



# **Building Units and Group Titles Act 1980**

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## Queensland

# Building Units and Group Titles Act 1980

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# Building Units and Group Titles Act 1980

**An Act to provide for the horizontal subdivision and vertical subdivision of land into lots and the disposition of titles thereto; and for purposes incidental thereto and connected therewith**

## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Building Units and Group Titles Act 1980*.

### 5 Savings and transitional

(1) In this section—

*appointed day* means the date fixed by proclamation under section 2.

*continued body corporate* means a body corporate continued by the operation of subsection (3).

*former Acts* mean the *Building Units Titles Act 1965* and the *Group Titles Act 1973*.

*former building units plan* means a building units plan registered under the *Building Units Titles Act 1965*, and includes a building units plan of resubdivision registered under that Act.

*former by-law* means a by-law within the meaning of the former Acts that was in force immediately before the appointed day.

*former common property* means so much of a former parcel as, immediately before the appointed day, was not comprised in any former lot.

*former group titles plan* means a group titles plan registered under the *Group Titles Act 1973*, and includes a group titles plan of resubdivision registered under that Act.

*former lot* means a lot or unit under the former Acts as it existed immediately before the appointed day.

*former parcel* means land which, immediately before the appointed day, comprised the former lots and the former common property the subject of a former plan.

*former plan* means a former building units plan or a former group titles plan.

*former proprietor* means a person who, immediately before the appointed day, was a proprietor of a former lot.

- (1A) For the purposes of the application of any provision of this Act to or in respect of a plan to which the provisions of this Act apply by reason of subsection (5), a reference to an original proprietor is a reference to the person who held the former parcel in fee simple at the time of registration of the former plan in respect thereof.
- (1B) The express application with or without modification of any provision of this Act by any provision of this section to or in respect of any act, matter or thing referred to in this section shall not, except in so far as a contrary intention appears, be construed as preventing or limiting the application of any other provision of this Act to that or any other act, matter or thing.

(2) **Registration of plans**

Notwithstanding section 9 or 10 a building units plan, group titles plan, building units plan of resubdivision or group titles plan of resubdivision within the meaning of the former Acts which is first lodged for registration after the appointed day may be registered as a building units plan, group titles plan, building units plan of resubdivision or group titles plan of

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resubdivision, as the case may be, but shall not be so registered unless—

- (a) the requirements of the former Acts have been or are complied with in so far as those requirements relate to the registration of a building units plan, group titles plan, building units plan of resubdivision or group titles plan of resubdivision, as the case may be; and
  - (b) in the case of a building units plan—the certificate referred to in the *Building Units Titles Act 1965*, section 4(6)(b) states that the approval given by the local authority to the erection of that building was given not earlier than 2 years before the appointed day; and
  - (c) in the case of a group titles plan—the certificate referred to in the *Group Titles Act 1973*, section 4(5) states that the decision of the local authority to approve in principle the application for that certificate was given not earlier than 2 years before the appointed day.
- (2A) Without limiting the generality of subsection (2)(a), for the purpose of enabling a person to comply, as referred to in that subsection, with the requirements of the former Acts—
- (a) the provisions of the *Building Units Titles Act 1965*, section 20 (other than subsection (4)(a), (c), (d), (e), (f) and (g)) apply to and in respect of an application for a certificate referred to in section 4(6)(b) of that Act relating to the proposed subdivision illustrated by a building units plan or building units plan of resubdivision referred to in subsection (2); and
  - (b) the provisions of the *Group Titles Act 1973*, section 18 (other than subsection (5)(a), (c), (d), (e), (f) and (g)) apply to and in respect of an application for a certificate referred to in section 4(5) of that Act, relating to the proposed subdivision illustrated by a group titles plan or group titles plan of resubdivision referred to in subsection (2);

as if the former Acts had not been repealed.

- (2B) Where a plan is registered under subsection (2), the land comprised in the plan shall be deemed to have been subdivided under this Act into lots and common property in the same manner as that land would have been subdivided if that plan had been registered under the former Acts and any such lots or common property shall, for the purposes of this Act, be deemed to be lots or common property.
- (2C) For the purposes of the registration of a plan under subsection (2), the reference in section 10(5) to a building units plan of resubdivision or a group titles plan of resubdivision shall be construed as a reference to a building units plan of resubdivision within the meaning of the *Building Units Titles Act 1965*, section 20(4) or, as the case may be, a group titles plan of resubdivision within the meaning of the *Group Titles Act 1973*, section 18(5).
- (2D) Where, under any provision of this Act, any act, matter or thing depends on or results from (either directly or indirectly) the registration of a plan, that provision operates in relation to the registration of a plan under subsection (2) in the same way as it operates in relation to the registration of a plan.
- (2E) Subject to subsections (2) to (2D) and (2F) to (2H), a reference in this Act to a building units plan, group titles plan, building units plan of resubdivision or group titles plan of resubdivision includes a reference to a plan registered under subsection (2) as a building units plan, group titles plan, building units plan of resubdivision or group titles plan of resubdivision, as the case may be.
- (2F) The address endorsed, as referred to in the *Building Units Titles Act 1965*, section 4(1)(h) or the *Group Titles Act 1973*, section 4(1)(h), upon a plan registered under subsection (2) shall, for the purposes of this Act, be deemed to be the address for the service of notices on the body corporate concerned until that address is altered in accordance with this Act.
- (2G) The schedule endorsed, as referred to in the *Building Units Titles Act 1965*, section 18 or the *Group Titles Act 1973*, section 15, upon a plan (not being a building units plan of resubdivision within the meaning of the *Building Units Titles*



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*Act 1965*, section 20(4) or a group titles plan of resubdivision within the meaning of the *Group Titles Act 1973*, section 18(5)) registered under subsection (2) shall, for the purposes of this Act, be deemed to be the schedule referred to in section 9(1)(f) or 9(2)(f), as the case may be.

- (2H) A reference to a lot or unit shown in a plan capable of being registered under subsection (2) made in any instrument executed before the registration of that plan under subsection (2) (being an instrument relating to the sale or other disposition of an estate or interest in the lot or unit so shown) shall, on and after the registration of that plan, be construed as a reference to the lot which corresponds to the lot or unit so shown.

(3) **Continuation of bodies corporate**

A body corporate, constituted under the former Acts in relation to a former plan—

- (a) shall continue notwithstanding the repeal of the former Acts; and
- (b) shall, on the appointed day, be deemed to be the body corporate constituted under section 27(1) in respect of that plan; and
- (c) notwithstanding section 27(1), shall have as its corporate name its corporate name under the former Acts.

(4) **Continuation of estates or interests in former lots and former common property and rights in former common property**

A person who, immediately before the appointed day—

- (a) had an estate or interest in a former lot, has on that day the same estate or interest in the lot which corresponds to that former lot; or
- (b) had an estate or interest (not being a right or special privilege referred to in subsection (11)) in former common property, has on that day the same estate or

interest in the common property which corresponds to that former common property.

(5) **Application of Act to former plans, former parcels, former lots and former common property**

Subject to this section, the provisions of this Act shall, on and from the appointed day, apply to and in respect of—

- (a) a former building units titles plan as if it were a building units titles plan; and
- (b) a former group titles plan as if it were a group titles plan; and
- (c) a former parcel as if it were a parcel; and
- (d) a former lot as if it were a lot; and
- (e) former common property as if it were common property; and
- (f) the unit entitlements or, as the case may be, lot entitlements endorsed on a former plan as if they were lot entitlements endorsed on a registered plan.

(6) **Registration of transfers or leases of common property registrable under former Acts**

Where a transfer or lease of any common property under the former Acts—

- (a) would under the *Building Units Titles Act 1965*, section 10 or the *Group Titles Act 1973*, section 9 have been registrable had this Act not been enacted but had not, before the appointed day, been lodged for registration under those Acts; and
- (b) was executed pursuant to an agreement entered into by the body corporate before the appointed day;

that transfer or lease, upon its lodgement in the land registry, shall be dealt with under section 22(11) as if it were a transfer or lease referred to in section 22(1).

**(7) General meetings of certain continued bodies corporate**

Where, in relation to a continued body corporate the original proprietor is not, on the appointed day, the proprietor of any lots the subject of the plan and—

- (a) a general meeting of that body corporate has not been held before the appointed day, a general meeting of that body corporate shall be held within 3 months after the appointed day, and that general meeting shall, for the purposes of this Act (other than section 29(4)) be the first annual general meeting of the body corporate; or
- (b) a general meeting of that body corporate has been held before the appointed day, the last general meeting of that body corporate held before that day shall, for the purposes of section 29A be deemed to have been the first annual general meeting.

(7A) Where, in relation to a continued body corporate, the original proprietor was, on the appointed day, the proprietor of a lot the subject of the plan, then—

- (a) if a general meeting of that body corporate has not been held before the commencement of the *Building Units and Group Titles Act Amendment Act 1988*, section 5—a general meeting of that body corporate shall be held within 3 months after that commencement and that general meeting shall, for the purposes of this Act (other than section 29(4)) be the first annual general meeting of the body corporate; or
- (b) the last annual general meeting of that body corporate held before the commencement of the *Building Units and Group Titles Act Amendment Act 1988*, section 5 or, if no such meeting has been held, the last general meeting held before that commencement shall, for the purposes only of section 29A, be deemed to have been a valid meeting and the first annual general meeting of the body corporate.

(7B) If a meeting of the body corporate is not held in accordance with subsection (7)(a) or (7A)(a), the referee may, pursuant to

an application by a proprietor or first mortgagee of a lot appoint, by order, a person to convene a general meeting within such time as may be specified in the order and the meeting convened by that person shall for the purposes of this Act (other than section 29(4)) be the first annual general meeting of the body corporate.

- (7C) An order made under subsection (7B) may include such ancillary or consequential provisions as the referee thinks fit.
- (7D) The agenda for a meeting convened under subsection (7)(a), (7A)(a) or (7B) shall be the agenda specified in section 29(2).
- (7E) The original proprietor shall not fail or neglect to deliver to the body corporate (being a body corporate a general meeting of which is required to be held under subsection (7)(a) or (7A)(a)), within 14 days after notice in writing is given to the original proprietor by the body corporate or if the documents referred to in paragraphs (a) and (b) are not then in the original proprietor's possession within 14 days after they come into the original proprietor's possession or under the original proprietor's control—
  - (a) all plans, specifications, drawings showing water pipes, electric cables, drainage, ventilation ducts or air-conditioning systems, certificates (other than certificates of title for lots), diagrams (including lift wiring diagrams) and other documents (including policies of insurance) obtained or received by the original proprietor and relating to the parcel or building; and
  - (b) any book of account, notice or other record relating to the plan; and
  - (c) the budget showing the estimated expenditure of the body corporate in relation to the parcel on an annual basis;

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

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Maximum penalty— $13\frac{1}{3}$  penalty units.

(7F) Notwithstanding subsection (7)(b) or (7A)(b), upon a resolution, carried by the body corporate in general meeting held within 6 months after the commencement of the *Building Units and Group Titles Act Amendment Act 1988*, section 5, to that effect, a reference in section 29A to the first annual general meeting shall, from the date of the resolution or from such earlier date as may be specified in the resolution, be read and construed as a reference to the date on which the last annual general meeting of the body corporate held before the appointed day was held.

(8) **Meetings of former bodies corporate held within 2 months after appointed day**

Notwithstanding schedule 2, for the purposes of any general meeting of a continued body corporate, being a general meeting held before the expiration of 2 months after the appointed day—

(a) the procedure for the convening and holding of meetings of such a body corporate and the rights of persons to vote at and to requisition meetings of such a body corporate shall be the same as they were under the former Acts; and

(b) where a notice is given to the body corporate under section 53(3), (5) or (6)—the mortgagee specified in the notice shall have the same voting rights as the mortgagee would have had if the meeting had been held in accordance with the former Acts and if the notice were a notice given under the *Building Units Titles Act 1965*, section 26(2) or the *Group Titles Act 1973*, section 24(2).

(9) **Notices served by public or local authority before the appointed day**

The reference in section 33 to a notice served on the proprietor of a lot by a public authority or local government includes a reference to a notice served, before the appointed

day, by a public or local authority on the proprietor of a former lot.

(10) **Effect of former by-laws**

Subject to subsection (11), the former by-laws relating to a former plan, together with such of the by-laws set out in schedule 3 as are not inconsistent with the former by-laws, shall be the by-laws relating to the corresponding plan to which the provisions of this Act apply by reason of subsection (5) save to the extent of any inconsistency of the former by-laws with any provision of this Act other than schedule 3.

(10A) It is hereby declared that, notwithstanding any addition to or amendment or repeal of any of the by-laws set forth in the *Building Units Titles Act 1965*, schedule 2 or, as the case may be, in the *Group Titles Act 1973*, schedule 2 before the appointed day, those by-laws were part of the former by-laws relating to a former plan.

(10B) However, if, at any time before the expiration of 6 months after the commencement of the *Building Units and Group Titles Act Amendment Act 1988*, section 5, the body corporate lodges with the registrar of titles a notification in the prescribed form of any such addition, amendment or repeal (having been made before that commencement by a by-law or former by-law that was valid at the time it was made) upon the registrar of titles recording the notification on the corresponding plan, those by-laws as added to, amended or repealed as particularised in the notification shall be deemed to be part of the former by-laws relating to the former plan.

(10C) In relation to that plan those by-laws shall be deemed to be the by-laws set forth in schedule 3 and the provisions of this Act shall apply thereto.

(11) **Maintenance of exclusive use etc. of, and special privileges in respect of, common property**

Where immediately before the appointed day a proprietor of a former lot was entitled, whether pursuant to a resolution of the body corporate under the former Acts or pursuant to a former

by-law, to a right of exclusive use and enjoyment of, or special privileges in respect of, any of the former common property, the proprietor for the time being of the lot shall continue to be entitled to that right or those special privileges and the resolution or former by-law, as the case may be, shall be deemed to be a by-law made pursuant to section 30(7).

(12) **Recovery of contributions levied under former Acts**

Any contribution levied under the former Acts by a body corporate and unpaid at the appointed day may be recovered by the continued body corporate as if it were a contribution levied under this Act.

- (12A) Any determination made under the former Acts by a body corporate specifying amounts to be raised by regular periodic contributions shall be deemed to be a determination made under the provisions of section 38(1)(j) of a kind referred to in the provisions of section 38(4) until the repeal of each of those provisions by the *Building Units and Group Titles Act Amendment Act 1988*, and, on and from the commencement of section 5 of that Act, under section 38A(1) of a kind referred to in section 38A(5).

(14) **Inspection of former records etc.**

A continued body corporate shall cause to be retained, until the expiration of the prescribed period, any records, minutes of meetings, notices and books of account kept or received by it before the appointed day and in its custody or under its control on that day and upon application under section 40(1) made in respect of a lot the subject of the plan concerned shall make those records, minutes, notices and books available for inspection by the applicant or the applicant's agent at a time and place ascertained in accordance with section 40(1)(b).

- (14A) Section 40(2) applies to the making of an inspection referred to in subsection (14) in the same way as it applies to the making of an inspection referred to in section 40(1)(b).

(15) **Administrative and sinking funds of continued bodies corporate**

Where a determination made under the *Building Units Titles Act 1965*, section 15(2)(b) or the *Group Titles Act 1973*, section 13(2)(b) by a continued body corporate was in force immediately before the appointed day, that determination shall be deemed to be the determination required to be made by that body corporate under the provisions of section 38(1)(j) until the repeal of those provisions by the *Building Units and Group Titles Act Amendment Act 1988* and, on and from the commencement of section 5 of that Act, under section 38A(1).

- (15A) Where a fund was, immediately before the appointed day, kept under the *Building Units Titles Act 1965*, section 15(2)(a) or the *Group Titles Act 1973*, section 13(2)(a) by a continued body corporate that fund shall, on the appointed day, be deemed to be the fund required to be established by that body corporate under the provisions of section 38(1)(l) until the repeal of those provisions by the *Building Units and Group Titles Act Amendment Act 1988* and, on and from the commencement of section 5 of that Act, under section 38(1).
- (15B) In relation to a continued body corporate to which the provisions of the *Building Units and Group Titles Act 1980*, section 5(15)(c) (which provisions have been repealed by the *Building Units and Group Titles Act Amendment Act 1988*) applied, in section 38A(1) the words ‘Within 14 days after the registration of the plan and from time to time thereafter’ shall be read and construed as ‘From time to time’.
- (15C) In relation to a continued body corporate which had, before the appointed day, made a determination under the *Building Units Titles Act 1965*, section 15(2)(b) or the *Group Titles Act 1973*, section 13(2)(b) but had not before that day established a fund under the *Building Units Titles Act 1965*, section 15(2)(a) or the *Group Titles Act 1973*, section 13(2)(a), in the *Building Units and Group Titles Act 1980*, section 38(1)(l) which has been repealed by the *Building Units and Group Titles Act Amendment Act 1988* the words ‘upon first determining the amounts referred to in



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paragraph (j)' shall be read as 'upon receiving any amounts raised pursuant to a determination referred to in section 5(15)(a)'.

(15D) A continued body corporate which, before the commencement of the *Building Units and Group Titles Act Amendment Act 1988*, section 5 has not—

(a) made a determination specified in the *Building Units and Group Titles Act 1980*, section 38(1)(k) which section has been repealed by the *Building Units and Group Titles Act Amendment Act 1988*; or

(b) established a sinking fund specified in the *Building Units and Group Titles Act 1980*, section 38(1)(m) which section has been repealed by the *Building Units and Group Titles Act Amendment Act 1988*;

shall within 12 months of that commencement—

(c) in a case referred to in paragraph (a)—make a determination specified in section 38A(2); and

(d) in all cases—establish a sinking fund specified in section 38(4) and (5).

(15E) Until a continued body corporate establishes its sinking fund—

(a) it may disburse the moneys in its administrative fund for the purpose of meeting its liabilities referred to in the *Building Units and Group Titles Act 1980*, section 38(1)(j) or (k) which section has been repealed by the *Building Units and Group Titles Act Amendment Act 1988* or section 38A; and

(b) the *Building Units and Group Titles Act 1980*, section 38(3) which section has been repealed by the *Building Units and Group Titles Act Amendment Act 1988* and section 38(3) do not apply to that body corporate.

(15F) Upon the establishment of its sinking fund a continued body corporate shall—

- (a) determine what part of its administrative fund should be allocated for the purpose of meeting its actual or expected liabilities referred to in section 38A(2); and
- (b) notwithstanding section 38(3), transfer the amount so determined to its sinking fund.

(16) **Notices to continued body corporate in respect of roll**

A notice given under the *Building Units Titles Act 1965*, section 26(2) or the *Group Titles Act 1973*, section 24(2) before the appointed day by a mortgagee to a body corporate shall, for the purpose of the making by the body corporate of a recording under section 39(3)(c) of the name of the mortgagee of the lot specified in the notice, be deemed to be a notice given to that body corporate under section 53(3) and for the purpose of completing the recording in the roll required by section 39(3)(c)—

- (a) the address (if any) specified in the notice as the address of the mortgagee shall be deemed to be the address for the service of notices on the mortgagee shown in a notice given to the body corporate under section 53(3); and
  - (b) where more than 1 notice is given to a body corporate before the appointed day—the body corporate shall record as the first mortgagee of the lot, the mortgagee first entitled in priority under the former Acts.
- (16A) Any notice given before the appointed day by a mortgagor of a former lot to a body corporate, being a notice of the discharge of a mortgage notice of which had been given to the body corporate under the *Building Units Titles Act 1965*, section 26(2) or the *Group Titles Act 1973*, section 24(2) shall, for the purpose of the making under section 39(3)(e) by the body corporate of a recording of the discharge of that mortgage, be deemed to be a notice given to that body corporate under section 53(4).

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(17) **Modification of section 40(1)(c) in relation to continued bodies corporate**

For the purposes of section 40(1)(c), any contribution levied under the former Acts by a body corporate and unpaid before the appointed day shall—

- (a) if levied pursuant to a determination specifying amounts to be raised by regular periodic contributions, be deemed to be a contribution determined under section 38A(1); or
- (b) except as provided in paragraph (a), be deemed to be a contribution determined under section 38A(2).

(18) **Councils to be committees**

Each council of a body corporate within the meaning of the *Building Units and Group Titles Act 1980* and in existence immediately before the commencement of the *Building Units and Group Titles Act Amendment Act 1988*, section 5 shall on and from that commencement be a committee of that body corporate and all references to such a council in any Act (other than this Act) or other document or writing by whatever means expressed shall be taken to be a reference to the relevant committee.

(19) **Operation of section 53 in relation to former plan**

Section 53 extends to authorising the giving by any person to a continued body corporate of a notice after the occurrence of any event specified in that section notwithstanding that that event occurred before the appointed day.

(20) **Modification of part 4, division 6**

Section 55 does not apply to or in respect of a continued body corporate which has in force on the appointed day a policy of insurance expiring not later than 1 year after the appointed day and effected by it in accordance with the *Building Units Titles Act 1965*, section 15(1)(a) or the *Group Titles Act 1973*, section 13(1)(a) until the expiry of that policy.

- (20A) Section 56(1)(a) does not apply to or in respect of a continued body corporate which has in force on the appointed day a

policy of insurance expiring not later than 1 year after the appointed day and effected by it in accordance with the *Building Units Titles Act 1965*, section 15(1)(b) or the *Group Titles Act 1973*, section 13(1)(b) until the expiry of that policy.

- (20B) Sections 57(2) and 60 apply to and in respect of a policy of insurance entered into in accordance with the former Acts before the appointed day between a continued body corporate and an insurer in the same way as those sections apply to and in respect of a contract of insurance entered into between a body corporate and an insurer pursuant to part 4, division 6.
- (20C) Notwithstanding the repeal of the *Building Units Titles Act 1965*, section 17 of that Act continues to apply to and in respect of a policy of insurance referred to in that section entered into before the appointed day until the expiry of that policy as if this Act had not been enacted.

(21) **Effect of section 62 in relation to former parcels**

A valuation of a former parcel made by the valuer-general in accordance with the *Building Units Titles Act 1965*, section 21(2)(a) or the *Group Titles Act 1973*, section 19(2)(a) and in force immediately before the appointed day shall, for the purposes of this Act, be deemed to be a valuation made in accordance with section 62(1) by the chief executive (valuations).

- (21A) In relation to a parcel to which the provisions of this Act apply by reason of subsection (5) a valuation of which had not, at the appointed day, been made in accordance with the *Building Units Titles Act 1965*, section 21(2)(a) or the *Group Titles Act 1973*, section 19(2)(a) in section 62(2) the words ‘the registration of a plan’ shall be read as ‘the appointed day’.

(22) **Evidence of lot entitlement on former plans**

Save where particulars of the lot entitlements of lots are endorsed upon a copy of a registered plan (or amendment thereof) furnished by the registrar of titles under section 14, the particulars of the lot entitlements of any former lots shown on a certified copy of the building units plan referred to in the *Building Units Titles Act 1965*, section 21(3) or a group titles

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plan referred to in the *Group Titles Act 1973*, section 19(3) or on any amendment thereof and furnished to any authority referred to in the *Building Units Titles Act 1965*, section 21(3) or the *Group Titles Act 1973*, section 19(3) shall for the purposes of section 63 be deemed to be particulars endorsed on a plan furnished to that authority under section 14 of the lot entitlements of the lots.

(23) **Destruction of or damage to building or extinguishment under former Acts**

Any proceedings under the *Building Units Titles Act 1965*, section 19(1) or the *Group Titles Act 1973*, section 16(1) which were pending before the Court immediately before the appointed day may be continued and completed as if they were proceedings under section 25.

(23A) A declaration made under the *Building Units Titles Act 1965*, section 19(1)(b) or the *Group Titles Act 1973*, section 16(1)(b)(ii) before the appointed day shall, notwithstanding the repeal of the former Acts, continue to operate and shall have the same force and effect as if this Act had not been enacted.

(23B) Any proceedings for an order referred to in the *Building Units Titles Act 1965*, section 19(3) which were pending before the Court immediately before the appointed day may be continued and completed as if they were proceedings under section 25(7).

(23C) An order made under the *Building Units Titles Act 1965*, section 19(3) before the appointed day shall, notwithstanding the repeal of the former Acts, continue to operate and shall, subject to subsection (23D), have the same force and effect as if this Act had not been enacted.

(23D) An order referred to in the *Building Units Titles Act 1965*, section 19(3) may be varied in the same way as if it were an order made under section 25.

(23E) Notwithstanding the repeal of the former Acts—

(a) the *Building Units Titles Act 1965*, section 11 and the regulations made under that section continue to apply to

and in respect of a building which before the appointed day was destroyed within the meaning of that Act and the parcel on which that building was situated;

- (b) the *Group Titles Act 1973*, section 17 and the regulations made under that section continue to apply to and in respect of a plan which before the appointed day was extinguished within the meaning of that Act.

(24) **Administrators under former Acts**

A person who, immediately before the appointed day, held office as an administrator under the *Building Units Titles Act 1965*, section 23 or the *Group Titles Act 1973*, section 21 shall, notwithstanding the repeal of the former Acts, continue to have the powers and duties the person had, as the holder of that office, immediately before the appointed day.

- (24A) The provisions of the *Building Units Titles Act 1965*, section 23 or the *Group Titles Act 1973*, section 21 continue to apply to and in respect of a person holding office as referred to in subsection (24) notwithstanding the repeal of the former Acts.

