives it, before or at the annual general meeting.
- ‘(8) When a ballot is held—
- (a) a voter who has not submitted a vote for the ballot may ask the secretary for a ballot paper, ballot paper envelope and particulars envelope or tab, and vote in the way this section provides; and
  - (b) a voter who wishes to withdraw a vote already made for the ballot and submit a replacement vote, may, if the particulars envelope, or the ballot paper envelope with particulars tab attached, for the vote already made can be readily identified and withdrawn, ask the secretary for a ballot paper, ballot paper envelope and particulars envelope or tab, and vote in the way this section provides.
- ‘(9) All completed ballot papers received before the annual general meeting ends are to be held in the custody of the secretary.

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**‘6 Conduct of elections for executive committee by open ballot [SM, s 22]**

- ‘(1) This section states how an open ballot under this schedule must be held.
- ‘(2) After nominations close, the secretary must prepare ballot papers for each of the following for which a ballot is required—
  - (a) chairperson;
  - (b) secretary;
  - (c) treasurer;
  - (d) the ordinary members of the executive committee.
- ‘(3) Each ballot must be conducted separately.
- ‘(4) However, the separate ballots may, but need not, appear on the one document.
- ‘(5) For each ballot, the secretary must, if satisfied the nominations comply with section 4, list the names of the properly nominated candidates in alphabetical order of family name, showing—
  - (a) after each name, a blank space for voting purposes; and
  - (b) the eligibility category for each candidate; and
  - (c) if the candidate is not a member of the body corporate or a person appointed by a subsidiary body corporate under section 103 or 140—
    - (i) the candidate’s residential or business address; and
    - (ii) the name of the member who nominated the candidate; and
  - (d) details of any payment to be made to, or to be sought by, the candidate from the body corporate for the candidate carrying out the duties of an executive committee member.
- ‘(6) The secretary must forward the ballot papers, and an envelope marked ‘ballot paper’ self-addressed to the secretary, with the notices for the annual general meeting.

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- ‘(7) To vote, a person must—
- (a) for a ballot for the position of chairperson, secretary or treasurer—place a mark in the space opposite the name of the candidate the person wishes to vote for; and
  - (b) for a ballot for the ordinary members’ positions—place a mark in each of the spaces opposite the names of however many candidates the person wishes to vote for; and
  - (c) sign each ballot paper the voter completes; and
  - (d) on each completed ballot paper, write the name of the member for whom the vote is exercised; and
  - (e) if the ballot paper is not completed at the annual general meeting—
    - (i) place the ballot paper in the ballot paper envelope supplied by the secretary; and
    - (ii) seal the envelope, and write on the back of the envelope the name mentioned in paragraph (d); and
    - (iii) give the ballot paper envelope to the secretary, or forward it to the secretary so that the secretary receives it, before or at the annual general meeting; and
  - (f) if the ballot paper is completed at the annual general meeting—give the ballot paper to the secretary before or at the meeting.
- ‘(8) When a ballot is held—
- (a) a voter who has not submitted a vote for the ballot may ask the secretary for a ballot paper, and vote in the way this section provides; and
  - (b) a voter who wishes to withdraw a vote already made for the ballot and submit a replacement vote, may, if the vote already made can be readily identified and withdrawn, ask the secretary for a ballot paper and vote in the way this section provides.

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- ‘(9) All completed ballot papers received before the annual general meeting ends are to be held in the custody of the secretary.

**‘7 Election of ordinary members of executive committee [SM, s 23]**

- ‘(1) A person nominated as an ordinary member of the executive committee becomes an ordinary member of the committee under section 11 on the basis of the nomination unless it is necessary to have a ballot.
- ‘(2) It is necessary to have a ballot for ordinary members of the executive committee if the number of persons nominated for ordinary member positions (other than a person who becomes an executive member of the executive committee), plus the number of executive members of the executive committee, is more than the required number of members for the executive committee.

**‘8 Conduct of ballot—general requirements [SM, s 24]**

- ‘(1) Any items of business about the election of members of the executive committee that are on the agenda for an annual general meeting must be conducted as the last items of business for the meeting.
- ‘(2) The election of members takes effect immediately after the close of the meeting at which they are elected.
- ‘(3) The ballots for the positions on the executive committee for which ballots are required must be conducted in the following order—
- chairperson
  - secretary
  - treasurer
  - ordinary members.

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- ‘(4) Each ballot may proceed to the count only after the person chairing the meeting has allowed enough time for votes to be cast and announced the close of the ballot.
  - ‘(5) Each candidate for a ballot, and any scrutineer appointed by the candidate, may watch the count.
  - ‘(6) The secretary must pass any ballot papers, particulars envelopes and ballot paper envelopes for the ballot to the person chairing the meeting for counting.

**‘9 Conduct of ballot—scrutiny of votes [SM, s 25]**

- ‘(1) If a ballot for positions on the executive committee is an open ballot, the person chairing the meeting must—
  - (a) confirm, by a scrutiny of the details on the back of each ballot paper envelope or each ballot paper itself, that the ballot paper is the vote of a person who has the right to vote in the election; and
  - (b) if a ballot paper is in a ballot paper envelope—take the ballot paper out of the envelope.
- ‘(2) If a ballot for positions on the executive committee is a secret ballot, the person chairing the meeting must—
  - (a) confirm, by a scrutiny of the details on each particulars envelope or particulars tab, that the ballot paper is the vote of a person who has the right to vote in the election; and
  - (b) take the ballot paper envelope out of the particulars envelope, or detach the particulars tab from the ballot paper envelope; and
  - (c) place the ballot paper envelope in a receptacle in open view of the meeting; and
  - (d) after paragraph (c) has been complied with for all ballot paper envelopes, randomly mix the envelopes; and
  - (e) take each ballot paper out of its envelope.

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- ‘(3) The person chairing the meeting must record the count of votes in each ballot in the minutes of the meeting.
- ‘(4) The person chairing the meeting may delegate a function under subsection (1) or (2) in relation to a ballot for a position on the executive committee to a person attending the meeting who is not a candidate for the position and who the person chairing the meeting considers has sufficient independence.

**‘10 Conduct of ballot—deciding executive member positions [SM, s 26]**

- ‘(1) If only 1 person is nominated for the position of chairperson, secretary or treasurer, the person chairing the meeting, if satisfied the nomination complies with this schedule, must declare the person to have been elected unopposed.
- ‘(2) If, for the position of chairperson, secretary or treasurer, there has been no nomination, the person chairing the meeting—
  - (a) must invite nominations for the position at the meeting; and
  - (b) must accept nominations that are made in either of the following ways—
    - (i) by members of the body corporate who are personally present or represented at the meeting;
    - (ii) in writing, by members of the body corporate not personally present or represented at the meeting.
- ‘(3) A member of the body corporate may nominate, under subsection (2), not more than 1 person for the position.
- ‘(4) To remove any doubt, it is declared that the member may make the nomination whether or not the member made a nomination under section 3 for an ordinary member’s position on the executive committee.
- ‘(5) If more than 1 person has nominated for a position, a ballot is conducted, and the person who receives the highest number of votes is declared elected.

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- ‘(6) If, on a counting of votes, 2 or more persons each receive an identical number of votes, and no other candidate receives a higher number of votes, the result must be decided between the 2 or more persons by chance in the way the meeting decides.

**‘11 Conduct of ballot—deciding ordinary member positions [SM, s 27]**

- ‘(1) The positions of the ordinary members of the executive committee are decided only after the executive member positions on the executive committee are filled.
- ‘(2) A person’s nomination for a position as an ordinary member has no effect if the person is elected as an executive member of the executive committee, even if the person’s name appears on a ballot for ordinary members forwarded before the meeting.
- ‘(3) If the number of candidates nominated for ordinary member positions, plus the number of executive members of the executive committee, is not more than the required number of members for the executive committee, the person chairing the meeting, if satisfied the nominations for the ordinary member positions comply with this schedule, must declare the candidates to have been elected as ordinary members.
- ‘(4) However, if the number of candidates nominated for ordinary member positions, plus the number of executive members of the executive committee, is less than the required number of members for the executive committee, the person chairing the meeting must invite nominations at the meeting for the number of ordinary member positions necessary to bring the total number of all executive committee members to not more than the required number of members for the executive committee.
- ‘(5) The person chairing the meeting—
- (a) must invite nominations for the position or positions at the meeting; and

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- (b) must accept nominations that are made in either of the following ways—
  - (i) by members of the body corporate who are personally present or represented at the meeting;
  - (ii) in writing, by members of the body corporate not personally present or represented at the meeting.
- ‘(6) A member of the body corporate may nominate, under subsection (5), not more than 1 person for all ordinary member positions for which nominations are invited.
- ‘(7) To remove any doubt, it is declared that the member may make the nomination whether or not the member made a nomination under section 3 for a position on the executive committee.
- ‘(8) If the number of candidates nominated for ordinary member positions, plus the number of executive members of the executive committee, is more than the required number of members for the executive committee, the person chairing the meeting must proceed with the scrutiny of the ballot papers relating to the ordinary member positions.
- ‘(9) The persons who receive the highest numbers of votes, in descending order until the executive committee numbers the required number of members for the executive committee, must be declared elected as the ordinary members.
- ‘(10) If, on a counting of votes, 2 or more persons each receive an identical number of votes and the number of persons to be elected would be exceeded if the 2 or more persons were declared elected, the result of the ballot must be decided between the 2 or more persons by chance in the way the meeting decides.
- ‘(11) For the counting of votes for positions of ordinary members of the executive committee on ballot papers completed before the annual general meeting, a mark against the name of each person who has already been elected to an executive member position is void.



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**‘12 Conduct of ballot—declaration of voting results  
[SM, s 28]**

- ‘(1) The person chairing an annual general meeting must declare the result of an election.
- ‘(2) When declaring the result of an election, the person chairing the meeting must state the number of votes cast for each candidate.
- ‘(3) The number of votes cast for each candidate must be recorded in the minutes of the meeting.
- ‘(4) The voting tally sheet kept for the meeting must include, for each ballot that is an open ballot under section 6—
  - (a) a list of the votes, identified by the name of the member on whose behalf the votes were cast, rejected as informal; and
  - (b) for each vote rejected—the reason for the rejection; and
  - (c) the total number of votes counted for each candidate.
- ‘(5) The voting tally sheet kept for the meeting must include, for each ballot that is a secret ballot under section 5—
  - (a) a list of the votes, identified by the name of the member on whose behalf the votes were cast, rejected from the count before the enclosing ballot paper envelopes were opened; and
  - (b) a list of the votes taken out of ballot paper envelopes for counting, but rejected as informal; and
  - (c) for each vote rejected—the reason for the rejection; and
  - (d) the total number of votes counted for each candidate.
- ‘(6) The voting tally sheet may be inspected at the meeting by any of the following persons—
  - (a) a person who is a voter for the meeting;
  - (b) a candidate;
  - (c) the returning officer, if any, appointed by the body corporate for the meeting;

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- (d) the person chairing the meeting;
- (e) a scrutineer appointed by a candidate under section 8.

## **‘Schedule 4      Code of conduct for voting members of executive committees**

sections 123A and 158A and schedule 7, definition *code of conduct*

### **‘1      Commitment to acquiring understanding of Act, including this code**

‘A voting member of the executive committee of a primary thoroughfare body corporate or principal body corporate must have a commitment to acquiring an understanding of this Act, including this code of conduct, relevant to the member’s role on the executive committee.

### **‘2      Honesty, fairness and confidentiality**

- ‘(1) The voting member must act honestly and fairly in performing the member’s functions as a voting member.
- ‘(2) The voting member must not unfairly or unreasonably disclose information held by the body corporate, including information about an owner of a lot, unless authorised or required by law to do so.

### **‘3      Acting in best interests of body corporate and persons with estate or interest in lots**

‘Unless it is unlawful to do so, the voting member must, in performing the member’s functions as a voting member, act in the best interests of—

- (a) the body corporate; and
- (b) either—
  - (i) for a voting member of the executive committee of the primary thoroughfare body corporate—the proprietors and occupiers of, and other persons having an estate or interest in, the lots in the approved scheme; or
  - (ii) for a voting member of the executive committee of the principal body corporate—the proprietors and occupiers of, and other persons having an estate or interest in, the lots in the residential precincts in the approved scheme.

#### **‘4 Complying with Act and this code**

‘The voting member must take reasonable steps to ensure the member complies with this Act, including this code, in performing the member’s functions as a voting member.

#### **‘5 Conflict of interest**

‘The voting member must disclose to the executive committee any conflict of interest the member may have in a matter before the executive committee.

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## **‘Schedule 5      Code of conduct for body corporate managers and caretaking service contractors**

section 175H and schedule 7, definition *code of conduct*

### **‘1      Knowledge of Act, including code**

‘A body corporate manager or caretaking service contractor appointed or engaged by the primary thoroughfare body corporate or principal body corporate must have a good working knowledge and understanding of this Act, including this code of conduct, relevant to the person’s functions.

### **‘2      Honesty, fairness and professionalism**

- ‘(1) The body corporate manager or caretaking service contractor must act honestly, fairly and professionally in performing the person’s functions under the person’s appointment or engagement.
- ‘(2) The body corporate manager must not attempt to unfairly influence the outcome of an election for the executive committee of the body corporate.

### **‘3      Skill, care and diligence**

‘The body corporate manager or caretaking service contractor must exercise reasonable skill, care and diligence in performing the person’s functions under the person’s appointment or engagement.

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**‘4 Acting in body corporate’s best interests**

‘The body corporate manager or caretaking service contractor must act in the best interests of the body corporate unless it is unlawful to do so.

**‘5 Keeping body corporate informed of developments**

‘The body corporate manager or caretaking service contractor must keep the body corporate informed of any significant development or issue about an activity carried out for the body corporate.

**‘6 Ensuring employees comply with Act and code**

‘The body corporate manager or caretaking service contractor must take reasonable steps to ensure an employee of the person complies with this Act, including this code, in performing the person’s functions under the person’s appointment or engagement.

**‘7 Fraudulent or misleading conduct**

‘The body corporate manager or caretaking service contractor must not engage in fraudulent or misleading conduct in performing the person’s functions under the person’s appointment or engagement.

**‘8 Unconscionable conduct**

‘The body corporate manager or caretaking service contractor must not engage in unconscionable conduct in performing the person’s functions under the person’s appointment or engagement.

*Examples of unconscionable conduct—*

- taking unfair advantage of the person’s superior knowledge relative to the body corporate
- requiring the body corporate to comply with conditions that are unlawful or not reasonably necessary

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- exerting undue influence on, or using unfair tactics against, the body corporate or the owner of a lot in the approved scheme

## **‘9 Conflict of duty or interest**

‘The body corporate manager or caretaking service contractor for an approved scheme or part of an approved scheme must not accept an appointment or engagement (the *second appointment or engagement*) if doing so will place the person’s functions or interests for the approved scheme or part in conflict with the person’s functions or interests for obligations under the second appointment or engagement.

*Example of a second appointment or engagement—*

an appointment as the body corporate manager or an engagement as a caretaking service contractor for another approved scheme

## **‘10 Goods and services to be supplied at competitive prices**

‘The body corporate manager or caretaking service contractor must take reasonable steps to ensure goods and services the person obtains for or supplies to the body corporate are obtained or supplied at competitive prices.

## **‘11 Body corporate manager to demonstrate keeping of particular records**

‘If the body corporate or its executive committee gives the body corporate manager a written request to show that the manager has kept the body corporate records as required under this Act, the manager must comply with the request within the reasonable period stated in the request.

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## **‘Schedule 6      Code of conduct for letting agents**

section 175I and schedule 7, definition *code of conduct*

### **‘1      Honesty, fairness and professionalism**

‘A letting agent for an approved scheme or part of an approved scheme must act honestly, fairly and professionally in conducting the letting agent’s business under the letting agent’s authorisation.

### **‘2      Skill, care and diligence**

‘The letting agent must exercise reasonable skill, care and diligence in conducting the letting agent business under the letting agent’s authorisation.

### **‘3      Acting in body corporate’s and individual lot owner’s best interests**

‘Unless it is unlawful to do so, the letting agent must, as far as practicable, act in the best interests of—

- (a) the body corporate that has given the letting agent’s authorisation; and
- (b) individual owners of lots in the approved scheme or part.

### **‘4      Ensuring employees comply with Act and code**

‘The letting agent must take reasonable steps to ensure an employee of the letting agent complies with this Act, including this code, in conducting the letting agent business under the letting agent’s authorisation.

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**‘5 Fraudulent or misleading conduct**

‘The letting agent must not engage in fraudulent or misleading conduct in conducting the letting agent business under the letting agent’s authorisation.

**‘6 Unconscionable conduct**

‘The letting agent must not engage in unconscionable conduct in conducting the letting agent business under the letting agent’s authorisation.

*Examples of unconscionable conduct—*

- taking unfair advantage of the person’s position as letting agent relative to the body corporate or the owner of a lot in the approved scheme
- exerting undue influence on, or using unfair tactics against, the body corporate or the owner of a lot in the approved scheme

**‘7 Nuisance**

‘The letting agent must not—

- (a) cause a nuisance or hazard on the site; or
- (b) interfere unreasonably with the use or enjoyment of a lot in the approved scheme; or
- (c) interfere unreasonably with the use or enjoyment of the common property by a person who is lawfully on the common property; or
- (d) otherwise behave in a way that unreasonably affects a person’s lawful use or enjoyment of a lot or common property.

**‘8 Goods and services to be supplied at competitive prices**

‘The letting agent must take reasonable steps to ensure goods and services the letting agent obtains for or supplies to the body corporate are obtained or supplied at competitive prices.’.



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## Part 4    Amendment of Liquor Act 1992

### 49        **Act amended**

This part amends the *Liquor Act 1992*.

### 50        **Amendment of s 9 (Ordinary trading hours)**

Section 9(1A)—

*omit, insert—*

‘(1A) Subject to subsections (2) and (3), on any day other than Good Friday or Christmas Day, the ordinary trading hours of licensed premises are between 10a.m. and 12 midnight, unless the premises are any of the following—

- (a) premises to which a producer/wholesaler licence relates;
- (b) premises to which an industrial canteen licence relates;
- (c) an airport or casino to which a commercial special facility licence relates.’

### 51        **Amendment of s 12 (Exemptions)**

(1) Section 12(2)(j)(iv)—

*omit, insert—*

‘(iv) the quantity of the liquor is not more than 2L and, if the liquor includes spirits, the quantity of spirits is not more than 1L; and’.

(2) Section 12(2)(j)(v), from ‘more’—

*omit, insert—*

‘more than 75% of the gift’s sale price or a lesser amount prescribed under a regulation; and’.

(3) Section 12(2)—

*insert—*

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- ‘(k) a sale of liquor in a retirement village to a person who is a resident of the retirement village or an adult guest of a resident if the quantity of liquor sold to the person is not more than 2 standard drinks in a day;
- (l) a sale of liquor by a hairdresser or a barber to an adult client if—
  - (i) the sale takes place at the premises where the hairdresser or barber conducts his or her business as part of the hairdressing or barber services provided to the client; and
  - (ii) the liquor is consumed on the premises; and
  - (iii) the quantity of the liquor sold to the client is not more than 2 standard drinks in a day; and
  - (iv) the liquor is not sold or consumed on Christmas Day, Good Friday or before 1p.m. on Anzac Day;
- (m) a sale of liquor by a limousine licensee to an adult passenger of a limousine if—
  - (i) the sale takes part during the journey for which the limousine was hired; and
  - (ii) the liquor is consumed inside the limousine; and
  - (iii) the quantity of the liquor sold to the passenger is not more than 2 standard drinks in a day; and
  - (iv) the liquor is not sold or consumed on Christmas Day, Good Friday, before 1p.m. on Anzac Day, or on any other day between 5a.m. and 10a.m.’
- (4) Section 12(4)—

*insert—*

‘*limousine* see the *Transport Operations (Passenger Transport) Act 1994*, schedule 3.

*limousine licensee* means the holder of a limousine service licence under the *Transport Operations (Passenger Transport) Act 1994*.

*resident*, of a retirement village, see the *Retirement Villages Act 1999*, section 9.

*retirement village* see the *Retirement Villages Act 1999*, section 5.

*standard drink* means a drink containing not more than 12.5mL of ethyl alcohol (ethanol).’.

**52 Amendment of s 71B (Authority of industrial canteen licence)**

Section 71B(1), after ‘off the premises’—

*insert—*

‘, during the times stated in the licence’.

**53 Insertion of new pt 12, div 9**

Part 12—

*insert—*

**‘Division 9 Transitional provision for Resorts and Other Acts Amendment Act 2009**

**‘296 Approved hours for commercial special facility licence**

‘(1) This section applies to a commercial special facility licence if—

- (a) the licence does not relate to an airport or a casino; and
- (b) immediately before the commencement of this section, the licensee was authorised under the licence to sell liquor on the licensed premises between 5a.m. and 10a.m.

‘(2) Despite section 64(1), the licence does not authorise the sale of liquor between 5a.m. and 10a.m.

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- ‘(3) However, subsection (2) does not apply to the licence to the extent that the licensee is authorised to sell liquor between 7a.m. and 10a.m. under an extended trading hours approval or an extended hours permit.
- ‘(4) Despite any other Act or law, no compensation is payable by the State to any person because of the operation of subsection (2).’.

## **Part 5**                      **Amendment of Mixed Use Development Act 1993**

### **54 Act amended**

This part amends the *Mixed Use Development Act 1993*.

### **55 Amendment of s 79 (Lodgement of building units or group titles plan)**

Section 79—

*insert—*

- ‘(5) A group titles plan must also be accompanied by a diagram showing the name and numbering, or proposed name and numbering, of each road that is, or is to be, on the primary thoroughfare, or the part of the primary thoroughfare, shown on the plan.’.

### **56 Amendment of s 80 (Approval of building units or group titles plan)**

Section 80(1)(b)—

*insert—*

- ‘(iii) the diagram mentioned in section 79(5).’.

**57 Amendment of s 101 (Subdivision by building units or group titles plan)**

Section 101—

*insert—*

‘(7) A group titles plan must also be accompanied by a diagram showing the name and numbering, or proposed name and numbering, of each road that is, or is to be, on—

(a) the community thoroughfare, or the part of the community thoroughfare, shown on the plan; and

(b) each precinct thoroughfare, or part of a precinct thoroughfare, shown on the plan.’.

**58 Amendment of s 102 (Approval of building units or group titles plan)**

Section 102(1)(b)—

*insert—*

‘(iii) the diagram mentioned in section 101(7).’.

**Part 6 Amendment of Sanctuary Cove Resort Act 1985**

**59 Act amended in pt 6 and schedule**

This part and the schedule amend the *Sanctuary Cove Resort Act 1985*.

**60 Amendment of s 4 (Interpretation)**

(1) Section 4, heading—

*omit, insert—*

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**‘4 Definitions’.**

- (2) Section 4, definitions *Albert Shire Council, proposed use plan, proposed use plan of the adjacent site, residential zone* and *zone*—

*omit.*

- (3) Section 4—

*insert*—

**‘adjacent site** see section 12A.

**approved use**, for a zone, see section 4A.

**associate**, of a person, means someone else with whom the person is associated under section 104D.

**body corporate**, for schedule 3, see schedule 3, section 1.

**body corporate manager**—

- (b) of the principal body corporate—means a person appointed by the body corporate under section 47AB; or
- (b) of the primary thoroughfare body corporate—means a person appointed by the body corporate under section 91AB.

**canal** see the *Coastal Protection and Management Act 1995*, schedule.

**candidate**, for schedule 3, see schedule 3, section 1.

**caretaking service contractor** see section 94A.

**code contravention notice** see section 94I(1).

**code of conduct** means—

- (a) for a voting member of the executive committee of the primary thoroughfare body corporate or principal body corporate—the code in schedule 4; or
- (b) for a body corporate manager or caretaking service contractor—the code in schedule 5; or
- (c) for a letting agent—the code in schedule 6.

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***Commercial and Consumer Tribunal*** means the tribunal of that name established under the *Commercial and Consumer Tribunal Act 2003*.

***eligibility category***, for schedule 3, see schedule 3, section 1.

***executive committee***, for schedule 3, see schedule 3, section 1.

***executive member***, for schedule 3, see schedule 3, section 1.

***financial year***—

(a) for the principal body corporate, see section 22; or

(b) for the primary thoroughfare body corporate, see section 65.

***financier***, for a letting agent's contract, see section 94B.

***former Albert Shire Council*** means the local government of that name that was constituted under the *Local Government Act 1993* or its successors in law.

***Integrated Planning Act*** means the *Integrated Planning Act 1997*.

***letting agent*** see section 94C(1).

***letting agent authorisation*** see section 94A.

***letting agent business*** see section 94C(2).

***local government*** means the local government for the local government area in which the site and adjacent site are situated.

***majority resolution***, for a duly convened general meeting of the primary thoroughfare body corporate or principal body corporate, means a resolution on a motion—

(a) for which only 1 written vote may be exercised, other than by proxy, for each lot mentioned in the relevant body corporate roll; and

(b) that is passed only if the votes counted for the motion are more than 50% of the lots for which persons are entitled to vote on the motion.

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**management rights**, of a letting agent for the resort or part of the resort, see section 94A.

**nominee**, of a member of the principal body corporate, see section 24(1).

**ordinary member**, for schedule 3, see schedule 3, section 1.

**ordinary resolution**, for a duly convened general meeting of the primary thoroughfare body corporate or principal body corporate, means a resolution that is passed by the members of the body corporate whose voting entitlements total more than 50% of the total of all voting entitlements recorded in the relevant body corporate roll.

**original owner**, of a secondary lot that has been subdivided by a building unit or group titles plan, see section 22.

**proposed use plan**—

- (a) for the site—see section 4B(1); or
- (b) for the adjacent site—see section 4B(2).

**relevant body corporate debt** means a following amount owed by a person to a subsidiary body corporate—

- (a) a contribution or instalment of a contribution;
- (b) a penalty for not paying a contribution or instalment of a contribution by the date for payment;
- (c) another amount associated with the ownership of a lot.

*Examples of another amount—*

- an annual payment for parking under an exclusive use by-law made by the subsidiary body corporate
- an amount owing to the subsidiary body corporate for lawn mowing services arranged by the subsidiary body corporate on behalf of the person

**relevant plan** see section 12I(2).

**residential zone** means any of the following zones—

- (a) General Residential Zone;
- (b) Harbour 1 Residential Zone;



(c) Harbour, River and Waterfront Residential Zone.

**resort** means Sanctuary Cove Resort.

**reviewable terms**, for a service contract, see section 94A.

**review advice**, about a service contract, see section 94A.

**service contract** see section 94A.

**service contractor**, for the resort or part of the resort, see section 94D.

**site** see section 5.

**subject land**, in relation to an amendment application under part 2AA, means each zone, or other land within the resort, to which the application relates.

**subsidiary body corporate**—

- (a) of, or in relation to, the primary thoroughfare body corporate, means—
  - (i) the principal body corporate; or
  - (ii) a body corporate created by the registration of a building units plan or group titles plan that is a member of the primary thoroughfare body corporate; or
- (b) of, or in relation to, the principal body corporate, means a body corporate created by the registration of a building units plan or group titles plan that is a member of the principal body corporate.

**transfer notice**, for part 5A, see section 94K(b)(ii).

**use**, for a zone, means a use mentioned in schedule 1, part 2.

**voting member**—

- (a) of the executive committee of the principal body corporate—see section 41A(1); or
- (b) of the executive committee of the primary thoroughfare body corporate—see section 85A(1).

**zone** means a part of the site or adjacent site that—

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- (a) has a name mentioned in schedule 1, part 1; and
  - (b) is shown as a zone on the proposed use plan of the site or the proposed use plan of the adjacent site.’.
- (4) Section 4, definition *initial plan of survey*, ‘in accordance with section 10’—  
*omit, insert—*  
‘under section 10 or 12P(4).’.
- (5) Section 4, definition *initial plan of survey of the adjacent site*, ‘in accordance with section 12F’—  
*omit, insert—*  
‘under section 12F or 12P(4).’.
- (6) Section 4, as amended by this Act, definitions—  
*relocate* to schedule 9 as inserted by this Act.
- (7) Section 4, as amended by this Act, ‘In this Act—’—  
*omit, insert—*  
‘The dictionary in schedule 9 defines particular words used in this Act.’.

## **61 Insertion of new ss 4A–4C**

Part 1—

*insert—*

### **‘4A Meaning of *approved use* for a zone**

‘An *approved use* for a zone is—

- (a) a use for the zone that is approved under a regulation as a use for the zone; or
- (b) if a change of a use for the zone is approved under part 2AA, the use for the zone as changed and approved under a regulation.

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**‘4B Meaning of *proposed use plan* of the site or adjacent site**

- ‘(1) The *proposed use plan* of the site is—
- (a) the plan of survey of the site approved by the local government under section 7(4); or
  - (b) if an amendment of the plan is approved by the local government under section 7(8)—the amended plan for the time being approved by the local government; or
  - (c) if an amendment of the plan is approved by the Governor in Council under section 12P—the amended plan for the time being approved by the Governor in Council.
- ‘(2) The *proposed use plan* of the adjacent site is—
- (a) the plan of survey of the adjacent site approved by the local government under section 12C(4); or
  - (b) if an amendment of the plan is approved by the local government under section 12C(8)—the amended plan for the time being approved by the local government; or
  - (c) if an amendment of the plan is approved by the Governor in Council under section 12P—the amended plan for the time being approved by the Governor in Council.
- ‘(3) To remove any doubt, it is declared for this section that the approval of an amendment of the proposed use plan of the site or the proposed use plan of the adjacent site under section 12P does not limit the later amendment and approval of the plan under section 7(8) or 12C(8).

*Note—*

See also sections 114 (References to proposed use plan of site) and 115 (References to proposed use plan of adjacent site).

**‘4C References to standard module**

- ‘(1) In this Act, the information included in square brackets after a section heading is a reference to a similar section of the *Body*

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*Corporate and Community Management (Standard Module)  
Regulation 2008.*

‘(2) The brackets and information do not form part of this Act.’

**62 Amendment of s 5 (The site)**

(1) Section 5(1)—

*omit, insert—*

‘(1) Subject to subsection (2), the *site* is the area of land shown on the initial plan of survey of the site.

‘(1A) If the initial plan of survey is amended under part 2AA by varying the boundary of the site, the *site* is the area of land shown on the initial plan of survey as amended.’

(2) Section 5(3)—

*omit, insert—*

‘(3) Despite the *Local Government Act 1993*, the site forms part of the Gold Coast city local government area constituted under that Act.’

(3) Section 5(1A) to (3)—

*renumber* as section 5(2) to (4).

**63 Replacement of ss 7 and 8**

Sections 7 and 8—

*omit, insert—*

**‘7 Proposed use plan of the site**

‘(1) The primary thoroughfare body corporate may lodge with the local government a plan of survey showing the zones of the site substantially in the form set out in schedule 7.

‘(2) If the local government considers it appropriate that a boundary of a zone shown on the plan should differ from the boundary of the zone as shown in schedule 7, it may require the primary thoroughfare body corporate to lodge an amended plan showing the different boundary.

- 
- ‘(3) The plan of survey must include a schedule stating—
- (a) for each of the residential zones, the maximum number of group title lots or building unit lots into which each zone may be subdivided for residential purposes; and
  - (b) the total of the maximum number of, not more than 1100, group title lots and building unit lots into which all of the residential zones within the site may be subdivided for residential purposes.
- ‘(4) The local government may approve the plan if it is satisfied—
- (a) the plan adequately defines the boundaries of all the zones within the site; and
  - (b) the number of building unit lots and group title lots under subsection (3)—
    - (i) is appropriate to the nature of the proposed development of the site; and
    - (ii) is not more than the maximum number under subsection (3)(b).
- ‘(5) The local government must—
- (a) keep the proposed use plan; and
  - (b) give a copy of the plan to—
    - (i) the registrar of titles; and
    - (ii) the chief executive.
- ‘(6) For deciding the number of group title lots or building unit lots into which a particular zone may be subdivided for residential purposes—
- (a) a group title lot that is subdivided into lots resulting in no area, other than common property, of the lot remaining must not be counted; and
  - (b) the group title lots or building unit lots created from the subdivision must be counted.
- ‘(7) The primary thoroughfare body corporate may lodge with the local government a plan of survey (an *amending plan*)

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varying the boundaries of the zones as shown on the proposed use plan.

- ‘(8) The local government may approve an amending plan if it is satisfied—
- (a) the plan complies with subsection (4); and
  - (b) the variation of the boundaries is of a minor nature and does not substantially prejudice the rights of any person.
- ‘(9) If the local government approves an amending plan—
- (a) the amending plan becomes the proposed use plan; and
  - (b) the local government must keep the amending plan and give a copy of it to the registrar of titles and chief executive.’.

#### **64 Amendment of s 9 (Town planning provisions)**

- (1) Section 9(1) and (2)—

*omit, insert—*

- ‘(1) Despite the Integrated Planning Act, the local government’s planning scheme under that Act does not apply to the site.’.

- (2) Section 9(2A), ‘the Albert’—

*omit, insert—*

‘the former Albert’.

- (3) Section 9(2A)—

*renumber* as section 9(2).

- (4) Section 9(3)—

*omit, insert—*

- ‘(3) For the Integrated Planning Act, the use of land or a building or other structure in a zone of the site for an approved use for the zone is taken to be a lawful use under that Act.’.

- (5) Section 9(4), from ‘Within’ to ‘that zone.’—

*omit, insert—*

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‘A person must not use land, or erect or use a building or other structure, in a zone of the site for a use that is not an approved use for the zone.’.

(6) Section 9(5)—

*omit, insert—*

‘(5) In this section—

*erect*, in relation to a building or other structure, includes the following—

- (a) doing work for the purpose of erecting the building or structure;
- (b) carrying out structural work, alterations or additions or rebuilding the building or structure;
- (c) moving the building or structure or rebuilding it, with or without alteration—
  - (i) within a parcel of land; or
  - (ii) from one parcel of land to another parcel of land; or
  - (iii) so that part of the building or structure is on a parcel of land and another part of the building or structure is on another parcel of land.’.

## **65 Amendment of s 10 (Initial subdivision within the site)**

(1) Section 10, ‘Albert Shire Council’—

*omit, insert—*

‘local government’.

(2) Section 10, ‘Director of Local Government’—

*omit, insert—*

‘chief executive’.

(3) Section 10(8)(b)—

*omit, insert—*

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- ‘(b) to amend the initial plan of survey in accordance with a variation of the boundary of a zone approved by—
  - (i) the local government under section 7(8); or
  - (ii) the Governor in Council under section 12P.’.
- (4) Section 10(9), ‘pursuant to subsection (8)’—  
*omit, insert—*  
‘under subsection (8)(a) or (b)(i)’.
- (5) Section 10(9A), ‘the plan of survey’—  
*omit, insert—*  
‘a plan of survey to be lodged under subsection (8)(a) or (b)(i)’.

## 66 Amendment of s 12A (The adjacent site)

- (1) Section 12A(1)—  
*omit, insert—*
  - ‘(1) Subject to subsection (2), the **adjacent site** is the area of land shown on the initial plan of survey of the adjacent site.
  - ‘(1A) If the initial plan of survey of the adjacent site is amended under part 2AA by varying the boundary of the adjacent site, the **adjacent site** is the area of land shown on the initial plan of survey of the adjacent site as amended.’.
- (2) Section 12A(3)—  
*omit, insert—*
  - ‘(3) Despite the *Local Government Act 1993*, the adjacent site forms part of the Gold Coast city local government area constituted under that Act.’.
- (3) Section 12A(4), ‘subsection (5)’—  
*omit, insert—*  
‘subsection (6)’.
- (4) Section 12A(5), ‘subsection (4)’—



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*omit, insert—*

‘subsection (5)’.

(5) Section 12A(1A) to (5)—

*renumber* as section 12A(2) to (6).

## **67 Replacement of ss 12C and 12D**

Sections 12C and 12D—

*omit, insert—*

### **‘12C Proposed use plan of the adjacent site**

- ‘(1) The primary thoroughfare body corporate may lodge with the local government a plan of survey showing the zones of the adjacent site substantially in the form set out in schedule 8.
- ‘(2) If the local government considers it appropriate that a boundary of a zone shown on the plan should differ from the boundary of the zone as shown in schedule 8, it may require the primary thoroughfare body corporate to lodge an amended plan showing the different boundary.
- ‘(3) The plan of survey must include a schedule stating—
- (a) for each of the residential zones, the maximum number of group title lots or building unit lots into which each zone may be subdivided for residential purposes; and
  - (b) the total of the maximum number of, not more than 900, group title lots and building unit lots into which all of the residential zones within the site may be subdivided for residential purposes.
- ‘(4) The local government may approve the plan if it is satisfied—
- (a) the plan adequately defines the boundaries of all the zones within the adjacent site; and
  - (b) the number of building unit lots and group title lots under subsection (3)—
    - (i) is appropriate to the nature of the proposed development of the adjacent site; and

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- (ii) is not more than the maximum number under subsection (3)(b).
- ‘(5) The local government must—
  - (a) keep the proposed use plan; and
  - (b) give a copy of the plan to—
    - (i) the registrar of titles; and
    - (ii) the chief executive.
- ‘(6) For deciding the number of group title lots or building unit lots into which a particular zone may be subdivided for residential purposes—
  - (a) a group title lot that is subdivided into lots resulting in no area, other than common property, of the lot remaining must not be counted; and
  - (b) the group title lots or building unit lots created from the subdivision must be counted.
- ‘(7) The primary thoroughfare body corporate may lodge with the local government a plan of survey (an *amending plan*) varying the boundaries of the zones as shown on the proposed use plan.
- ‘(8) The local government may approve an amending plan if it is satisfied—
  - (a) the plan complies with subsection (4); and
  - (b) the variation of the boundaries is of a minor nature and does not substantially prejudice the rights of any person.
- ‘(9) If the local government approves an amending plan—
  - (a) the amending plan becomes the proposed use plan; and
  - (b) the local government must keep the amending plan and give a copy of it to the registrar of titles and chief executive.’.