- (24B) Where immediately before the appointed day an application under the *Building Units Titles Act 1965*, section 23(1) or the *Group Titles Act 1973*, section 21(1) was pending, the Court shall remit the application to such referee as it thinks fit on such terms and conditions (including terms and conditions relating to the payment of the costs of the application up to the date of the remittal) as it thinks fit and an application so remitted shall be deemed to be an application capable of being made under section 94.

(25) **Recovery of rates paid by body corporate**

A continued body corporate may recover any amount referred to in the *Building Units Titles Act 1965*, section 16(1) or the *Group Titles Act 1973*, section 14(1) paid by it, whether before or after the appointed day, as if the *Building Units Titles Act 1965*, section 16(3) or the *Group Titles Act 1973*, section 14(3) had not been repealed by this Act.

(26) **Regulations**

The Governor in Council may, for the purposes of bringing lots, units, common areas, common property, bodies corporate and councils, within the meaning of the former Acts, under the provisions of this Act and applying the provisions of this Act, with or without modifications, additions or exclusions to or in respect of any such lots, units, common areas, common property, bodies corporate or committees, and for any purposes incidental thereto, make regulations containing such transitional, consequential or savings provisions as the Governor in Council considers necessary or expedient.

- (27) A regulation made under subsection (26) may make provisions which differ in their application according to such factors as may be specified in the regulation.

**5A Limited operation of Act on commencement of ch 8, pt 1 of BCCM Act**

- (1) On and from the commencement of chapter 8, part 1 of the BCCM Act, this Act applies only for—
- (a) the operation of a specified Act; and
  - (b) the registration of a future 1980 Act plan under the transitional provisions of the BCCM Act; and
  - (c) any other matter under the transitional provisions of the BCCM Act required to be effected under this Act.
- (2) For anything not mentioned in subsection (1)(a), (b) or (c), the *Acts Interpretation Act 1954*, sections 19, 20 and 20A apply to this Act as if this Act had been repealed by the BCCM Act.

- (3) In this section—

***BCCM Act*** means the *Body Corporate and Community Management Act 1997*.

***specified Act*** means—

- (a) the *Integrated Resort Development Act 1987*; or
- (b) the *Mixed Use Development Act 1993*; or

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- (c) the *Registration of Plans (H.S.P. (Nominees) Pty. Limited) Enabling Act 1980*; or
- (d) the *Registration of Plans (Stage 2) (H.S.P. (Nominees) Pty. Limited) Enabling Act 1984*; or
- (e) the *Sanctuary Cove Resort Act 1985*.

*transitional provisions*, of the BCCM Act, means the provisions of the BCCM Act, chapter 8, part 1.

## 6 Construction of Act

- (1) This Act shall be read and construed with and as an amendment of the *Land Title Act 1994*.
- (2) However, that Act shall be read and construed subject to this Act and to the extent that this Act is inconsistent with that Act, this Act shall prevail.

## 7 Interpretation

- (1) In this Act and in all instruments purporting to be made or executed thereunder unless the contrary intention appears—

*administrative fund* means the fund established by a body corporate under section 38(1), and includes a fund established under the *Building Units and Group Titles Act 1980*, section 38(1)(l) prior to the repeal of that section by the *Building Units and Group Titles Act Amendment Act 1988*.

*aggregate lot entitlement* means the sum of the lot entitlements of all lots on a plan.

*approved form* means a form approved under section 133B.

*associate*, of a person, for part 4, see section 26A.

*associated body corporate*, for a body corporate, for part 4, division 2, see section 41A.

*body corporate* means a body corporate incorporated by section 27.

*body corporate manager*—



- (a) generally, means a person appointed under section 50 or 94 as a body corporate manager of a body corporate; and
- (b) for a body corporate incorporated under a specified Act, for part 4, division 2—see section 41A.

**building**, in relation to a building units plan, means the building or buildings shown on the plan each of which contains 2 or more lots or parts of lots and, where more than 1 building is shown on the plan, means any 1 or more of those buildings.

**building units plan** means a plan which—

- (a) is described in the title or heading thereto as a building units plan; and
- (b) shows the building comprised therein as being divided into lots; and
- (c) shows the common property comprised therein; and
- (d) complies with the requirements of section 9;

and includes a plan of resubdivision of a lot or common property or a lot and common property in a building units plan registered under this Act.

**cadastral surveyor**, for part 4, division 3, see section 48D.

and includes a plan of resubdivision of a lot or common property or a lot and common property in a group titles plan registered under this Act.

For the purpose of determining the number of proprietors pursuant to paragraph (a), each lot has 1 proprietor.

**ceiling** does not include a false ceiling.

**committee** means the committee of a body corporate constituted under this Act.

**common property** means so much of a parcel as from time to time is not comprised in any lot.

**company nominee**, in relation to a corporation, means the individual (if any) for the time being authorised under section 52 by the corporation.

**Court** means the Supreme Court.

**development site**, for a body corporate, for part 4, division 2, see section 41A.

**electable person**, for part 4, division 2, see section 41B.

**group titles plan** means a plan which—

- (a) is described in the title or heading thereto as a group titles plan; and
- (b) shows the land comprised therein as being divided into lots and common property; and
- (c) complies with the requirements of section 9;

**individual nominee**, in relation to a proprietor who is an individual, means an individual who is not a proprietor but is nominated for election to a committee by the proprietor.

**land** means land under the provisions of the *Land Title Act 1994* held by the registered proprietor in fee simple.

**law practice**, for part 4, division 3, subdivision 2, see section 49C.

**letting arrangement**, for part 4, division 2, see section 41A.

**lot** means a lot shown as such on a plan.

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

**mortgage** includes a charge for securing money or money's worth.

**occupier**, in relation to a lot, means a person in lawful occupation of that lot.

**original plan** means—

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- (a) in relation to a plan of resubdivision—the registered plan containing the lots or common property the subject of the plan of resubdivision; or
  - (b) in relation to a plan of amalgamation—the registered plan containing the lots the subject of the plan of amalgamation; or
  - (c) in relation to a conversion of lots into common property—the registered plan containing those lots.

***original proprietor*** means the person by whom a parcel the subject of a plan was held in fee simple at the time of registration of the plan, and includes any successor or assignee of that person, but does not include a bona fide purchaser for value of a lot or any successor or assignee of that purchaser.

***parcel*** means the land comprised in a plan.

***plan*** means a building units plan or a group titles plan.

***planning scheme*** means a planning scheme under the *Local Government (Planning and Environment) Act 1990*.

*Editor's note—*

*Local Government (Planning and Environment) Act 1990—see the Acts Interpretation Act 1954, section 14H and the Integrated Planning Act 1997.*

***prescribed arrangement*** means any agreement or arrangement (including an arrangement set out in the by-laws in respect of the plan) between—

- (a) in the case of a registered lot—the body corporate or the original proprietor and any other person; or
- (b) in the case of a proposed lot—the original proprietor and any other person;

being an agreement or arrangement—

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

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

**prescribed trust account**, for part 4, division 3, subdivision 2, see section 49C.

**proprietor** means the person for the time being registered or entitled to immediate registration under the *Land Title Act 1994* as the proprietor of a lot.

**public trustee** means the public trustee within the meaning of the *Public Trustee Act 1978*.

**qualified auditor** means—

- (a) a person registered as an auditor under the Corporations Act; or
- (b) a member of CPA Australia who is entitled to use the letters ‘CPA’ or ‘FCPA’; or
- (c) a member of The Institute of Chartered Accountants in Australia who is entitled to use the letters ‘CA’ or ‘FCA’; or
- (d) a member of the Institute of Public Accountants who is entitled to use the letters ‘MIPA’ or ‘FIPA’.

**real estate agent**, for part 4, division 3, subdivision 2, see section 49C.

**recognised entity**, for part 4, division 3, subdivision 2, see section 49C.

**referee** means a referee appointed under section 69.

**registered plan** means a plan as amended from time to time registered under this Act.

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**registrar of titles** means the registrar of titles under the *Land Title Act 1994*.

**relevant body corporate debt**, for part 4, division 2, see section 41A.

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

**roll** means the roll referred to in section 39 that relates to a plan or to a plan that has been extinguished.

**service arrangement**, for part 4, division 2, see section 41A.

**service obligation** means a service obligation created or implied by section 17 or 18.

**service right** means a service right created or implied by section 17 or 18.

**sinking fund** means the fund established by a body corporate under section 38(4), and includes a fund established under the *Building Units and Group Titles Act 1980*, section 38(1)(m) prior to the repeal of that section by the *Building Units and Group Titles Act Amendment Act 1988*.

**special resolution** means a resolution which is passed at a duly convened general meeting of a body corporate by the proprietors where the proprietors who vote against the motion proposed as a special resolution do not together—

- (a) constitute more than 25% of the total number of proprietors; and
- (b) hold more than 25% of the aggregate lot entitlement.

**specified Act** see section 5A(3).

**titles registry fee**, for a matter mentioned in a provision of this Act, means the fee payable for the matter under section 133C.

**titles registry function** see the *Queensland Future Fund (Titles Registry) Act 2021*, section 5.

**tribunal** means a tribunal constituted under section 96.

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

***voting member***, of a committee, means a member of the committee who is entitled to vote at meetings of the committee.

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

- (2) A reference in this Act to a resubdivision of a lot or common property or of a lot and common property is a reference to the alteration of the boundaries of—
- (a) 1 or more lots so as to create only 2 or more different lots; or
  - (b) 1 or more lots so as to create 1 or more different lots and common property; or
  - (c) 1 or more lots and common property so as to create 1 or more different lots or 1 or more different lots and common property; or
  - (d) common property so as to create 1 or more lots;

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

- (3) In this Act, a reference to the *Local Government (Planning and Environment) Act 1990* includes a reference to a planning scheme.

*Editor's note—*

*Local Government (Planning and Environment) Act 1990—see the Acts Interpretation Act 1954, section 14H and the Integrated Planning Act 1997.*

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## Part 2 Subdivision of land

### Division 1 Creation of lots and common property

#### 8 Subdivision

- (1) Land may be subdivided into lots and common property by the registration of a plan in the manner provided by or under this Act.
- (2) A lot may consist of separate parts.
- (3) When a plan has been registered—
  - (a) each lot comprised therein may devolve or be transferred, leased, mortgaged or otherwise dealt with; and
  - (b) subject to the approval of the local government to the lease, a lease of part of a lot and, in the case of a group titles plan, of part of any improvements on a lot may be registered;

in the same manner and form as any other land held under the provisions of the *Land Title Act 1994*.

- (3A) Easements to or over lots may be registered.
- (4) Upon the recording of particulars of the plan in the register the plan shall for the purposes of the *Land Title Act 1994* be deemed upon registration to be embodied in the register; and notwithstanding the provisions of that Act, a proprietor shall hold the proprietor's lot and the proprietor's share in the common property subject to any interests affecting the same for the time being notified on the registered plan and subject to any amendments to lots or common property shown on that plan.
- (5) Upon registration of a plan the registrar of titles shall thereafter be authorised to issue a separate certificate of title for each lot showing that the proprietor holds the share of the

common property appurtenant thereto in accordance with the lot entitlement set forth in the plan.

## 9 Registration of plan

- (1) A building units plan shall—
- (a) delineate the external surface boundaries of the parcel and the location of the building in relation thereto;
  - (b) bear a statement containing such particulars as may be necessary to identify the title to such parcel;
  - (c) include a drawing illustrating the lots and distinguishing such lots by numbers;
  - (d) define the boundaries of each lot in the building by reference to floors, walls, ceilings and, in the case where a boundary may be defined by reference to a permanent structure or permanent structures of the building, each such structure;  
However, it shall not be necessary to show any bearing or dimensions of a lot;
  - (e) show the approximate floor area of each lot;
  - (f) have endorsed upon it a schedule complying with the provisions of section 19;
  - (g) have endorsed upon it the name of the building;
  - (h) have endorsed upon it the address at which documents may be served on the body corporate in accordance with section 127;
  - (i) contain such other features as may be prescribed.
- (2) A group titles plan shall—
- (a) delineate the external surface boundaries of the parcel and the location of each lot and the common property in relation thereto;
  - (b) bear a statement containing such particulars as may be necessary to identify the title to such parcel;



- (c) delineate the lots and distinguish such lots by numbers;
  - (d) delineate the common property;
  - (e) show the area of each lot and of the common property;
  - (f) have endorsed upon it a schedule complying with the provisions of section 19;
  - (g) have endorsed upon it the name of the parcel;
  - (h) have endorsed upon it the address at which documents may be served on the body corporate in accordance with section 127;
  - (i) be in the approved form;
  - (j) contain such other matters, and be of such standard of accuracy, as may be prescribed.
- (3) Save with the consent of the Minister a plan shall not be registered if the name of the building or the name of the parcel, as the case may be, endorsed thereon, in the opinion of the registrar of titles, is undesirable.
- (3A) A plan shall not be registered if the name of the building or the name of the parcel, as the case may be, endorsed thereon is currently endorsed on—
- (a) a registered leasehold building units plan under the *South Bank Corporation Act 1989*; and
  - (b) a registered building units plan;
- or is reserved pursuant to—
- (c) section 120 of this Act; or
  - (d) the *South Bank Corporation Act 1989*, schedule 4, section 120.
- (4) A body corporate may, by resolution without dissent and with the consent of the registrar of titles, change the name of the building or the parcel, as the case may be, endorsed upon the plan to a name with which the plan could be registered without contravention of subsection (3) or (3A).

- (5) In a building units plan, the common boundary of any lot with another lot or with common property shall be the centre of the wall, floor or ceiling, as the case may be.
- (5A) Notwithstanding subsections (5) and (5B), a balcony, courtyard, roof garden or other area (being part of a building) which is not bounded wholly by walls or a ceiling or walls and a ceiling may and, it is hereby declared, always could from the commencement of the *Building Units and Group Titles Act 1980* be included as part of a lot shown on a building units plan.
- (5B) Provided that the balcony, courtyard, roof garden or other area shall be contiguous to a part of the lot the boundary of which part if it, by itself, were a lot would be the centre of walls, floor and ceiling.
- (6) Where, pursuant to subsection (5A), a balcony, courtyard, roof garden or other area of a building is included as part of a lot shown on a building units plan—
  - (a) that part of the boundary of the lot that is not the centre of a wall and would, but for the operation of subsections (5A) and (5B), be required to be the centre of a wall shall be the vertical plane from the upper boundary of the lot to the floor along the line described connecting the centres of the permanent vertical structures of the building approved for that purpose by the registrar of titles (which may include part of a wall) on that boundary, with the centres of the walls that form part of the boundary of the lot;
  - (b) that part of the boundary of the lot that is not the centre of a ceiling and would, but for subsections (5A) and (5B), be required to be the centre of a ceiling shall be the horizontal plane from the edge of the existing ceiling to the vertical boundary of the lot over which that ceiling does not extend at the level or levels of the walls and, where paragraph (a) applies, the permanent vertical structures to that part, such that, in any case, the plane is no higher than the boundary of the area of the lot that is the centre of a ceiling.

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- (7) Every plan lodged for registration shall be endorsed with or be accompanied by a certificate of the local government that the proposed subdivision of the parcel as illustrated in the plan has been approved by the local government and that all the requirements of the *Local Government (Planning and Environment) Act 1990* as modified by this Act have been complied with in regard to the subdivision.

*Editor's note—*

*Local Government (Planning and Environment) Act 1990—see the Acts Interpretation Act 1954, section 14H and the Integrated Planning Act 1997.*

- (8) Every building units plan lodged for registration shall be endorsed with or be accompanied by certificates respectively—
- (a) of a cadastral surveyor within the meaning of the *Surveyors Act 2003* that the building shown on the building units plan is within the external surface boundaries of the parcel the subject of the building units plan and, where a part of the building projects beyond such external boundaries, that an appropriate easement has been granted as an appurtenance of the parcel or, where that projection is over a road, that the local government has consented thereto pursuant to the local laws, as the case may be; and
  - (ab) of a cadastral surveyor within the meaning of the *Surveyors Act 2003* containing the particulars prescribed; and
  - (b) where the construction of the building shown on the building units plan was commenced after 1 February 1973, of an architect within the meaning of the *Architects Act 2002* that the building has been substantially completed in accordance with plans and specifications approved by the local government or a designated officer of the local government or, where the building has not been constructed under the supervision of an architect, of a building surveyor (or where there is no building surveyor a building inspector) of the local government (which certificate a building surveyor or

building inspector is hereby authorised to give unless otherwise directed by the local government) that the building has been substantially completed in accordance with plans and specifications approved by the local government or a designated officer of the local government.

- (9) No certificate given by a building surveyor or building inspector in good faith for the purposes of subsection (8)(b) shall subject the building surveyor or building inspector to any liability whatsoever in respect thereof and the proof of any allegation of the absence of good faith on the part of the building surveyor or building inspector shall be upon the person so alleging.
- (10) For the purposes of this section—  
*building surveyor* and *building inspector* include, where there is no building surveyor or building inspector of the local government, the officer of the local government whose duties include the performance of duties usually undertaken by a building surveyor or building inspector of a local government.
- (11) Before registering a building units plan the registrar of titles may require proof to the registrar's satisfaction by statutory declaration or otherwise of the time of commencement of construction of the building to which the plan relates.
- (12) Each group titles plan lodged for registration must be endorsed with or accompanied by a certificate—
- (a) approved under the *Survey and Mapping Infrastructure Act 2003*; and
  - (b) given by a cadastral surveyor within the meaning of the *Surveyors Act 2003*; and
  - (c) certifying that the plan is accurate.
- (13) Before registering a plan the registrar of titles may make or cause to be made such inspection of the parcel to which the plan relates as the registrar considers necessary.
- (14) Upon lodgement for registration of a plan the registrar of titles shall allot thereto a number.

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- (15) Registration of a plan shall be effected by notifying under the seal of the registrar of titles on the plan the fact and date of such registration.
  - (16) Every building units plan, group titles plan, building units plan of resubdivision or amalgamation, group titles plan of resubdivision or amalgamation or notice of conversion lodged for registration shall be accompanied by the relevant titles registry fees (including the fee mentioned in section 14).

## **10 Resubdivision**

- (1) Lots or common property or lots and common property may be resubdivided, with the approval of the local government, by the registration of a plan relating to the lots or common property or lots and common property so resubdivided in the manner provided by this Act for the registration of plans.
- (1A) However, lots or common property or lots and common property contained in a group titles plan may only be resubdivided by a group titles plan of resubdivision.
- (1B) In addition, where a resubdivision affects common property or creates additional common property the approval of the body corporate by resolution without dissent is required.
- (2) The provisions of this Act relating to plans and to appeals from any decision of a local government or failure of a local government to make a decision shall with such modifications as may be necessary apply to resubdivision.
- (3) Notwithstanding the provisions of section 27 proprietors of lots in a building units plan of resubdivision or group titles plan of resubdivision shall not be a body corporate, but shall, upon the date of registration of such plan of resubdivision be members of the body corporate constituted in respect of the original plan.
- (4) On registration of a building units plan of resubdivision or group titles plan of resubdivision, lots comprised therein shall be subject to the burden and have the benefit of any easements, service rights and service obligations affecting

such lots in the original plan as are included in the plan of resubdivision.

- (5) Where the resubdivision is of 1 or more lots so as to create only 2 or more different lots the schedule endorsed on the building units plan of resubdivision or group titles plan of resubdivision as required by section 19 shall apportion among the lots the lot entitlement of such lot or lots in the original plan as are included in the plan of resubdivision and the registrar when registering that plan shall amend the schedule to the original plan to show the lot entitlement of each lot and each proposed lot and the aggregate lot entitlement as whole numbers.
- (6) Where the resubdivision affects common property or creates additional common property the schedule endorsed on the building units plan of resubdivision or group titles plan of resubdivision as required by section 19 shall—
  - (a) show as a whole number, in respect of—
    - (i) each lot comprised in the parcel other than any lot or lots the subject of the proposed resubdivision; and
    - (ii) each proposed lot;the proposed lot entitlement of that lot or proposed lot and show the proposed aggregate lot entitlement; and
  - (b) be accompanied by a certificate under the seal of the body corporate concerned certifying that it has by resolution without dissent agreed to each proposed lot entitlement and the proposed aggregate lot entitlement shown in that schedule.
- (7) A resubdivision that creates additional common property shall not be registered unless every mortgage, current lease, caveat or other interest recorded on the certificate of title in respect of each lot from which the additional common property or part thereof is derived has been discharged, surrendered, withdrawn or otherwise disposed of in so far as it affects that additional common property or part thereof.

- (8) When registering a building units plan of resubdivision or group titles plan of resubdivision the registrar of titles shall amend the original plan in the manner prescribed.
- (9) Upon registration of a building units plan of resubdivision or group titles plan of resubdivision land therein shall not be dealt with by reference to lots in the original plan.

## **11 Amalgamation of lots**

- (1) Two or more lots may be amalgamated into 1 lot with the approval of the local government by the registration of a building units plan of amalgamation or group titles plan of amalgamation.
- (2) The lot entitlement of a lot created by the amalgamation of 2 or more lots shall be the sum of the lot entitlements of those lots.
- (3) When registering a building units plan of amalgamation or group titles plan of amalgamation the registrar of titles shall amend the original plan and the schedule of lot entitlements endorsed thereon in the manner prescribed.

## **12 Conversion of lots into common property**

- (1) One or more lots may be converted into common property with the approval of the local government by registering with the land registry, as a notice of conversion, a notice executed by the proprietor or proprietors of that lot or those lots and approved by the body corporate by unanimous resolution.
- (2) The provisions of this Act relating to plans and to appeals from any decision of a local government or failure of a local government to make a decision shall with such modifications as may be necessary apply to conversions of lots into common property.
- (3) A notice of conversion shall not be registered unless every mortgage, current lease, caveat or other interest recorded on each certificate of title has in so far as it affects the lot or lots

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to which the notice relates been discharged, surrendered, withdrawn or otherwise disposed of, as the case may be.

- (4) When registering a notice of conversion the registrar of titles shall—
- (a) amend the original plan in the manner prescribed; and
  - (b) amend the schedule of lot entitlements endorsed upon the original plan in accordance with the schedule complying with the provisions of section 19 lodged with the notice; and
  - (c) cancel the certificate of title for each lot converted into common property.

### **13 Plans and notices of conversion to be signed**

Where a building units plan, group titles plan, building units plan of resubdivision or amalgamation, group titles plan of resubdivision or amalgamation or notice of conversion is lodged in the land registry for registration it shall not be registered unless it is signed by every person having a sufficient estate or interest to transfer the land or lots comprised in the plan or notice.

### **14 Copies of plan to certain authorities and bodies corporate**

Upon payment of the relevant titles registry fee the registrar of titles shall, within 28 days after the registration of a plan or an amendment thereof, furnish to the valuer-general, to the Commissioner of State Revenue appointed under the *Taxation Administration Act 2001*, to the local government in relation to the parcel or any part thereof and to the body corporate, 2 copies of the registered plan or amendment thereof including all endorsements thereon.

### **15 Support**

In respect of each lot there shall be implied—



- (a) in favour of the proprietor of the lot and as appurtenant thereto, an easement for the lateral support and, in the case of a building units plan, the subjacent support thereof by the common property and by every other lot capable of affording support whether by party wall or otherwise; and
- (b) as against the proprietor of the lot and to which the same shall be subject, an easement for the lateral support and, in the case of a building units plan, subjacent support of the common property and of every other lot capable of enjoying support whether by party wall or otherwise.

## **16 Shelter**

- (1) Every proprietor of a lot in a building units plan shall be entitled to have the proprietor's lot sheltered by all such parts of the building as are capable of affording shelter.
- (2) The right created by this section shall be an easement to which such parts aforesaid of the building shall be subject.
- (3) The easement for shelter created by this section shall entitle the proprietor of the dominant tenement to enter on the servient tenement to replace, renew or restore any shelter.

## **17 Services**

In respect of each lot there shall be implied—

- (a) in favour of the proprietor of the lot and as appurtenant thereto, easements for the passage or provision of services (including water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air, heating oil, telephone, radio and television) through or by means of any pipes, poles, wires, cables or ducts to be laid down or erected or which are for the time being existing in or over the parcel to the extent to which those services are capable of being used in connection with the enjoyment of the lot; and

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- (b) as against the proprietor of the lot and to which the lot shall be subject, easements for the passage or provision of services (including water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air, heating oil, telephone, radio and television) through or by means of any pipes, poles, wires, cables or ducts to be laid down or erected or which are for the time being existing within that lot as appurtenant to the common property and also to every other lot capable of enjoying such services;

but the easements conferred by this section shall not be exercised by any proprietor in such a manner as unreasonably to prevent any other proprietor from enjoying the use and occupation of the proprietor's lot and the common property.

## **18 Ancillary rights**

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

## **19 Lot entitlement**

- (1) Every plan lodged for registration and every notice of conversion shall have endorsed upon it a schedule specifying in whole numbers the lot entitlement of each lot and a number equal to the aggregate lot entitlement of all lots contained in that plan, and that lot entitlement shall determine—
- (a) the voting rights of proprietors; and
  - (b) the quantum of the undivided share of each proprietor in the common property; and
  - (c) the proportion payable by each proprietor of contributions levied pursuant to section 32.
- (2) In a group titles plan the lot entitlement of each lot shall (as nearly as is practicable) bear in relation to the aggregate lot entitlement of all lots contained in that plan the same proportion as the values of all the lots contained in the plan.