## **68 Amendment of s 12E (Town planning provisions)**

- (1) Section 12E(1) and (2)—

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*omit, insert—*

‘(1) Despite the Integrated Planning Act, the local government’s planning scheme under that Act does not apply to the adjacent site.’.

(2) Section 12E(2A), ‘the Albert’—

*omit, insert—*

‘the former Albert’.

(3) Section 12E(2A)—

*renumber* as section 12E(2).

(4) Section 12E(3)—

*omit, insert—*

‘(3) For the Integrated Planning Act, the use of land or a building or other structure in a zone of the adjacent site for an approved use for the zone is taken to be a lawful use under that Act.’.

(5) Section 12E(4), from ‘Within’ to ‘that zone.’—

*omit, insert—*

‘A person must not use land, or erect or use a building or other structure, in a zone of the adjacent site for a use that is not an approved use for the zone.’.

(7) Section 12E(5)—

*omit, insert—*

‘(5) In this section—

***erect***, in relation to a building or other structure, includes the following—

- (a) doing work for the purpose of erecting the building or structure;
- (b) carrying out structural work, alterations or additions or rebuilding the building or structure;
- (c) moving the building or structure or rebuilding it, with or without alteration—
  - (i) within a parcel of land; or

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- (ii) from one parcel of land to another parcel of land;  
or
- (iii) so that part of the building or structure is on a  
parcel of land and another part of the building or  
structure is on another parcel of land.’.

**69 Amendment of s 12F (Initial subdivision within the adjacent site)**

- (1) Section 12F, ‘Albert Shire Council’—  
*omit, insert*—  
‘local government’.
- (2) Section 12F, ‘Director of Local Government’—  
*omit, insert*—  
‘chief executive’.
- (3) Section 12F(8)(b)—  
*omit, insert*—  
‘(b) to amend the initial plan of survey in accordance with a  
variation of the boundary of a zone approved by—
  - (i) the local government under section 12C(8); or
  - (ii) the Governor in Council under section 12P.’.
- (4) Section 12F(9), ‘pursuant to subsection (8)’—  
*omit, insert*—  
‘under subsection (8)(a) or (b)(i)’.
- (5) Section 12F(9A), ‘the plan of survey’—  
*omit, insert*—  
‘a plan of survey to be lodged under subsection (8)(a) or  
(b)(i)’.

**70 Insertion of new pt 2AA**

After part 2A—

*insert—*

## **‘Part 2AA                    Amendments by application to Minister**

### **‘12I    Amendment applications**

- ‘(1) The primary thoroughfare body corporate may apply to the Minister under this part for any of the following amendments—
- (a) changing an approved use for a zone by—
    - (i) replacing the use with a different approved use; or
    - (ii) including an additional approved use for the zone;
  - (b) amending the proposed use plan of the site or the proposed use plan of the adjacent site by—
    - (i) replacing a zone name with a different zone name;  
or
    - (ii) varying the boundary of a zone on the plan, other than a variation to which section 7(8) or 12C(8) applies;
  - (c) amending the initial plan of survey of the site by varying the boundary of the site;
  - (d) amending the initial plan of survey of the adjacent site by varying the boundary of the adjacent site.
- ‘(2) Each of the plans mentioned in subsection (1)(b) to (d) is a *relevant plan*.

### **‘12J    Members to be notified of proposed amendment**

- ‘(1) Before making the application, the primary thoroughfare body corporate must—
- (a) give a written notice to each of the members of the primary thoroughfare body corporate and each of the members of the principal body corporate stating—

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- (i) the nature of the proposed amendment; and
  - (ii) a description of each lot to which the proposed amendment relates; and
  - (iii) that a member may give the primary thoroughfare body corporate written submissions about the proposed amendment within a period (the *notification period*) of at least 30 business days after the notice is given; and
- (b) for a proposed amendment of a relevant plan, make the proposed amended plan available for inspection by the members of the primary thoroughfare body corporate and the members of the principal body corporate during the notification period; and
- (c) place, on the subject land, a notice stating—
- (i) a brief summary of the nature of the proposed amendment and each lot to which the amendment relates; and
  - (ii) the notification period for giving written submissions about the proposed amendment; and
  - (iii) the name and contact details of a person authorised by the primary thoroughfare body corporate to give information about the amendment.
- ‘(2) The notice under subsection (1)(c) must—
- (a) be of a type, and placed on the subject land in the way required, under schedule 2; and
  - (b) remain on the subject land during the notification period.

## ‘12K Requirements for application

‘The application must include—

- (a) a written statement confirming that—

- 
- (i) a written notice was given to the members under section 12J(1)(a), including the days the notice was given; and
  - (ii) a notice was placed on the subject land under section 12J(1)(c) and (2), including the period during which the notice was on the land; and
  - (b) a copy of the notice given under section 12J(1)(a); and
  - (c) for an amendment of a relevant plan—
    - (i) a written statement confirming the plan was made available for inspection under section 12J(1)(b), including the period during which the plan was available for inspection; and
    - (ii) a copy of the proposed amended plan; and
  - (d) all written submissions given to the primary thoroughfare body corporate under section 12J(1)(a)(iii); and
  - (e) other matters, if any, the Minister considers necessary for deciding the application.

#### **‘12L Minister to consider application**

- ‘(1) The Minister must—
  - (a) consider the application including any written submissions included in the application; and
  - (b) consult any local government, department of government or statutory authority that, in the Minister’s opinion, is likely to be affected by the amendment.
- ‘(2) The Minister may also consult another person, if, in the Minister’s opinion, the person is likely to be affected by the amendment.
- ‘(3) The Minister must give the Governor in Council—
  - (a) the application; and
  - (b) a written notice stating details of the consultation, if any, under subsection (1)(b) and (2), including—

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- (i) who the Minister consulted; and
- (ii) the results of the consultation.

#### **‘12M Decision on application**

‘The Governor in Council may, subject to section 12N—

- (a) approve the amendment; or
- (b) approve the amendment with modifications or subject to conditions; or
- (c) refuse to approve the amendment.

#### **‘12N Minor variation of site boundaries**

‘(1) This section applies to an amendment of—

- (a) the initial plan of survey of the site by varying the boundary of the site; or
- (b) the initial plan of survey of the adjacent site by varying the boundary of the adjacent site.

‘(2) The Governor in Council may approve the amendment only if—

- (a) the Governor in Council considers—
  - (i) the proposed variation of the boundary is of a minor nature; and
  - (ii) the total area of the site or adjacent site will not be materially changed because of the variation; and
- (b) neither the aggregate number of the lots on the plan nor the aggregate voting entitlements for the lots will be changed because of the variation; and
- (c) each affected land owner has given the owner’s written consent to the variation.

‘(3) In this section—

*affected land owner* means an owner of—



- 
- (a) land that is outside the site and is proposed under the relevant application to be within the site; or
  - (b) land that is outside the adjacent site and is proposed under the relevant application to be within the adjacent site.

#### **‘12O Approval of change of use for zone**

‘If the Governor in Council approves an amendment to change an approved use for a zone, the amendment does not take effect until it has been approved under a regulation.

#### **‘12P Approval of amendment of relevant plan**

- ‘(1) This section applies if the Governor in Council approves an amendment of a relevant plan under this part.
- ‘(2) The chief executive must—
  - (a) notify the approval of the amendment by a gazette notice stating—
    - (i) the amendment that has been approved; and
    - (ii) the modifications, if any, made by the approval and the conditions, if any, to which the approval is subject; and
    - (iii) the places where a copy of the approval is available for inspection; and
  - (b) keep a copy of the approval available for inspection at the office of the chief executive at Brisbane during business hours; and
  - (c) note the approval on the amended plan; and
  - (d) give to the registrar of titles and the local government a copy of—
    - (i) the approved amendment; and
    - (ii) the amended plan endorsed under paragraph (c).

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- ‘(3) The chief executive must, on payment by a person of the reasonable fee decided by the chief executive, give a copy of the amendment to the person.
- ‘(4) If an amendment of the initial plan of survey of the site or the initial plan of survey of the adjacent site is approved under this section, the registrar of titles must register the amended plan.’.

## **71 Amendment of s 15 (Subdivision of secondary lots)**

- (1) Section 15—

*insert—*

‘(2CA) A group titles plan mentioned in subsection (2) or (2A) that is submitted to the local government must be accompanied by a diagram showing the name and numbering, or proposed name and numbering, of each road that is, or is to be, on—

- (a) the primary thoroughfare, or the part of the primary thoroughfare, shown on the plan; and
- (b) each secondary thoroughfare, or part of a secondary thoroughfare, shown on the plan.’.

- (2) Section 15(3), ‘Albert Shire Council’—

*omit, insert—*

‘local government’.

- (3) Section 15(1) and (2AA)—

*omit.*

- (4) Section 15(2) and (3), ‘Harbour, River and Waterfront Residential Zone’—

*omit, insert—*

‘Harbour 1 Residential Zone, Harbour, River and Waterfront Residential Zone’.

- (5) Section 15(2A), (2B), (2C), (2CA) and (5), ‘subsection (2)’—

*omit, insert—*

- ‘subsection (1)’.
- (6) Section 15(2B), (2C) and (2CA), ‘or (2A)’—  
*omit, insert—*  
‘or (2)’.
- (7) Section 15(4) and (5), ‘subsection (3)’—  
*omit, insert—*  
‘subsection (7)’.
- (8) Section 15(2) to (9)—  
*renumber* as section 15(1) to (13).

**72 Amendment of s 15A (Plan of survey where variation of boundary approved)**

- (1) Section 15A(1), ‘under section 8(7) or 12D(7)’—  
*omit, insert—*  
‘by the local government under section 7(8) or 12C(8) or by the Governor in Council under section 12P’.
- (2) Section 15A(2), ‘Albert Shire Council’—  
*omit, insert—*  
‘local government’.
- (3) Section 15A(3), ‘director of local government’—  
*omit, insert—*  
‘chief executive’.
- (4) Section 15A(3)—  
*renumber* as section 15A(4).
- (5) Section 15A—  
*insert—*
- ‘(3) However, the endorsement of the approval of the local government is not required on a plan of survey showing a

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variation of a boundary of a zone that has been approved under section 12P.’.

**73 Amendment of s 20 (Subdivision of land where wholly or partly submerged)**

Section 20(1), ‘Floating Dwelling House Zone’—

*omit, insert—*

‘Harbour 1 Residential Zone’.

**74 Amendment of s 21A (Subdivision of land outside residential zones)**

(1) Section 21A, ‘Albert Shire Council’—

*omit, insert—*

‘local government’.

(2) Section 21A(3), ‘director of local government’—

*omit, insert—*

‘chief executive’.

(3) Section 21A(4), ‘the council’—

*omit, insert—*

‘the local government’.

(4) Section 21A(3) and (4)—

*renumber* as section 21A(4) and (5).

(5) Section 21A—

*insert—*

‘(3) A plan of subdivision lodged with the local government under this section must be accompanied by a diagram showing the name and numbering, or proposed name and numbering, of each road that is, or is to be, on the primary thoroughfare, or the part of the primary thoroughfare, shown on the plan.’.

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**75 Amendment of s 22 (Interpretation)**

(1) Section 22, heading—

*omit, insert—*

**‘22 Definitions for pt 3’.**

(2) Section 22—

*insert—*

*‘financial year* means a period in relation to which the principal body corporate is required under section 33(1)(f) to prepare a statement of accounts.

*nominee*, of a member of the principal body corporate, see section 24(1).

*original owner*, of a secondary lot that has been subdivided by a building unit or group titles plan, means the person who was the registered owner of the lot immediately before it was subdivided by the plan.’.

**76 Replacement of s 24 (Member’s nominee)**

Section 24—

*omit, insert—*

**‘24 Member’s nominee**

‘(1) This section applies to a member of the principal body corporate for appointing a person (a *nominee*) to represent and vote on behalf of the member at meetings of the principal body corporate.

‘(2) A subsidiary body corporate of the principal body corporate—

(a) must appoint a nominee at its annual general meeting;  
and

(b) otherwise, may appoint a nominee from time to time.

‘(3) A member of the principal body corporate, other than a subsidiary body corporate, may appoint a nominee from time to time.

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- ‘(4) Subject to section 24A, a nominee appointed by a subsidiary body corporate must be a member of the subsidiary body corporate.
- ‘(5) The appointment of a nominee has no effect until written notice of the appointment is received by the secretary of the principal body corporate.
- ‘(6) A nominee appointed by a subsidiary body corporate must represent the subsidiary body corporate—
  - (a) in the way the subsidiary body corporate directs; and
  - (b) subject to paragraph (a), in a way that is in the best interests of the subsidiary body corporate.
- ‘(7) The appointment of a nominee for a member ends when the first of the following happens—
  - (a) the end of 1 year after the appointment;
  - (b) the secretary of the principal body corporate receives written notice of—
    - (i) the cancellation of the nominee’s appointment; or
    - (ii) the appointment of another nominee for the member.
- ‘(8) A written notice under subsection (5) or (7)(b) must be signed—
  - (a) for an appointment or cancellation made by a subsidiary body corporate—by the chairperson and secretary of the subsidiary body corporate; or
  - (b) otherwise—by the member.

**‘24A When original owner can not be nominee for subsidiary body corporate**

- ‘(1) This section applies if more than 50% of the lots created by the registration of a group titles plan or building units plan subdividing a secondary lot are no longer owned by the original owner of the secondary lot.

- 
- ‘(2) The subsidiary body corporate created by the registration of the plan can not appoint as its nominee—
- (a) the original owner; or
  - (b) an associate (an *ineligible associate*) of the original owner who is not 1 of the proprietors constituting the subsidiary body corporate.
- ‘(3) If the original owner or an ineligible associate of the original owner is already a nominee for the subsidiary body corporate—
- (a) a general meeting of the subsidiary body corporate must be held within 2 months; and
  - (b) if it is not sooner ended, the owner’s or associate’s appointment as the nominee ends at the next general meeting of the subsidiary body corporate.’.

**77 Amendment of s 27 (Meetings of principal body corporate)**

Section 27(5A), after ‘apply’—

*insert—*

‘and the application of the *Building Units and Group Titles Act 1980*, schedule 2, part 2 is subject to schedule 3 and schedule 9, definition *ordinary resolution*’.

**78 Amendment of s 32 (Miscellaneous powers of principal body corporate)**

- (1) Section 32, ‘body corporate may’—

*omit, insert—*

‘body corporate may do any of the following’.

- (2) Section 32—

*insert—*

‘(e) employ staff to perform its functions.’.

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**79 Amendment of s 33 (Duties of principal body corporate)**

Section 33(1)(e)—

*omit, insert—*

‘(e) keep—

- (i) for at least 10 years after their creation or receipt by or for the principal body corporate—
  - (A) minutes of its meetings, including particulars of motions passed at the meetings; and
  - (B) proper books of account for amounts received or paid by the principal body corporate showing the items for which the amounts were received or paid; and
- (ii) for at least 2 years after their creation or receipt by or for the principal body corporate—voting tally sheets or other records showing votes for motions and election ballots related to its meetings; and’.

**80 Amendment of s 41 (Constitution of executive committee)**

(1) Section 41(3), ‘3 members’—

*omit, insert—*

‘5 members’.

(2) Section 41(4)—

*omit, insert—*

‘(4) If there are more than 5 members of the principal body corporate, the executive committee must consist of at least 5 persons and not more than the number of members of the principal body corporate, as decided by the principal body corporate.’.

(3) Section 41(5), ‘(if any)’—

*omit.*

(4) Section 41(5), ‘more than 3’—



*omit, insert—*

‘more than 5’.

(5) Section 41(6)—

*omit, insert—*

‘(5A) The election of the chairperson, secretary, treasurer and any other members of the executive committee at a general meeting of the principal body corporate must be conducted under schedule 3.

‘(6) A person is eligible for election as chairperson, secretary or treasurer, or as another member of the executive committee, only if the person—

(a) is an individual who is—

(i) a member of the principal body corporate; or

(ii) a nominee of a member of the principal body corporate; and

(b) does not owe a relevant body corporate debt in relation to a lot or lots owned by the person.’.

## **81 Insertion of new s 41A**

After section 41—

*insert—*

### **‘41A Code of conduct for voting members of executive committee**

‘(1) The code of conduct in schedule 4 applies to each person (a *voting member*) who is—

(a) a member of the executive committee; and

(b) entitled to vote at general meetings of the principal body corporate.

‘(2) On becoming a voting member of the executive committee, the person is taken to have agreed to comply with the code of conduct.’.

[s 82]

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**82 Amendment of s 42 (Vacation of office of member of executive committee)**

(1) Section 42(1)(j)—

*renumber* as section 42(1)(k).

(2) Section 42(1)—

*insert—*

‘(j) if the person is removed from office by ordinary resolution of the principal body corporate under division 2D; or’.

**83 Insertion of new s 44A**

After section 44—

*insert—*

**‘44A Conflict of interest of executive committee member [SM, s 53]**

- ‘(1) A member of the executive committee must disclose to a meeting of the committee the member’s direct or indirect interest in an issue being considered, or about to be considered, by the committee if the interest could conflict with the appropriate performance of the member’s duties about the consideration of the issue.
- ‘(2) If a member required under subsection (1) to disclose an interest in an issue is a voting member of the committee, the member is not entitled to vote on a motion involving the issue.
- ‘(3) A person who holds the proxy of a member of the committee must disclose to a meeting of the committee the proxy holder’s direct or indirect interest in an issue being considered, or about to be considered, by the committee if the interest could conflict with the appropriate performance of the proxy holder’s duties about the consideration of the issue.
- ‘(4) A proxy holder required under subsection (3) to disclose an interest in an issue must not vote as the proxy on a motion involving the issue.

- ‘(5) A person who holds the proxy of a member of the committee must disclose to a meeting of the committee the member’s direct or indirect interest in an issue being considered, or about to be considered, by the committee if the proxy holder is aware that the member, if present, would be required under subsection (1) to disclose the interest.
- ‘(6) A proxy holder required under subsection (5) to disclose an interest in an issue must not vote as the proxy on a motion involving the issue.’.

#### **84 Amendment of s 47A (Principal body corporate manager)**

- (1) Section 47A(1), ‘subsection (2)’—

*omit, insert—*

‘subsections (2), (8), (9) and (10)’.

- (2) Section 47A(9)—

*renumber* as section 47A(11).

- (3) Section 47A(8)—

*omit, insert—*

- ‘(8) The term of appointment of the body corporate manager (after allowing for any rights or options of extension or renewal, whether provided for in the instrument of appointment or subsequently agreed to) must not be longer than 3 years.

*Example—*

The appointment of a body corporate manager begins on 1 January 2009 and is for a term of 3 years. The appointment can not end later than 31 December 2011.

- ‘(9) If the term of appointment purports to be longer than 3 years, it is taken to be 3 years.
- ‘(10) To remove any doubt, it is declared that at the end of the term of appointment of a person as the body corporate manager—
- (a) the appointment expires; and
  - (b) the person can not act again as the body corporate manager without a new appointment.’.

[s 85]

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- (4) Section 47A—  
*renumber* as section 47AB.

## **85 Insertion of new ss 47A and 47AA**

Part 3, division 2—

*insert*—

### **‘47A Protection of executive committee members from liability**

- ‘(1) A member of the executive committee is not civilly liable for an act done or omission made in good faith and without negligence in performing the person’s role as a member of the committee.
- ‘(2) In this section—  
*act done or omission made* does not include the publication of defamatory matter as mentioned in section 47AA(1).

### **‘47AA Protection of body corporate and executive committee from liability for defamation**

- ‘(1) This section applies if—
- (a) the executive committee publishes required material for a general meeting of the principal body corporate; and
  - (b) the required material contains defamatory matter.
- ‘(2) Each of the following is not liable for defamation because of the publication—
- (a) the principal body corporate;
  - (b) the committee, or a member of the committee, other than a member of the committee who submitted the document containing the defamatory matter.
- ‘(3) In this section—  
*member of the committee* includes the body corporate manager acting under a delegation under section 47AB(1).

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***prescribed motion*** means any of the following—

- (a) a motion to give a member of the executive committee a notice under section 47K(1);
- (b) a motion mentioned in section 47L(2)(a) to remove a member of the executive committee from office;
- (c) a motion to give a letting agent a code contravention notice;
- (d) a motion to require a letting agent to transfer the letting agent's management rights for a part of the resort under section 94K;
- (e) a motion to terminate a person's appointment as a body corporate manager, engagement as a service contractor or authorisation as a letting agent under section 94V.

***required material***, for a general meeting of the principal body corporate, means any of the following required under this Act to be published for the meeting—

- (a) a prescribed motion submitted other than by or for the committee for the general meeting;
- (b) the substance of a prescribed motion mentioned in paragraph (a);
- (c) notice of a prescribed motion mentioned in paragraph (a) or another document required to accompany the motion, prepared by the submitter of the motion.'

## **86 Insertion of new pt 3, divs 2B–2D**

Part 3—

*insert*—

[s 86]

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## **‘Division 2B                    Proxies for general meetings of principal body corporate**

### **‘47B    Application of div 2B**

‘This division applies to the appointment and use of a proxy to represent a member of the principal body corporate at a general meeting of the principal body corporate.

### **‘47C    Appointment [SM, s 107]**

- ‘(1) Subject to subsections (2) to (5), a person entitled to vote at the general meeting may appoint a proxy to act for the person at the general meeting.
- ‘(2) The principal body corporate may by special resolution prohibit the use of proxies—
  - (a) for particular things described in the special resolution;  
or
  - (b) altogether.
- ‘(3) An appointment under subsection (1) has effect subject to the operation of a special resolution under subsection (2).
- ‘(4) A person must not hold—
  - (a) if there are 20 or more lots for which there are voting entitlements for the meeting—proxies greater in number than 5% of the lots; or
  - (b) if there are fewer than 20 lots for which there are voting entitlements for the meeting—more than 1 proxy.
- ‘(5) The appointment of a proxy is effective only if the person or the holder of the proxy gives, by hand, post or facsimile, a properly completed proxy form to the secretary of the principal body corporate before—
  - (a) the start of the meeting where the proxy is to be exercised; or

- 
- (b) if the principal body corporate has fixed an earlier time by which proxies must be given (that can not, however, be earlier than 24 hours before the time fixed for the meeting)—the earlier time.

**‘47D Form of proxy [SM, s 108]**

‘A proxy under this division—

- (a) must be in the approved form; and
- (b) must be in the English language; and
- (c) can not be irrevocable; and
- (d) can not be transferred by the holder of the proxy to a third person; and
- (e) lapses at the end of the principal body corporate’s financial year or at the end of a shorter period stated in the proxy; and
- (f) may be given by any person who has the right to vote at a general meeting; and
- (g) subject to the limitations contained in this division, may be given to any individual; and
- (h) must appoint a named individual.

**‘47E Use of proxy [SM, s 109]**

- ‘(1) A member of the principal body corporate (*member A*) who is the proxy for another member of the principal body corporate (*member B*) may vote both in member A’s own right and also as proxy of member B.
- ‘(2) If at least 1 co-owner of a lot is present at the general meeting, a proxy given by another co-owner of the lot is of no effect.
- ‘(3) A vote by proxy must not be exercised at the general meeting—

[s 86]

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- (a) if the member who gave the proxy is personally present at the meeting, unless the member consents at the meeting; or
  - (b) on a particular motion, if the person who gave the proxy has exercised a written or electronic vote on the motion; or
  - (c) on a ballot for the election of a member of the executive committee, or for otherwise choosing a member of the executive committee; or
  - (d) for voting for a special resolution prohibiting, wholly or partly, the use of proxies at executive committee meetings or general meetings; or
  - (e) for voting for a majority resolution; or
  - (f) on a motion approving—
    - (i) the appointment, engagement or authorisation of a person as the body corporate manager, a service contractor or a letting agent; or
    - (ii) the amendment or termination of an appointment, engagement or authorisation mentioned in subparagraph (i); or
  - (g) on a motion decided by secret ballot.
- ‘(4) A proxy may be exercised by—
- (a) the proxy holder voting in a show of hands at a general meeting; or
  - (b) the proxy holder completing a written or electronic vote on a motion before the start of, or at, the general meeting.

#### **‘47F Special provisions about proxy use [SM, s 110]**

- ‘(1) A member of the principal body corporate can not be prevented by contract from exercising a vote at the general meeting, and can not be required by contract to make



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someone else the member's proxy for voting at the general meeting.

- (2) A proxy can not be exercised for someone else by—
- (a) the original owner of a secondary lot; or
  - (b) a body corporate manager for—
    - (i) the primary thoroughfare body corporate; or
    - (ii) the principal body corporate; or
    - (iii) a subsidiary body corporate of the primary thoroughfare body corporate or principal body corporate; or
  - (c) an associate of a person mentioned in paragraph (a) or (b), unless the associate is 1 of the proprietors constituting a body corporate that is itself a member of the principal body corporate.

#### **'47G Offence [SM, s 111]**

'A person must not exercise a proxy, or otherwise purport to vote on behalf of another person, at the general meeting of the principal body corporate knowing that the person does not have the right to exercise the proxy or otherwise vote on behalf of the other person.

Maximum penalty—100 penalty units.

### **'Division 2C Accounts and audit**

#### **'47H Application of div 2C**

'This division applies to the principal body corporate for preparing a statement of accounts under section 33(1)(f).

[s 86]

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**‘471 Accounts [SM, s 154]**

- ‘(1) The statement of accounts may be prepared on a cash or accrual basis.
- ‘(2) If the accounts are prepared on a cash basis, they must include disclosure of the following—
  - (a) the total amounts paid to the fund established under section 33(1)(i) and the account established under section 33(1)(k);
  - (b) total contributions in arrears;
  - (c) balances for all financial institution accounts and investments;
  - (d) all outstanding receipts and payments.
- ‘(3) If the accounts are prepared on an accrual basis, they must show the assets and liabilities of the principal body corporate at the end of the financial year for which the accounts are prepared.
- ‘(4) The statement of accounts must include—
  - (a) the corresponding figures for the previous financial year; and
  - (b) disclosure of all remuneration, allowances or expenses paid to members of the executive committee, identifying the total amounts paid to each member during the financial year under the following categories—
    - (i) remuneration or allowances;
    - (ii) expenses, split up into travelling, accommodation, meal and other expenses.
- ‘(5) A copy of the statement of accounts must accompany the notice of the annual general meeting first happening after the end of the financial year for which the accounts are prepared.

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**‘47J Audit [SM, s 155]**

- ‘(1) The principal body corporate must have its statement of accounts for each financial year of the body corporate audited by an auditor.
- ‘(2) The auditor to be appointed must be agreed to by ordinary resolution of the principal body corporate.
- ‘(3) The motion for agreeing to the auditor to be appointed—
  - (a) must be included in the agenda for the general meeting where the motion is to be considered; and
  - (b) must include the name of the auditor proposed to be appointed.
- ‘(4) Also, the body corporate may, by ordinary resolution—
  - (a) resolve to have its accounting records audited for a particular period or a particular project; and
  - (b) appoint an auditor for the audit.
- ‘(5) A member of the executive committee, the body corporate manager, or an associate of a member of the executive committee or body corporate manager, can not be appointed to audit the accounting records or the statement of accounts of the principal body corporate.
- ‘(6) On finishing an audit of the principal 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 principal body corporate’s financial affairs; and
  - (b) if the statement of accounts does not give a true and fair view of the principal body corporate’s financial affairs—identifying the deficiencies in the statement.
- ‘(7) A copy of the auditor’s certificate must accompany the notice of the next annual general meeting held after the certificate is given.
- ‘(8) In this section—

[s 86]

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**auditor** means—

- (a) a person who is a registered company auditor; or
- (b) a person who—
  - (i) is a member of—
    - (A) CPA Australia and entitled to use the letters ‘CPA’ or ‘FCPA’; or
    - (B) the Institute of Chartered Accountants in Australia and entitled to use the letters ‘CA’ or ‘FCA’; or
    - (C) the National Institute of Accountants and entitled to use the letters ‘MNIA’, ‘FNIA’, ‘PNA’ or ‘FPNA’; and
  - (ii) has a total of 2 years auditing experience, whether or not continuous.

## **‘Division 2D                    Removal from office of voting members of executive committee for breach of code of conduct**

### **‘47K    Notice for breach of code of conduct [SM, s 34]**

- ‘(1) If the principal body corporate believes a voting member of its executive committee has breached the code of conduct for the member, the principal body corporate may decide, by ordinary resolution, to give the member a written notice stating each of the following—
  - (a) that the principal body corporate believes the member has breached a stated provision of the code of conduct;
  - (b) details sufficient to identify the breach in not more than 600 words;
  - (c) that the member may give any other member of the principal body corporate, within the stated period of at least 21 days after the member is given the notice, a

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written response to the notice in not more than 600 words;

- (d) that, if asked by the member, the principal body corporate will pay the member all postage charges and copying expenses reasonably incurred by the member in giving a written response under paragraph (c) to any other member of the principal body corporate;
- (e) that the principal body corporate is to consider a motion to remove the member from office for the breach at its next general meeting called after the period mentioned in paragraph (c) ends.

- ‘(2) If asked by the member, the principal body corporate must pay the member all postage charges and copying expenses reasonably incurred by the member in giving a written response under subsection (1)(c) to any other member of the principal body corporate.

**‘47L Removal of voting member at general meeting  
[SM, s 35]**

- ‘(1) This section applies if—
  - (a) the principal body corporate gives a voting member of its executive committee a notice under section 47K(1); and
  - (b) the period mentioned in section 47K(1)(c) for the notice has ended.
- ‘(2) The principal body corporate must—
  - (a) include on the agenda of its next general meeting, called after the period mentioned in section 47K(1)(c) ends, a motion to remove the member from office for breaching the code of conduct; and
  - (b) attach to the agenda a copy of—
    - (i) the notice; and

[s 87]

---

(ii) if the body corporate has received a written response from the member under section 47K(1)(c)—the response.

‘(3) The member may be removed from office, by ordinary resolution of the principal body corporate, at the next general meeting.’.

**87 Amendment of s 60 (Establishment of pedestrian mall)**

Section 60, ‘Floating Dwelling House Zone’—

*omit, insert—*

‘Harbour 1 Residential Zone’.

**88 Replacement of s 64A (Maintenance etc. of canals)**

Section 64A—

*omit, insert—*

**‘64A Maintenance etc. of canals**

‘The principal body corporate must preserve, maintain and keep clean a canal, or the part of a canal, that is part of a secondary thoroughfare.’.

**89 Amendment of s 64B (Surrender of secondary thoroughfare as canal)**

(1) Section 64B(1)—

*omit, insert—*

‘(1) This section applies to a canal, including the part of a canal, that is part of a secondary thoroughfare.’.

(2) Section 64B, ‘Albert Shire Council’—

*omit, insert—*

‘local government’.

(3) Section 64B, ‘Canals Act 1958’—

*omit, insert—*

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*‘Coastal Protection and Management Act 1995’.*

- (4) Section 64B(2), ‘a canal’—

*omit, insert—*

‘the canal’.

## **90 Amendment of s 65 (Interpretation)**

- (1) Section 65, heading—

*omit, insert—*

## **‘65 Definitions for pt 5’.**

- (2) Section 65—

*insert—*

*‘financial year*, for the primary thoroughfare body corporate, means a period in relation to which the primary thoroughfare body corporate is required under section 77(1)(f) to prepare a statement of accounts.’.

## **91 Amendment of s 67 (Member’s nominee)**

- (1) Section 67(1)(a), from ‘a body corporate’ to ‘group titles plan’—

*omit, insert—*

‘a subsidiary body corporate’.

- (2) Section 67—

*insert—*

- ‘(4) A person appointed under this section by a subsidiary body corporate must represent the subsidiary body corporate—

(a) in the way the subsidiary body corporate directs; and

(b) subject to paragraph (a), in a way that is in the best interests of the subsidiary body corporate.’.

[s 92]

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**92 Amendment of s 70 (Meetings of primary thoroughfare body corporate)**

Section 70(5A), after ‘apply’—

*insert—*

‘and the application of the *Building Units and Group Titles Act 1980*, schedule 2, part 2 is subject to schedule 3 and schedule 9, definition *ordinary resolution*’.

**93 Amendment of s 76 (Miscellaneous powers of primary thoroughfare body corporate)**

(1) Section 76, ‘body corporate may’—

*omit, insert—*

‘body corporate may do any of the following’.

(2) Section 76—

*insert—*

‘(g) employ staff to perform its functions.’.

**94 Amendment of s 77 (Duties of primary thoroughfare body corporate)**

Section 77(1)(e)—

*omit, insert—*

‘(e) keep—

(i) for at least 10 years after their creation or receipt by or for the primary thoroughfare body corporate—

(A) minutes of its meetings, including particulars of motions passed at the meetings; and

(B) proper books of account for amounts received or paid by the primary thoroughfare body corporate showing the items for which the amounts were received or paid; and



- (ii) for at least 2 years after their creation or receipt by or for the primary thoroughfare body corporate— voting tally sheets or other records showing votes for motions and election ballots related to its meetings; and’.

**95 Amendment of s 85 (Constitution of executive committee)**

- (1) Section 85(3), ‘3 members’—  
*omit, insert—*  
‘5 members’.
- (2) Section 85(4)—  
*omit, insert—*  
‘(4) If there are more than 5 members of the primary thoroughfare body corporate, the executive committee must consist of at least 5 persons and not more than the number of members of the primary thoroughfare body corporate, as decided by the primary thoroughfare body corporate.’.
- (3) Section 85(5), ‘(if any)’—  
*omit.*
- (4) Section 85(5), ‘more than 3’—  
*omit, insert—*  
‘more than 5’.
- (5) Section 85(6)—  
*omit, insert—*  
‘(5A) The election of the chairperson, secretary, treasurer and any other members of the executive committee at a general meeting of the primary thoroughfare body corporate must be conducted under schedule 3.
- ‘(6) A person is eligible for election as chairperson, secretary or treasurer, or as another member of the executive committee, only if the person—
  - (a) is an individual who—

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- (i) is a member of the primary thoroughfare body corporate; or
  - (ii) has been nominated for election by a member of the primary thoroughfare body corporate; and
- (b) does not owe a relevant body corporate debt in relation to a lot or lots owned by the person.’.

**96 Insertion of new s 85A**

After section 85—

*insert—*

**‘85A Code of conduct for voting members of executive committee**

- ‘(1) The code of conduct in schedule 4 applies to each person (a *voting member*) who is—
- (a) a member of the executive committee; and
  - (b) entitled to vote at general meetings of the primary thoroughfare body corporate.
- ‘(2) On becoming a voting member of the executive committee, the person is taken to have agreed to comply with the code of conduct.’.

**97 Amendment of s 86 (Vacation of office of member of executive committee)**

- (1) Section 86(1)(j)—  
*renumber* as section 86(1)(k).

- (2) Section 86(1)—

*insert—*

- ‘(j) if the person is removed from office by ordinary resolution of the primary thoroughfare body corporate under division 2C; or’.

---

**98 Insertion of new s 88A**

After section 88—

*insert—*

**‘88A Conflict of interest of executive committee member  
[SM, s 53]**

- ‘(1) A member of the executive committee must disclose to a meeting of the committee the member’s direct or indirect interest in an issue being considered, or about to be considered, by the committee if the interest could conflict with the appropriate performance of the member’s duties about the consideration of the issue.
- ‘(2) If a member required under subsection (1) to disclose an interest in an issue is a voting member of the committee, the member is not entitled to vote on a motion involving the issue.
- ‘(3) A person who holds the proxy of a member of the committee must disclose to a meeting of the committee the proxy holder’s direct or indirect interest in an issue being considered, or about to be considered, by the committee if the interest could conflict with the appropriate performance of the proxy holder’s duties about the consideration of the issue.
- ‘(4) A proxy holder required under subsection (3) to disclose an interest in an issue must not vote as the proxy on a motion involving the issue.
- ‘(5) A person who holds the proxy of a member of the committee must disclose to a meeting of the committee the member’s direct or indirect interest in an issue being considered, or about to be considered, by the committee if the proxy holder is aware that the member, if present, would be required under subsection (1) to disclose the interest.
- ‘(6) A proxy holder required under subsection (5) to disclose an interest in an issue must not vote as the proxy on a motion involving the issue.’.

[s 99]

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**99 Amendment of s 91A (Primary thoroughfare body corporate manager)**

(1) Section 91A(1), ‘subsection (2)’—

*omit, insert—*

‘subsections (2), (8), (9) and (10)’.

(2) Section 91A(9)—

*renumber* as section 91A(11).