- (3) Every group titles plan lodged for registration as such shall be accompanied by a certificate under the hand of a valuer registered under the provisions of the *Valuers Registration Act 1992* setting out the valuer's opinion as to the value, and the lot entitlement, of each lot contained in the plan.

*Note—*

For 'value' see the *Land Valuation Act 2010*, chapter 2 and chapter 10, part 3.

## **Division 2                      Common property**

### **20            Ownership of common property**

- (1) The common property shall be held by the proprietors as tenants in common in shares proportional to the lot entitlements of their respective lots.
- (2) The registrar of titles in issuing a certificate of title for a lot shall certify therein that the proprietor holds the share in the common property appurtenant thereto in accordance with the lot entitlement of that lot as set forth in the plan.
- (3) Save as in this Act provided, no share in the common property shall be disposed of except as appurtenant to the lot of the proprietor and any assurance of a lot shall operate to assure the share of the disposing party in the common property without express reference thereto.

### **21            Acquisition of additional common property**

- (1) A body corporate may, pursuant to a unanimous resolution, accept—
  - (a) a grant or transfer of land, not being a lot within the parcel, which abuts on the parcel; or
  - (b) a lease of land, not being a lot within the parcel, whether or not it abuts on the parcel;for the purpose of creating additional common property.

- (1A) For the purposes of the application of the *Land Act 1994*, a body corporate shall be deemed to be the holder or the registered proprietor in fee simple of the land comprising the parcel.
- (2) A transfer or lease referred to in subsection (1) shall be accompanied by—
- (a) the deed of grant or certificate of title comprising the land described in the transfer or lease or, in the case of a transfer of a lease or sublease, the registered lease referred to in the transfer or sublease; and
  - (b) a certificate under the seal of the body corporate certifying that the resolution authorising the acceptance of the transfer or lease was a unanimous resolution;
- and, in the case of a transfer other than a transfer of a lease, there shall be lodged in the land registry a plan under the *Land Title Act 1994* showing as a single lot the land comprised in the transfer and the land comprised in the parcel before the registration of the transfer.
- (2A) The registrar of titles shall not—
- (a) deliver to any person; or
  - (b) record in the register any dealings in respect of;  
a deed of grant issued in the name of a body corporate until there is registered in the land registry a plan under the *Land Title Act 1994* showing as a single lot the land comprised in the grant and the land comprised in the parcel before the grant.
- (3) Upon the registration under the *Land Title Act 1994* of any such grant or transfer, other than a transfer of a lease, the land comprised therein becomes common property and is subject to the provisions of this Act relating to common property and the registrar of titles shall make an appropriate recording on the registered plan to which the parcel relates.
- (4) Upon the registration under the *Land Title Act 1994* of any such lease, transfer of a lease or sublease—

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- (a) the leasehold interest becomes common property and thereupon is subject to such of the provisions of this Act relating to common property as are applicable to a leasehold interest; and
  - (b) the body corporate is responsible for all payments and the performance of all duties required of the lessee by the terms of the lease or sublease, as the case may be; and
  - (c) the registrar of titles shall make an appropriate noting on the registered plan to which the parcel relates and on the certificate of title or the lease, as the case may be, comprising the demised land to the effect that during the term of the lease or sublease the demised land is incorporated with and as part of, the common property.
- (5) A body corporate may, pursuant to a unanimous resolution and with the concurrence of the lessor, surrender a lease accepted by it under this section.
- (6) Upon the registration under the *Land Title Act 1994* of any such surrender the registrar of titles shall make an appropriate recording on the registered plan on which the lease was recorded.

## **22 Transfer or lease of part of common property**

- (1) A body corporate may, subject to the approval of the local government—
- (a) pursuant to a unanimous resolution, execute a transfer of part of common property; or
  - (b) pursuant to a resolution without dissent, execute a lease of or rent part of common property;
- other than common property the subject of a lease accepted or acquired by the body corporate under section 21(1).
- (2) Subject to the approval of the local government and if not prevented by the terms of the lease a body corporate may, pursuant to a resolution without dissent, transfer a lease of common property accepted or acquired by it under

section 21(1) or grant, by way of sublease, a lease of its estate or interest in common property the subject of a lease so accepted or acquired.

- (3) A body corporate may, pursuant to a resolution without dissent, accept the surrender of a lease, or, if otherwise empowered so to do, re-enter under a lease granted under subsection (1) or (2) or referred to in section 5(6).
- (4) Subject to subsection (7), the provisions of this Act relating to resubdivision and to appeals from any decision of a local government or failure of a local government to make a decision shall with such modifications as may be necessary apply to transfers and to leases of part of common property.
- (5) A transfer or lease of part of the common property shall be with such modifications as may be necessary in conformity with the provisions of the *Local Government (Planning and Environment) Act 1990*.

*Editor's note—*

*Local Government (Planning and Environment) Act 1990—see the Acts Interpretation Act 1954, section 14H and the Integrated Planning Act 1997.*

- (6) The body corporate, if it is satisfied that all persons having registered interests in the parcel and all other persons having interests (other than statutory interests) which have been notified to the body corporate have—
  - (a) in the case either of a memorandum of transfer or lease—consented in writing to the release of those interests in respect of the land comprised in the proposed transfer; or
  - (b) in the case of a lease—approved in writing of the execution of the proposed lease;

shall execute the appropriate memorandum of transfer or lease and the memorandum of transfer or lease shall be valid and effective without execution by any person having an interest in the common property and the receipt of the body corporate for the purchase money, rent, premiums or other moneys payable to the body corporate under the terms of the

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memorandum of transfer or lease shall be a sufficient discharge, and shall exonerate the persons taking under the memorandum of transfer or the lessee, as the case may be, from any responsibility for the application of the moneys expressed to have been so received.

- (7) The local government shall not give its approval to a transfer, lease, sublease or transfer of a lease of part of the common property unless it is satisfied—
- (a) that the proposed transfer, lease, sublease or transfer of lease will not interfere with the existing or likely future amenity of the neighbourhood, having regard to the circumstances of the case and the public interest; and
  - (b) that if the application for approval were an application to the local government for a certificate for the purposes of section 9(7) in respect of the subdivision of the parcel as illustrated in the plan (excluding the part the subject of the proposed transfer, lease, sublease or transfer of lease) it would be proper for the local government to direct the issue of the certificate; and
  - (c) that the easements, services and rights referred to in sections 15 to 18 and presently enjoyed or exercised, or capable of being enjoyed or exercised, will not be, or be likely to be, unduly interfered with by the proposed transfer, lease, sublease or transfer of lease or that suitable alternative arrangements approved by the local government have been agreed upon by the parties in relation thereto.
- (8) Every—
- (a) memorandum of transfer or lease executed pursuant to subsection (1); and
  - (b) transfer of lease or sublease executed, or surrender of lease accepted pursuant to subsection (2) or (3);

lodged for registration with the land registry shall be endorsed with or accompanied by a certificate under the seal of the body corporate that the resolution was duly passed, that the memorandum of, transfer, lease, sublease, transfer of lease or

surrender of lease conforms with the terms thereof and that all necessary consents were given.

- (9) In favour of purchasers or lessees of part of the common property and in favour of the registrar of titles the certificate shall be conclusive evidence of the matters certified therein.
- (10) Upon lodgement for registration of a memorandum of transfer of part of the common property and any plan of subdivision under the *Land Title Act 1994* necessary therefor, the registrar of titles shall, before issuing a certificate of title, amend the registered plan by deleting therefrom the part of common property comprised in the memorandum of transfer.
- (11) The registrar of titles shall register the memorandum of transfer, the lease pursuant to subsection (1), the surrender of that lease, the transfer of lease, sublease or, as the case may be, surrender of sublease by recording particulars thereof in the register in accordance with the provisions of the *Land Title Act 1994*.
- (12) Notwithstanding the provisions of this section a body corporate shall not grant a lease of common property where the access to or egress from the parcel by any proprietor is interfered with.

## **23 Creation of easements**

- (1) A body corporate may by unanimous resolution—
  - (a) execute a grant of easement; or
  - (b) accept a grant of easement; or
  - (c) surrender a grant of easement; or
  - (d) accept the surrender of a grant of easement.
- (2) Subsection (1) does not authorise a body corporate to accept a grant or execute a surrender of easement relating to common property the subject of a lease accepted or acquired by the body corporate under section 21(1) that, apart from subsection (1), it is not entitled to accept or execute as a lessee



or, by the terms of the lease, it is prevented from accepting or executing.

- (3) A body corporate may, pursuant to a unanimous resolution, consent to the execution or acceptance by a lessor of a grant or surrender of easement relating to common property the subject of a lease accepted or acquired by the body corporate under section 21(1).
- (4) The body corporate, if it is satisfied that all persons having registered interests in the parcel and all other persons having interests (other than statutory interests) which have been notified to the body corporate have consented in writing to the release of those interests in respect of the land comprised in the proposed disposition, shall execute the appropriate instrument and any plan necessary therefor and every instrument shall be valid and effective without execution by any person having an interest in the parcel, and the receipt of the body corporate of any moneys payable to the body corporate under the terms of the instrument shall be a sufficient discharge, and shall exonerate the persons taking under the instrument from any responsibility for the application of the moneys expressed to have been so received.
- (5) Every instrument executed pursuant to subsection (4) and lodged for registration with the land registry shall be endorsed with or accompanied by a certificate under the seal of the body corporate that the resolution was duly passed and that all necessary consents were given.
- (6) In favour of persons dealing with the body corporate pursuant to this section and in favour of the registrar of titles the certificate shall be conclusive evidence of the matters certified therein.
- (7) The registrar of titles shall register the instrument creating or surrendering an easement by recording the particulars thereof in the register in the manner prescribed.

## **Division 3                      Approval of local government**

### **24            Approval of subdivision**

- (1) The provisions relating to subdivision of land contained in the *Local Government (Planning and Environment) Act 1990*, or any other Act, shall not apply to—
- (a) a subdivision of land into lots effected by the registration of a building units plan; or
  - (b) a resubdivision of lots or common property or lots and common property effected by the registration of a building units plan of resubdivision.

*Editor's note—*

*Local Government (Planning and Environment) Act 1990—see the Acts Interpretation Act 1954, section 14H and the Integrated Planning Act 1997.*

- (1A) Provided always that the boundaries of the parcel correspond with boundaries of a lawful subdivision within the meaning of the *Local Government (Planning and Environment) Act 1990*.

*Editor's note—*

*Local Government (Planning and Environment) Act 1990—see the Acts Interpretation Act 1954, section 14H and the Integrated Planning Act 1997.*

- (2) Subject to this section, the local government may direct the issue of a certificate for the purposes of section 9(7) in relation to—
- (a) a subdivision of land into lots effected by the registration of a group titles plan; or
  - (b) a resubdivision of lots or common property or lots and common property effected by the registration of a group titles plan of resubdivision;

notwithstanding that it does not comply with the provisions relating to subdivision contained in the *Local Government (Planning and Environment) Act 1990*.

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*Editor's note—*

*Local Government (Planning and Environment) Act 1990—see the Acts Interpretation Act 1954, section 14H and the Integrated Planning Act 1997.*

- (3) To the extent to which the local government, on application stating the specific provisions from which waiver is required and the reason therefor and having regard to all the circumstances of the case, considers that waiver of compliance with those provisions is warranted, the local government is hereby authorised to waive such compliance, but the boundaries of the parcel shall correspond with the boundaries of a lawful subdivision within the meaning of the *Local Government (Planning and Environment) Act 1990*.

*Editor's note—*

*Local Government (Planning and Environment) Act 1990—see the Acts Interpretation Act 1954, section 14H and the Integrated Planning Act 1997.*

- (4) In respect of an application for a certificate for the purposes of section 9(7) the local government shall, subject to subsections (5) and (5A), direct the issue of the certificate if it is satisfied that—
- (a) the subdivision complies with the applicable provisions referred to in subsections (1) and (2); and
  - (b) separate occupation of the proposed lots will not contravene—
    - (i) a planning scheme; or
    - (ii) a local law; or
    - (iii) interim development control provisions within the meaning of the *Local Government (Planning and Environment) Act 1990* (the **control provisions**); or

*Editor's note—*

*Local Government (Planning and Environment) Act 1990—see the Acts Interpretation Act 1954, section 14H and the Integrated Planning Act 1997.*

- (iv) the policies of the local government in force—

- (A) in the case of a building units plan—at the date of the approval given by the local government to the erection of the building; or
  - (B) in the case of a group titles plan—at the date of lodgement of the application; and
  - (c) any consent or approval required under a planning scheme, a local law or control provisions has been given for the separate occupation of the proposed lots; and
  - (d) the proposed subdivision of the parcel into lots for separate occupation will not interfere with the existing or likely future amenity of the neighbourhood, having regard to the circumstances of the case, the public interest and the adequacy of access drives and parking areas within the common property.
- (5) Within 40 days (or such longer period as may be approved by the Minister for the time being charged with the administration of the *Local Government (Planning and Environment) Act 1990*) after the date of receipt of the application in respect of a group titles plan for a certificate for the purposes of section 9(7), the local government shall notify the applicant in writing of its decision to approve and the conditions imposed (if any) or refuse the application but the local government shall not issue such a certificate until it is satisfied that any necessary works lawfully required by the conditions of approval are completed and any money lawfully required to be paid to the local government is paid and that the applicant has entered into any necessary agreement with the local government lawfully required and has furnished any security lawfully required and that all other conditions of approval lawfully required have been complied with in every respect.

*Editor's note—*

*Local Government (Planning and Environment) Act 1990—see the Acts Interpretation Act 1954, section 14H and the Integrated Planning Act 1997.*

(5A) Where the application has been approved pursuant to subsection (5) and the applicant has complied in every respect with the lawful requirements of the local government, the local government shall within 14 days of notice being given to it of such compliance or, if the relevant plan is submitted to it at a later date, within 14 days of such later date, issue or endorse on the plan the certificate required for the purposes of section 9(7).

(6) An applicant for a certificate required for the purposes of section 9(7) who feels aggrieved by—

(a) the refusal of a local government to direct the issue of the certificate; or

(b) the failure of a local government to—

(i) direct the issue of a certificate; or

(ii) notify approval and conditions imposed (if any) pursuant to subsection (5);

within 40 days (or such longer period as may be approved by the Minister for the time being charged with the administration of the *Local Government (Planning and Environment) Act 1990*) after the receipt by the local government of the application for that certificate; or

*Editor's note—*

*Local Government (Planning and Environment) Act 1990—see the Acts Interpretation Act 1954, section 14H and the Integrated Planning Act 1997.*

(c) the conditions imposed by a local government pursuant to subsection (5); or

(d) the failure of a local government to comply with the provisions of subsection (5A);

may appeal to the Planning and Environment Court.

(7) The *Local Government (Planning and Environment) Act 1990*, part 7 (Appeals) applies to an appeal under subsection (6) as if the right to appeal was given by that Act.

*Editor's note—*

*Local Government (Planning and Environment) Act 1990—see the Acts Interpretation Act 1954, section 14H and the Integrated Planning Act 1997.*

## **Part 3                      Variation or extinguishment of plans**

### **25            Variation or extinguishment of plan**

- (1) For the purposes of this Act a plan is extinguished on the happening of the following events—
  - (a) when—
    - (i) the body corporate by unanimous resolution so resolves; or
    - (ii) the Court is satisfied that, having regard to the rights and interests of the proprietors as a whole, it is just and equitable that the plan should be extinguished, and makes an order to that effect;
  - (b) when, in the case of a group titles plan, the approval of the local authority to the proposed extinguishment has been obtained;
  - (c) when the registrar of titles makes an entry of the extinguishment on the registered plan pursuant to section 26.
- (2) Upon a proposal to extinguish a group titles plan pursuant to this section, the body corporate shall make application to the local government for approval to the extinguishment of the plan.
- (3) Upon an application pursuant to subsection (2) the local government shall not refuse to approve the application but may approve the application subject to reasonable and relevant conditions including, for example, conditions about—

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- (a) the removal of such improvements therefrom as would be necessary for the land and improvements remaining thereon to comply with the lawful requirements of the local government; or
  - (b) the subdivision of the parcel in such a manner that the locations of any remaining improvements thereon comply with the lawful requirements of the local government.
- (4) Within 40 days (or such longer period as may be approved by the Minister for the time being charged with the administration of the *Local Government (Planning and Environment) Act 1990*) after the date of receipt of an application for approval pursuant to subsection (2) the local government shall notify the applicant in writing of its decision to approve the application and the conditions (if any) required by the local government.

*Editor's note—*

*Local Government (Planning and Environment) Act 1990—see the Acts Interpretation Act 1954, section 14H and the Integrated Planning Act 1997.*

- (4A) Where the application has been approved and the applicant has complied in every respect with the conditions (if any) lawfully imposed by the local government pursuant to subsection (3), the local government shall within 14 days of notice being given to it of such compliance issue a certificate that the requirements of the local government have been complied with.
- (5) An applicant for approval to the extinguishment of a plan who feels aggrieved by—
- (a) the failure of a local government to notify approval and the conditions imposed (if any) within 40 days (or such longer period as may be approved by the Minister for the time being charged with the administration of the *Local Government (Planning and Environment) Act 1990*) after the receipt by the local government of the application for approval; or

*Editor's note—*

*Local Government (Planning and Environment) Act 1990—see the Acts Interpretation Act 1954, section 14H and the Integrated Planning Act 1997.*

- (b) the conditions imposed by a local government pursuant to subsection (3); or
- (c) the failure of a local government to comply with the provisions of subsection (4A);

may appeal to the Planning and Environment Court.

- (5A) The *Local Government (Planning and Environment) Act 1990*, part 7 (Appeals) applies to an appeal under subsection (5) as if the right to appeal was given by that Act.

*Editor's note—*

*Local Government (Planning and Environment) Act 1990—see the Acts Interpretation Act 1954, section 14H and the Integrated Planning Act 1997.*

- (6) Where an order is made pursuant to subsection (1)(a)(ii), the Court may by order—
  - (a) impose such conditions and give such directions (including directions for the payment of money) as it thinks fit for the purpose of adjusting as between the body corporate and the proprietors and as amongst the proprietors themselves the effect of the order; and
  - (b) in the case of a group titles plan, impose any of the conditions which a local government may impose pursuant to subsection (3).
- (7) Where a building is damaged but the relevant building units plan is not extinguished pursuant to subsection (1), the Court may by order settle a scheme, including provisions—
  - (a) for the reinstatement in whole or in part of the building; or
  - (b) for the transfer or vesting of the interests of proprietors of lots which have been wholly or partially destroyed to the other proprietors in proportion to their lot entitlements.



- (7A) In the exercise of its powers under subsection (7) the Court may make such orders as it considers necessary or expedient for giving effect to the scheme, including orders—
- (a) directing the application of insurance moneys received by the body corporate in respect of damage to the building; or
  - (b) directing payment of money by the body corporate or by proprietors or by some 1 or more of them; or
  - (c) directing such amendment of the building units plan as the Court thinks fit, so as to include in the common property any accretion thereto; or
  - (d) imposing such terms and conditions as it thinks fit.
- (8) For the purpose of the foregoing provisions of this section an application may be made to the Court by the body corporate or by a proprietor or by a registered mortgagee of a lot.
- (9) On an application to the Court under the foregoing provisions of this section in relation to a building units plan, an insurer who has effected insurance on a building or any part thereof (being insurance against destruction of lots or damage to the building) shall have the right to appear in person or be represented by counsel or a solicitor, or by an agent authorised in writing, who may examine witnesses and address the Court on behalf of the insurer.
- (10) The Court may from time to time vary an order made by it under this section.
- (11) The Court, on the application of the body corporate, a proprietor or the body corporate manager appointed under section 94, may by order make provision for the winding-up of the affairs of the body corporate.
- (11A) By the same or subsequent order the Court may declare the body corporate dissolved as on and from a date specified in the order.
- (12) On an application under this section the Court may make such order for the payment of costs as it thinks fit.

- (13) Where the Court makes an order under subsection (7) or (7A) the registrar of titles shall, upon lodgement for registration of a request to register that order, do all such things as appear to the registrar to be necessary or proper to give effect to the order.

## **25A Notification to local government on extinguishment of plan**

Upon extinguishment of a plan, the registrar of titles shall forthwith furnish to the local government a notification in writing of the extinguishment in the approved form which shall include a statement of the undivided share in the land comprised in the extinguished plan to which each proprietor is entitled as a tenant in common with the other proprietors.

## **26 Disposition on extinguishment of plan**

- (1) Upon a resolution by the body corporate pursuant to section 25(1)(a)(i) or an order of the Court pursuant to section 25(1)(a)(ii) and, in the case of a group titles plan, the obtaining of the approval of the local government to the proposed extinguishment, the body corporate shall forthwith lodge with the land registry—
- (a) a notification of the proposed extinguishment in the approved form; and
  - (b) in the case of a group titles plan—the certificate of the local government that the requirements of the local government have been complied with, together with any plan of subdivision under the *Land Title Act 1994* approved by the local government and required by the local government pursuant to section 25(3)(b).
- (2) Upon receipt of the notification referred to in subsection (1) together with any other documents required to be lodged by that subsection, the registrar of titles shall record the particulars thereof in the register in the manner prescribed.

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- (3) Upon the entry in pursuance of subsection (2) the proprietors shall be entitled to the land comprised in the extinguished plan as tenants in common—
    - (a) in the case of a building units plan—in shares proportional to the lot entitlements of their respective lots; or
    - (b) in the case of a group titles plan—in such shares as the proprietors by unanimous resolution may resolve or as the Court may order having regard to the rights and interests of the proprietors as a whole upon an application made to the Court by any person specified in section 25(8).
  - (4) Upon a resolution by the body corporate pursuant to section 25(1)(a)(i) or an order of the Court pursuant to section 25(1)(a)(ii) and, in the case of a group titles plan, the obtaining of the approval of the local government to the proposed extinguishment, the body corporate by unanimous resolution may transfer the land comprised in the plan or any part or parts thereof.
  - (5) The body corporate, if it is satisfied that all persons having registered interests in the parcel and all other persons having interests (other than statutory interests) which have been notified to the body corporate have consented in writing to the release of those interests in respect of the land comprised in the proposed disposition, shall execute the appropriate memorandum of transfer and the memorandum of transfer shall be valid and effective without execution by any person having an interest in the parcel and the receipt of the body corporate for any moneys payable to the body corporate under the terms of the memorandum of transfer shall be a sufficient discharge, and shall exonerate the persons taking under the memorandum of transfer from any responsibility for the application of the moneys expressed to have been so received.
  - (6) Every memorandum of transfer executed pursuant to subsection (5) and lodged for registration shall be endorsed with or accompanied by a certificate under the seal of the

body corporate that the resolution was duly passed and that all necessary consents were given.

- (7) In favour of purchasers of the land comprised in the extinguished plan and in favour of the registrar of titles, the certificate shall be conclusive evidence of the facts stated therein.
- (8) Upon lodgement for registration of a memorandum of transfer of land comprised in an extinguished plan by the body corporate pursuant to this section, the registrar of titles shall, before issuing a certificate of title, make the recordings prescribed by subsection (2).
- (9) Where land is transferred by the body corporate pursuant to this section—
  - (a) the proprietors shall surrender to the land registry their certificates of title for cancellation; and
  - (b) the registrar of titles shall cancel the certificates of title relating to the lots and, after registering the memorandum of transfer, issue to the transferee a certificate of title for the land transferred and;

where part only of the land comprised in the extinguished plan is transferred, issue to the proprietors as tenants in common in the shares determined pursuant to subsection (3) a certificate of title for that part of the land that was not transferred.

- (10) Where no resolution is made in accordance with subsection (4) the registrar of titles shall, after cancelling all certificates of title relating to the lots and recording the extinguishment of the plan in the register, issue to the proprietors as tenants in common in the shares determined pursuant to subsection (3) a certificate of title under the *Land Title Act 1994* for the land comprised in the extinguished plan.
- (11) The person who is the proprietor of a lot immediately prior to the extinguishment of a plan shall continue after extinguishment to be liable for any rate or charge made and levied by a local government before extinguishment in respect of that lot.

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## Part 4 Management

### Division 1AA Interpretation

#### 26A Definition for part

In this part—

*associate*, of a person, means someone else with whom the person is associated under section 26B.

#### 26B Associates

- (1) A person is associated with someone else if—
  - (a) a relationship of a type mentioned in subsection (2) exists between them; or
  - (b) a series of relationships of a type mentioned in subsection (2) can be traced between them through another person or other persons.
- (2) For subsection (1), the relationships are as follows—
  - (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, one 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;
  - (i) the relationship of a corporation that is a proprietor and a company nominee of the corporation.
- (3) However, despite subsection (2)(e) and (f), the proprietor of a lot and a person who is a party to a letting arrangement as defined in section 41A are not associated merely because of services provided to the proprietor by the person under the arrangement.
- (4) Also, for a person mentioned in section 41B(a)(iii), the proprietor who nominates the person for election is associated with the person.
- (5) 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.

## **Division 1                      Bodies corporate**

### **27            Constitution of bodies corporate**

- (1) The proprietor or proprietors from time to time shall, by virtue of this Act, upon registration of the plan be a body corporate under the name 'The Proprietors—(insert name of the building) Building Units Plan No. ' or 'The Proprietors—(insert name of the parcel) Group Titles Plan No. ', as the case may be. (The name of the building or parcel shall be the name endorsed upon the relevant plan and the plan number shall be the number allotted to that plan pursuant to section 9(14).)
- (2) The Corporations Act does not apply to or in respect of a body corporate constituted under this Act.