(3) Section 91A(8)—

*omit, insert—*

‘(8) The term of appointment of the body corporate manager (after allowing for any rights or options of extension or renewal, whether provided for in the instrument of appointment or subsequently agreed to) must not be longer than 3 years.

*Example—*

The appointment of a body corporate manager begins on 1 January 2009 and is for a term of 3 years. The appointment can not end later than 31 December 2011.

‘(9) If the term of appointment purports to be longer than 3 years, it is taken to be 3 years.

‘(10) To remove any doubt, it is declared that at the end of the term of appointment of a person as the body corporate manager—

(a) the appointment expires; and

(b) the person can not act again as the body corporate manager without a new appointment.’.

(4) Section 91A—

*renumber* as section 91AB.

**100 Insertion of new ss 91A and 91AA**

Part 5, division 2—

*insert—*

---

**‘91A Protection of executive committee members from liability**

- ‘(1) A member of the executive committee is not civilly liable for an act done or omission made in good faith and without negligence in performing the person’s role as a member of the committee.
- ‘(2) In this section—  
*act done or omission made* does not include the publication of defamatory matter as mentioned in section 91AA(1).

**‘91AA Protection of body corporate and executive committee from liability for defamation**

- ‘(1) This section applies if—
- (a) the executive committee publishes required material for a general meeting of the primary thoroughfare body corporate; and
  - (b) the required material contains defamatory matter.
- ‘(2) Each of the following is not liable for defamation because of the publication—
- (a) the primary thoroughfare body corporate;
  - (b) the committee, or a member of the committee, other than a member of the committee who submitted the document containing the defamatory matter.
- ‘(3) In this section—  
*member of the committee* includes the body corporate manager acting under a delegation under section 91AB(1).  
*prescribed motion* means any of the following—
- (a) a motion to give a member of the executive committee a notice under section 91H(1);
  - (b) a motion mentioned in section 91I(2)(a) to remove a member of the executive committee from office;

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- (c) a motion to give a letting agent a code contravention notice;
- (d) a motion to require a letting agent to transfer the letting agent's management rights for the resort or a part of the resort under section 94K;
- (e) a motion to terminate a person's appointment as a body corporate manager, engagement as a service contractor or authorisation as a letting agent under section 94V.

*required material*, for a general meeting of the primary thoroughfare body corporate, means any of the following required under this Act to be published for the meeting—

- (a) a prescribed motion submitted other than by or for the committee for the general meeting;
- (b) the substance of a prescribed motion mentioned in paragraph (a);
- (c) notice of a prescribed motion mentioned in paragraph (a) or another document required to accompany the motion, prepared by the submitter of the motion.'.

## **101 Insertion of new pt 5, divs 2B and 2C**

Part 5—

*insert—*

### **'Division 2B Proxies for principal body corporate at general meetings of primary thoroughfare body corporate**

#### **'91B Application of div 2B**

'This division applies to the appointment and use of a proxy to represent the principal body corporate at a general meeting of the primary thoroughfare body corporate.

---

**‘91C Appointment [SM, s 107]**

- ‘(1) Subject to subsection (2), the principal body corporate may appoint a proxy to act for the body corporate at the general meeting.
- ‘(2) The appointment of a proxy is effective only if the principal body corporate or the holder of the proxy gives, by hand, post or facsimile, a properly completed proxy form to the secretary of the primary thoroughfare body corporate before—
  - (a) the start of the meeting where the proxy is to be exercised; or
  - (b) if the primary thoroughfare body corporate has fixed an earlier time by which proxies must be given (that can not, however, be earlier than 24 hours before the time fixed for the meeting)—the earlier time.

**‘91D Form of proxy [SM, s 108]**

‘A proxy given under this division—

- (a) must be in the approved form; and
- (b) must be in the English language; and
- (c) can not be irrevocable; and
- (d) can not be transferred by the holder of the proxy to a third person; and
- (e) lapses at the end of the primary thoroughfare body corporate’s financial year or at the end of a shorter period stated in the proxy; and
- (f) may be given by any person who has the right to vote at a general meeting; and
- (g) subject to the limitations contained in this division, may be given to any individual; and
- (h) must appoint a named individual.

[s 101]

---

**‘91E Use of proxy [SM, s 109]**

- ‘(1) A member of the primary thoroughfare body corporate who is the proxy for the principal body corporate may vote both in the member’s own right and also as proxy of the principal body corporate.
- ‘(2) A vote by proxy must not be exercised on behalf of the principal body corporate at the general meeting—
- (a) if the person appointed to represent the principal body corporate under section 67(1) is personally present at the meeting, unless the person consents at the meeting; or
  - (b) on a particular motion, if a written or electronic vote has been exercised on the motion on behalf of the principal body corporate; or
  - (c) on a ballot for the election of a member of the executive committee, or for otherwise choosing a member of the executive committee; or
  - (d) for voting for a special resolution prohibiting, wholly or partly, the use of proxies at executive committee meetings or general meetings; or
  - (e) for voting for a majority resolution; or
  - (f) on a motion approving—
    - (i) the appointment, engagement or authorisation of a person as the body corporate manager, a service contractor or a letting agent; or
    - (ii) the amendment or termination of an appointment, engagement or authorisation mentioned in subparagraph (i); or
  - (g) on a motion decided by secret ballot.
- ‘(3) A proxy may be exercised by—
- (a) the proxy holder voting in a show of hands at a general meeting; or



- (b) the proxy holder completing a written or electronic vote on a motion before the start of, or at, the general meeting.

**‘91F Special provisions about proxy use [SM, s 110]**

- ‘(1) The principal body corporate can not be prevented by contract from exercising a vote at the general meeting, and can not be required by contract to make someone else the body corporate’s proxy for voting at the general meeting.
- ‘(2) A proxy can not be exercised for the principal body corporate by—
  - (a) the original owner of a secondary lot; or
  - (b) a body corporate manager for—
    - (i) the primary thoroughfare body corporate; or
    - (ii) the principal body corporate; or
    - (iii) a subsidiary body corporate of the primary thoroughfare body corporate or principal body corporate; or
  - (c) an associate of a person mentioned in paragraph (a) or (b), unless the associate is 1 of the proprietors constituting a subsidiary body corporate of the principal body corporate.

**‘91G Offence [SM, s 111]**

‘A person must not exercise a proxy, or otherwise purport to vote on behalf of the principal body corporate, at the general meeting of the primary thoroughfare body corporate knowing that the person does not have the right to exercise the proxy or otherwise vote on behalf of the principal body corporate.

Maximum penalty—100 penalty units.

[s 101]

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**‘Division 2C                    Removal from office of voting  
members of executive committee  
for breach of code of conduct**

**‘91H    Notice for breach of code of conduct [SM, s 34]**

- ‘(1) If the primary thoroughfare body corporate believes a voting member of its executive committee has breached the code of conduct for the member, the primary thoroughfare body corporate may decide, by ordinary resolution, to give the member a written notice stating each of the following—
- (a) that the primary thoroughfare body corporate believes the member has breached a stated provision of the code of conduct;
  - (b) details sufficient to identify the breach in not more than 600 words;
  - (c) that the member may give any other member of the primary thoroughfare body corporate, within the stated period of at least 21 days after the member is given the notice, a written response to the notice in not more than 600 words;
  - (d) that, if asked by the member, the primary thoroughfare body corporate will pay the member all postage charges and copying expenses reasonably incurred by the member in giving a written response under paragraph (c) to any other member of the primary thoroughfare body corporate;
  - (e) that the primary thoroughfare body corporate is to consider a motion to remove the member from office for the breach at its next general meeting called after the period mentioned in paragraph (c) ends.
- ‘(2) If asked by the member, the primary thoroughfare body corporate must pay the member all postage charges and copying expenses reasonably incurred by the member in giving a written response under subsection (1)(c) to any other member of the primary thoroughfare body corporate.

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**‘911 Removal of voting member at general meeting  
[SM, s 35]**

- ‘(1) This section applies if—
- (a) the primary thoroughfare body corporate gives a voting member of its executive committee a notice under section 91H(1); and
  - (b) the period mentioned in section 91H(1)(c) for the notice has ended.
- ‘(2) The primary thoroughfare body corporate must—
- (a) include on the agenda of its next general meeting, called after the period mentioned in section 91H(1)(c) ends, a motion to remove the member from office for breaching the code of conduct; and
  - (b) attach to the agenda a copy of—
    - (i) the notice; and
    - (ii) if the body corporate has received a written response from the member under section 91H(1)(c)—the response.
- ‘(3) The member may be removed from office, by ordinary resolution of the primary thoroughfare body corporate, at the next general meeting.’.

**102 Insertion of new pt 5A**

After part 5—

*insert—*

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## **‘Part 5A                      Conduct of body corporate managers, service contractors and letting agents**

### **‘Division 1                      Preliminary**

#### **‘94A    Definitions for pt 5A**

‘In this part—

*caretaking service contractor*, for the resort, or part of the resort, means a service contractor for the resort or part who is also—

- (a) a letting agent for the resort or part; or
- (b) an associate of the letting agent.

*letting agent authorisation*, for a letting agent, means an authorisation given by the primary thoroughfare body corporate or principal body corporate to the letting agent to conduct a letting agent business for the resort or part of the resort.

*management rights*, of a letting agent for the resort or part of the resort, means—

- (a) the letting agent business for the resort or part, including the letting agent’s authorisation; and
- (b) the business conducted by the letting agent under a service contract for the resort or part, including the service contract; and
- (c) the letting agent’s interest in a lot used for conducting a business mentioned in paragraph (a) or (b); and
- (d) any right of the letting agent to use and occupy a part of the common property for a business mentioned in paragraph (a) or (b).

*reviewable terms*, for a service contract, means the terms of the contract that provide for—

- 
- (a) the functions and powers of the relevant letting agent as a service contractor; or
  - (b) the remuneration payable to the relevant letting agent as a service contractor.

**review advice**, about a service contract, means written advice about whether the contract's reviewable terms—

- (a) are currently fair and reasonable; and
- (b) if the reviewable terms are not currently fair and reasonable—how the reviewable terms should be changed to ensure they are fair and reasonable.

**service contract** means a contract entered into with a person for the engagement of the person as a service contractor for the resort or part of the resort.

#### **'94B Meaning of *financier* for a letting agent's contract**

- '(1) A person is a ***financier*** for a contract under which a letting agent is authorised by a body corporate if the letting agent and the person give written notice signed by each of them to the body corporate that the person is a financier for the contract.
- '(2) A person stops being a ***financier*** for the contract if the person gives the body corporate a written notice withdrawing the notice given under subsection (1).
- '(3) A notice under subsection (2) may be given without the letting agent's agreement.
- '(4) However, a person is a ***financier*** for the contract only if the person is—
  - (a) a financial institution; or
  - (b) a person who, in the ordinary course of the person's business, supplies, or might reasonably be expected to supply, finance for business acquisitions, using charges over contracts as the whole or part of the person's security for supplying the finance; or

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- (c) at the time the person supplied finance for a business acquisition using a charge over the contract as the whole or part of the person's security, the person was a person to whom paragraph (b) would have applied.

#### **'94C Meaning of *letting agent* and *letting agent business***

- '(1) A person is a *letting agent* for the resort or part of the resort if the person is authorised by the primary thoroughfare body corporate or principal body corporate to conduct a letting agent business for the resort or part.
- '(2) A person conducts a *letting agent business* for the resort or part of the resort if—
  - (a) the person conducts, subject to the *Property Agents and Motor Dealers Act 2000*, the business of acting as the agent of the owners of 1 or more lots included in the resort or part; and
  - (b) the owners choose to use the person's services for securing, negotiating or enforcing, including collecting rents or tariffs for, leases or other occupancies of lots included in the resort or part.
- '(3) It is not relevant to the identification of a person as a letting agent under this section that the person also conducts an ancillary business or other activity.

*Examples of ancillary businesses or activities—*

video hire, linen hire, agency for tour operator

#### **'94D Meaning of *service contractor* for resort or part**

'A person is a *service contractor* for the resort or part of the resort if—

- (a) the person is engaged by the primary thoroughfare body corporate or principal body corporate to supply services to the body corporate for the benefit of the common property or lots included in the resort or part; and

- (b) the person is not an employee of the primary thoroughfare body corporate or principal body corporate; and
- (c) the services do not include administrative services; and
- (d) the term of the engagement is at least 1 year.

*Examples of services that might be provided by a service contractor—*  
caretaking services, pool cleaning services

## **‘Division 2                    Codes of conduct**

### **‘94E    Code of conduct for body corporate manager and caretaking service contractor**

- ‘(1) The code of conduct in schedule 5 applies to—
  - (a) a body corporate manager appointed by the primary thoroughfare body corporate or principal body corporate in performing obligations under the person’s appointment; and
  - (b) a caretaking service contractor engaged by the primary thoroughfare body corporate or principal body corporate for the resort or part of the resort in performing obligations under the person’s engagement.
- ‘(2) Compliance with the provisions of the code is taken to be a condition of the instrument of appointment or the contract providing for the person’s engagement.
- ‘(3) If there is an inconsistency between a provision of the code and a provision in the instrument of appointment or contract, the provision of the code prevails.
- ‘(4) In this section—  
*instrument of appointment*, in relation to a person’s appointment as a body corporate manager, includes a contract or other document relating to the appointment.

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**‘94F Code of conduct for letting agent**

‘The code of conduct in schedule 6 applies to a letting agent authorised by the primary thoroughfare body corporate or principal body corporate to conduct a letting agent business for the resort or part of the resort.

**‘Division 3 Required transfer of management rights for contravention of code of conduct**

**‘Subdivision 1 Preliminary**

**‘94G Application of div 3**

- ‘(1) This division applies for transferring the management rights of a letting agent authorised by the primary thoroughfare body corporate or principal body corporate to conduct a letting agent business for the resort or a part of the resort.
- ‘(2) However, this division does not apply to a letting agent for conducting a letting agent business or a part of a letting agent business for a part of the resort for which a serviced strata arrangement or scheme under the Corporations Act is in operation.

**‘94H Effect of div 3 on other provisions**

‘The provisions of a letting agent authorisation or service contract providing for its transfer or termination are void to the extent the provisions are inconsistent with this division.



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## **‘Subdivision 2      Transfer of management rights**

### **‘94I      Code contravention notice**

- ‘(1) The body corporate must, if required by ordinary resolution decided by secret ballot, give the letting agent a signed notice under this section (a *code contravention notice*).
- ‘(2) The code contravention notice must state—
- (a) that the body corporate believes the letting agent has or is contravening a provision of the code of conduct for—
    - (i) letting agents; or
    - (ii) body corporate managers and caretaking service contractors; and
  - (b) the provision the body corporate believes has been or is being contravened; and
  - (c) details sufficient to identify the contravention; and
  - (d) a reasonable period within which the letting agent must remedy the contravention; and
  - (e) that the body corporate may, without further notice, give the letting agent a transfer notice if—
    - (i) the letting agent does not comply with the code contravention notice; or
    - (ii) the body corporate reasonably believes the letting agent, after being given the notice, has contravened a provision of a code mentioned in paragraph (a).

### **‘94J      Grounds for requiring transfer**

‘The body corporate may require the transfer of the letting agent’s management rights under this division only if the requirement is based on either of the following grounds—

- (a) the letting agent failed to comply with a code contravention notice;

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- (b) the body corporate reasonably believes the letting agent, after being given the notice, contravened a provision of the code of conduct for—
  - (i) letting agents; or
  - (ii) body corporate managers and caretaking service contractors.

#### **‘94K Requirement for transfer**

‘The letting agent must transfer the letting agent’s management rights for the resort or the part of the resort if—

- (a) a ground under section 94J exists for the body corporate to require the transfer; and
- (b) the body corporate—
  - (i) by majority resolution decided by secret ballot requires the transfer; and
  - (ii) gives written notice of the requirement (the *transfer notice*) to the letting agent.

#### **‘94L Transfer—letting agent’s choice of transferee**

‘(1) The letting agent must transfer the management rights—

- (a) within the following period after the transfer notice is given to the letting agent—
  - (i) if section 94Q does not apply—9 months;
  - (ii) if section 94Q applies—11 months; and
- (b) to a person, other than an associate of the letting agent, chosen by the letting agent and approved by the body corporate.

‘(2) For deciding whether to approve a person under subsection (1)(b), the body corporate—

- (a) must act reasonably and as quickly as practicable; and
- (b) may have regard only to the person’s—

- 
- (i) character; and
  - (ii) financial standing; and
  - (iii) competence, qualifications and experience.
- ‘(3) However, the body corporate must not—
- (a) unreasonably withhold approval of the person; or
  - (b) require or receive a fee or other consideration for approving the person, other than reimbursement for legal expenses reasonably incurred by the body corporate in relation to a request for its approval.

Maximum penalty for subsection (3)—50 penalty units.

- ‘(4) If the letting agent transfers the management rights to a person who is not approved by the body corporate, the transfer is of no effect.

#### **‘94M Giving financier copy of transfer notice**

‘When the body corporate gives the transfer notice to the letting agent, the body corporate must give a copy of it to each person who is a financier for the contract under which the letting agent is authorised as the letting agent.

#### **‘94N Transfer—body corporate’s choice of transferee**

- ‘(1) If the letting agent does not transfer the management rights as required under section 94L, the letting agent must transfer the management rights—
- (a) to a replacement letting agent chosen by the executive committee of the body corporate and named in a written notice given by the committee to the letting agent; and
  - (b) at the price stated in the notice; and
  - (c) within the period, of at least 2 months after the notice is given, stated in the notice.
- ‘(2) The price stated must be 1 of the following—

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- (a) the average of 2 valuations, obtained by the body corporate from 2 independent registered valuers, stating the value of the management rights;
  - (b) the highest bid for the management rights, excluding a bid by the letting agent or an associate of the letting agent, made at an auction—
    - (i) conducted at the request of the body corporate; and
    - (ii) of which at least 60 days notice was given;
  - (c) the highest amount tendered, excluding by tender by the letting agent or an associate of the letting agent, for the management rights after reasonable efforts made by the body corporate to market the management rights for at least 60 days.
- ‘(3) The letting agent must pay the body corporate, from the proceeds of the sale, the reasonable costs incurred by the body corporate under subsection (2).

*Note—*

If the letting agent does not transfer the management rights as required under this section, it is a ground for giving the letting agent a remedial action notice under section 94V.

#### **‘94O Terms of service contract on transfer**

- ‘(1) This section applies to a service contract (the *transferred service contract*) transferred to a person (the *transferee*) under section 94L or 94N.
- ‘(2) Unless the body corporate and transferee agree otherwise, the terms of the transferred service contract are—
- (a) the terms applying to the service contract under subsection (3); or
  - (b) if subsection (3) does not apply—the terms applying to the service contract immediately before the transfer (the *existing terms*).

- 
- ‘(3) The terms of the transferred service contract are the existing terms as changed under a review advice about the contract if—
- (a) the review advice states how the contract’s reviewable terms should be changed to ensure they are fair and reasonable; and
  - (b) the body corporate gave the letting agent a copy of the review advice as required under section 94S(1).

### ‘Subdivision 3      **Replacement of letting agent authorisation and service contract**

#### ‘94P      **Replacement of letting agent authorisation and service contract in particular circumstances**

- ‘(1) This section applies if the remainder of the term of the letting agent’s authorisation (the *transferred authorisation*), including any rights or options of extension or renewal, is less than 7 years when transferred to a person (the *transferee*) under this division.

*Example—*

A letting agent’s authorisation is given for a term of 5 years with 4 rights of renewal of 5 years each and 5 years have expired. The remainder of the term is therefore 20 years and this section does not apply.

- ‘(2) On the transfer—
- (a) the transferred authorisation and any service contract (the *transferred service contract*) forming part of the transferred management rights terminate; and
  - (b) the body corporate must—
    - (i) authorise the transferee to conduct a letting agent business for the resort or part; and
    - (ii) if a service contract formed part of the transferred management rights—engage the transferee as a service contractor.

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- ‘(3) The authorisation and engagement must be given for a term of 9 years starting immediately after the transfer.
- ‘(4) Subject to subsection (3)—
- (a) the authorisation must be given on the terms applying to the transferred authorisation immediately before the transfer; and
  - (b) unless the body corporate and transferee agree otherwise, the engagement must be given on—
    - (i) the terms applying to the transferred service contract under subsection (5); or
    - (ii) if subsection (5) does not apply—the terms applying to the transferred service contract immediately before the transfer (the *existing terms*).
- ‘(5) The engagement must be given on the existing terms of the transferred service contract as changed under a review advice about the contract if—
- (a) the review advice states how the contract’s reviewable terms should be changed to ensure they are fair and reasonable; and
  - (b) the body corporate gave the letting agent a copy of the review advice as required under section 94S(1).

## ‘Subdivision 4      **Reviewing terms of letting agent’s service contract**

### ‘94Q      **Reviewing terms of service contract**

- ‘(1) This section applies if—
- (a) the letting agent’s management rights include a service contract; and
  - (b) when the body corporate passes the majority resolution mentioned in section 94K, the body corporate also passes, by ordinary resolution, a motion (a *review*

*motion*) that a review advice about the service contract be obtained.

- ‘(2) Within 1 month after the review motion is passed, the body corporate must obtain the review advice from an independent appropriate person.

*Example of an independent appropriate person—*

a person who, in the ordinary course of the person’s business, has knowledge of the functions and powers of service contractors and the remuneration for performing the functions and powers

- ‘(3) The review advice must be based on the review criteria stated in section 94R.
- ‘(4) This section applies to the contract even if the contract also provides for either or both of the following—
- (a) the letting agent’s engagement as a body corporate manager;
  - (b) the letting agent’s authorisation as a letting agent.

#### **‘94R Review criteria**

- ‘(1) The review criteria are each of the following—
- (a) the appropriateness of the reviewable terms for achieving a fair and reasonable balance between the interests of the body corporate and the service contractor;
  - (b) whether the reviewable terms impose conditions that—
    - (i) are unreasonably difficult to comply with; or
    - (ii) are not necessary and reasonable for the protection of the legitimate interests of the body corporate or the service contractor;
  - (c) the consequences of complying with, or contravening, the reviewable terms and whether the consequences are unfairly harsh or beneficial to the body corporate or the service contractor;

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- (d) whether the reviewable terms are appropriate for the resort;
  - (e) the term of the engagement as service contractor and the period of the term remaining.
- ‘(2) The review criterion mentioned in subsection (1)(d) is to be applied having regard, in particular, to the nature, features and characteristics of the resort.

**‘94S Giving copy of review advice to letting agent and prospective buyer of management rights**

- ‘(1) Within 14 days after obtaining the review advice, the body corporate must give a copy of it to the letting agent.
- ‘(2) If requested by a prospective buyer of the letting agent’s management rights, the body corporate must give a copy of the review advice to the prospective buyer.

**‘Subdivision 5 Disputes about transfer of management rights**

**‘94T CCT jurisdiction**

‘A dispute about the transfer, under this division, of a letting agent’s management rights may be dealt with by the Commercial and Consumer Tribunal under the *Commercial and Consumer Tribunal Act 2003*.

**‘Division 4 Disputes about contractual matters**

**‘94U CCT jurisdiction**

- ‘(1) This section applies to a dispute about a claimed or anticipated contractual matter about—



- (a) the appointment or engagement of a person as a body corporate manager or caretaking service contractor for the resort or part of the resort; or
  - (b) the authorisation of a person as a letting agent for the resort or part of the resort.
- ‘(2) A party to the dispute may apply under the *Commercial and Consumer Tribunal Act 2003* for an order of the Commercial and Consumer Tribunal to resolve the dispute.

## **‘Division 5                    Termination of appointment,    engagement or authorisation**

### **‘94V    Termination for failure to comply with remedial                  action notice [SM, s 131]**

- ‘(1) The primary thoroughfare body corporate or principal body corporate may terminate a person’s appointment as a body corporate manager or engagement as a service contractor if the person or, if the person is a corporation, a director of the corporation—
- (a) engages in misconduct, or is grossly negligent, in carrying out functions required under the appointment or engagement; or
  - (b) fails to carry out duties under the appointment or engagement; or
  - (c) contravenes—
    - (i) for a body corporate manager—the code of conduct for body corporate managers and caretaking service contractors; or
    - (ii) for a service contractor who is a caretaking service contractor—the code of conduct for body corporate managers and caretaking service contractors or the code of conduct for letting agents.

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- ‘(2) Also, the body corporate may terminate a person’s authorisation as a letting agent if—
- (a) the person or, if the person is a corporation, a director of the corporation—
    - (i) engages in misconduct, or is grossly negligent, in carrying out obligations, if any, under the authorisation; or
    - (ii) fails to carry out duties under the authorisation; or
    - (iii) contravenes the code of conduct for letting agents or, for a caretaking service contractor, the code of conduct for body corporate managers and caretaking service contractors; or
  - (b) the person has been given a transfer notice requiring transfer of the person’s management rights and has not transferred the management rights as required under section 94N.
- ‘(3) The body corporate may act under subsection (1) or (2) only if—
- (a) the body corporate has given the manager, contractor or agent a remedial action notice; and
  - (b) the manager, contractor or agent fails to comply with the remedial action notice within the period stated in the notice; and
  - (c) the termination is approved by ordinary resolution of the body corporate; and
  - (d) for the termination of a person’s engagement as a caretaking service contractor or authorisation as a letting agent—the motion to approve the termination is decided by secret ballot.
- ‘(4) In this section—
- remedial action notice*** means a written notice stating each of the following—
- (a) that the body corporate believes the person to whom the notice is given has acted—

- 
- (i) for a body corporate manager or service contractor—in a way mentioned in subsection (1); or
  - (ii) for a letting agent—in a way mentioned in subsection (2);
  - (b) details of the action sufficient to identify—
    - (i) the misconduct or gross negligence the body corporate believes has happened; or
    - (ii) the duties the body corporate believes have not been carried out; or
    - (iii) the provision of the code of conduct the body corporate believes has been contravened; or
    - (iv) if subsection (2)(b) applies, the contravention of the code contravention notice or the relevant provision of the code of conduct that was the ground for requiring the transfer of the person's management rights under section 94J;
  - (c) that the person must, within the reasonable period of at least 14 days stated in the notice—
    - (i) remedy the misconduct or gross negligence; or
    - (ii) carry out the duties; or
    - (iii) remedy the contravention;
  - (d) that if the person does not comply with the notice in the stated period, the body corporate may terminate the person's appointment, engagement or authorisation as a body corporate manager, service contractor or letting agent.'.

**103 Amendment of s 96 (Minor noncompliance with development control by-laws)**

- (1) Section 96(1), 'that member of'—  
*omit, insert—*  
'an affected person with'.

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- (2) Section 96(1A), ‘is’—  
*omit, insert—*  
‘must be’.
- (3) Section 96(1A) and (2)—  
*renumber* as section 96(2) and (3).
- (4) Section 96—  
*insert—*
- ‘(4) In this section—  
***affected person*** means any of the following—
  - (a) the member of the principal body corporate making the request under subsection (1);
  - (b) the registered proprietor, mortgagee in possession, lessee or occupier of the land or lot to which the request relates.’.

#### **104 Amendment of s 97 (Interpretation)**

- (1) Section 97, definition *floating dwelling house*—  
*omit.*
- (2) Section 97, definition *special dwelling house*, before ‘Harbour’—  
*insert—*  
‘Harbour 1 Residential Zone or’.

#### **105 Amendment of s 102 (Construction of floating dwelling houses and special dwelling houses)**

- (1) Section 102, heading ‘floating dwelling houses and’—  
*omit.*
- (2) Section 102(1), ‘a floating dwelling house or’—  
*omit.*

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**106 Amendment of s 103 (Application of laws of the State)**

- (1) Section 103(1), ‘and to floating dwelling houses’—  
*omit.*
  - (2) Section 103(1), ‘or, as the case may be, floating dwelling houses’—  
*omit.*
  - (3) Section 103(2) and (3)—  
*omit, insert—*
- ‘(2) The *Coastal Protection and Management Act 1995* and the Integrated Planning Act do not apply to the development, or proposed development, of a part of the site as a harbour facility.
- ‘(3) In this section—  
*harbour facility* see schedule 1, part 3.’.

**107 Replacement of s 104A (Dealing with disputes)**

Section 104A—  
*omit, insert—*

**‘Division 1 Resolution of particular disputes**

**‘104A Dealing with particular disputes under Building Units and Group Titles Act 1980**

- ‘(1) Subject to subsection (2), a dispute about the operation of this Act or the rights and obligations of persons under this Act may be dealt with under the *Building Units and Group Titles Act 1980*, part 5.
- ‘(2) However, this section—
  - (a) does not apply to a dispute or matter mentioned in section 94T, 94U or 104B; and
  - (b) is subject to section 104C.

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**‘104B Dealing with matter relating to development control by-law**

- ‘(1) The Commercial and Consumer Tribunal may deal with a matter relating to—
- (a) the application of a development control by-law to a person mentioned in subsection (2)(b) or (c); or
  - (b) a contravention or alleged contravention of a development control by-law.
- ‘(2) Each of the following persons may apply to the tribunal to deal with a matter under subsection (1) if the person has standing to make the application—
- (a) the principal body corporate;
  - (b) a subsidiary body corporate of the principal body corporate;
  - (c) a proprietor or occupier of, or a person having an estate or interest in, a lot in a residential zone.
- ‘(3) For subsection (2), a person has standing to make the application if the person is directly and materially affected by the matter to which the application relates.

*Example—*

A proprietor of a lot in a residential zone alleges the amenity of the lot has been, or will be, adversely affected by development authorised under a development control by-law in an adjoining residential zone.

- ‘(4) This section is subject to section 104C.

**‘104C Internal dispute resolution processes to be used before application**

- ‘(1) This section applies to—
- (a) a referee for deciding an application for an order under the *Building Units and Group Titles Act 1980*, part 5 relating to a dispute about a matter mentioned in section 104A; and

- 
- (b) the Commercial and Consumer Tribunal for deciding an application about a matter mentioned in section 104B.
- ‘(2) The referee or tribunal must not decide the application unless the referee or tribunal is satisfied the applicant has made reasonable attempts to resolve the dispute or matter by using internal dispute resolution processes.

*Examples of internal dispute resolution processes—*

- the parties to a dispute communicating with each other
- the applicant writing to the executive committee for the principal body corporate
- the applicant causing a motion to be presented for consideration at a general meeting of the principal body corporate

## ‘Division 2                      Other matters

### ‘104D Associates

- ‘(1) For this Act, 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 partnership;
- (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) business partnership;
- (d) the relationship of employer and employee;
- (e) a fiduciary relationship;

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- (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 corporation and executive officer of the corporation;
  - (h) the relationship of a corporation and a person who is in a position to control or substantially influence the corporation's conduct.
- ‘(3) Despite subsection (2)(e) and (f), the owner of a secondary lot or lot on a group titles plan or building units plan and a letting agent for the resort or part of the resort are not associated merely because of their relationship as owner and letting agent.
- ‘(4) In this section—
- executive officer*, of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.’.

## **108 Insertion of new pt 10**

After section 112—

*insert—*

# **‘Part 10 Transitional provisions for Resorts and Other Acts Amendment Act 2009**

## **‘Division 1 Preliminary**

### **‘113 Definitions for pt 10**

‘In this part—

*commencement* means the commencement of this section.



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*effective day* means the day that is 6 months after the commencement.

## **‘Division 2            Changes to zones**

### **‘114    References to proposed use plan of site**

- ‘(1) This section applies—
- (a) until the local government approves a plan of survey of the site under section 7(4); and
  - (b) despite section 4B(1).
- ‘(2) A reference in this Act to the proposed use plan of the site is a reference to the plan of survey of the site approved under section 8(4) or (7) as it was in force immediately before the commencement.

### **‘115    References to proposed use plan of adjacent site**

- ‘(1) This section applies—
- (a) until the local government approves a plan of survey of the adjacent site under section 12C(4); and
  - (b) despite section 4B(2).
- ‘(2) A reference in this Act to the proposed use plan of the adjacent site is a reference to the plan of survey of the adjacent site approved under section 12D(4) or (7) as it was in force immediately before the commencement.

### **‘116    Former floating dwelling house zone**

- ‘(1) Subsections (2) and (3) apply until—
- (a) the local government approves a plan of survey of the site under section 7(4); or
  - (b) the beginning of the effective day.

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- ‘(2) The former floating dwelling house zone continues to be a residential zone of the site.
- ‘(3) A reference to the Harbour 1 Residential Zone in schedule 1, part 1 or schedule 9, definition *residential zone* is taken to be a reference to the former floating dwelling house zone.
- ‘(4) If, at the beginning of the effective day, the approval mentioned in subsection (1)(a) has not happened—
  - (a) the name of the former floating dwelling house zone is changed to ‘Harbour 1 Residential Zone’; and
  - (b) a reference in the proposed use plan of the site to the Floating Dwelling House Zone is taken to be a reference to the Harbour 1 Residential Zone.
- ‘(5) In this section—  
*former floating dwelling house zone* means the zone that, before the commencement, was named and shown on the proposed use plan of the site as the Floating Dwelling House Zone.

**‘117 Transitional amendment of initial plan of survey of site to reflect new zone boundaries**

- ‘(1) This section applies if a proposed use plan of the site is approved by the local government under section 7(4).
- ‘(2) A plan of survey (the *amending plan*) may be lodged with the registrar of titles to amend the initial plan of survey of the site in accordance with the boundaries of the zones shown on the proposed use plan.
- ‘(3) Section 10(9) to (10) applies to the amending plan as if the amending plan had been lodged with the registrar of titles under section 10(8)(b)(i).
- ‘(4) Only 1 lodgement may be made under subsection (2).

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**‘118 Transitional amendment of initial plan of survey of adjacent site to reflect new zone boundaries**

- ‘(1) This section applies if a proposed use plan of the adjacent site is approved by the local government under section 12C(4).
- ‘(2) A plan of survey (the *amending plan*) may be lodged with the registrar of titles to amend the initial plan of survey of the adjacent site in accordance with the boundaries of the zones shown on the proposed use plan.
- ‘(3) Section 12F(9) to (10) applies to the amending plan as if the amending plan had been lodged with the registrar of titles under section 12F(8)(b)(i).
- ‘(4) Only 1 lodgement may be made under subsection (2).

**‘119 Transitional amendment of other plans of survey or group title plans to reflect new zone boundaries**

- ‘(1) This section applies if a proposed use plan is approved by the local government under section 7(4) or 12C(4).
- ‘(2) A plan of survey (the *amending plan*) may be lodged with the registrar of titles to amend any of the following plans in accordance with the boundaries of the zones shown on the proposed use plan—
  - (a) a plan of survey or group titles plan for the subdivision or resubdivision of a secondary lot;
  - (b) a group titles plan for the resubdivision of a lot shown on a group titles plan.
- ‘(3) Section 15A(2) and (4) applies to the amending plan as if the amending plan had been lodged with the registrar of titles under section 15A(1).
- ‘(4) Only 1 lodgement may be made under subsection (2).

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## **‘Division 3                    Bodies corporate**

### **‘120    Existing number of committee members may continue until effective day**

- ‘(1) This section applies if—
- (a) the principal body corporate or primary thoroughfare body corporate has more than 5 members; and
  - (b) the number (the *existing number*) of members of the executive committee of the body corporate is less than 5.
- ‘(2) Despite section 41(4) or 85(4), the executive committee may continue to consist of the existing number of members.
- ‘(3) This section stops applying at the beginning of the effective day.

### **‘121    Deferred application of particular provisions**

‘The following provisions do not apply until the effective day—

- (a) sections 41A and 85A and schedule 4;
- (b) part 3, divisions 2B, 2C and 2D;
- (c) part 5, divisions 2B and 2C.

*Editor’s note—*

- sections 41A (Code of conduct for voting members of executive committee) and 85A (Code of conduct for voting members of executive committee) and schedule 4 (Code of conduct for voting members of executive committees)
- part 3 (Principal body corporate), divisions 2B (Proxies for general meetings of principal body corporate), 2C (Accounts and audit) and 2D (Removal from office of voting members of executive committee for breach of code of conduct)
- part 5 (Primary thoroughfare body corporate), divisions 2B (Proxies for principal body corporate at general meetings of primary thoroughfare body corporate) and 2C (Removal from office of voting members of executive committee for breach of code of conduct)

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**‘122 Application of code of conduct for existing voting members of executive committees**

- ‘(1) This section applies to a person who, before the effective day, was a voting member of the executive committee of the primary thoroughfare body corporate or principal body corporate.
- ‘(2) The code of conduct for voting members of the executive committee applies to the person only in relation to acts done or omissions made on or after the effective day.

**‘123 Auditing accounts for first annual general meeting after evaluation day**

- ‘(1) This section applies if—
- (a) before the effective day—
    - (i) the principal body corporate authorised a person to prepare a statement of accounts under section 33(1)(f) for adoption at the body corporate’s annual general meeting; and
    - (ii) the person started to prepare the statement of accounts; and
  - (b) the annual general meeting has not happened.
- ‘(2) Section 47J does not apply for auditing the statement of accounts for the period to which the authorisation relates.