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- (3) Subject to this Act the body corporate shall have the powers, authorities, duties and functions conferred or imposed on it by or under this Act or the by-laws and shall do all things reasonably necessary for the enforcement of the by-laws and the control, management and administration of the common property.
  - (4) The body corporate must act reasonably in anything it does under subsection (3), including making, or not making, a decision under the subsection.
  - (5) Notwithstanding the provisions of section 25, a body corporate continues in existence until the folios of the register book constituted by the certificates of title relating to the lots under the plan have been cancelled.
  - (6) The body corporate shall have perpetual succession and a common seal and shall be capable of suing and being sued in its corporate name and shall be regulated in accordance with the by-laws for the time being in force.
  - (7) The body corporate may—
    - (a) sue and be sued on any contract made by it; and
    - (b) sue for and in respect of any damage or injury to the common property caused by any person, whether a proprietor or not; and
    - (c) be sued in respect of any matter connected with the parcel for which the proprietors are jointly liable.
  - (8) In any case in which work is carried out for the purpose of constructing or preparing the common property the body corporate, upon registration of the plan, shall be deemed to have been a party to an enforceable contract for the carrying out of such work, and may sue in respect of that contract.

## **28 Seal of body corporate**

- (1) The common seal of a body corporate shall be kept—
  - (a) where the body corporate is constituted by 1 proprietor—by that proprietor; or

- (b) where the body corporate is constituted by 2 or more proprietors—by such proprietor or member of the committee as the body corporate determines or, in the absence of any such determination, by the secretary of the committee.
- (2) The common seal of the body corporate shall only be affixed to an instrument or document in the presence of—
  - (a) where the body corporate is constituted by 1 or 2 proprietors—that proprietor or those proprietors, as the case may be; or
  - (b) where the body corporate is constituted by more than 2 proprietors—such 2 persons, being proprietors or members of the committee, as the body corporate determines or, in the absence of any such determination, the secretary and any other member of the committee;who shall attest the fact and date of the affixing of the seal by their signatures.
- (3) Notwithstanding subsections (1) and (2), a body corporate manager shall, for the purpose of exercising or performing any of the manager’s powers, authorities, duties or functions, be entitled to have the custody of the common seal of the body corporate and to affix it to any instrument or document and, where the manager so affixes it, shall attest the fact and date of the affixing of the seal by the manager’s signature.
- (4) Where a body corporate manager has affixed the common seal of the body corporate to any instrument or document, the manager shall be deemed to have done so under the authority of a delegation made under section 50 by the body corporate.
- (5) Subsection (4) shall not operate so as to enable a person to fraudulently obtain a benefit from its operation, but any benefit that accrues to a person from the operation of that subsection shall be deemed not to be fraudulently obtained if the benefit was first obtained by that person without any fraud by the person.



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## **29 First annual general meeting of body corporate**

- (1) Within 3 months after the registration of the plan, the original proprietor, whether or not the original proprietor is a proprietor at the time the original proprietor does so, shall, in accordance with schedule 2, part 1 convene a meeting of the body corporate which shall be held within that period.

Maximum penalty—50 penalty units.

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

- (2AA) For subsection (2)(h), only a qualified auditor may be appointed to audit the books and accounts of the body corporate.
- (2A) The agenda for a meeting convened under subsection (1) may include as an item that the body corporate resolve that the accounts of the body corporate shall not be audited.
- (2B) If the body corporate so resolves, the item on the agenda referred to in subsection (2)(h) shall not be proceeded with.
- (2C) Nothing in subsections (2A) and (2B) shall prevent a body corporate resolving in general meeting that the accounts of the body corporate relating to any period specified in the resolution shall be audited.
- (3) The meeting held under subsection (1) shall be the first annual general meeting of the body corporate and at such meeting a chairperson, secretary and treasurer shall be elected.
- (3A) However, a person may be elected to 1 or more of those offices.
- (4) An original proprietor shall not fail or neglect to deliver to the body corporate at its first annual general meeting—
  - (a) all plans, specifications, drawings showing water pipes, electric cables, drainage, ventilation ducts or air-conditioning systems, certificates (other than certificates of title for lots), diagrams (including lift wiring diagrams) and other documents (including policies of insurance) obtained or received by the original proprietor and relating to the parcel or building; and
  - (b) if they are in the original proprietor's possession or under the original proprietor's control—the roll, books of account and any notices or other records relating to the plan; and
  - (c) the budget showing the estimated expenditure of the body corporate in relation to the parcel on an annual basis;

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

Maximum penalty—50 penalty units.

- (5) Schedule 2, part 1 applies to and in respect of the first annual general meeting of the body corporate and voting at that meeting.
- (6) If a meeting of the body corporate is not convened and held in accordance with subsections (1) and (2), a referee may, pursuant to an application by the body corporate, a proprietor or a mortgagee of a lot, appoint by order a person to convene a meeting of the body corporate within such time as may be specified in the order and the meeting convened by that person shall be held within that period and shall, for the purposes of subsection (3), be deemed to be the meeting convened under subsection (1).
- (8) An order made under subsection (6) may include such ancillary or consequential provisions as the referee thinks fit.
- (9) Notwithstanding schedule 2, where an order made under subsection (6) so provides—
  - (a) the person appointed to convene a meeting of a body corporate by the order shall preside at the meeting and, while the person so presides, shall be deemed to be the chairperson of the body corporate; and
  - (b) notice of that meeting may be given in the manner specified in the order.
- (10) An original proprietor who has failed to convene a meeting of the body corporate in accordance with subsection (1) remains liable to the penalty provided by that subsection notwithstanding that an order has been made under subsection (6) or that a meeting has been convened pursuant to any such order.

### **29A Meetings, other than first annual general meeting, of body corporate**

- (1) An annual general meeting of a body corporate shall be held in each year on or after the anniversary of the first annual general meeting but not later than 2 months after that anniversary.
- (2) A meeting of a body corporate which is not an annual general meeting shall be held whenever it is convened by the committee and shall be an extraordinary general meeting.
- (3) Schedule 2, part 2 applies to and in respect of a meeting of a body corporate, which is not the first annual general meeting, and voting at that meeting.

### **29B Audit of accounts of body corporate**

- (1) The books and accounts of the body corporate in respect of each financial year of the body corporate shall be audited except where the body corporate at the annual general meeting held at the beginning of that financial year by special resolution resolves that the accounts shall not be audited.
- (2) The audit of the books and accounts of the body corporate must be performed by a qualified auditor.

### **30 By-laws**

- (1) Except as provided in this section the by-laws set forth in schedule 3 shall be the by-laws in force in respect of each plan.
- (2) Save where otherwise provided in subsections (7), (11) and (11A) a body corporate, pursuant to a special resolution, may, for the purpose of the control, management, administration, use or enjoyment of the lots and common property the subject of the plan, make by-laws amending, adding to or repealing the by-laws set forth in schedule 3 or any by-laws made under this subsection.
- (3) An amendment of, addition to or repeal of the by-laws has no force or effect until the registrar of titles has, pursuant to a

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notification in the approved form lodged in the land registry by the body corporate, recorded the notification on the registered plan.

- (3A) The registrar of titles shall not record a notification on the registered plan in relation to an amendment of, addition to or repeal of the by-laws made more than 3 months prior to the lodgement of the notification.
- (4) A lease of a lot or common property shall be deemed to contain an agreement by the lessee that the lessee will comply with the by-laws for the time being in force.
- (5) Without limiting the operation of any other provision of this Act, the by-laws for the time being in force bind the body corporate and the proprietors and any mortgagee in possession (whether by himself, herself or any other person), lessee or occupier, of a lot to the same extent as if the by-laws had been signed and sealed by the body corporate and each proprietor and each such mortgagee, lessee and occupier respectively and as if they contained mutual covenants to observe and perform all the provisions of the by-laws.
- (6) No by-law or any amendment of or addition to a by-law shall be capable of operating to prohibit or restrict the devolution of a lot or a transfer, lease, mortgage or other dealing therewith or to destroy or modify any easement, service right or service obligation implied or created by this Act.
- (7) With the written consent of the proprietor or proprietors of the lot or lots concerned, a body corporate may, pursuant to a resolution without dissent make a by-law—
- (a) conferring on the proprietor of a lot specified in the by-law, or on the proprietors of the several lots so specified—
- (i) the exclusive use and enjoyment of; or
- (ii) special privileges in respect of;
- the whole or any part of the common property, upon conditions (including the payment of money at specified times or as required by the body corporate, by the

proprietor or proprietors of the lot or several lots) specified in the by-law; or

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

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

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

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

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

(c) to the body corporate; or

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

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

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

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

(a) need not identify or define the common property the subject of the grant of exclusive use and enjoyment or special privileges provided that the by-law prescribes a method of identifying or defining the common property; and

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- (b) may authorise a person (including the original proprietor or the original proprietor's agent) to identify or define the common property and to allocate such identified or defined area of common property to the respective proprietors of each lot who are entitled by the by-law to the grant of exclusive use and enjoyment or special privileges; and
- (c) may authorise the transposition of an identified or defined area of common property from one proprietor of a lot to another proprietor of a lot at any time and from time to time on receipt of written notice to the body corporate from both such proprietors.
- (7C) The notification on the registered plan referred to in subsection (7D) shall be given forthwith by the body corporate on receipt of a written request from the person referred to in subsection (7B)(b) or the proprietors referred to in subsection (7B)(c).
- (7D) Neither the allocation of identified or defined common property nor any variation or transposition in relation thereto (which occurs after the commencement of the *Building Units and Group Titles Act Amendment Act 1990*, other than sections 1 and 2) has any force or effect until the registrar of titles has, pursuant to a notification in the approved form lodged in the land registry by the body corporate, recorded the notification on the registered plan.
- (7E) The registrar of titles shall not record a notification on the registered plan in relation to an allocation of identified or defined common property or any variation or transposition in relation thereto (not being an allocation of identified or defined common property or any variation or transposition in relation thereto which occurred prior to the commencement of the *Building Units and Group Titles Act Amendment Act 1990*, other than sections 1 and 2) which occurred more than 3 months prior to the lodgement of the notification.
- (8) A by-law referred to in subsection (7) shall, while it remains in force, enure as appurtenant to, and for the benefit of, and (subject to section 40(4)) is binding upon, the proprietor or

proprietors for the time being of the lot or lots specified in the by-law.

- (9) To the extent to which such a by-law makes a proprietor directly responsible for the duties of the body corporate referred to in subsection (7A)(a), it discharges the body corporate from the performance of those duties.
- (9A) Where a person becomes a proprietor of a lot at a time when, pursuant to a by-law, another person is liable to pay money to the body corporate, the person who so becomes proprietor is, subject to section 40(4), jointly and severally liable with the other person to pay the money to the body corporate.
- (10) Any moneys payable by a proprietor to the body corporate under a by-law referred to in subsection (7) may be recovered, as a debt, by the body corporate in any court of competent jurisdiction.
- (11) Where an order made under part 5, division 3 has effect as if its terms were a by-law, a by-law may vary or nullify the effect thereof.
- (11A) However, such by-law shall be made pursuant to a resolution without dissent.
- (12) A by-law which, but for this section, would have effect to prohibit or restrict—
- (a) the keeping on a lot of a guide, hearing or assistance dog used by a proprietor or occupier of a lot who is a person with a disability who relies on a guide, hearing or assistance dog; or
  - (b) the use of a guide, hearing or assistance dog on a lot or common property by a person with a disability who relies on a guide, hearing or assistance dog;
- shall, to the extent of that prohibition or restriction, have no force or effect.

- (12A) For the purposes of subsection (12)—

*assistance dog*, *disability*, *guide dog* and *hearing dog* have the meanings respectively assigned to them under the *Guide, Hearing and Assistance Dogs Act 2009*.



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- (13) Subject to subsection (12), each by-law in force in respect of a plan immediately before the commencement of the *Building Units and Group Titles Act Amendment Act 1988*, section 19 shall, notwithstanding the commencement of that section, continue to be a by-law in force in respect of that plan except to the extent of any subsequent amendment or addition thereto or repeal thereof pursuant to this section.

### **31 Copy of by-laws to be produced upon request**

Where any lot or common property is leased or rented, otherwise than to a proprietor of a lot, the lessor or, as the case may be, landlord shall upon the request of the lessee or tenant produce or cause to be produced to the lessee or tenant for his or her inspection a copy of the by-laws for the time being in force in respect of the plan.

Maximum penalty—2 penalty units.

### **32 Levies by body corporate on proprietors**

- (1) A body corporate may levy the contributions determined by it in accordance with section 38A(1) and (2) and contributions referred to in section 38A(3) and the amount (if any) determined pursuant to section 38A(4) in respect thereof by serving on the proprietors notice in writing of the contributions payable by them in respect of their respective lots.
- (2) Contributions levied under subsection (1) by a body corporate shall be levied in respect of each lot and shall be payable, subject to this section, by the proprietors in shares proportional to the lot entitlements of their respective lots.
- (3) In respect of a contribution levied under subsection (1) a proprietor of a lot is, subject to section 40(4), liable, jointly and severally with any person who was liable to pay that contribution when that proprietor became the proprietor of that lot, to pay such part of that contribution as was unpaid when he or she became the proprietor of that lot.

- (4) Regular periodic contributions to the administrative fund and sinking fund of a body corporate referred to in section 38A(5) shall be deemed to have been duly levied on a proprietor of a lot notwithstanding that notice levying the contributions was not served on the proprietor.
- (5) Without affecting the liability of a proprietor of a lot in respect of a contribution levied under this section, where a mortgagee is in possession (whether by himself, herself or any other person) of a lot the mortgagee shall be liable jointly and severally with the proprietor of the lot of which the mortgagee is in possession for a contribution levied on that proprietor in accordance with this Act but shall not be so liable in respect of a contribution, other than regular periodic contributions to the administrative fund and sinking fund referred to in section 38A(5), unless notice in writing of the levy of the contribution has been served on the mortgagee.
- (5A) A notice of the levy of contributions to a proprietor of a lot shall—
  - (a) if an amount has been determined pursuant to section 38A(4) in respect of the contributions—state the amount of the contribution attributable to that amount of discount; and
  - (b) state the date when the contribution becomes due and payable; and
  - (c) be served or deemed to be served on the proprietor before the date when the contributions become due and payable.
- (6) A contribution levied in respect of a lot under this section—
  - (a) becomes due and payable to the body corporate in accordance with the decision of the body corporate to make the levy; and
  - (b) if paid within 30 days after the date when it becomes due and payable—shall be reduced by that part of the contribution attributable to the amount determined pursuant to section 38A(4) (if any); and

(c) must be paid to the body corporate as a monetary amount;

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

- (7) Nothing in this section shall be construed to prevent a body corporate, in general meeting or the committee, either generally or in a particular case, determining that a contribution may be reduced as provided in subsection (6)(b) notwithstanding that the contribution is not paid as prescribed in that subsection.
- (8) Despite subsection (6)(c), a contribution levied by a body corporate in relation to a lot is taken to be paid in full or part if it is satisfied in full or part by an offset arrangement between the body corporate and the proprietor of the lot.
- (9) Subsection (8) applies only if—
- (a) the terms of the offset arrangement were approved by resolution of the body corporate at a general meeting before the arrangement was completed; and
  - (b) the fair value of land, goods or services provided as an offset under the offset arrangement equals the value of the contribution sought to be satisfied in full or part by the offset arrangement.
- (10) Neither the proprietor nor an associate of the proprietor is entitled to vote on the motion for the resolution mentioned in subsection (9)(a).

### **32A Recovery of body corporate debts**

- (1) If a contribution levied by a body corporate is not paid within 30 days after the date when it becomes due and payable, the body corporate may recover the amount of the contribution as a debt.
- (2) If the amount of a contribution levied by a body corporate has been outstanding for 2 years and 30 days (the *relevant*

*period*), the body corporate must, within 2 months after the end of the relevant period, start proceedings to recover the amount.

### **33 Power of body corporate to carry out work**

- (1) Where a notice has been served on the proprietor of a lot by a public authority or local government requiring that proprietor to carry out work on or in relation to that lot and the notice is not complied with the body corporate may carry out the work.
- (2) Where a proprietor, mortgagee in possession, lessee or occupier of a lot fails or neglects to carry out work—
  - (a) required to be carried out by him or her under a term or condition of a by-law referred to in section 30(7); or
  - (b) necessary to remedy a breach of the duty imposed on him or her by section 51(1)(a);the body corporate may carry out that work.
- (3) Where the body corporate carries out work on or in relation to a lot or common property pursuant to subsection (1) or (2), it may, subject to section 40(4), recover the cost of so doing, as a debt—
  - (a) from the proprietor, mortgagee in possession, lessee or occupier referred to in subsection (1) or (2); or
  - (b) where the work is carried out pursuant to—
    - (i) subsection (1) or (2)(b)—from any person who, after the work is carried out, becomes the proprietor of the lot on or in relation to which the work was carried out; or
    - (ii) subsection (2)(a)—from any person who, after the work is carried out, becomes the proprietor of the lot in respect of which the by-law referred to in subsection (2)(a) was made.
- (4) Where an order has been made under part 5 and the order is not complied with, the body corporate may carry out any work specified in the order and recover from the person against

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whom the order was made the cost of so doing, as a debt, in any court of competent jurisdiction.

(5) Where—

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

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

### **34 Body corporate's address**

- (1) A body corporate shall ensure that an address for the time being for service of notices on it is recorded on the registered plan.
- (2) Upon a change of address of a body corporate for service of notices on it, the body corporate shall cause a notice in the approved form of the change of address to be lodged forthwith in the land registry.
- (3) Notwithstanding subsection (2), a body corporate which has decided, before the commencement of the *Building Units and Group Titles Act Amendment Act 1988*, section 23 upon such a change of address and has not, prior to that commencement, lodged the notice in the prescribed form of the change of address in the land registry, shall do so within 2 months of that commencement.
- (4) The registrar of titles shall make such recording on the registered plan of the change of address of a body corporate as the registrar considers appropriate.
- (5) Upon the recording by the registrar of titles of the change of address notified in accordance with subsection (2) or (3) and

not otherwise, that address as changed shall, notwithstanding any other provision of this Act, be an address for service of notices on the body corporate.

### **35 Agreement for payment to a proprietor of consideration on transfer or lease of common property**

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

### **36 Power of entry**

- (1) For the purpose of carrying out—
  - (a) pursuant to section 33(1), (2), (4) or (5), any work; or
  - (b) any work required to be carried out by a body corporate—
    - (i) by a notice served on it by a public authority or local government; or
    - (ii) by an order of the referee or a tribunal; or
  - (c) any work referred to in section 37(1)(b) or (c); or
  - (d) any work necessary to repair or renew any pipes, poles, wires, cables or ducts referred to in section 51(1)(a)(ii);  
the body corporate may, by its agents, servants or contractors, enter upon any part of the parcel for the purpose of carrying out the work—
  - (e) in the case of an emergency—at any time; or
  - (f) in any other case—at any reasonable time on notice given to any occupier of that part of the parcel.
- (2) A person shall not obstruct or hinder a body corporate in the exercise of its power under subsection (1).

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Maximum penalty— $2\frac{2}{3}$  penalty units.

**37 Duties and powers of body corporate regarding property etc.**

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

- (a) enter into an agreement, upon such terms and conditions (including terms for the payment of consideration) as may be agreed upon by the parties thereto, with a proprietor or occupier of a lot for the provision of amenities or services by it to the lot or to the proprietor or occupier thereof; and
  - (b) acquire and hold any personal property; and
  - (d) enter into hiring agreements and leasing arrangements; and
  - (e) accept or acquire a lease, licence or permit for the purposes of providing moorings for vessels; and
  - (f) accept and deal with a lease, licence or permit that may be issued or granted under the *Land Act 1994* to any person in respect of any unallocated State land, road or reserve which abuts on the parcel; and
  - (g) make or cause to be made improvements to the common property where—
    - (i) in any one case, the cost of the improvements does not exceed the prescribed amount; or
    - (ii) the body corporate by resolution without dissent so resolves; or
    - (iii) the body corporate resolves in general meeting that the improvements are considered to be essential for the health, safety or security of users of the common property and the referee makes an order approving the making of the improvements.
- (3) For the purposes of the application of the *Land Act 1994* the body corporate shall be deemed to be the holder or the registered proprietor in fee simple of the land comprising the parcel.
- (4) Any unallocated State land, road or reserve referred to in subsection (2)(f) is additional common property.



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**37A Improvement etc. to common property by proprietor of lot**

- (1) A body corporate may, upon such terms as it considers appropriate, at the request of a proprietor of a lot, by resolution without dissent, authorise the proprietor of the lot to effect improvements (including erect or install fixtures and fittings) in or upon the common property for the benefit of that proprietor.
- (2) The proprietor for the time being of a lot in respect of which any improvement in or upon the common property has been effected pursuant to an authority granted under subsection (1) shall, unless excused by the body corporate, be responsible for the performance of the duty of the body corporate under section 37(1)(c) in respect of the improvement.

**38 Administrative fund and sinking fund**

- (1) A body corporate shall establish and maintain a fund as its administrative fund.
- (2) A body corporate shall pay the following amounts into its administrative fund—
  - (a) all moneys received by it in respect of contributions determined pursuant to section 38A(1);
  - (b) the proceeds of the sale or other disposal of any personal property of the body corporate;
  - (c) any fees received by the body corporate under section 40;
  - (d) any amounts paid to the body corporate by way of discharge of insurance claims;
  - (e) interest received on any investments belonging to the administrative fund.
- (3) A body corporate shall not disburse any moneys from its administrative fund otherwise than for the purpose of—
  - (a) meeting its liabilities referred to in section 38A(1); or
  - (b) carrying out its powers, authorities, duties or functions under this Act.

[s 38A]

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- (4) A body corporate shall establish and maintain a fund as its sinking fund.
- (5) A body corporate shall pay the following amounts into its sinking fund—
  - (a) all moneys received by it in respect of contributions determined pursuant to section 38A(2);
  - (b) any amounts paid to the body corporate by way of discharge of insurance claims and not paid to its administrative fund;
  - (c) all other amounts received by the body corporate and not paid or payable into the administrative fund;
  - (d) interest received on any investments belonging to the sinking fund.
- (6) A body corporate shall not disburse any moneys from its sinking fund otherwise than for the purpose of—
  - (a) meeting its liabilities referred to in section 38A(2); or
  - (b) carrying out its powers, authorities, duties or functions under this Act.
- (7) A body corporate may only invest any moneys in its administrative fund or its sinking fund in any manner permitted by law for the investment of trust funds or in any prescribed investment.
- (8) A body corporate shall pay any moneys in its administrative fund or its sinking fund that are not otherwise invested in accordance with subsection (7) into an account established with a financial institution in the name of the body corporate.

### **38A Body corporate to determine contributions by proprietors**

- (1) Within 14 days after registration of the plan and from time to time thereafter, the body corporate shall determine the amounts which are reasonable and necessary to be raised by contributions for the purpose of meeting its actual or expected liabilities incurred or to be incurred within the period (not

exceeding 12 months) specified in the determination in respect of—

- (a) the regular maintenance and keeping in good and serviceable repair pursuant to section 37 of parts of the parcel being the common property, fixtures, fittings and other property (including personal property) held by or on behalf of the body corporate; and
  - (b) the payment of insurance premiums; and
  - (c) all other liabilities incurred or to be incurred during that period by or on behalf of the body corporate in carrying out its powers, authorities, duties and functions under this Act other than liabilities referred to in subsection (2).
- (2) Within 12 months after registration of the plan and from time to time thereafter, the body corporate shall determine the amounts which are reasonable and necessary to be raised by contributions for the purposes of meeting its actual or expected liabilities in respect of—
- (a) painting or treating of any part of the common property which is a structure or other improvement for the preservation and appearance of the common property; and
  - (b) the acquisition of personal property; and
  - (c) the making of improvements to the common property; and
  - (d) the renewal or replacement pursuant to section 37 of parts of the parcel being the common property, fixtures and fittings which the body corporate is required by this Act to maintain and keep in good and reasonable repair and other property (including personal property) held by or on behalf of the body corporate; and
  - (e) such other liabilities expected to be incurred at a future time where the body corporate considers that the whole or part thereof should be met from its sinking fund.

[s 38B]

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- (3) If the body corporate becomes liable to pay any moneys that it is unable to pay forthwith, the body corporate shall determine that amount to be raised by contributions.
- (4) The body corporate from time to time may in respect of contributions determined in accordance with subsection (1), (2) or (3) determine, for the purposes of section 32(6)(b) an amount being not greater than 20% of those contributions.
- (5) A determination made by a body corporate under subsection (1) or (2) may specify that the amounts to be raised for the purposes therein referred to shall be raised by such regular periodic contributions as may be specified in the determination.