**‘124 End of appointment of original owner of secondary lot as nominee for subsidiary body corporate**

- ‘(1) This section applies if—
- (a) before the commencement—
    - (i) a subsidiary body corporate under a building units or group titles plan appointed as its nominee, under section 24, the original owner of the secondary lot subdivided by the plan or an ineligible associate of the original owner; and

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- (ii) the original owner ceased to own more than 50% of the lots; and
  - (b) immediately before the commencement, the original owner or ineligible associate was still the nominee for the subsidiary body corporate.
- ‘(2) Despite section 24A, the owner’s or associate’s appointment as the nominee for the subsidiary body corporate ends when the first of the following happens—
  - (a) the beginning of the effective day;
  - (b) the secretary of the principal body corporate receives a written notice under section 24(7)(b) of—
    - (i) the cancellation of the appointment; or
    - (ii) the appointment of another nominee for the subsidiary body corporate.
- ‘(3) In this section—

*ineligible associate* see section 24A(2)(b).

*subsidiary body corporate*, under a building units or group titles plan subdividing a secondary lot within a residential zone, means the body corporate created by the registration of the plan.

## ‘Division 4                      **Body corporate managers, service contractors and letting agents**

### ‘125    **Deferred application of particular provisions**

‘The following provisions do not apply until the effective day—

- (a) part 5A, divisions 2, 3, 4 and 5;
- (b) schedules 5 and 6.

*Editor’s note—*

- Part 5A (Conduct of body corporate managers, service contractors and letting agents), divisions 2 (Codes of conduct), 3 (Required

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transfer of management rights for contravention of code of conduct), 4 (Disputes about contractual matters) and 5 (Termination of appointment, engagement or authorisation)

- schedules 5 (Code of conduct for body corporate managers and caretaking service contractors) and 6 (Code of conduct for letting agents)

**‘126 Application of code of conduct for existing managers and contractors**

- ‘(1) This section applies to a person who, before the effective day—
- (a) was appointed as the body corporate manager of the primary thoroughfare body corporate or principal body corporate; or
  - (b) was engaged as a caretaking service contractor for the resort or part of the resort.
- ‘(2) The code of conduct for body corporate managers and caretaking service contractors applies to the person only in relation to acts done or omissions made on or after the effective day.

**‘127 Application of code of conduct for existing letting agents**

- ‘(1) This section applies to a person who, before the effective day, was a letting agent for the resort or part of the resort.
- ‘(2) The code of conduct for letting agents applies to the person only in relation to acts done or omissions made on or after the effective day.

**‘128 Existing term of appointment for body corporate manager**

- ‘(1) This section applies if—
- (a) before the commencement, a body corporate manager was appointed for—

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- (i) the principal body corporate under former section 47A; or
    - (ii) the primary thoroughfare body corporate under former section 91A; and
  - (b) the term of the appointment has not ended.
- ‘(2) The term of the appointment ends on the day provided for in the instrument of appointment.
- ‘(3) For subsection (2), the term of the appointment provided for in the instrument of appointment includes rights or options of extension or renewal provided for in the instrument of appointment.
- ‘(4) This section applies despite sections 47AB(8) and (9) and 91AB(8) and (9).
- ‘(5) In this section—
- former section 47A* means section 47A as it was in force immediately before the commencement.
- former section 91A* means section 91A as it was in force immediately before the commencement.’.

## **109 Amendment of sch A (Uses permitted within zones)**

- (1) Schedule A, item 1, definition *floating dwelling house*—  
*omit*.
- (2) Schedule A, item 1, definition *harbour facility*, ‘has been developed’—  
*omit, insert*—  
‘has been, or is intended to be, developed’.
- (3) Schedule A, item 1, definition *waste transfer facility*, ‘within the Sanctuary Cove Resort’—  
*omit, insert*—  
‘within the resort’.



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- (4) Schedule A, item 1, definition *waste transfer facility*, ‘from Sanctuary Cove Resort’—  
*omit, insert—*  
‘from the resort’.
- (5) Schedule A, as amended under this Act, item 1, definitions—  
*relocate* to schedule 1, part 3 as inserted under this Act.
- (6) Schedule A, as amended under this Act—  
*omit.*

## **110 Replacement of schs B–E**

Schedules B to E—

*omit, insert—*

## **‘Schedule 1 Names of and uses for zones**

schedule 9, definitions *use* and *zone*

## **‘Part 1 Names of zones**

Administration Zone

General Residential Zone

Golf Course Zone

Harbour 1 Residential Zone

Harbour Zone

Harbour, River and Waterfront Residential Zone

International Hotel Zone

Primary Thoroughfare Zone

Recreation Club Zone

Village Zone

## **‘Part 2**                      **Uses for zones**

- accommodation units
- brewery
- car hire premises
- catering facility
- child care centre
- club
- commercial premises
- commissary
- dwelling house
- educational establishment
- fauna park
- gatehouse
- harbour facility
- health care institution
- helipad
- indoor entertainments
- international hotel
- lake
- landscaping
- licensed premises
- liquid fuel depot
- marina
- motel
- outdoor entertainment
- park

- place of assembly
- place of worship
- plant nursery
- premises
- recreation
- recreation club
- service station
- shop
- site maintenance depot
- special dwelling house
- thoroughfare
- transport terminal
- utility undertaking
- vehicular parking area
- veterinary surgery
- visitor information centre
- waste transfer facility
- water recreation
- yacht club

## **‘Part 3                      Definitions of uses for zones**

‘In part 2—

## **‘Schedule 2      Requirements for notices of proposed amendments**

section 12J(2)

### **‘1      Requirements for placing notice on subject land**

- ‘(1) This section applies for placing a notice under section 12J(1)(c) on subject land.
- ‘(2) The notice must be—
  - (a) placed on, or within 1.5m of, the road frontage for the land; and
  - (b) mounted at least 300mm above ground level; and
  - (c) positioned so that it is visible from the road; and
  - (d) made of weatherproof material; and
  - (e) not less than 1200mm x 900mm.
- ‘(3) The lettering on the notice must be—
  - (a) for lettering in a heading—at least 50mm in height and in a bold style; or
  - (b) for lettering in a subheading—at least 25mm in height and in a bold style; or
  - (c) for lettering not mentioned in paragraphs (a) and (b)—at least 25mm in height, of regular weight and in sentence case.
- ‘(4) Each sentence in the notice must start on a new line.
- ‘(5) If the land has more than 1 road frontage, a notice must be placed on each road frontage for the land.
- ‘(6) The primary thoroughfare body corporate must maintain the notice from the day it is placed on the land until the end of the notification period stated in the notice.
- ‘(7) In this section—

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*road frontage*, for subject land, means—

- (a) the boundary between the land and any road adjoining the land; or
- (b) if the only access to the land is across other land—the boundary between the other land and any road adjoining the other land at the point of access.

## **‘Schedule 3      Election of executive committee members of body corporate**

sections 41(5A) and 85(5A)

### **‘1      Definitions for sch 3**

‘In this schedule—

*body corporate* means the primary thoroughfare body corporate or principal body corporate.

*candidate* see section 4(3)(a).

*eligibility category*, for a candidate, means the category of person mentioned in section 41(6) or 85(6) to which the candidate belongs.

*executive committee* means the executive committee of the primary thoroughfare body corporate or principal body corporate.

*executive member*, of an executive committee, means the chairperson, secretary or treasurer of the committee.

*ordinary member*, of an executive committee, means a member, other than an executive member, of the committee.

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**‘2 Election of members of executive committee  
[SM, s 15]**

‘(1) Unless otherwise provided under this schedule, the election of a member of the executive committee of a body corporate must be by ballot.

*Note—*

See, for example, section 7 (Election of ordinary members of executive committee).

‘(2) A ballot for membership of the executive committee must be a secret ballot unless the body corporate decides by ordinary resolution that the election be held by open ballot.

‘(3) The value of any vote able to be cast for a lot included in the resort or a part of the resort for choosing a member of the executive committee is the same as the value of the vote able to be cast for each other lot included in the resort or part.

**‘3 Nomination procedures for election of executive committee other than at first annual general meeting  
[SM, s 16]**

‘(1) This section states how individuals are nominated for election at the body corporate’s annual general meeting, other than the first annual general meeting, as a voting member of the executive committee.

‘(2) The secretary must serve a notice on each member of the body corporate—

(a) inviting nomination for the members of the executive committee; and

(b) stating that a nominated person is not eligible to be a voting member of the executive committee if, when the members of the executive committee are chosen, the person owes a body corporate debt in relation to a lot or lots owned by the person.

‘(3) The notice must be given at least 3 weeks before, but not earlier than 6 weeks before, the end of the body corporate’s financial year.

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- ‘(4) Nominations must comply with section 4 and must be given to the secretary by the end of the body corporate’s financial year.
  - ‘(5) As soon as practicable after receiving a nomination under this section from a candidate for election, the secretary must forward written notice to the candidate acknowledging the nomination has been received.

#### ‘4 Requirements for nominations [SM, s 18]

- ‘(1) Each member of the body corporate may nominate 1 person for election as a voting member of the executive committee.
- ‘(2) A nomination must be made by written notice and—
  - (a) if the nomination is from a member of the body corporate who is an individual nominating himself or herself—must be signed and dated by the member; or
  - (b) if the nomination is from a member of the body corporate other than a member to whom paragraph (a) applies—
    - (i) must be signed and dated by the nominated person; and
    - (ii) must be countersigned by the appropriate authorising person.
- ‘(3) A nomination must contain each of the following details—
  - (a) the family name and either the first given name or other name or abbreviation by which the nominated person (the *candidate*) is generally known;
  - (b) the position or positions the candidate is nominated for;
  - (c) the eligibility category for the candidate;
  - (d) if the candidate is not a member of the body corporate or a person appointed by a subsidiary body corporate under section 24 or 67—
    - (i) the candidate’s residential or business address; and
    - (ii) the name of the member who nominated the candidate;

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- (e) details of any payment to be made to, or to be sought by, the candidate from the body corporate for the candidate carrying out the duties of a member of the executive committee.

*Example of a payment—*

payment of the candidate's expenses for travelling to executive committee meetings

‘(4) In this section—

***appropriate authorising person***, for a nomination from a member of the body corporate, means—

- (a) if the member is an individual—the member; or
- (b) if the member is a subsidiary body corporate—the person appointed by the member under section 24 or 67; or
- (c) if the member is a corporation other than a subsidiary body corporate—a director, secretary or other nominee of the corporation.

## ‘5 **Conduct of elections for executive committee by secret ballot [SM, s 21]**

- ‘(1) This section states how a secret ballot required under this schedule must be held.
- ‘(2) After nominations close, the secretary must prepare ballot papers for each of the following for which a ballot is required—
  - (a) chairperson;
  - (b) secretary;
  - (c) treasurer;
  - (d) the ordinary members of the executive committee.
- ‘(3) Each ballot must be conducted separately.
- ‘(4) However, the separate ballots may, but need not, appear on the one document.



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- ‘(5) For each ballot, the secretary must, if satisfied the nominations comply with this schedule, state the names of the properly nominated candidates in alphabetical order of family name, showing—
- (a) after each name, a blank space for voting purposes; and
  - (b) the eligibility category for each candidate; and
  - (c) if the candidate is not a member of the body corporate or a person appointed by a subsidiary body corporate under section 24 or 67—
    - (i) the candidate’s residential or business address; and
    - (ii) the name of the member who nominated the candidate; and
  - (d) details of any payment to be made to, or to be sought by, the candidate from the body corporate for the candidate carrying out the duties of an executive committee member.
- ‘(6) The secretary must forward, with the notices for the annual general meeting—
- (a) the ballot papers; and
  - (b) an envelope marked ‘ballot paper’; and
  - (c) either of the following—
    - (i) a separate particulars envelope;
    - (ii) a particulars tab that forms part of the ballot paper envelope but that a person may detach without unsealing or otherwise opening the ballot paper envelope.
- ‘(7) To vote, a person must—
- (a) for a ballot for the position of chairperson, secretary or treasurer—place a mark in the space opposite the name of the candidate the person wishes to vote for; and
  - (b) for a ballot for the ordinary members’ positions—place a mark in each of the spaces opposite the names of

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- however many candidates the person wishes to vote for;  
and
- (c) place the ballot paper in the ballot paper envelope supplied by the secretary and seal it; and
  - (d) if a separate particulars envelope is supplied—place the sealed ballot paper envelope in the separate envelope and seal it; and
  - (e) complete the separate particulars envelope or particulars tab by signing and dating the envelope or tab, and inserting the following information on the envelope or tab—
    - (i) the name of the member for whom the vote is exercised;
    - (ii) the name of the person having the right to vote for the member;
    - (iii) the basis for the person’s right to vote; and
  - (f) give the completed particulars envelope with the ballot paper envelope enclosed, or the ballot paper envelope with the completed particulars tab attached, to the secretary, or forward the envelope to the secretary so that the secretary receives it, before or at the annual general meeting.
- ‘(8) When a ballot is held—
- (a) a voter who has not submitted a vote for the ballot may ask the secretary for a ballot paper, ballot paper envelope and particulars envelope or tab, and vote in the way this section provides; and
  - (b) a voter who wishes to withdraw a vote already made for the ballot and submit a replacement vote, may, if the particulars envelope, or the ballot paper envelope with particulars tab attached, for the vote already made can be readily identified and withdrawn, ask the secretary for a ballot paper, ballot paper envelope and particulars envelope or tab, and vote in the way this section provides.

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- ‘(9) All completed ballot papers received before the annual general meeting ends are to be held in the custody of the secretary.

**‘6 Conduct of elections for executive committee by open ballot [SM, s 22]**

- ‘(1) This section states how an open ballot required under this schedule must be held.
- ‘(2) After nominations close, the secretary must prepare ballot papers for each of the following for which a ballot is required—
- (a) chairperson;
  - (b) secretary;
  - (c) treasurer;
  - (d) the ordinary members of the executive committee.
- ‘(3) Each ballot must be conducted separately.
- ‘(4) However, the separate ballots mentioned in subsection (3) may, but need not, appear on the one document.
- ‘(5) For each ballot, the secretary must, if satisfied the nominations comply with section 4, list the names of the properly nominated candidates in alphabetical order of family name, showing—
- (a) after each name, a blank space for voting purposes; and
  - (b) the eligibility category for each candidate; and
  - (c) if the candidate is not a member of the body corporate or a person appointed by a subsidiary body corporate under section 24 or 67—
    - (i) the candidate’s residential or business address; and
    - (ii) the name of the member who nominated the candidate; and
  - (d) details of any payment to be made to, or to be sought by, the candidate from the body corporate for the candidate

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carrying out the duties of an executive committee member.

- ‘(6) The secretary must forward the ballot papers, and an envelope marked ‘ballot paper’ self-addressed to the secretary, with the notices for the annual general meeting.
- ‘(7) To vote, a person must—
- (a) for a ballot for the position of chairperson, secretary or treasurer—place a mark in the space opposite the name of the candidate the person wishes to vote for; and
  - (b) for a ballot for the ordinary members’ positions—place a mark in each of the spaces opposite the names of however many candidates the person wishes to vote for; and
  - (c) sign each ballot paper the voter completes; and
  - (d) on each completed ballot paper, write the name of the member for whom the vote is exercised; and
  - (e) if the ballot paper is not completed at the annual general meeting—
    - (i) place the ballot paper in the ballot paper envelope supplied by the secretary; and
    - (ii) seal the envelope, and write on the back of the envelope the name mentioned in paragraph (d); and
    - (iii) give the ballot paper envelope to the secretary, or forward it to the secretary so that the secretary receives it, before or at the annual general meeting; and
  - (f) if the ballot paper is completed at the annual general meeting—give the ballot paper to the secretary before or at the meeting.
- ‘(8) When a ballot is held—
- (a) a voter who has not submitted a vote for the ballot may ask the secretary for a ballot paper, and vote in the way this section provides; and

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- (b) a voter who wishes to withdraw a vote already made for the ballot and submit a replacement vote, may, if the vote already made can be readily identified and withdrawn, ask the secretary for a ballot paper and vote in the way this section provides.
- ‘(9) All completed ballot papers received before the annual general meeting ends are to be held in the custody of the secretary.

**‘7 Election of ordinary members of executive committee [SM, s 23]**

- ‘(1) A person nominated as an ordinary member of the executive committee becomes an ordinary member of the committee under section 11 on the basis of the nomination unless it is necessary to have a ballot.
- ‘(2) It is necessary to have a ballot for ordinary members of the executive committee if the number of persons nominated for ordinary member positions (other than a person who becomes an executive member of the executive committee), plus the number of executive members of the executive committee, is more than the required number of members for the executive committee.

**‘8 Conduct of ballot—general requirements [SM, s 24]**

- ‘(1) Any items of business about the election of members of the executive committee that are on the agenda for an annual general meeting must be conducted as the last items of business for the meeting.
- ‘(2) The election of members takes effect immediately after the close of the meeting at which they are elected.
- ‘(3) The ballots for the positions on the executive committee for which ballots are required must be conducted in the following order—
- chairperson
  - secretary

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- treasurer
  - ordinary members.
- ‘(4) Each ballot may proceed to the count only after the person chairing the meeting has allowed enough time for votes to be cast and announced the close of the ballot.
- ‘(5) Each candidate for a ballot, and any scrutineer appointed by the candidate, may watch the count.
- ‘(6) The secretary must pass any ballot papers, particulars envelopes and ballot paper envelopes for the ballot to the person chairing the meeting for counting.

**‘9 Conduct of ballot—scrutiny of votes [SM, s 25]**

- ‘(1) If a ballot for positions on the executive committee is an open ballot, the person chairing the meeting must—
- (a) confirm, by a scrutiny of the details on the back of each ballot paper envelope or each ballot paper itself, that the ballot paper is the vote of a person who has the right to vote in the election; and
  - (b) if a ballot paper is in a ballot paper envelope—take the ballot paper out of the envelope.
- ‘(2) If a ballot for positions on the executive committee is a secret ballot, the person chairing the meeting must—
- (a) confirm, by a scrutiny of the details on each particulars envelope or particulars tab, that the ballot paper is the vote of a person who has the right to vote in the election; and
  - (b) take the ballot paper envelope out of the particulars envelope, or detach the particulars tab from the ballot paper envelope; and
  - (c) place the ballot paper envelope in a receptacle in open view of the meeting; and
  - (d) after paragraph (c) has been complied with for all ballot paper envelopes, randomly mix the envelopes; and

- (e) take each ballot paper out of its envelope.
- ‘(3) The person chairing the meeting must record the count of votes in each ballot in the minutes of the meeting.
- ‘(4) The person chairing the meeting may delegate a function under subsection (1) or (2) in relation to a ballot for a position on the executive committee to a person attending the meeting who is not a candidate for the position and who the person chairing the meeting considers has sufficient independence.