### **38B Levy by body corporate for contributions**

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

### **38C Borrowings by body corporate**

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

### **38D Duty of body corporate as to keeping records, convening meetings etc.**

- (1) A body corporate shall—
  - (a) cause proper records to be kept of notices given to the body corporate under this or any other Act and of any orders made under this Act and served on the body corporate whether before or after the commencement of the *Building Units and Group Titles Act Amendment Act 1988*; and
  - (b) cause to be kept and retained for the prescribed time or times full and accurate minutes of its meetings (which

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shall include particulars of motions passed by it at those meetings) and proper books of account in respect of moneys received or expended by the body corporate; and

- (c) cause to be prepared, from the books referred to in paragraph (b), a proper statement of accounts of the body corporate in respect of each period commencing on the date of registration of the plan or the day immediately after the date up to which the last previous such statement was prepared and ending on the last day of the month that precedes by 3 months the month in which occurs each anniversary of the first annual general meeting; and
  - (d) give a copy of the minutes of each of its meetings to each proprietor and first mortgagee of a lot within 21 days after the meeting is held; and
  - (e) cause annual general meetings to be convened in accordance with section 29A.
- (2) For the purpose of this section—
- (a) proper books of account shall include a receipt book, cash book, financial institution deposit book, contributions levy register, cheque book and register of assets; and
  - (b) a register of assets shall disclose the personal property vested in the body corporate; and
  - (c) the expression **book** includes any register or other record of information and any accounts or accounting records however compiled, recorded or stored and also includes any document.
- (3) For the purposes of subsection (1)(c), there shall be shown in respect of each item shown in every statement of accounts of the body corporate, except the first statement after incorporation of the body corporate, the corresponding amount (if any) as at the end of the immediately preceding financial year and where the financial years are not equal in

length, the periods covered shall be clearly indicated by way of note or otherwise.

- (3A) If the statement of accounts does not include an item corresponding to an item in the statement of accounts as at the end of the immediately preceding financial year, that previous item and the amount thereof shall be shown.
- (4) If a body corporate fails or neglects to convene an annual general meeting within the period required by section 29A, the annual general meeting held next after the expiration of that period shall be an annual general meeting of the body corporate.
- (5) Subsection (1)(d) does not apply in relation to a person who—
  - (a) has given the secretary of the body corporate a written notice instructing the secretary that the person does not wish to be given copies of the minutes; and
  - (b) has not withdrawn the instruction.

### **38E Body corporate to implement its decisions**

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

### **39 Roll**

- (1) A body corporate shall prepare and maintain a roll in accordance with this section.
- (2) The roll shall be kept in the form of a book (either bound or loose-leaf) which shall contain 1 or more pages in respect of each lot the subject of the plan concerned.
- (3) The body corporate shall record the following information on a page of the roll relating to the lot to which the information relates—
  - (a) the lot entitlement of the lot, as shown from time to time on copies of schedules of lot entitlement forwarded under section 14 and received by the body corporate;

- (b) the name and address of the original proprietor as shown in the register consequent upon registration of the plan and the name of and address for the service of notices on the proprietor of each lot as shown in the prescribed notices;
- (c) the name of the first mortgagee of the lot as shown on the prescribed notice and the address for the service of notices on the first mortgagee as shown therein;
- (d) the name of the company nominee of any corporation that is a proprietor or mortgagee of a lot as shown in the prescribed notices;
- (e) the discharge, transfer or assignment of a mortgage referred to in paragraph (c) as shown in a prescribed notice and, except in the case of a discharge, the address for the service of notices on the transferee or assignee as shown therein;
- (f) the entry into possession of the lot by a mortgagee as shown in a prescribed notice;
- (g) the name and address of any lessee of the lot the prescribed notice of the granting of whose lease has been given and the address for the service of notices on the lessor and lessee as shown therein;
- (h) the termination or assignment of any lease, referred to in paragraph (g), as shown in a prescribed notice and, in the case of an assignment, the name of the assignee and the address for the service of notices on the assignee as shown therein;
- (i) the name of any person who has become entitled, otherwise than as a transferee, to the lot, the prescribed notice of which entitlement has been given to the body corporate and the address for the service of notices on the person as shown therein;
- (j) the address for the service of notices on any person as shown in a prescribed notice;
- (k) the name and address of any real estate agent, or resident letting agent under the *Property Occupations*

*Act 2014* appointed as agent by the proprietor for the purpose of the letting of the lot as shown in a prescribed notice.

(3A) In subsection (3)—

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

- (4) The body corporate shall record and maintain in the roll a copy of the by-laws for the time being in force with respect to the plan concerned.
- (5) The body corporate shall maintain as part of the roll a register in which shall be recorded the prescribed particulars of each prescribed arrangement entered into in respect of the plan.

#### **40 Supply of information, certificates and copies by body corporate**

- (1) A body corporate incorporated by the registration of a plan shall, upon application made to it in writing in respect of a lot the subject of that plan by a prescribed person and on payment of the prescribed fee, do such 1 or more of the following things as are required of it in the application—
  - (a) inform the applicant of the name and address of each person who is the chairperson, secretary or treasurer of the body corporate or a member of the committee and of any person who has been appointed under section 50 or 94 as body corporate manager;
  - (b) make the following available for inspection by the applicant or the applicant's agent—
    - (i) the roll;
    - (ii) the notices and orders referred to in section 38D(1)(a);
    - (iii) the plans, specifications, drawings showing water pipes, electric cables, drainage, ventilation ducts or air-conditioning systems, certificates, diagrams



and other documents delivered under section 5(7E) or 29(4);

- (iv) the minutes of general meetings of the body corporate and of the committee;
- (v) the books of account of the body corporate;
- (vi) a copy of the statement of accounts of the body corporate last prepared by the body corporate in accordance with section 38D(1)(c);
- (vii) every current policy of insurance effected by the body corporate and the receipt for the premium last paid in respect of each such policy;
- (viii) any other record or document in the custody or under the control of the body corporate;
- (ix) the by-laws for the time being in force;

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

- (c) certify, as at the date of the certificate, in respect of the lot in respect of which the application is made—
  - (i) the amount of any regular periodic contributions determined by the body corporate under section 38A(1), (2) and (5) and the periods in respect of which those contributions are payable; and
  - (ii) whether there is any amount unpaid of any contribution determined under section 38A(1) and of any contribution determined by the body corporate under section 38A(2) and, if so, the amount thereof and, in the case of a contribution levied under section 38A(2), the date on which any such contribution was levied; and
  - (iii) whether there is any amount unpaid of any contribution levied under section 38A(3) or 38B

- and, if so, the amount thereof and the date on which it was levied; and
- (iv) whether there is any amount unpaid by a proprietor under a by-law referred to in section 30(7); and
  - (v) whether there is any amount unpaid of any contribution levied under section 124(2) and, if so, the amount thereof and the date on which it was levied; and
  - (vi) whether there is any amount recoverable from the proprietor of that lot under section 33(3) or (4) and, if so, the amount thereof; and
  - (vii) the amount (if any) determined under section 38A(4) in respect of any unpaid contribution referred to in this paragraph;
- (d) furnish to the applicant or the applicant's agent a copy of the by-laws for the time being in force or any part thereof within a period of 14 days commencing on the day next after the day on which the application is received by the body corporate.
- (2) Where an applicant and a body corporate fail to reach an agreement referred to in subsection (1)(b) within 3 days after the receipt of the application by the body corporate, the body corporate shall forthwith send by post to the applicant a notice fixing a time, specified in the notice, between 9a.m. and 8p.m. on a date so specified, being a date not later than 14 days after the receipt of the application by the body corporate for the making of the inspection referred to in subsection (1)(b).
- (3) The body corporate shall permit any person to whom the by-laws are made available for inspection to make copies of or take extracts from the by-laws.
- (4) In favour of a person taking for valuable consideration an estate or interest in any lot a certificate given under subsection (1)(c) by the body corporate in respect of that lot is conclusive evidence, as at the date of the certificate, of the matters stated therein.
- (5) For the purposes of subsection (1)—

*prescribed person* means—

- (a) a proprietor or mortgagee of the lot in respect of which the application is made or a person authorised in writing by that proprietor or mortgagee; or
  - (b) a person who signs (by himself, herself or the person's agent) a contract for sale or other instrument that is intended to bind the person (absolutely or conditionally) to purchase the lot in respect of which the application is made from the proprietor of that lot or a person authorised in writing by the firstmentioned person.
- (6) An application under subsection (1) by a person specified in provision (b) shall be supported by a statutory declaration under the *Oaths Act 1867* unless the body corporate is otherwise satisfied that an applicant is such a person.

#### **40A Body corporate may require information as to letting of lot**

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

#### **41 Exemption from certain provisions of Act**

- (1) Where all of the proprietors of lots contained in a plan reside permanently in their respective lots the body corporate may by resolution without dissent resolve that any one or more of the following provisions of this Act shall not apply to that body corporate—
- (a) section 74(a) and (b);
  - (b) schedule 2, part 2, sections 1(4)(d), (5), (6), (7), (8) and (10), 4(b), 5(b), 6 and 8;
  - (c) schedule 4, section 10(f) insofar as that section casts a duty upon a secretary of the body corporate and any

regulation prescribing any procedure for the carrying out of that duty.

- (1A) A resolution pursuant to subsection (1) shall cease to be a resolution of the body corporate if the proprietor of any lot ceases to reside permanently therein.
- (2) Where subsections (1) and (1A) do not apply to a body corporate, it may by resolution without dissent resolve to make an application on any 1 or more of the prescribed grounds to the referee for an order that any 1 or more of the provisions of this Act specified in subsection (1) shall not apply to that body corporate.
- (3) An application made by a body corporate pursuant to subsection (2) shall be in the approved form, be accompanied by the prescribed fee (if any) and specify the grounds upon which the application is made.
- (4) Where the referee considers that the grounds specified in an application made pursuant to subsection (2) justify the making of an order the referee may make an order specifying which provision or provisions of this Act specified in subsection (1) shall not apply to the body corporate which made the application.
- (4A) Where, upon an application by a proprietor or the body corporate for an order under this subsection, a referee considers that such an order should be made, the referee may by order—
  - (a) revoke an order made under subsection (4); or
  - (b) vary an order made under subsection (4); or
  - (c) determine that the order made under subsection (4) shall apply or shall not apply to the extent indicated in the order and either generally or in respect of the applicant.
- (5) The provisions of part 5 shall so far as applicable apply to the making of an order under this section.
- (6) For so long as a resolution made under subsection (1) or an order made under subsection (4) or (4A) subsists, the provisions of this Act the subject of the resolution or, as the

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case may be, order shall not apply to the extent indicated in the resolution or order.

## Division 2            Committees

### Subdivision 1        Interpretation

#### 41A    Definitions for division

In this division—

***associated body corporate***, for a body corporate, means another body corporate, including a body corporate incorporated under a specified Act, for a lot within the development site for the body corporate.

***body corporate manager***, for a body corporate incorporated under a specified Act, means a body corporate manager for the body corporate under that Act.

***development site***, for a body corporate, means a site developed under a specified Act that includes lots for which the body corporate is constituted.

***electable person*** see section 41B.

***letting arrangement*** means an agreement or arrangement (including an arrangement set out in a by-law under this Act) for the conduct of a business of a kind mentioned in section 7(1), definition *prescribed arrangement*, paragraph (g).

*Example of a letting arrangement—*

an arrangement for the conduct of a letting agent business by a letting agent under the *Mixed Use Development Act 1993*

***relevant body corporate debt*** means any of the following amounts relating to a lot that are unpaid and have been due for payment for at least 30 days—

- (a) a contribution;
- (b) another amount associated with the ownership of a lot.

*Examples of another amount—*

- an annual payment for the exclusive use and enjoyment of a car park under a by-law made by a body corporate
- an amount for lawn mowing services arranged by a body corporate on behalf of an owner of a lot

***service arrangement*** means an agreement or arrangement (including an arrangement set out in a by-law under this Act) for carrying out duties of a kind mentioned in section 7(1), definition *prescribed arrangement*, paragraph (d).

*Example of a service arrangement—*

an arrangement for the supply of services by a service contractor under the *Mixed Use Development Act 1993*

#### **41B Meaning of *electable person***

A person is an ***electable person*** for a body corporate if—

- (a) the person is an individual—
  - (i) who is a proprietor; or
  - (ii) who is a company nominee of a corporation that is a proprietor; or
  - (iii) who is not a proprietor but is nominated for election by a proprietor who is an individual; and
- (b) neither the person nor an associate of the person, other than an associate mentioned in section 26B(2)(a) or (b), owes a relevant body corporate debt to the body corporate or an associated body corporate; and
- (c) neither the person nor an associate of the person—
  - (i) is a body corporate manager for the body corporate or an associated body corporate; or
  - (ii) is a party to a service arrangement or letting arrangement (however called) with the body corporate or an associated body corporate; or
  - (iii) is a party to another agreement or arrangement with the body corporate or an associated body

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corporate under which services or amenities are provided to proprietors.

*Example of services or amenities—*

a utility service

## **Subdivision 2      Other provisions**

### **42      Constitution of committees**

- (1) After the first annual general meeting of a body corporate, there shall be a committee consisting of a chairperson, secretary and treasurer and such other members as may be elected or appointed pursuant to this section.
- (2) The chairperson, secretary and treasurer of the body corporate shall be members of, and be also respectively the chairperson, secretary and treasurer of, the committee.
- (2A) However, a person may be elected to 1 or more of those offices.
- (3) Where there are not more than 3 proprietors, the committee shall consist of each proprietor (if any) who is an individual or the proprietor's nominee, together with the company nominee of each proprietor (if any) which is a corporation.
- (3A) Where there is 1 proprietor only, the proprietor may make any decision that a duly convened committee may make under this Act and such decision shall be deemed to be a decision of the committee.
- (4) Where there are more than 3 proprietors, the body corporate shall determine the number of persons, being not less than 3 nor more than the number of proprietors or 7, whichever is the less, to be members of the committee including the chairperson, secretary and treasurer of the body corporate.
- (4A) The committee shall consist of such members as for the time being hold office not exceeding in number the number determined by the body corporate under subsection (4).

- (5) The members of a committee referred to in subsection (4) (if any) and the chairperson, secretary and treasurer—
- (a) shall, upon the number of proprietors increasing to more than 3, be first elected—
    - (i) at an extraordinary general meeting convened for the purpose and held forthwith after notice thereof has been duly given but not later than 3 months before the anniversary date of the annual general meeting of the body corporate first occurring after that increase or, if requested, in writing addressed to the secretary of the body corporate, by a proprietor, at any time before that anniversary date; or
    - (ii) at the annual general meeting of the body corporate first held after that increase;whichever shall first occur; and
  - (b) shall be elected at each annual general meeting of the body corporate held after the first such election.
- (6) A person is eligible for election as chairperson, secretary or treasurer of the body corporate or as a member of a committee of the body corporate only if the person is an electable person for the body corporate at the time of the meeting of the body corporate at which the person's election is proposed.
- (6A) Notwithstanding the provisions of this section, the body corporate may determine that the holder of the office of secretary or treasurer of the body corporate shall not be a member of the committee whereupon, upon election to that office a person shall be the secretary or, as the case may be, treasurer of the body corporate and of the committee but shall not be a member of the committee.
- (7) A member of a committee may, with the consent of the committee, appoint a proprietor or company nominee of a corporation which is a proprietor to act in the member's place as a member of the committee at any meeting of the committee and any proprietor or company nominee of a corporation which is a proprietor so appointed shall, when the



member is so acting, be deemed to be a member of the committee.

- (8) A proprietor or company nominee of a corporation may be appointed under subsection (7) whether or not he or she is a member of the committee.
- (9) If a person appointed under subsection (7) is a member of the committee the person may, at any meeting of the committee, separately vote in the person's capacity as such a member and on behalf of the member in whose place the person has been appointed to act.
- (10) Notwithstanding any other provision of this section, a committee may be constituted before the first annual general meeting of the body corporate.
- (11) The members of a committee constituted under subsection (10) (if any) and the chairperson, secretary and treasurer of a body corporate shall be elected at a general meeting of the body corporate and the provisions of subsections (6) and (6A) and such of the provisions of schedule 2, part 1 as relate to the election of the chairperson, secretary and treasurer of a body corporate and of members of a committee apply to and in respect of the election of the chairperson, secretary and treasurer and of those members of a committee to be so constituted.
- (12) Schedule 2, part 2 (other than section 16(1)) does not apply to or in respect of the election of the chairperson, secretary and treasurer of a body corporate and the members of a committee to be constituted under subsection (10).
- (13) The provisions of this division (other than subsections (1) to (3) and (5) of this section) apply to and in respect of a committee constituted under subsection (10) and the members thereof.
- (14) Where there is no committee of a body corporate, the body corporate shall exercise and perform the powers, authorities, duties and functions of the committee but nothing in this subsection prevents a body corporate manager appointed under this Act from exercising or performing any powers,

authorities, duties or functions conferred or imposed upon the manager.

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

#### **42A Non-voting members of committees**

- (1) This section applies to a person who is—
- (a) a body corporate manager of a body corporate; or
  - (b) a party to both a letting arrangement and service arrangement with a body corporate.
- (2) The person is, without further election or appointment, a member of the committee of the body corporate.
- (3) Subsection (2) applies even though the person is not an electable person for the body corporate.
- (4) A person who is a member of a committee under this section is not entitled to vote at a meeting of the committee or vote in writing on a resolution under schedule 4, section 7.
- (5) Subsection (4) applies even if the person is a person of the type mentioned in section 41B(a).
- (6) A person who is a member of a committee under this section is not to be counted—
- (a) under section 42(4) for determining the number of members of the committee; or
  - (b) under section 45(1) for determining whether a quorum is constituted at a meeting of the committee.

#### **43 Vacation of office of member of committee**

- (1) A person elected as chairperson, secretary or treasurer of the body corporate or as a member of a committee vacates the person's office—

- (a) if the person ceases to be an electable person for the body corporate under section 41B(a)(i) or (c)(i), (ii) or (iii); or
- (b) for a person who is an individual nominee for a proprietor who is an individual or a company nominee of a proprietor that is a corporation, if—
  - (i) the proprietor notifies the body corporate, in writing, that the person's office, as a member of the committee, is vacated; or
  - (ii) the individual or corporation ceases to be a proprietor; or
- (c) upon the receipt by the body corporate from the person of notice in writing of the person's resignation; or
- (d) upon the election at a general meeting of the body corporate of another person to that office or as a member of the committee; or
- (e) where the person is a member referred to in section 42(3) or (3A) and the number of proprietors increases to more than 3—upon the election of the chairperson, secretary and treasurer of the body corporate and the other members of the committee at the annual general meeting, or the extraordinary general meeting referred to in section 42(5); or
- (f) if the person is absent without prior leave granted by the committee from 3 consecutive meetings of the committee of which due notice has been given to the person; or
- (g) if the person becomes bankrupt or compounds with the person's creditors or otherwise takes advantage of the laws in force for the time being relating to bankruptcy; or
- (h) if the person is convicted in Queensland of an indictable offence or, elsewhere than in Queensland, is convicted of an offence which would be an indictable offence if committed in Queensland; or

- (i) if the person dies; or
  - (j) if the body corporate in general meeting pursuant to a resolution, determines that the person's office is vacated.
- (2) However, if a person elected as secretary or treasurer of the body corporate is not a member of the committee under section 42(6A), the person's office cannot be vacated under subsection (1)(b)(i) or (ii).
- (3) Upon the occurrence of a vacancy in the office of chairperson, secretary or treasurer of the body corporate or another member of a committee, otherwise than by reason of subsection (1)(d) or (e), the body corporate shall appoint a person eligible for election as such at the time of the appointment to fill the vacancy, and a person so appointed shall, subject to this section, hold office for the balance of the person's predecessor's term of office.
- (4) If the membership of the committee is one-half or less than one-half of the number determined by the body corporate pursuant to section 42(4) to be members of the committee, the members for the time being of the committee shall, notwithstanding section 45(1), constitute a quorum at a meeting of the committee for the purpose only of appointing a person to fill a vacancy in the office of chairperson, secretary or treasurer of the body corporate or another member of the committee or of convening a meeting of the body corporate for that purpose.
- (5) However, if—
- (a) there is no member of the committee; or
  - (b) the members of the committee—
    - (i) do not appoint a person to fill the vacancy or vacancies in that office or those offices; and
    - (ii) have not convened a meeting of the body corporate for that purpose;

the referee may, pursuant to an application made to the referee by a proprietor or mortgagee of a lot, appoint by order a person nominated by the proprietor or mortgagee, who has

consented to that nomination, to convene and hold a meeting of the body corporate within such time as may be specified in the order for the purpose of appointing a person or persons to fill the vacancy or vacancies in that office or those offices and a meeting so convened shall be held within that time.

- (6) An order under subsection (5) may include such ancillary or consequential provisions as the referee thinks fit.
- (7) Notwithstanding schedule 2, where an order made under subsection (5) so provides—
  - (a) the person appointed to convene and hold a meeting of the body corporate by the order shall preside at the meeting and, while the person so presides, shall be deemed to be the chairperson of the body corporate; and
  - (b) notice of that meeting may be given in the manner specified in the order.
- (8) A meeting convened and held pursuant to an order of the referee made under subsection (5) by reason that there is no member of the committee shall, for the purpose of conducting the election of the chairperson, secretary and treasurer of the body corporate and the other members of the committee, be deemed to be a first annual general meeting of the body corporate.

#### **44 Chairperson, secretary and treasurer of committee**

- (1) The chairperson shall preside at all meetings of the committee at which the chairperson is present and, if the chairperson is absent from any meeting, the members of the committee present at that meeting shall appoint one of their number to preside at that meeting during the absence of the chairperson.
- (1A) The committee may from time to time appoint a member of the committee to exercise the powers and authorities and perform the duties and functions of the secretary of the body corporate during any absence of the secretary specified in the appointment and that member while acting in accordance with the terms of the member's appointment shall be deemed to be the secretary of the committee.

- (2) A person shall not exercise or perform any of the powers, authorities, duties or functions of the body corporate or of the treasurer of the body corporate, being powers, authorities, duties or functions relating to the receipt or expenditure of, or accounting for, moneys, or the keeping of the books of account, of the body corporate, unless the person is—
- (a) the treasurer of the body corporate; or
  - (b) a body corporate manager who is empowered to exercise or perform that power, authority, duty or function; or
  - (c) a person with whom the treasurer of the body corporate is required by an order of the committee to exercise or perform jointly that power, authority, duty or function, and who is enabling the treasurer to comply with the order.

Maximum penalty— $6\frac{2}{3}$  penalty units.

- (3) The treasurer of a body corporate may delegate the exercise or performance of any of the treasurer's powers (other than this power of delegation), authorities, duties or functions as treasurer, the delegation of which is specifically approved by the committee, to another member of the committee so approved, subject to such limitations as to time or otherwise as are so approved and, while a delegate is acting in accordance with the terms of a delegation under this subsection, the delegate shall be deemed to be the treasurer of the body corporate.
- (4) The committee may, by a notice in writing served on the treasurer of the body corporate, order that the treasurer shall not exercise or perform any of the treasurer's powers, authorities, duties or functions that are specified in the notice, unless the treasurer does so jointly with another person so specified.
- (5) A person who has possession or control of—
- (a) any records, books of account or keys belonging to a body corporate; or

- (b) the roll kept by a body corporate; or
- (c) any other property of a body corporate;

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

Maximum penalty— $6\frac{2}{3}$  penalty units.

#### **45 Meetings of committees**

- (1) At a meeting of a committee a quorum is constituted by members who number more than one-half of—
  - (a) the number of persons determined by the body corporate pursuant to section 42(4) to be members of the committee; or
  - (b) if such a determination has not been made—the members of the committee.
- (2) Subject to this Act, the decision on any matter of the majority of the members voting on that matter shall be the decision of the committee at any meeting at which a quorum is present.
- (3) A decision of a committee has no force or effect if, before that decision is made, notice in writing is given to the secretary of the committee by not less than half of the total number of proprietors, the sum of whose lot entitlements exceed one-half of the aggregate lot entitlement, that the making of the decision is opposed by those proprietors.
- (4) A committee shall cause to be kept a record of its decisions, of any notices given to its secretary under subsection (3) and full and accurate minutes of its meetings.
- (5) The secretary of a committee must give a copy of the following to each proprietor and first mortgagee of a lot—
  - (a) the minutes of each of its meetings;

- (b) the minutes of resolutions passed under schedule 4, section 7.
- (6) Subsection (5) does not apply in relation to a person who—
  - (a) has given the secretary a written notice instructing the secretary that the person does not wish to be given copies of the minutes; and
  - (b) has not withdrawn the instruction.
- (7) A copy of minutes given to a person under subsection (5) must be given—
  - (a) for minutes mentioned in subsection (5)(a)—within 21 days after the meeting is held; or
  - (b) for minutes mentioned in subsection (5)(b)—within 21 days after the resolution is passed.

#### **45A When voting member ineligible to vote at committee meetings**

- (1) For this section, a voting member of a committee is a *debtor member* for a meeting of the committee if—
  - (a) the member is a proprietor and at the time of the meeting the member owes a relevant body corporate debt to the body corporate; or
  - (b) the member is an individual nominee of a proprietor who is an individual or a company nominee of a proprietor that is a corporation and at the time of the meeting the proprietor owes a relevant body corporate debt to the body corporate.
- (2) A debtor member for a meeting of a committee must not vote at the meeting—
  - (a) in the member's own right; or
  - (b) as a person appointed under section 42(7) to act in another committee member's place.
- (3) Also, a person appointed under section 42(7) to act in the place of a debtor member for a meeting of a committee must



not exercise a vote on behalf of the debtor member at the meeting.

- (4) However, nothing in this section prevents a debtor member for a meeting of a committee from being counted, under section 45, for deciding whether there is a quorum for the meeting.

#### **45B Conflict of interest**

- (1) A member of a 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 of a committee required under subsection (1) to disclose an interest in an issue is a voting member, the member is not entitled to vote on a motion involving the issue.
- (3) A person who is appointed under section 42(7) to act in a committee member's place must disclose to a meeting of the committee the person'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 person's duties about the consideration of the issue.
- (4) A person required under subsection (3) to disclose an interest in an issue must not vote as the person appointed under section 42(7) to act in the committee member's place on a motion involving the issue.
- (5) A person who is appointed under section 42(7) to act in a committee member's place 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 person is aware that the member, if present, would be required under subsection (1) to disclose the interest.
- (6) A person required under subsection (5) to disclose an interest in an issue must not vote as the person appointed under section 42(7) to act in the committee member's place on a motion involving the issue.

#### **45C When committee member may receive particular benefits**

- (1) A member of a committee may receive a direct or indirect benefit from a party to a service arrangement with the body corporate only if—
  - (a) the benefit is the supply of, or payment for—
    - (i) a service that the body corporate has engaged the party to provide; or
    - (ii) a service that a proprietor has engaged the party to provide at market price; or

*Example for subparagraph (ii)—*

a gardening or maintenance service provided by a person to proprietors
  - (b) subsection (3) applies.
- (2) A member of a committee may receive a direct or indirect benefit from a party to a letting arrangement with the body corporate only if—
  - (a) the benefit is the supply of, or payment for, a letting agent business service conducted by the party; or
  - (b) subsection (3) applies.
- (3) A member of a committee may receive a direct or indirect benefit from a party mentioned in subsection (1) or (2) if the body corporate has authorised the member, by ordinary resolution, to receive the benefit.

#### **46 Committee's decisions to be decisions of body corporate**

- (1) In this section—

*restricted matter* means—

  - (a) any matter relating to the striking of a special monetary levy on all proprietors; and
  - (b) any matter which seeks to alter the rights, privileges or obligations of proprietors; and

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- (c) any matter which seeks to alter the annual monetary contribution of proprietors; and
  - (d) any matter a decision on which may, in accordance with any provision of this Act, only be made by the body corporate pursuant to a unanimous resolution, resolution without dissent or a special resolution or in general meeting of the body corporate; and
  - (e) any matter referred to in section 48 and specified in a resolution of the body corporate passed for the purposes of that section.
- (2) Subject to this Act, the decision of a committee on any matter, other than a restricted matter, shall be the decision of the body corporate.
  - (3) A committee must act reasonably in making, or not making, a decision.
  - (4) Notwithstanding that a committee holds office, the body corporate may in general meeting continue to exercise or perform all or any of the powers, authorities, duties and functions conferred or imposed on it by this Act.

#### **47 Statutory restrictions on powers of committees**

- (1) Unless—
  - (a) otherwise determined by the body corporate in general meeting; or
  - (b) in an emergency authorised by the referee; or
  - (c) consented to by each person entitled to vote at a general meeting of the body corporate;the committee shall not, in any one case, undertake expenditure exceeding the sum obtained by multiplying the prescribed amount by the number of lots the subject of the plan.
- (2) In respect of any proposed expenditure which, under subsection (1), the committee is not entitled to undertake the committee shall—

- (a) submit the proposal for determination at an extraordinary general meeting of the body corporate convened for the purpose of, or for purposes which include, consideration of the proposal; and
  - (b) if the proposed expenditure is in respect of work to be performed or the purchase of personal property submit at least 2 tenders to that meeting with the proposal.
- (3) Subsection (1) does not apply to the expenditure of moneys—
- (a) in payment of any premium of insurance effected by or on behalf of the body corporate; or
  - (b) to comply with—
    - (i) a notice or order served on the body corporate by any public authority or local government; or
    - (ii) an order made with respect to the body corporate by a referee or a tribunal; or
  - (c) in discharge of any liability incurred in respect of an obligation of the body corporate authorised by the body corporate in general meeting.

#### **48 Restrictions imposed on committee by body corporate**

The body corporate may in general meeting decide what matters or class of matters (if any) shall be determined only by the body corporate in general meeting.

#### **48A Protection of committee members from liability**

No action shall lie against a member of a committee on account of anything done in good faith and without negligence under the authority of this Act or purporting to be under the authority of this Act.

## **48B Schedule 4**

Schedule 4 applies to and in respect of the committee of the body corporate, the chairperson, secretary and treasurer of the body corporate and the other members of the committee.

## **Division 3 Sale of lots and proposed lots**

### **Subdivision 1 General**

#### **48C Application of div 3 generally**

This division applies to the sale of a proposed lot regardless of where the contract for the sale was entered into if, when the proposed lot becomes a lot, it will be situated in Queensland.

#### **48D Definition for div 3**

In this division—

*cadastral surveyor* see the *Surveyors Act 2003*, schedule 3.

#### **48E References to disclosure statement**

In this division, a reference to a disclosure statement for a lot or proposed lot includes a reference to the documents required to be given with or to accompany the disclosure statement for the lot or proposed lot under section 49.

#### **48F References to things done by or in relation to original proprietor or purchaser**

- (1) This section applies in relation to a provision of this division that refers to—
  - (a) a thing required or permitted to be done by or in relation to an original proprietor or purchaser of a lot or proposed lot; or

- (b) a thing having been done by or in relation to an original proprietor or purchaser of a lot or proposed lot.
- (2) The thing may be done, or the thing may have been done, by or in relation to the original proprietor or purchaser either—
  - (a) personally; or
  - (b) through an agent who is authorised to act for the original proprietor or purchaser in relation to the thing.

### **48G Application of s 49 if option granted**

- (1) Section 49, as modified by this section, applies if a person grants an option (the *option*) to another person—
  - (a) to purchase a proposed lot; or
  - (b) to sell a proposed lot.
- (2) For subsection (1)—
  - (a) section 49(1) requires the giving of a disclosure statement in relation to the option as if a reference to a contract for the sale of a proposed lot being entered into were a reference to an option to purchase or sell the proposed lot being granted; and
  - (b) any right of avoidance under section 49 relating to the disclosure statement applies in relation to—
    - (i) the option; and
    - (ii) a contract entered into by the original proprietor and purchaser for the sale to the purchaser of the proposed lot arising from the option.
- (3) If the original proprietor and purchaser enter into a contract for the sale to the purchaser of the proposed lot arising from the option, section 49(1) does not require the giving of a disclosure statement in relation to the contract for the sale.
- (4) If the purchaser is not a party to the contract for the sale of the proposed lot arising from the option, the original proprietor must comply with section 49 before entering into the contract for the sale.

(5) In this section—

*original proprietor* means the person who grants an option to purchase, or is granted an option to sell, the proposed lot.

*purchaser* means the person who is granted an option to purchase, or grants an option to sell, the proposed lot.

## 49 Duties of original proprietor

- (1) Before a contract (the *contract*) is entered into by an original proprietor and another person (the *purchaser*) for the sale to the purchaser of a lot or proposed lot, the original proprietor must give the purchaser a disclosure statement complying with this section.
- (2) The disclosure statement must—
  - (a) clearly identify the lot or proposed lot to which the statement relates; and
  - (b) for the purchase of a proposed lot—
    - (i) be accompanied by a disclosure plan, complying with section 49A, for the lot; and
    - (ii) state the date by which the original proprietor must settle the contract for the sale of the lot as provided under section 49B; and
  - (c) set out or be accompanied by particulars of—
    - (i) the lot entitlement of every lot and the aggregate lot entitlement; or
    - (ii) the proposed lot entitlement of every proposed lot and the proposed aggregate lot entitlement; and
  - (d) set out or be accompanied by details of any prescribed arrangement entered into in respect of the plan or proposed plan including the terms and conditions of that prescribed arrangement and the cost or estimated costs thereof to the proprietor of each lot; and

- (e) set out or be accompanied by the by-laws in force in respect of the plan or the proposed by-laws in respect of the proposed plan; and
  - (f) be signed by the original proprietor.
- (3) The disclosure statement must be substantially complete.
- (3A) The original proprietor does not fail to comply with subsection (1) merely because the disclosure statement, although substantially complete as at the day the contract is entered into, contains inaccuracies.
- (4) If, at any time before the contract for the sale of a lot or proposed lot is settled, the disclosure statement given to the purchaser—
  - (a) is not accurate as at the time it is given; or
  - (b) contains information that subsequent to the time it is given becomes inaccurate in any respect;it is the duty of the original proprietor to give (at least 21 days before the contract is settled) to the purchaser a further statement (the *further statement*), that rectifies the inaccuracy.
- (4A) The further statement must—
  - (a) be signed by the original proprietor; and
  - (b) to the extent, if any, the further statement rectifies inaccuracies in the disclosure plan—be certified as accurate by a cadastral surveyor.
- (4B) The purchaser may avoid the contract if—
  - (a) it has not already been settled; and
  - (b) the purchaser would be materially prejudiced, if compelled to complete the contract, given the extent to which the disclosure statement was, or has become, inaccurate; and
  - (c) the avoidance is effected by written notice given to the original proprietor within 21 days, or a longer period agreed between the purchaser and original proprietor,



after the original proprietor gives the purchaser the further statement.

- (4C) Subsections (4) to (4B) continue to apply after a further statement is given on the basis that the disclosure statement under subsection (1) is taken to be constituted by the disclosure statement and any further statement.
- (5) If the original proprietor fails to give the purchaser a disclosure statement in compliance in every respect with subsections (1) to (3) or a further statement, the purchaser may avoid the contract by written notice given to the original proprietor if—
- (a) the contract has not already been settled; and
  - (b) for a failure to give a further statement under subsection (4)—the purchaser would be materially prejudiced if compelled to complete the contract, given the extent to which the disclosure statement was, or has become, inaccurate.
- (6) If the purchaser avoids a contract under this section, the original proprietor must, within 14 days after the avoidance, repay to the purchaser—
- (a) any amount paid to the original proprietor towards the purchase of the lot or proposed lot; and
  - (b) any interest accrued on the amount since it was paid.
- (6A) However, if the amount or interest is held by an entity in a trust account kept as required under an Act, the requirement under subsection (6) applies subject to compliance with the law governing the entity's trust account.
- (6B) An amount repayable under subsection (6) may be recovered as a debt.
- (7) Save as prescribed by subsections (4) to (5) this section applies so as not to render illegal or void any contract or to empower any party to avoid the contract.
- (9) Any covenant, agreement or condition expressed or implied in any contract, agreement or document whatsoever legally binding, or intended legally to bind, the purchaser in respect

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of the sale to that purchaser of any lot or any proposed lot to which this section applies, or in a separate document, whereby it is agreed between the original proprietor and the purchaser that this section or any provision hereof shall not apply in respect of that sale, or shall so apply subject to exceptions, limitations or restrictions, or otherwise affecting or prejudicing the rights and remedies had by the purchaser under this section or any provision hereof, shall be absolutely void and of no legal effect whatsoever.

(11) In this section—

*original proprietor* includes, in respect of a proposed lot or proposed plan, the person who upon registration of the proposed plan becomes the original proprietor.

(12) The provisions of this section do not apply to any contract, agreement or document or any management or other agreement entered into before the commencement of this Act.

#### **49A Disclosure plan requirements**

(1) A disclosure plan may comprise 1 or more documents that contain—

- (a) for a proposed lot intended to be shown on a building units plan—the building units particulars; or
- (b) for a proposed lot intended to be shown on a group titles plan—the group titles particulars.

*Example of a document that may comprise or form part of a disclosure plan—*

a draft plan of survey

(2) A disclosure plan must be prepared by a cadastral surveyor.

(3) In this section—

*appropriate contour intervals* means contour intervals of not more than—

- (a) for a proposed lot of not more than 2,000m<sup>2</sup>—50cm in height; or
- (b) for a proposed lot of more than 2,000m<sup>2</sup>—1m in height.

***building units particulars***, for a proposed lot intended to be shown on a building units plan, means the following—

- (a) the proposed number of the lot;
- (b) the total area of the lot;
- (c) identification of any parts of the lot proposed to be outside the building in which the lot is proposed to be located, including any proposed balcony, courtyard or carport;
- (d) the floor level in the building in which the lot is proposed to be located;
- (e) identification of other lots and common property proposed to be on the same floor level in the building in which the lot is proposed to be located;
- (f) identification of the proposed orientation of the lot by reference to north.

***existing surface contours***, of a proposed lot intended to be shown on a group titles plan, means the surface contours of the lot at the time the disclosure plan for the lot is prepared.

***group titles particulars***, for a proposed lot intended to be shown on a group titles plan, means the following—

- (a) the proposed number of the lot;
- (b) a description of the dimensions of the lot as bearings and distances;
- (c) if the original proprietor of the lot intends that before the contract is settled, a building be constructed on the lot by the original proprietor, or by another person who is not the purchaser under an arrangement procured by the original proprietor—
  - (i) the location of the building on the lot; and
  - (ii) the total area, and number of levels, of the building; and

- (iii) identification of any features proposed to be constructed on the lot, including, for example, any proposed driveway, carport, courtyard or pergola;
- (d) identification of the proposed orientation of the lot by reference to north;
- (e) if there is operational work for the lot—
  - (i) contour maps of the lot showing the surface contours, with appropriate contour intervals, as at the completion of the work; and
  - (ii) the location of any retaining walls that are part of the work; and
  - (iii) the height of any retaining walls that are part of the work or, if the height varies across the length of the wall, the height of the lowest and highest points of the wall and the average height of the wall; and
  - (iv) the areas of the lot to be cut or filled as part of the work; and
  - (v) the following information about any fill that is part of the work—
    - (A) the depth of the fill;
    - (B) whether the compaction of the fill will be done in accordance with Australian Standard AS 3798-2007, and the level of inspection and testing services carried out;
    - (C) if the compaction of the fill will not be done in accordance with that Australian Standard, the nature of the departure from the standard.
- (f) if there is no operational work for the lot—contour maps of the lot showing the existing surface contours, with appropriate contour intervals.

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## **49B Avoiding contract if not settled within particular period**

- (1) This section applies if, other than because of the purchaser's default, the original proprietor has not settled the contract for the sale of the proposed lot before—
  - (a) if the contract provides for a date by which it must be settled (the *sunset date*), the earlier of the following—
    - (i) the sunset date or, if the purchaser requests a later date for settlement and the original proprietor agrees to the date, the later date;
    - (ii) the end of 5<sup>1</sup>/<sub>2</sub> years after the day the contract was entered into by the purchaser or, if the purchaser requests a later date for settlement and the original proprietor agrees to the date, the later date; or
  - (b) otherwise—the end of 3<sup>1</sup>/<sub>2</sub> years after the day the contract was entered into by the purchaser or, if the purchaser requests a later date for settlement and the original proprietor agrees to the date, the later date.

*Note—*

See section 139 for the particular circumstances in which the period prescribed in subsection (1)(b) is changed.

- (2) The purchaser may avoid the contract for the sale of the proposed lot by a signed written notice of avoidance given to the original proprietor before the contract is settled.

## **Subdivision 2 Amounts held in trust accounts and security instruments**

### **49C Definitions for sdiv 2**

In this subdivision—

*law practice* means any of the following, within the meaning of the *Legal Profession Act 2007*, that has an office in Queensland—

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- (a) an Australian legal practitioner who is a sole practitioner but not a barrister under that Act;
- (b) a law firm;
- (c) an incorporated legal practice;
- (d) a multi-disciplinary partnership.

***prescribed trust account***, for a recognised entity, means—

- (a) if the recognised entity is a law practice—a trust account kept by the practice under the *Legal Profession Act 2007*; or
- (b) if the recognised entity is the public trustee—a common fund held by the public trustee under the *Public Trustee Act 1978*; or
- (c) if the recognised entity is a real estate agent—a trust account kept by the agent under the *Agents Financial Administration Act 2014*.

***real estate agent*** means a real estate agent carrying on business as a real estate agent under the *Property Occupations Act 2014*.

***recognised entity*** means—

- (a) a law practice; or
- (b) the public trustee; or
- (c) a real estate agent.

#### **49D Payment of particular amounts**

This subdivision applies to the following amounts—

- (a) an amount paid towards the purchase of a proposed lot under a contract for the sale of the lot (other than an amount paid at settlement);
- (b) an amount paid under another instrument (whether legally binding or not) relating to the sale of a proposed lot.

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*Examples of instruments for paragraph (b)—*

- an option to purchase
- an instrument providing for an expression of interest

#### **49E Amounts paid under s 49D to be held in prescribed trust account**

- (1) The person to whom the amount is paid must pay the amount directly to—
- (a) if the contract or instrument states the amount is to be paid to either of the following recognised entities, the recognised entity—
- (i) a law practice at its office in Queensland;
- (ii) a real estate agent carrying on the business of a real estate agent; or
- (b) if paragraph (a) does not apply, the public trustee.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (2) An amount paid to a recognised entity mentioned in subsection (1)(a) or (b) must be—
- (a) held by the entity in a prescribed trust account; and
- (b) dealt with by the entity in accordance with this subdivision and the law governing the operation of the entity's prescribed trust account.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (3) An amount paid to a law practice under this section is taken to be trust money under the *Legal Profession Act 2007*, part 3.3.

#### **49F Disposal of amount held in prescribed trust account**

- (1) A recognised entity that is paid an amount under section 49E(1) must hold the amount in the entity's prescribed trust account until a party to the contract or instrument

becomes entitled, under this division or otherwise according to law, to a repayment or payment of the amount.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (2) On a party becoming entitled to a repayment or payment of the amount, the recognised entity must dispose of the amount in accordance with the law governing the operation of the entity's prescribed trust account.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (3) Subsections (1) and (2) apply despite anything in the contract or instrument under which the amount was paid to the entity.

*Example—*

A contract for the sale of a proposed lot that includes a term that allows for the payment of an amount paid under section 49E(1) would be void to the extent to which it purports to exclude, restrict or otherwise change the effect of a provision of this subdivision.

#### **49G Investment of amount held in prescribed trust account**

- (1) A recognised entity that holds an amount paid under section 49E(1) in a prescribed trust account may invest the amount if—
- (a) either of the following applies—
- (i) the contract or instrument authorises the investment;
- (ii) the parties to the contract or instrument give the entity their consent to the investment by signed written notice; and
- (b) the investment is carried out in accordance with the law governing the operation of the prescribed trust account.
- (2) An amount invested as mentioned in subsection (1) is taken to be an amount in the prescribed trust account.
- (3) Any proceeds of an investment of an amount as mentioned in subsection (1) must be paid into the prescribed trust account,



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unless the proceeds are further invested as mentioned in subsection (1).

Maximum penalty for subsection (3)—200 penalty units or 1 year's imprisonment.

## 49H Security instruments

- (1) This section applies if an instrument is received from the purchaser of a proposed lot as security for the payment of an amount under the contract for the sale of the lot—
  - (a) by a recognised entity on behalf of the original proprietor; or
  - (b) by any other person on behalf of the original proprietor; or
  - (c) by the original proprietor.

*Example of an instrument for subsection (1)—*

bank guarantee

- (2) For subsection (1)(a), the recognised entity must keep the instrument at the prescribed place until—
  - (a) the instrument is returnable to the purchaser according to law; or
  - (b) the instrument is given to the issuer of the security in exchange for the amount it secures.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (3) The amount given in exchange for the instrument under subsection (2)(b) is trust money.
- (4) The amount given must be—
  - (a) held by the recognised entity who held the instrument in the entity's prescribed trust account; and
  - (b) dealt with by the recognised entity in accordance with this division and the law governing the operation of the entity's prescribed trust account.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (5) For subsection (1)(b), the person must give the instrument directly to a recognised entity.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (6) For subsection (1)(c), the original proprietor must give the instrument directly to a recognised entity.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (7) If the instrument is given to a recognised entity under subsection (5) or (6), subsections (2), (3) and (4) apply as if the instrument were received from the purchaser by the recognised entity on behalf of the original proprietor as provided in subsection (1)(a).

- (8) In this section—

*prescribed place* means—

- (a) for a recognised entity that is a law practice—an office of the practice in Queensland; or
- (b) for a recognised entity that is the public trustee—an office of the public trustee in Queensland; or
- (c) for a recognised entity that is a real estate agent—the office of the real estate agency in which the agent carries on the business of a real estate agent.

## Subdivision 3 Evidence

### 49I Evidentiary provision

In a proceeding for an offence against this division, a copy of a contract or other instrument purporting to relate to the sale or purchase of a proposed lot and produced on behalf of the complainant is admissible in evidence as if it were the original contract or instrument.

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## Division 4                      **Body corporate managers**

### 50            **Body corporate manager**

- (1) Subject to subsection (2), a body corporate may, in general meeting and by instrument in writing, appoint upon such terms and conditions as the body corporate determines a body corporate manager and may, in like manner, delegate to the manager—
  - (a) all of its powers, authorities, duties and functions; or
  - (b) any one or more of its powers, authorities, duties and functions specified in the instrument; or
  - (c) all of its powers, authorities, duties and functions except those specified in the instrument;and may, in like manner, revoke wholly or in part the delegation.
- (2) A body corporate may not, under subsection (1), delegate to a body corporate manager its power to make—
  - (a) a delegation under that subsection; or
  - (b) a decision on a restricted matter within the meaning of section 46.
- (3) A power, authority, duty or function the exercise or performance of which has been delegated under subsection (1) may, while the delegation remains unrevoked, be exercised from time to time in accordance with the delegation.
- (4) A delegation under subsection (1) may be made subject to such conditions or such limitations as to the exercise or performance of all or any of the powers, authorities, duties or functions, or as to time or circumstances, as may be specified in the instrument of delegation.
- (5) Notwithstanding any delegation made under subsection (1), the body corporate may continue to exercise or perform all or any of the powers, authorities, duties or functions delegated by it.

- (6) Any act or thing done or suffered by a body corporate manager while acting in the exercise of a delegation under subsection (1) has the same force and effect as if it had been done or suffered by the body corporate and shall be deemed to have been done or suffered by the body corporate.
- (7) Where the instrument of the body corporate manager's appointment so provides, a body corporate manager shall have and may exercise and perform all the powers, authorities, duties and functions of the chairperson, secretary or treasurer of the body corporate and the committee or such of those powers, authorities, duties and functions as may be specified in the instrument.
- (8) Upon registration of the plan, a person shall not be appointed a body corporate manager otherwise than by the body corporate or a referee.
- (9) Notwithstanding any agreement between a body corporate and a body corporate manager, there shall be implied in the agreement or instrument of appointment of a body corporate manager appointed pursuant to this section who is the body corporate manager at the expiration of a period of 3 years from the date of the first annual general meeting of the body corporate a term that the body corporate, within 30 days after the expiration of that period, may terminate the body corporate manager's appointment as body corporate manager.
- (10) No action shall lie against a body corporate, original proprietor or any proprietor of a lot in respect of a termination of appointment under this subsection.

#### **50A Certain voting by proxy etc. restricted**

- (1) At any meeting of the body corporate, a person who has a financial interest in a prescribed arrangement or a proposed prescribed arrangement, is not entitled to vote as proxy for another person (other than a person who is the person's coproprietor or comortgagee) or as company nominee of a corporation (other than a corporation where the company nominee is the majority shareholder or all of the shares are held by the family of the nominee or by the nominee and the

nominee's family) upon a motion relating to that prescribed arrangement or proposed prescribed arrangement.

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

*family* means the spouse, parent, brother, sister or child of the company nominee.

(2) For the purposes of subsection (1), if a person or the person's spouse—

(a) owns shares (whether beneficially or otherwise) in a company; or

(b) is a member of a firm; or

(c) is a director or employee of a company or of a firm;

that stands to be benefited directly from the prescribed arrangement or proposed prescribed arrangement to which the motion relates the person shall be taken to thereby have a financial interest in that prescribed arrangement or, as the case may be, proposed prescribed arrangement.

## **Division 5                      Proprietors and other occupiers of lots**

### **51            Duties of proprietors and other occupiers of lots**

(1) A proprietor, mortgagee in possession (whether by himself, herself or any other person), lessee or occupier of a lot shall not—

(a) do anything or permit anything to be done on or in relation to that lot so that—

(i) any support or shelter provided by that lot for another lot or common property is interfered with; or

(ii) the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air, heating oil and other services (including telephone, radio and television services)

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through or by means of any pipes, poles, wires, cables or ducts for the time being in or upon the lot is interfered with; or

- (b) use or enjoy that lot, or permit that lot to be used or enjoyed, in such a manner or for such a purpose as to cause a nuisance or hazard to the occupier of any other lot (whether that person is a proprietor or not); or
  - (c) use or enjoy the common property in such a manner or for such a purpose as to interfere unreasonably with the use or enjoyment of the common property by the occupier of any other lot (whether that person is a proprietor or not) or by any other person entitled to the use and enjoyment of the common property.
- (2) A proprietor or mortgagee in possession (whether by himself, herself or any other person) shall repair and maintain his or her lot (including any part of a pipe, pole, wire, cable or duct which is intended to be used solely for the servicing or enjoyment of the lot and is within the lot but not within a wall, floor or ceiling forming a boundary of that lot) and keep the same in a state of good repair, reasonable wear and tear, and damage by fire, storm, tempest or act of God excepted.

### **51A Illegal use of lot prohibited**

A proprietor, mortgagee in possession (whether by himself, herself or any other person), lessee or occupier of a lot shall not use his or her lot for any purpose which may be illegal or injurious to the reputation of the parcel.