**‘10 Conduct of ballot—deciding executive member positions [SM, s 26]**

- ‘(1) If only 1 person is nominated for the position of chairperson, secretary or treasurer, the person chairing the meeting, if satisfied the nomination complies with this schedule, must declare the person to have been elected unopposed.
- ‘(2) If, for the position of chairperson, secretary or treasurer, there has been no nomination, the person chairing the meeting—
  - (a) must invite nominations for the position at the meeting; and
  - (b) must accept nominations that are made in either of the following ways—
    - (i) by members of the body corporate who are personally present or represented at the meeting;
    - (ii) in writing, by members of the body corporate not personally present or represented at the meeting.
- ‘(3) A member of the body corporate may nominate, under subsection (2), not more than 1 person for the position.
- ‘(4) To remove any doubt, it is declared that the member may make the nomination whether or not the member made a nomination under section 3 for an ordinary member’s position on the executive committee.
- ‘(5) If more than 1 person has nominated for a position, a ballot is conducted, and the person who receives the highest number of votes is declared elected.

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- ‘(6) If, on a counting of votes, 2 or more persons each receive an identical number of votes, and no other candidate receives a higher number of votes, the result must be decided between the 2 or more persons by chance in the way the meeting decides.

**‘11 Conduct of ballot—deciding ordinary member positions [SM, s 27]**

- ‘(1) The positions of the ordinary members of the executive committee are decided only after the executive member positions on the executive committee are filled.
- ‘(2) A person’s nomination for a position as an ordinary member has no effect if the person is elected as an executive member of the executive committee, even if the person’s name appears on a ballot for ordinary members forwarded before the meeting.
- ‘(3) If the number of candidates nominated for ordinary member positions, plus the number of executive members of the executive committee, is not more than the required number of members for the executive committee, the person chairing the meeting, if satisfied the nominations for the ordinary member positions comply with this schedule, must declare the candidates to have been elected as ordinary members.
- ‘(4) However, if the number of candidates nominated for ordinary member positions, plus the number of executive members of the executive committee, is less than the required number of members for the executive committee, the person chairing the meeting must invite nominations at the meeting for the number of ordinary member positions necessary to bring the total number of all executive committee members to not more than the required number of members for the executive committee.
- ‘(5) The person chairing the meeting—
- (a) must invite nominations for the position or positions at the meeting; and



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- (b) must accept nominations that are made in either of the following ways—
- (i) by members of the body corporate who are personally present or represented at the meeting;
  - (ii) in writing, by members of the body corporate not personally present or represented at the meeting.
- ‘(6) A member of the body corporate may nominate, under subsection (5), not more than 1 person for all ordinary member positions for which nominations are invited.
- ‘(7) To remove any doubt, it is declared that the member may make the nomination whether or not the member made a nomination under section 3 for a position on the executive committee.
- ‘(8) If the number of candidates nominated for ordinary member positions, plus the number of executive members of the executive committee, is more than the required number of members for the executive committee, the person chairing the meeting must proceed with the scrutiny of the ballot papers relating to the ordinary member positions.
- ‘(9) The persons who receive the highest numbers of votes, in descending order until the executive committee numbers the required number of members for the executive committee, must be declared elected as the ordinary members.
- ‘(10) If, on a counting of votes, 2 or more persons each receive an identical number of votes and the number of persons to be elected would be exceeded if the 2 or more persons were declared elected, the result of the ballot must be decided between the 2 or more persons by chance in the way the meeting decides.
- ‘(11) For the counting of votes for positions of ordinary members of the executive committee on ballot papers completed before the annual general meeting, a mark against the name of each person who has already been elected to an executive member position is void.

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**‘12 Conduct of ballot—declaration of voting results  
[SM, s 28]**

- ‘(1) The person chairing an annual general meeting must declare the result of an election.
- ‘(2) When declaring the result of an election, the person chairing the meeting must state the number of votes cast for each candidate.
- ‘(3) The number of votes cast for each candidate must be recorded in the minutes of the meeting.
- ‘(4) The voting tally sheet kept for the meeting must include, for each ballot that is an open ballot under section 6—
  - (a) a list of the votes, identified by the name of the member on whose behalf the votes were cast, rejected as informal; and
  - (b) for each vote rejected—the reason for the rejection; and
  - (c) the total number of votes counted for each candidate.
- ‘(5) The voting tally sheet kept for the meeting must include, for each ballot that is a secret ballot under section 5—
  - (a) a list of the votes, identified by the name of the member on whose behalf the votes were cast, rejected from the count before the enclosing ballot paper envelopes were opened; and
  - (b) a list of the votes taken out of ballot paper envelopes for counting, but rejected as informal; and
  - (c) for each vote rejected—the reason for the rejection; and
  - (d) the total number of votes counted for each candidate.
- ‘(6) The voting tally sheet may be inspected at the meeting by any of the following persons—
  - (a) a person who is a voter for the meeting;
  - (b) a candidate;
  - (c) the returning officer, if any, appointed by the body corporate for the meeting;

- (d) the person chairing the meeting;
- (e) a scrutineer appointed by a candidate under section 8.

## **‘Schedule 4      Code of conduct for voting members of executive committees**

sections 41A and 85A and schedule 9, definition *code of conduct*

### **‘1      Commitment to acquiring understanding of Act, including this code**

‘A voting member of the executive committee of the primary thoroughfare body corporate or principal body corporate must have a commitment to acquiring an understanding of this Act, including this code of conduct, relevant to the member’s role on the executive committee.

### **‘2      Honesty, fairness and confidentiality**

- ‘(1) The voting member must act honestly and fairly in performing the member’s functions as a voting member.
- ‘(2) The voting member must not unfairly or unreasonably disclose information held by the body corporate, including information about an owner of a lot, unless authorised or required by law to do so.

### **‘3      Acting in best interests of body corporate and persons with estate or interest in lots**

‘Unless it is unlawful to do so, the voting member must, in performing the member’s functions as a voting member, act in the best interests of—

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- (a) the body corporate; and
- (b) either—
  - (i) for a voting member of the executive committee of the primary thoroughfare body corporate—the proprietors and occupiers of, and other persons having an estate or interest in, the lots in the site and the adjacent site; or
  - (ii) for a voting member of the executive committee of the principal body corporate—the proprietors and occupiers of, and other persons having an estate or interest in, the lots in the residential zones.

#### **‘4 Complying with Act and this code**

‘The voting member must take reasonable steps to ensure the member complies with this Act, including this code, in performing the member’s functions as a voting member.

#### **‘5 Conflict of interest**

‘The voting member must disclose to the executive committee any conflict of interest the member may have in a matter before the executive committee.

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**‘Schedule 5      Code of conduct for body  
corporate managers  
and caretaking service  
contractors**

section 94E and schedule 9, definition *code of conduct*

**‘1      Knowledge of Act, including code**

‘A body corporate manager or caretaking service contractor appointed or engaged by the primary thoroughfare body corporate or principal body corporate must have a good working knowledge and understanding of this Act, including this code of conduct, relevant to the person’s functions.

**‘2      Honesty, fairness and professionalism**

- ‘(1) The body corporate manager or caretaking service contractor must act honestly, fairly and professionally in performing the person’s functions under the person’s appointment or engagement.
- ‘(2) The body corporate manager must not attempt to unfairly influence the outcome of an election for the executive committee of the body corporate.

**‘3      Skill, care and diligence**

‘The body corporate manager or caretaking service contractor must exercise reasonable skill, care and diligence in performing the person’s functions under the person’s appointment or engagement.

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**‘4 Acting in body corporate’s best interests**

‘The body corporate manager or caretaking service contractor must act in the best interests of the body corporate unless it is unlawful to do so.

**‘5 Keeping body corporate informed of developments**

‘The body corporate manager or caretaking service contractor must keep the body corporate informed of any significant development or issue about an activity performed for the body corporate.

**‘6 Ensuring employees comply with Act and code**

‘The body corporate manager or caretaking service contractor must take reasonable steps to ensure an employee of the person complies with this Act, including this code, in performing the person’s functions under the person’s appointment or engagement.

**‘7 Fraudulent or misleading conduct**

‘The body corporate manager or caretaking service contractor must not engage in fraudulent or misleading conduct in performing the person’s functions under the person’s appointment or engagement.

**‘8 Unconscionable conduct**

‘The body corporate manager or caretaking service contractor must not engage in unconscionable conduct in performing the person’s functions under the person’s appointment or engagement.

*Examples of unconscionable conduct—*

- taking unfair advantage of the person’s superior knowledge relative to the body corporate
- requiring the body corporate to comply with conditions that are unlawful or not reasonably necessary

- exerting undue influence on, or using unfair tactics against, the body corporate or the owner of a lot in the resort

**‘9 Conflict of duty or interest**

‘The body corporate manager or caretaking service contractor for the resort or part of the resort must not accept an appointment or engagement (the *second appointment or engagement*) if doing so will place the person’s functions or interests for the resort or part in conflict with the person’s functions or interests for obligations under the second appointment or engagement.

*Example of a second appointment or engagement—*

an appointment as the body corporate manager or an engagement as a caretaking service contractor for another scheme

**‘10 Goods and services to be supplied at competitive prices**

‘The body corporate manager or caretaking service contractor must take reasonable steps to ensure goods and services the person obtains for or supplies to the body corporate are obtained or supplied at competitive prices.

**‘11 Body corporate manager to demonstrate keeping of particular records**

‘If the body corporate or its executive committee gives the body corporate manager a written request to show that the manager has kept the body corporate records as required under this Act, the manager must comply with the request within the reasonable period stated in the request.

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## **‘Schedule 6      Code of conduct for letting agents**

section 94F and schedule 9, definition *code of conduct*

### **‘1      Honesty, fairness and professionalism**

‘A letting agent for the resort or part of the resort must act honestly, fairly and professionally in conducting the letting agent’s business under the letting agent’s authorisation.

### **‘2      Skill, care and diligence**

‘The letting agent must exercise reasonable skill, care and diligence in conducting the letting agent business under the letting agent’s authorisation.

### **‘3      Acting in body corporate’s and individual lot owner’s best interests**

‘Unless it is unlawful to do so, the letting agent must, as far as practicable, act in the best interests of—

- (a) the body corporate that has given the letting agent’s authorisation; and
- (b) individual owners of lots in the resort or part.

### **‘4      Ensuring employees comply with Act and code**

‘The letting agent must take reasonable steps to ensure an employee of the letting agent complies with this Act, including this code, in conducting the letting agent business under the letting agent’s authorisation.



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**‘5 Fraudulent or misleading conduct**

‘The letting agent must not engage in fraudulent or misleading conduct in conducting the letting agent business under the letting agent’s authorisation.

**‘6 Unconscionable conduct**

‘The letting agent must not engage in unconscionable conduct in conducting the letting agent business under the letting agent’s authorisation.

*Examples of unconscionable conduct—*

- taking unfair advantage of the person’s position as letting agent relative to the body corporate or the owner of a lot in the resort
- exerting undue influence on, or using unfair tactics against, the body corporate or the owner of a lot in the resort

**‘7 Nuisance**

‘The letting agent must not—

- (a) cause a nuisance or hazard at the resort; or
- (b) interfere unreasonably with the use or enjoyment of a lot in the resort; or
- (c) interfere unreasonably with the use or enjoyment of the common property by a person who is lawfully on the common property; or
- (d) otherwise behave in a way that unreasonably affects a person’s lawful use or enjoyment of a lot or common property.

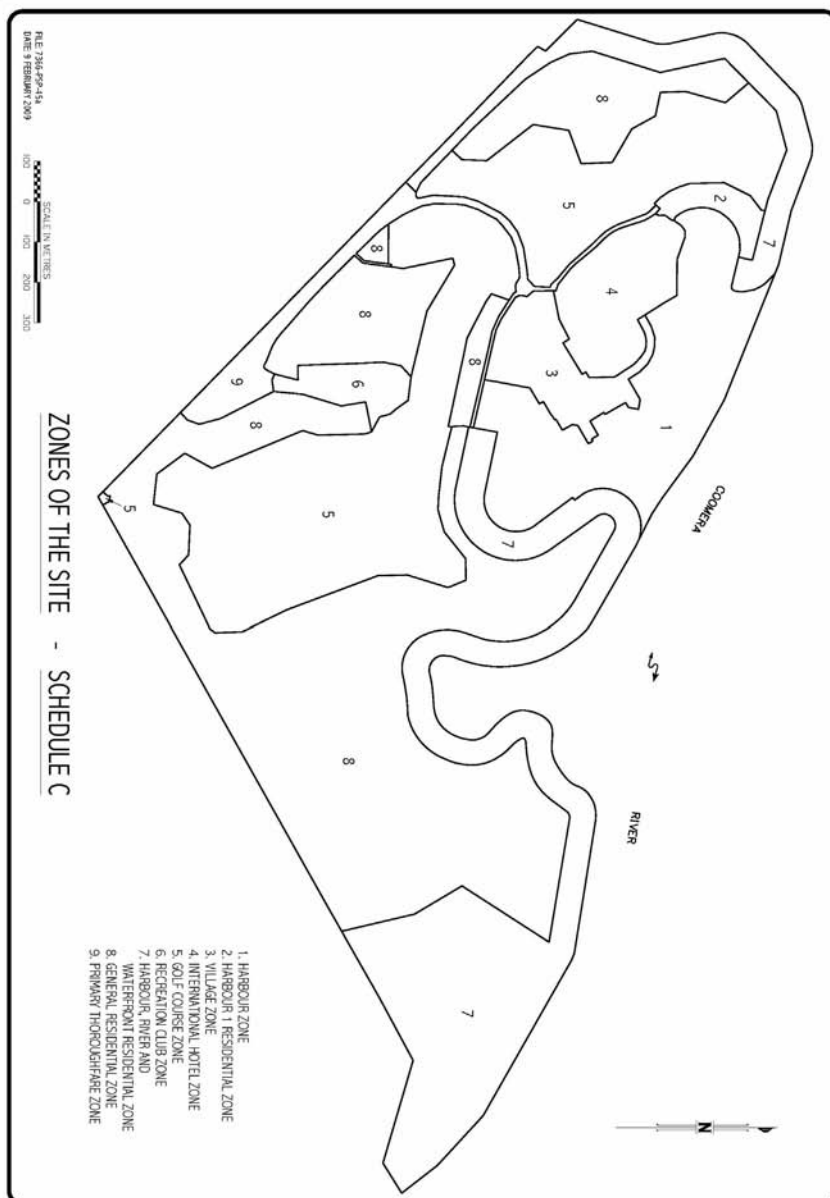
**‘8 Goods and services to be supplied at competitive prices**

‘The letting agent must take reasonable steps to ensure goods and services the letting agent obtains for or supplies to the body corporate are obtained or supplied at competitive prices.

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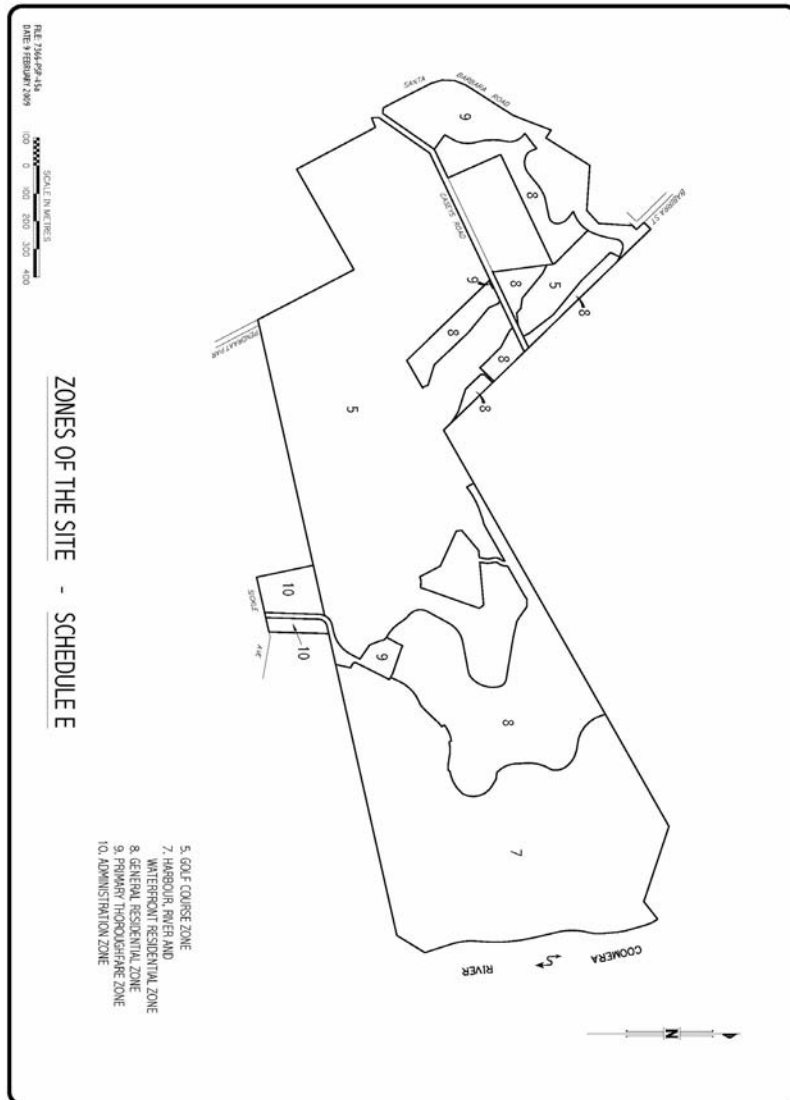
## 'Schedule 7 Zones of the site

section 7(1)



## 'Schedule 8 Zones of the adjacent site

section 12C(1)



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## **‘Schedule 9      Dictionary**

section 4’.

**Schedule**                      **Minor and consequential  
amendments**

sections 3, 5 and 59

**Iconic Queensland Places Act 2008**

**1**            **Section 2(2)(b), ‘development’—**

*omit, insert—*

‘particular development’.

**2**            **Part 4, heading, ‘Development’—**

*omit, insert—*

‘Particular development’.

**Integrated Resort Development Act 1987**

**1**            **Sections 15(4), 20(1)(b), 72(5), 90(3) and 96(7), ‘*Integrated  
Planning Act 1997*’—**

*omit, insert—*

‘Integrated Planning Act’.

## Sanctuary Cove Resort Act 1985

- 1 Sections 13, 52, 54(1), 58, 59, 61, 63(b), 64, 106(1) and 108, 'Albert Shire Council'—**

*omit, insert—*

'local government'.

- 2 Section 13(5B), 'Director of Local Government'—**

*omit, insert—*

'chief executive'.

- 3 Section 51, heading, 'Albert Shire Council'—**

*omit, insert—*

'Local government'.

- 4 Section 51, 'the Albert Shire Council'—**

*omit, insert—*

'the local government'.

- 5 Section 106, heading, 'Albert Shire Council'—**

*omit, insert—*

'local government'.