### **52 Power for individuals to act for corporate proprietors and mortgagees of lots**

- (1) A corporation may authorise an individual to exercise or perform on its behalf any power, authority, duty or function conferred by or under this Act on the corporation as proprietor or mortgagee of a lot and may revoke the authority of an individual so authorised.

- (2) Where an individual exercises or performs a power, authority, duty or function that the individual is, by a proprietor or mortgagee of a lot, authorised pursuant to subsection (1) to exercise or perform, the power, authority, duty or function shall be deemed to be exercised or performed by the proprietor or mortgagee, as the case may be, of the lot.
- (3) Nothing in subsection (1) or (2) affects any liability or obligation imposed by or under this Act on a corporation which is a proprietor or mortgagee of a lot.
- (4) A document under the seal of a corporation purporting to be an authorisation under subsection (1) or to be a revocation of such an authorisation is admissible in evidence and shall, unless the contrary is proved, be deemed to be such an authorisation or revocation, as the case may be.

### **53 Notices to be given by proprietors and mortgagees**

- (1) An original proprietor and any person who, under this section, has given notice of an address for the service of notices on him or her may give notice in writing to the body corporate of an address or change of address for the service of notices on him or her.
- (2) After delivery to a transferee of a lot of an instrument or instruments of transfer in the name of the transferee duly executed and capable of immediate registration, the transferor shall give to the body corporate written notice which shall identify the lot and—
  - (a) specify the name of the transferee in full, the address for the service of notices on the transferee, the address for the service of notices on the transferor and the date upon which the instrument was or instruments were so delivered; and
  - (b) bear written confirmation by the transferee of the accuracy of the information contained in the notice.
- (2A) Where a transferor of a lot fails to comply with subsection (2), the transferee of the lot may give to the body corporate written notice which shall identify the lot and specify the transferee's

name in full, address for service of notices and the date upon which the instrument was or instruments were delivered to the transferee.

- (3) After the delivery to a first mortgagee of an executed bill of mortgage of a lot, the mortgagee may give to the body corporate written notice of the mortgage which shall identify the lot and—
  - (a) specify the name of the mortgagee in full and the address for the service of notices on the mortgagee and the date on which the bill of mortgage was so delivered; and
  - (b) bear written confirmation by the mortgagor of the accuracy of the information contained in the notice.
- (4) After the delivery to a mortgagor of a discharge of a bill of mortgage of a lot the mortgagor may give to the body corporate written notice of the discharge which shall identify the lot and the mortgage that has been discharged and—
  - (a) specify the date on which the discharge was so delivered; and
  - (b) bear written confirmation by the mortgagee of the discharge of the bill of mortgage.
- (5) After the delivery by a first mortgagee of a transfer of a bill of mortgage of a lot, the transferee may give to the body corporate written notice of the transfer which shall identify the lot and—
  - (a) specify the name of the transferee in full and the address for the service of notices on the transferee and the date on which the transfer was so delivered; and
  - (b) bear written confirmation by the transferor of the accuracy of the information contained in the notice.
- (6) After the entry into possession of a lot by a first mortgagee, the mortgagee may give to the body corporate written notice which shall identify the lot and specify the date on which the mortgagee entered into possession.



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- (7) After granting a lease or sublease of a lot or part of a lot, a lessor, to whom this subsection applies, shall give to the body corporate written notice of the granting of the lease which shall identify the lot, specify the name of the lessee in full and the address for the service of notices on the lessee and the address for the service of notices on the lessor.
- (7A) Subsection (7) applies to a lessor who grants a lease or sublease of a lot or part of a lot for a period of not less than 6 months except where the body corporate by resolution without dissent determines, either generally or in a particular case, that this subsection shall not apply.
- (8) After the termination or assignment of any lease or sublease of a lot or part of a lot notice of which lease or sublease has, pursuant to subsection (7), been given to the body corporate, the lessor shall give to the body corporate written notice of the termination or assignment which shall identify the lot and the lease or sublease that has been terminated or assigned and—
- (a) specify the date of the termination or assignment; and
  - (b) in the case of an assignment—
    - (i) specify the name of the assignee in full and the address for the service of notices on the assignee; and
    - (ii) bear written confirmation by the assignee of the accuracy of the information contained in the notice.
- (9) After a person becomes entitled, otherwise than as a transferee, to be registered under the *Land Title Act 1994* as the proprietor of a lot, the person may give to the body corporate written notice, in the form of a statutory declaration, which shall identify the lot and specify—
- (a) by what right the person became entitled to the lot; and
  - (b) the person's name, in full, the address for the service of notices on the person and the date upon which the person became entitled to the lot.
- (10) Where—

- (a) a body corporate believes that a person, under this section, may or is required to give a notice to it; and
  - (b) the body corporate has not received that notice;  
the body corporate may serve a notice on that person specifying the capacity in which it believes the person is entitled to give the notice and requiring the person—
  - (c) to state, within 14 days, whether or not the person is a person entitled or required to give a notice in that capacity; and
  - (d) if the person is such a person—to give that notice.
- (11) Where a body corporate has served a notice under subsection (10) on a person whom it believes to be a person entitled to give a notice to the body corporate under this section that person is not entitled to cast a vote at any meeting of the body corporate until the person gives the required notice.
- (12) A vote cast at a meeting of a body corporate by or on behalf of a company nominee of a corporation has no effect unless the body corporate has been given notice in writing specifying the company nominee of the corporation.
- (13) A notice referred to in subsection (12) may be included in any other notice that the corporation to which it relates or any other person is entitled under this section to give to the body corporate.
- (14) A proprietor who appoints a real estate agent or resident letting agent under the *Property Occupations Act 2014* as the proprietor's agent for the purpose of letting (within the meaning of that Act) of the lot shall forthwith give notice in writing to the body corporate of the name and business address of the agent and, upon cessation of the appointment, shall give forthwith notice in writing to the body corporate.

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## Division 6 Insurance

### 54 Interpretation

(1) In this division—

*building*, in relation to a building units plan, means a building or buildings shown on the plan, but does not include a proprietor's fixture.

*damage policy*, in relation to a building or the common property including improvements thereon, means a contract of insurance providing, in the event of the building or the common property including improvements thereon being destroyed or damaged by fire, storm, tempest, explosion or any other occurrence specified in the policy—

(a) for—

- (i) the rebuilding of the building or the common property including improvements thereon or its replacement by a similar building or the common property including improvements thereon in the event of its destruction; and
- (ii) the repair of damage to or the restoration of the damaged portion of the building or the common property including improvements thereon in the event of its being damaged but not destroyed;

so that, in the case of destruction, every part of the rebuilt building or the common property including improvements thereon or the replacement building or the common property including improvements thereon and, in the case of damage, the repaired or restored portion, is in a condition no worse nor less extensive than that part or portion or its condition when that part or portion was new; and

- (b) for the payment of expenses incurred in the removal of debris and the remuneration of architects and other persons whose services are necessary as an incident to the rebuilding, replacement, repair or restoration.

*proprietor's fixture* means a structure or fixture made after the registration of the building units plan forming part of a building, being a structure or fixture—

- (a) which is exclusively for the use and enjoyment of a lot within or partly within that building but not being a floor, wall or ceiling; and
  - (b) which—
    - (i) is not made for the necessary renewal or replacement of a structure or fixture made before the registration of the plan; or
    - (ii) replaces a structure or fixture made before the registration of the plan and is of greater value than the necessary replacement of and of a like nature to the structure or fixture replaced.
- (2) A damage policy may provide that, instead of the work and the payments specified in the definition of *damage policy* in subsection (1) being carried out or made upon the occurrence of any of the events specified in that definition, the liability of the insurer shall, upon the occurrence of any such event, be limited to an amount specified in the policy.

## **55 Insurance of buildings and common property**

The body corporate shall insure and keep insured—

- (a) the common property including any improvements thereon; and
  - (b) in the case of a building units plan, the building;
- under a damage policy to the reinstatement or replacement value thereof.

## **55A Original proprietor to pay for damage policy insurance in first year**

- (1) In respect of a plan registered on or after the commencement of the *Building Units and Group Titles Act Amendment Act 1988*, section 51 the premiums payable in respect of

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insurances effected by a body corporate pursuant to section 55 and covering the period of 1 year commencing on the date of registration of the plan shall be paid by the original proprietor.

- (2) A body corporate that pays any premium payable by the original proprietor under subsection (1) may recover the amount of the premium from the original proprietor in any court of competent jurisdiction as a debt due and owing to it.
- (3) Nothing in this section shall prevent an agreement for the sale of a lot by an original proprietor providing for the payment by the purchaser of an amount determined in respect of an amount paid by the original proprietor under subsection (1) in accordance with the terms of the agreement.

## **56 Further insurance by body corporate**

- (1) In addition to any insurance effected by a body corporate pursuant to section 55 a body corporate shall effect insurance—
  - (a) in respect of any occurrence against which it is required by law to insure, including any insurance required to be effected because of the *Workers' Compensation and Rehabilitation Act 2003*; and
  - (b) in respect of the liability of the body corporate for damage to property, death or bodily injury occurring upon the common property; and
  - (c) against the possibility of the proprietors becoming jointly liable by reason of a claim arising in respect of any other occurrence against which the body corporate, pursuant to a special resolution, decides to insure.
- (2) Insurance effected pursuant to subsection (1)(b) shall be for a cover of the prescribed amount or, if not prescribed, \$500,000.
- (3) The body corporate may insure any property which it is not required to insure pursuant to this division and in which it has an insurable interest.

## **57 Insurance by proprietor**

- (1) Nothing in this division limits any right of a proprietor to effect insurance.
- (2) Insurance effected by a proprietor does not affect, and shall not be taken into consideration in determining, the amount payable to a body corporate under a contract of insurance entered into between it and an insurer pursuant to this division, notwithstanding anything contained in that contract of insurance.

## **57A Insurance by proprietor in case of common walls on group title plan**

Where a building upon a lot shown on a group titles plan has a common wall with a building on another lot or the common property shown on that plan, the proprietor of the firstmentioned building shall insure and keep insured that building under a damage policy to the reinstatement or replacement value thereof.

## **58 Insurance of mortgaged lot**

- (1) A contract of insurance may be entered into by a proprietor in respect of damage to the proprietor's lot in a sum equal to the amount secured at the date of the contract by mortgage of the proprietor's lot and where such a contract is in force—
  - (a) subject to the terms and conditions of the contract—
    - (i) a payment to be made under that contract by the insurer in respect of damage shall be made to each mortgagee whose interest is noted thereon in order of the mortgagee's respective priority; and
    - (ii) the amount of the payment shall be the amount stated in the contract, the amount of the loss, or an amount sufficient, at the date of the loss, to discharge the mortgage of the lot, whichever is the least amount; and

- (b) where the amount so paid by the insurer equals the amount necessary to discharge a mortgage of the lot—the insurer shall be entitled to an assignment of that mortgage; and
  - (c) where the amount so paid by the insurer is less than the amount necessary to discharge a mortgage of the lot—the insurer shall be entitled to secure the amount so paid by a transfer of the bill of mortgage to the insurer and the mortgagee as tenants in common in undivided shares proportional to the amount paid by the insurer and the balance necessary to discharge the mortgagee’s interest.
- (2) A contract of insurance entered into as referred to in subsection (1) shall not be liable to be brought into contribution with any other such contract of insurance except another such contract of insurance which—
- (a) is in respect of damage to the same lot; and
  - (b) relates to the same mortgage debt;
- as that referred to in the contract of insurance firstmentioned in this subsection.

## **59 Rebuilding**

Subject to any order made under section 25 or 26, where a body corporate receives payment of moneys from an insurer in respect of destruction of or damage to a building or common property including any improvements thereon, those moneys shall, unless the body corporate by unanimous resolution otherwise resolves, forthwith be applied by the body corporate in rebuilding, replacing, repairing or restoring the building or common property including any improvements thereon, as the case may require, so far as the same may lawfully be effected.

## **60 Insurable interest of body corporate**

Notwithstanding any other law relating to insurance, a body corporate shall be deemed to have a sufficient insurable interest in the subject matter of any contract of insurance entered into by it pursuant to this division.

## **Division 7 Rating and taxation**

### **62 Valuation of parcel**

- (1) Where the valuer-general causes a parcel to be valued under and subject to the *Land Valuation Act 2010*, the parcel shall, notwithstanding the provisions of that or any other Act, be valued as a single parcel of land and as if it were owned by a single owner and, for the purposes of any such valuation and all purposes incidental thereto (including objection to and appeal against a valuation) but not otherwise, the parcel and all improvements thereon shall be deemed to be owned by the body corporate and by no other person.
- (2) During the period from the registration of a plan and until a valuation of the parcel showing the body corporate as owner becomes effective for rating and taxing purposes the valuation in force during that period is—
  - (a) for the *Land Tax Act 2010*, section 29, taken to be a valuation of the parcel made by the valuer-general; and
  - (b) for the repealed *Land Tax Act 1915*, sections 11B and 64, taken to be a valuation of the parcel made by the valuer-general as if the body corporate were shown on it as the owner.
- (3) The valuer-general is not for the purposes of the making, levying, imposition, assessment or recovery of rates or taxes referred to in this division, required to make separate valuations of any parts of a parcel otherwise than as if the parcel were owned by a single owner.
- (4) Notwithstanding the provisions of the *Land Valuation Act 2010*, the valuer-general may upon the registration of a plan,



cause a valuation of the parcel to be made under and subject to that Act showing the body corporate as owner.

### **63 Particulars of lot entitlements to be conclusive**

For all purposes in relation to the making, levying, imposition, assessment or recovery of rates, charges or taxes in relation to the parcel or any part thereof—

- (a) the particulars shown on the copy of a plan or amendment thereof furnished by the registrar of titles pursuant to section 14 shall be conclusive evidence of those particulars; and
- (b) the production by an authority authorised to levy rates, charges or taxes in relation to the parcel or any part thereof of what purports to be the copy of the plan or amendment thereof so furnished shall be prima facie evidence that it is the copy so furnished.

### **64 Rating of lots**

- (1) For all purposes in relation to the making, levying or recovery of rates or charges by a local government pursuant to the *Local Government Act 2009* or the *City of Brisbane Act 2010* in relation to a parcel the following provisions have effect—
  - (a) the value of the parcel shown in the valuation shall be apportioned by the local government between the lots comprised in the parcel in proportion to the lot entitlements of the respective lots as shown on the registered plan;
  - (b) save as is provided in section 67, the body corporate is not liable in respect of the parcel for any rate or charge made and levied by the local government;
  - (c) the proprietor of each lot comprised in the parcel is deemed to be the owner in fee simple in possession of the lot as if it were a separate parcel of land having a value equal to that apportioned to it under paragraph (a)

and is liable accordingly for any rate or charge made and levied by the local government on the owners of land;

- (d) where part of a parcel is subject to rates or charges or rates and charges levied by a local government in respect of water supply, sewerage, cleansing or garbage services otherwise than on the basis of value—such rates or charges or rates and charges shall be levied upon the proprietor of each lot, in accordance with such basis or bases as may be adopted by the local government pursuant to the *Local Government Act 2009* or the *City of Brisbane Act 2010*.
- (2) However, where a rate or charge can not be directly related to use of the service within a particular lot, the rate or charge shall be apportioned by the local government between the lots in accordance with the lot entitlements of the respective lots.

## **67 Local government may recover arrears of rates and charges upon conversion etc.**

Upon registration of a plan of resubdivision or amalgamation or a notice of conversion, a local government may recover any rates and charges outstanding or accrued and unpaid at the time of registration—

- (a) in respect of a lot that becomes common property—from the body corporate; or
- (b) in respect of a lot part of which only becomes common property—from the proprietor for the time being of the balance of the lot; or
- (c) in respect of 1 or more lots that are resubdivided or amalgamated—from the proprietor of each lot thereby created in proportion to the lot entitlement that the proprietor's lot bears to the sum of lot entitlements of the lots created thereby.

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## Part 5 Disputes

### Division 1 Referee

#### 69 Referees and other officers employed under Public Sector Act 2022

Referees, and officers necessary to assist them, are to be employed under the *Public Sector Act 2022*.

#### 70 Referee may delegate

A referee may delegate the referee's powers under this Act to a public service employee.

### Division 2 Applications for orders

#### 71 Referee may inspect certain records

- (1) Where application is made for an order under this part, the body corporate has, in relation to a referee and the referee's delegate, the same duties under section 40(1) and (2) as it has under that section in relation to a proprietor.
- (1A) However, the body corporate shall not be entitled to payment of any fee prescribed under that section.
- (2) A body corporate shall not neglect or fail to perform any duty owed by it to a referee or the referee's delegate under subsection (1).

Maximum penalty— $6\frac{2}{3}$  penalty units.

#### 72 Applications for orders to be made to referee

Application for an order under this part shall be made to a referee in writing specifying the grounds on which it is made and the order sought and shall be accompanied by the fee

prescribed in respect of the application (if any) and the prescribed deposit (if any).

### **73 Procedure after referee receives application**

- (1) After receipt of an application for an order under this part, other than an application that pursuant to section 106(8) accompanied a notice of appeal made pursuant to section 106, a referee—
  - (a) may require the applicant to provide the referee with such further information in relation to the application as, in the referee's opinion, may assist the investigation of the application; and
  - (b) may refuse to proceed with the application until a requirement made by the referee pursuant to paragraph (a) has been complied with; and
  - (c) shall give written notice of the application (setting out the grounds specified therein) to the body corporate to which the application relates and to any other person who, in the referee's opinion, would be affected if the order sought were made;  

However, an applicant need not be given a notice under this paragraph; and
  - (d) shall, in a notice referred to in paragraph (c), specify the order sought and invite the body corporate and any member thereof and any other person to whom the notice is given to make to the referee, within a time specified in the notice, a written submission in respect of the matter to which the application relates; and
  - (e) may, by further notice, allow the body corporate and each person to whom a notice under paragraph (c) was given a longer time within which to make a submission referred to in paragraph (d); and
  - (f) may make such other investigations with respect to the application as the referee thinks fit; and

- (g) may enter upon any parcel to which a dispute relates for the purpose of carrying out any investigation with respect to the application at any reasonable time on notice given to every person who has been notified of the application and to the body corporate.
- (2) A person shall not obstruct or hinder the referee or the referee's delegate in the exercise of powers under subsection (1)(g).

Maximum penalty—\$500.

### **73A How referee must act**

When investigating an application for an order under this part, a referee—

- (a) must observe natural justice; and
- (b) must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the application; and
- (c) is not bound by the rules of evidence.

### **74 Body corporate to display and give certain notices**

A body corporate given a notice under section 73(1)(c) or (e) shall—

- (a) forthwith cause the notice or a copy thereof to be prominently displayed within the parcel on some part of the common property; and
- (b) keep the notice so displayed until the expiration of the time limited by the notice for the making of submissions; and
- (c) forthwith serve a copy of the notice on each person whose name appears on its roll.

## **Division 3                      Orders by referee**

### **75            Orders under this division**

- (1) A referee shall not make an order, other than an order under section 76(2), until after—
  - (a) the expiration of the time specified in the notice given under section 73(1)(c); or
  - (b) where a further notice has been given under section 73(1)—the expiration of the longer time specified in that notice;for the making of written submissions with respect to the application seeking the order.
- (2) An order made may include such ancillary or consequential provisions as the referee thinks fit.
- (3) The referee may order a body corporate, a body corporate manager, a proprietor, a person having an estate or interest in a lot or an occupier of a lot to do, or to refrain from doing, a specified act with respect to a parcel.
- (4) The referee may, by order, dismiss an application for an order.
- (5) An application may be withdrawn by the applicant at any time before an order is made.
- (6) An application may be amended by the applicant at any time before an order is made provided that the applicant shall satisfy the referee that the applicant has served every party to whom the referee has given written notice of the application with a copy of the amendment and advice that the party is entitled to make within a time specified in the notice further written submissions to the referee.
- (6A) In such a case the referee shall not make an order until after the expiration of the time so specified which shall not be less than the time allowed by the referee for submissions in respect of the original application.
- (7) The referee may not, in connection with an application for an order, make any order for the payment of costs.

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- (8) Subject to section 76(5), an order made by the referee shall not be capable of being varied or revoked by the referee but this subsection does not prevent a subsequent order being made.

## 76 Interim orders

- (1) In this section—  
*interim order* means an order made under subsection (2).
- (2) Where an applicant for an order under section 77(1) states in his or her application that the applicant requests an interim order, the referee may, if the referee is satisfied on reasonable grounds that, by reason of the urgent circumstances of the case, the referee should do so—
- (a) make, under this subsection, any order that may be made under section 77(1) with respect to the application; and
  - (b) before the expiration of 3 months from the date on which it takes effect and upon a further request made by the applicant, renew an interim order that is in force by serving notice in accordance with subsection (6) that the order is renewed.
- (3) An interim order may be made or renewed notwithstanding—
- (a) that any power or duty of the referee under section 73(1) has not been exercised or performed with respect to the application; or
  - (b) where the referee has given written notice of the application under section 73(1)(c)—that any time specified under section 73(1)(d) or (e) in that or any further notice has not expired.
- (4) An interim order made pursuant to an application for an order under section 77(1) ceases to have effect—
- (a) at the expiration of 3 months from the date on which it takes effect or, where the referee has renewed the interim order, at the expiration of 6 months from that date; or

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- (b) where the interim order is revoked by a tribunal under section 107(1)(c) or by the referee under subsection (5)—when it is so revoked; or
- (c) where—
  - (i) the referee makes an order under section 77(1) with respect to the application; or
  - (ii) the referee dismisses the application;before the interim order ceases to have effect under paragraph (a) or (b), when the order is made under section 77(1) or the application is dismissed, as the case may be.
- (5) The referee may revoke an interim order and, if the referee does so, the referee shall serve notice in accordance with subsection (6) that the order has been revoked.
- (6) A notice of the renewal or revocation of an interim order shall be served—
  - (a) except as provided in paragraph (b), on the body corporate for the plan to which the order relates; or
  - (b) where the order requires a person to do or refrain from doing a specified act—on that person.
- (7) A person shall not in, or in connection with, a request for an interim order or for the renewal of any such order, make a statement that the person knows is false or misleading in a material respect.

Maximum penalty for subsection (7)— $6\frac{2}{3}$  penalty units.

## **77 General powers of referee to make orders**

- (1) A referee may, pursuant to an application of a body corporate, a body corporate manager, a proprietor, a person having an estate or interest in a lot or an occupier of a lot in respect of a parcel, make an order on any person entitled to make an application under this subsection or on the chairperson, secretary or treasurer of the body corporate for the settlement of a dispute, or the rectification of a complaint, with respect to



the exercise or performance of, or the failure to exercise or perform, a power, authority, duty or function conferred or imposed by this Act in connection with that parcel.

- (2) Where a body corporate has a discretion as to whether or not it exercises or performs a power, authority, duty or function conferred or imposed on it by this Act, it shall be deemed to have refused or failed to exercise or perform that power, authority, duty or function only if it has decided not to exercise or perform that power, authority, duty or function.
- (3) Nothing in this part authorises the referee to make an order of the kind that may be made by the Court under section 25 or 26.
- (4) Nothing in this part affects the generality of subsection (1), but an order in respect of any matter dealt with in any other section of this part shall not be made under this section.

## **78 Further powers of referee**

- (1) A referee is empowered to make an order that—
  - (a) requires a party to the dispute before the referee to pay money not exceeding the sum of \$1,000 to a person specified in the order; or
  - (b) requires a party to the dispute before the referee to do, or refrain from doing, some specified act to which the application relates; or
  - (c) strikes out for want of jurisdiction the dispute before the referee.
- (2) An order made by a referee may direct that the order shall be complied with within a time limited in the order.
- (3) An order made by a referee that requires the payment of money may be made to take effect instanter or so as to take effect upon default being made in complying with some other order made by the referee.

**79 Order with respect to certain consents affecting common property**

Where, pursuant to an application by a proprietor for an order under this section, the referee considers that the body corporate for the parcel to which the application relates has unreasonably refused to consent to a proposal by that proprietor—

- (a) to effect improvements on or alterations to the common property; or
- (b) to have carried out repairs to any damage to the common property or any other property of the body corporate;

the referee may make an order that the body corporate consent to the proposal.

**80 Order with respect to acquisition of personal property**

Where, pursuant to an application by a proprietor for an order under this section, the referee considers that an acquisition, or a proposed acquisition, by the body corporate for the parcel to which the application relates of personal property is unreasonable, the referee may order—

- (a) that the personal property acquired be sold or otherwise disposed of by the body corporate within a specified time; or
- (b) that the personal property be not acquired.

**81 Order to acquire personal property**

Where, pursuant to an application by a proprietor for an order under this section, the referee considers that the body corporate for the parcel to which the application relates has unreasonably refused to acquire personal property, the referee may order the body corporate to acquire the personal property.

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**82 Order to make or pursue insurance claim**

Where, pursuant to an application by a proprietor for an order under this section, the referee considers that the body corporate for the parcel to which the application relates has unreasonably refused to make or pursue an insurance claim in respect of damage to a building or any other property insured by the body corporate under part 4, division 6 the referee may order the body corporate to make or pursue the claim.

**83 Order varying certain contributions**

Where, pursuant to an application by a proprietor for an order under this section, the referee considers that the body corporate for the parcel to which the application relates has determined an unreasonable amount pursuant to section 38A(4) in respect of a contribution for the purposes of section 32, the referee may, in respect of such contributions as are specified in the order, order that the amount shall not be payable or that the amount payable be an amount specified by the referee in the order instead of the amount so determined.

**84 Order to supply information or documents**

Where, pursuant to an application for an order under this section, the referee considers that the body corporate for the parcel to which the application relates, or the body corporate manager for that parcel, or the chairperson, secretary or treasurer of that body corporate has wrongfully—

- (a) withheld from the applicant information to which the applicant is entitled under this Act; or
- (b) failed to make available for inspection by the applicant or the applicant's agent a record or document that, under this Act, the applicant is entitled to inspect;

the referee may order that body corporate, body corporate manager, chairperson, secretary or treasurer to supply or make available the information or to make so available the record or document, as the case may require, to the applicant.

### **85 Order relating to animal kept contrary to by-laws**

Where, pursuant to an application by a body corporate, a proprietor, a person having an estate or interest in a lot or an occupier of a lot for an order under this section, the referee considers that a person is keeping an animal on a lot or common property in contravention of the by-laws, the referee may order that person to cause the animal to be removed from the parcel within a specified time, and thereafter to be kept away from the parcel, unless the keeping of the animal on the lot or common property, as the case may be, is subsequently authorised pursuant to the by-laws.

### **86 Order relating to animal kept pursuant to by-laws**

Where, pursuant to an application by a body corporate, a proprietor, a person having an estate or interest in a lot or an occupier of a lot for an order under this section, the referee considers that an animal kept on a lot or the common property in accordance with the by-laws causes a nuisance or hazard to the proprietor or occupier of another lot or unreasonably interferes with the use and enjoyment of another lot or of the common property, the referee may—

- (a) order the person keeping the animal to cause the animal to be removed from the parcel within a specified time, and thereafter to be kept away from the parcel; or
- (b) order the person keeping the animal to take, within a time specified in the order, such action so specified as, in the opinion of the referee, will terminate the nuisance, hazard or unreasonable interference.

### **87 Order confirming information for roll**

- (1) Where a person fails to provide written confirmation of a notice under section 53 that is required to bear that confirmation and a body corporate, body corporate manager, proprietor or other person having or acquiring an estate or interest in a lot applies for an order under this section, the referee may, subject to subsection (2), order the body

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corporate in respect of the plan concerned to enter the information in the notice in the roll notwithstanding that it does not bear that confirmation.

- (2) In making an order under subsection (1) the referee may amend in any manner the referee thinks fit the information in the notice to which the order relates.
- (3) The referee shall dismiss an application for an order under this section if the referee considers that the rights of any person would be prejudiced if the referee makes the order.
- (4) A copy of an order under subsection (1) served on a body corporate shall be deemed to be a notice given to the body corporate under section 53 and information entered on a roll pursuant to such an order shall be deemed to have been entered from a notice bearing written confirmation required by that section.

## **88 Order revoking amendment of by-law or reviving repealed by-law**

- (1) Where, pursuant to an application by any person entitled to vote at a meeting of the body corporate (including both a first mortgagee and a mortgagor of a lot) for an order under this section, the referee considers that, having regard to the interest of all proprietors in the use and enjoyment of their lots or the common property, an amendment or repeal of a by-law or addition of a new by-law should not have been made or effected, the referee may order that the amendment be revoked, that the repealed by-law be revived or that the additional by-law be repealed.
- (2) An order under subsection (1), when recorded under section 112, has effect, subject to any order with respect thereto made by a superior court, as if its terms were a by-law.
- (3) The provisions of this section do not apply with respect to a by-law made or deemed to be made pursuant to section 30(7).

## **89 Order granting certain licence**

- (1) Pursuant to an application by a proprietor for an order under this section, a referee may, subject to this section, order that the applicant, and any occupier of the lot of which the applicant is the proprietor, may use specified common property in such a manner, for such purposes, and upon such terms and conditions (if any) as are specified in the order.
- (2) A referee shall not make an order under subsection (1) unless the referee is satisfied—
  - (a) that the lot of which the applicant is proprietor is incapable of reasonable use and enjoyment by the proprietor or occupier of the lot unless the order is made; and
  - (b) that the body corporate has refused to grant a licence to use common property in such a manner, for such purposes, and upon such terms and conditions as would enable that proprietor or such an occupier reasonably to use and enjoy that lot.
- (3) An order under subsection (1), when recorded under section 112, has effect, subject to any order with respect thereto made by a superior court, as if its terms were a by-law.

## **90 Order invalidating purported by-law**

- (1) Where, pursuant to an application by any person entitled to vote at a meeting of the body corporate (including both a first mortgagee and a mortgagor of a lot) for an order under this section, a referee considers that a body corporate did not have the power to make a by-law purporting to have been made by it, the referee may make an order declaring the by-law to be invalid.
- (2) An order under subsection (1), when recorded under section 112, has effect, subject to any order with respect thereto made by a superior court, as if its terms were a by-law repealing the by-law to which the order relates.

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**91 Order for variation of contributions or manner of payment thereof**

Where, pursuant to an application by a proprietor or by a mortgagee in possession (whether by himself, herself or another person) for an order under this section, a referee considers that any amount of contributions levied under section 32 or determined under section 38A is inadequate or excessive, or that the manner of payment of contributions is unreasonable, the referee may—

- (a) order variation of the amount; or
- (b) order payment of contributions in a different manner; or
- (c) make both such orders.

**92 Order where voting rights denied or due notice of item of business not given**

(1) Where, pursuant to an application by a person under this section, a referee is satisfied that a particular resolution would not have been passed at a general meeting of a body corporate but for the fact that the applicant—

- (a) was improperly denied a vote on the motion for the resolution; or
- (b) was not given due notice of the item of business pursuant to which the resolution was passed;

the referee may order that the resolution be treated as a nullity on and from the date of the order.

(2) An application for an order under subsection (1) shall be made within the period of 30 days (or such longer period as the referee, in the particular case, allows) after the date of the meeting at which the resolution was passed.

(3) Where—

- (a) an order under subsection (1) is made in respect of a resolution making a by-law amending, adding to or repealing another by-law; and

(b) the by-law made pursuant to that resolution is in force;  
and

(c) the order is recorded as provided by section 112;

the by-laws shall, subject to their having been or being amended, added to or repealed under section 30 and to any order with respect to the order under subsection (1) made by a superior court, have force and effect on and from the date the order is so recorded to the same extent as they would have had if the resolution had not been passed.

### **93 Order varying amount of insurance to be provided**

Where, pursuant to an application by a proprietor or a mortgagee of a lot for an order under this section, a referee considers that the amount for which the body corporate for the parcel concerned has insured under section 55 or 56(1)(c) is not reasonable, the referee may order the body corporate to vary that amount to a specified amount.

### **94 Order appointing body corporate manager to exercise or perform certain powers etc.**

(1) Where—

(a) in consequence of the making of an order under this part a duty is imposed on a body corporate; or

(b) a duty is otherwise imposed by this Act on a body corporate; or

(c) a duty is imposed by this Act on the chairperson, secretary or treasurer of a body corporate or of the committee of a body corporate or on that committee; or

(d) a judgment debt is owed by a body corporate;

a referee may—

(e) in the case referred to in paragraph (a)—on the application of the person who obtained the order so referred to; or



- (f) in the case referred to in paragraph (b) or (c)—on the application of a person having an estate or interest in a lot the subject of the plan concerned; or
- (g) in the case referred to in paragraph (d)—on the application of the judgment creditor;

by order appoint a body corporate manager (being a person who has consented in writing to the appointment) to perform that duty and any other duty specified in the order or to pay that judgment debt, as the case may require.

- (2) A referee who appoints a body corporate manager under subsection (1) may also order that the body corporate manager shall have and may exercise and perform—
  - (a) all of the powers, authorities, duties and functions of the body corporate for the parcel to which the order relates or of the chairperson, secretary or treasurer of that body corporate or the committee of that body corporate; or
  - (b) any 1 or more of those powers, authorities, duties or functions specified in the order; or
  - (c) all of those powers, authorities, duties and functions except those specified in the order.
- (3) Where a referee makes an order under subsection (1), no person other than the body corporate manager appointed by the order may, while that body corporate manager holds office as such, exercise or perform any power, authority, duty or function which the body corporate manager is authorised to exercise or perform by that order or an order under subsection (2).
- (4) The appointment of a body corporate manager under this section may be made upon such terms and conditions (including terms and conditions relating to the body corporate manager's remuneration by the body corporate and the duration of the body corporate manager's appointment) as the referee specifies in the order making the appointment.

**94A Order varying anniversary of first annual general meeting of body corporate**

Where, pursuant to an application by a body corporate for an order under this section, the referee considers that it is reasonable so to do, the referee may order that a date specified in the order and occurring after the order is made shall, for the purposes of this Act, be taken to be the anniversary of the first annual general meeting of the body corporate whereupon each subsequent anniversary of that date shall for the purposes of this Act be taken to be an anniversary of the first annual general meeting of the body corporate in place of the anniversary of the date on which the first annual general meeting was in fact held.

**94B Order revoking resolution dispensing with audit**

Where a body corporate has resolved that the accounts of the body corporate relating to any financial period should not be audited, a referee may, pursuant to an application by a proprietor for an order under this section, if the referee considers that the accounts of the body corporate should be subjected to such an audit, order the body corporate to appoint a qualified auditor who consents to the appointment to audit the accounts of the body corporate for the relevant period.

**94C Order for costs**

- (1) This section applies if—
  - (a) for an application for an order under this part, a referee makes an order under section 75(4) for the reason that it appears to the referee that the application is frivolous, vexatious, misconceived or without substance; and
  - (b) no prescribed deposit accompanied the application.
- (2) The referee—
  - (a) may order costs against the applicant to compensate all or any of the following for loss resulting from the application—

- (i) the respondent to the application;
- (ii) the body corporate;
- (iii) an affected person for the application; and

*Example of loss for paragraph (a)—*

legal expenses reasonably incurred by the person in relation to the application

- (b) in ordering the costs, may have regard to previous applications for orders under this part made by the applicant.
- (3) The total amount of costs ordered under subsection (2) must not be more than \$2,000.
- (4) In this section—

*affected person*, for an application for an order under this part, means a person, other than a party to the application, who would be directly and materially affected by the order sought by the application.

## 95 Copy of order to be served

- (1) An order by a referee shall be made in writing and a copy thereof, certified by the referee to be a true copy, shall be served by the referee on each of the following persons—
- (a) the body corporate for the parcel to which the order relates;
  - (b) the applicant for the order;
  - (c) any person to whom notice of the application has been given pursuant to section 73(1);
  - (d) any person who, by the order, is required to do, or to refrain from doing, a specified act.
- (2) The copy of the order duly certified shall be accompanied by a statement setting out the reasons for the referee's decision.

## **Division 4                      Tribunals**

### **96            Appointment of tribunal**

- (1) Every stipendiary magistrate and acting stipendiary magistrate shall by virtue of appointment to that office and without any further or other appointment whatsoever constitute a tribunal for the purposes of this Act while he or she continues to be a stipendiary magistrate or an acting stipendiary magistrate.
- (2) If a tribunal which has begun an investigation into a matter under this division ceases to be a stipendiary magistrate or an acting stipendiary magistrate by reason of the expiration of the period of, or the stipendiary magistrate's retirement from appointment as stipendiary magistrate or acting stipendiary magistrate, he or she shall continue to be a tribunal for the purpose of determining that matter.

### **97            Tribunal may investigate as appropriate**

- (1) Before making an order under this part a tribunal shall make a thorough investigation without regard to legal forms or solemnities.
- (2) A tribunal is not bound to apply the rules of evidence and, after informing itself in such manner as the tribunal thinks fit, may make an order under this part with or without any hearing and, where a hearing is held, whether or not it is conducted formally.
- (3) Notwithstanding subsection (2), a tribunal shall conduct a hearing where any person entitled or required to appear before the tribunal on the hearing of the application or appeal so appears.

### **98            General provisions relating to orders on appeal**

- (1) An order made by a tribunal may include such ancillary or consequential provisions as the tribunal thinks fit.

- (2) For the purpose of securing compliance with an order on appeal, a tribunal may order a body corporate, the chairperson, secretary or treasurer of a body corporate or its committee, a body corporate manager or a proprietor or other person having an estate or interest in a lot or an occupier of a lot to do or refrain from doing a specified act with respect to a parcel.
- (3) A tribunal may, by order, dismiss an appeal.

## **99 Representation before a tribunal**

A person may appear before the tribunal on the hearing of the appeal, or be represented by counsel or a solicitor, or by an agent authorised in writing, who may examine witnesses and address the tribunal on behalf of that person.

## **100 Adjournment of appeal**

- (1) A tribunal may from time to time adjourn the hearing of an appeal to such times and places and for such purposes as the tribunal considers necessary.
- (2) The tribunal shall cause notice of the adjournment and of the time and place to which the hearing of the appeal is adjourned to be given to any person served with a notice pursuant to section 106(7) who is not present or represented at the time the hearing is adjourned.

## **101 Continuity of hearing**

- (1) The hearing of an appeal shall at all times during its continuance be conducted by the same tribunal.
- (2) Subject to section 96, if a hearing is interrupted before an order is made therein by the death, incapacity or removal of the stipendiary magistrate or acting stipendiary magistrate constituting the tribunal and the appellant desires to have the appeal determined the appeal shall be heard de novo by a tribunal constituted at the same place by another stipendiary magistrate or acting stipendiary magistrate.

## **102 Copy of order to be served**

- (1) An order made by a tribunal under this part shall be made in writing and the tribunal shall cause to be sent to the referee—
  - (a) the order; and
  - (b) the records of the tribunal relating to the appeal including records forwarded to it by the referee when referring that appeal to the tribunal.
- (2) Where an order has been sent to the referee under subsection (1), the referee shall serve a copy of the order, certified by the referee to be a true copy, on—
  - (a) the body corporate for the parcel to which the order relates; and
  - (b) the applicant for the order and the appellant; and
  - (c) any person who was given notice under section 106(7) of the time and place for the determination of the appeal; and
  - (d) any person who, by the order, is required to do, or to refrain from doing, a specified act.

## **103 Witness may be summoned before tribunal**

- (1) Upon the request of a person to whom a notice has been given under section 106(7), or the agent of any such person, a tribunal under its hand may summon any person to attend the tribunal at the time and place specified in the summons and then and there to give evidence and to produce books, documents or writings in the person's custody or control which the person is required by the summons to produce.
- (2) The fee payable for the issue of a summons is such amount as may be prescribed.
- (3) A person served with a summons under subsection (1) shall not, without reasonable excuse, disobey the summons.

Maximum penalty—

- (a) in the case of a corporation— $13\frac{1}{3}$  penalty units; or

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- (b) in any other case— $6\frac{2}{3}$  penalty units or 6 months imprisonment.
- (4) A person is not bound to produce any books, documents or writings not specified or otherwise sufficiently described in the summons or which the person would not be bound to produce upon a subpoena for production in the Court.
- (5) A summons under subsection (1) need not be obeyed by a person unless the person is tendered the person's reasonable expenses for attending the tribunal in accordance with the summons.

#### **104 Tribunal may administer oath**

- (1) A tribunal may administer an oath or affirmation to a person appearing as a witness before it, whether or not the person has appeared in answer to a summons, and may examine the witness upon oath or affirmation.
- (2) A person appearing as a witness before a tribunal—
- (a) shall not refuse to be sworn or to make an affirmation; and
  - (b) shall not refuse to answer any question relevant to any proceedings before the tribunal put to the person by the tribunal or by any person entitled to appear before the tribunal in those proceedings; and
  - (c) shall not knowingly give false testimony in any evidence given by the person to the tribunal.

Maximum penalty— $6\frac{2}{3}$  penalty units or 6 months imprisonment.

- (3) A witness before a tribunal has—
- (a) the same protection; and
  - (b) in addition to the penalties provided by this Act, the same liabilities;

as the person would have had if the person had been a witness before the Court instead of the tribunal.

## **105 Contempt of tribunal**

- (1) A person shall not wilfully insult or disturb a tribunal, or interrupt the proceedings of a tribunal, or by writing or speech use words which are false or defamatory of a tribunal or otherwise commit any wilful contempt of a tribunal.

Maximum penalty— $6\frac{2}{3}$  penalty units or 6 months imprisonment.

- (2) A tribunal has, in relation to a contravention of subsection (1) committed in the face of the tribunal, all the powers of a Magistrates Court under the *Justices Act 1886*, section 40.

## **Division 5 Appeals**

### **106 Appeal against order of referee**

- (1) Where a referee makes an order under this part—
- (a) the applicant for the order; or
  - (b) a person who, in connection with the application for the order, duly made written submissions to the referee; or
  - (c) being an order requiring a person to do or refrain from doing a specified act, that person;

may appeal to a tribunal against the order of the referee by lodging a written notice of appeal with the referee, accompanied by the prescribed fee, not later than 21 days after the order takes effect.

- (2) A person may appeal under this section against an order made by a referee under section 76(2) only on the grounds that the referee acted unreasonably by making the order.
- (3) A notice of appeal lodged under subsection (1) shall specify—
- (a) the name and address of the appellant; and
  - (b) the order appealed against; and
  - (c) the grounds of the appeal; and



- (d) any other matter prescribed.
- (4) The tribunal to which an appeal lies under this section is the tribunal to which, pursuant to subsection (5), the referee forwards the notice of appeal.
- (5) Where a notice of appeal is lodged under subsection (1), the referee shall forward to the tribunal that, in the referee's opinion, is nearest to the parcel to which the order appealed against relates—
  - (a) the notice of appeal; and
  - (b) the referee's records relating to the order appealed against; and
  - (c) the notices referred to in subsection (6).
- (6) The notices that the referee is required by subsection (5)(c) to forward are notices that shall be addressed to each of the following addressees—
  - (a) the appellant;
  - (b) each person (other than the appellant) entitled under subsection (1) to appeal against the order;
  - (ba) each person (other than a person referred to in paragraph (a) or (b)) on whom pursuant to section 95 a true copy of the order against which the appeal has been lodged has been served by the referee;
  - (c) the body corporate for the parcel to which the order appealed against relates, unless it is the appellant.
- (6A) Each notice shall be accompanied by a copy of the notice of appeal and shall specify the tribunal which is to hear the appeal.
- (7) The tribunal to which documents are forwarded under subsection (5) shall cause—
  - (a) the notices referred to in subsections (6) and (6A) to be completed by specifying therein—
    - (i) the place at which the tribunal specified in the notices is to determine the appeal; and

- (ii) a time and day for the determination of the appeal to which the documents relate; and
  - (b) each notice to be sent by registered post to the addressee thereof so that it would, in the ordinary course of post, be received by the addressee not less than 7 days before the day specified in the notice pursuant to paragraph (a)(ii).
- (8) Where a notice of appeal is accompanied by an application for an order under this subsection—
  - (a) the referee, before the referee forwards to a tribunal the documents referred to in subsection (5); or
  - (b) the tribunal to which the referee has sent those documents;may, by order, stay the operation of the order appealed against and, where the referee or it does so, forward notice of the order made under this subsection to the persons referred to in subsection (6).

## **107 Determination of appeal from order of referee**

- (1) In the determination of an appeal from an order of the referee, a tribunal—
  - (a) if the tribunal thinks it is proper to do so, may admit evidence other than the evidence before the referee when the referee made the order; and
  - (b) where the order was made otherwise than under section 76(2)—may, by order, affirm, vary or revoke the order appealed against or substitute the tribunal’s order for the order appealed against; and
  - (c) where the order was made under section 76(2)—may dismiss the appeal or, by order, revoke the order appealed against; and
  - (d) shall not make any order as to costs.
- (2) An order made under subsection (1)(b) has effect, and the provisions of this Act other than section 106 apply to it, in all

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respects as if it were an order made under the provision of this Act under which the order appealed against was made.

### **108 Appeal to Court on question of law**

- (1) An appeal lies to the Court from an order made by a tribunal under section 107 on the ground that the order is erroneous in law but on no other ground.
- (2) The persons who may appeal under subsection (1) are—
  - (a) the appellant to the tribunal; and
  - (b) where he or she was not the appellant to the tribunal—the applicant for the original order made by the referee; and
  - (c) any person who, in connection with the application for the original order, duly made written submissions to the referee; and
  - (d) where an order requires a person to do or refrain from doing any act—that person; and
  - (e) in any case where the body corporate for the parcel to which the appeal relates is not included in paragraphs (a) to (d)—that body corporate.

### **109 Appeal does not lie from tribunal except as provided in this division**

Except as provided by this division, an appeal does not lie from an order made by a tribunal.

## **Division 6 Miscellaneous**

### **110 Refund of prescribed deposit**

Upon the final determination of an application made under this part, the prescribed deposit which accompanied the application shall, unless the referee, the tribunal or the Court

making that determination otherwise directs on the ground that the application was frivolous, vexatious, misconceived or without substance, be refunded to the applicant.

## **111 Effect of certain orders**

- (1) The terms of an order made under section 79, 80, 81, 83, 91 or 92 (other than section 92(3)(a)) or under section 93 or an order made under section 77 in which the referee declares that it is to have effect as a decision of a body corporate shall be deemed to be a resolution passed by the body corporate in respect of the plan to which the order relates.
- (2) Upon service upon it by the referee of a copy of an order referred to in subsection (1), the body corporate shall cause the terms of the order to be recorded in its minute book.
- (3) Except in the case of a unanimous resolution or a resolution without dissent, a resolution passed by a body corporate has no force or effect if it purports to rescind or amend a resolution deemed by subsection (1) to have been passed by the body corporate.
- (4) Where an order referred to in subsection (1) specifies a period during which a resolution passed by the body corporate has no force or effect if it purports to alter the effect of that order, such a resolution has no force or effect if it is passed during that period—
  - (a) unless it is a unanimous resolution or a resolution without dissent; or
  - (b) unless, upon an application made as referred to in subsection (5), a referee makes an order under this paragraph authorising the submission to a general meeting of the body corporate of a motion for that resolution.
- (5) An application for an order under subsection (4)(b)—
  - (a) may be made by any person who, if the application for the order referred to in subsection (1) were made at the time the application referred to in this subsection is

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- made, would be entitled to make the application for the order referred to in subsection (1); and
- (b) shall specify the order sought; and
  - (c) shall be made to the referee in writing specifying the grounds on which it is made; and
  - (d) shall be accompanied by the prescribed fee and the prescribed deposit (if any).
- (6) An application referred to in subsection (5) shall be dealt with in all respects as if it were an application for an order under this part.

## **112 Recording on plan of effect of certain orders**

- (1) Where an order is made under section 88, 89 or 90 or under section 92 (being an order referred to in section 92(3)(a)), the body corporate shall—
- (a) lodge in the land registry—
    - (i) if no appeal is lodged against the order or, if an appeal is lodged but the order is not revoked—a copy of the order, certified by the referee as a true copy; and
    - (ii) if upon appeal the order is varied by the tribunal—a copy of the order of the tribunal, certified by the referee as a true copy; and
  - (b) pay the relevant titles registry fee;
- and the registrar of titles shall record the order on the registered plan to which the order relates.
- (2) The body corporate shall lodge a copy of the relevant order as provided in subsection (1) forthwith—
- (a) upon the expiration of the time allowed for an appeal against the referee's order; or
  - (b) if an appeal is lodged upon the determination of that appeal;
- whichever is the later.

### **113 Penalty for contravention of certain orders**

- (1) A person shall not contravene an order made under this part, not being an order made under section 76(2), to do or refrain from doing a specified act.

Maximum penalty—8 penalty units and, subject to subsection (2), a further penalty not exceeding 2 penalty units for every day during which the contravention continues.

- (2) The maximum amount that may be recovered in any prosecution for an offence under subsection (1) is the maximum amount for which a personal action may be commenced from time to time in a Magistrates Court whether on a balance of account or after an admitted set off or otherwise.

- (3) A person shall not contravene an order under section 76(2) to do or refrain from doing a specified act.

Maximum penalty—20 penalty units.

- (4) Proceedings for an offence under subsection (1) or (3) of contravening an order may only be taken by the applicant for the order or body corporate concerned.

- (5) In proceedings under this section—

(a) the imposition of a penalty operates as a judgment under the *Magistrates Courts Act 1921* against the defendant and in favour of the prosecutor for the amount of the penalty; and

(b) an order for a person to pay an amount of costs operates as a judgment for that amount under that Act against that person and in favour of the person whose costs are ordered to be paid.

- (6) A penalty imposed under this section or costs referred to in subsection (5)(b) shall not be enforceable or recoverable except as provided in subsection (5).

- (7) Any costs awarded against a defendant in proceedings under this section shall include the amount of the fee paid on filing the application for the order contravened.

- (8) A document purporting to be a copy of an order made by a referee or a tribunal shall be admissible in evidence and shall, until the contrary is proved, be deemed to be an order made by the referee or tribunal, as the case may be.

#### **114 Protection of referee and tribunal**

No action shall lie against a referee, including the referee's delegate, or a tribunal on account of any proceeding taken, any publication made or anything done under the authority of this Act or taken, made or done bona fide purportedly under the authority of this Act.

#### **115 Enforcement of orders for payment of money**

- (1) The person to whom payment is to be made under an order that requires the payment of money may enforce the order by filing in the office of the registrar of the Magistrates Court at a place appointed for holding Magistrates Courts in the Magistrates Court district wherein the person required by the order to make payment resides or has a place of business or wherein the person to whom payment is to be made resides—
- (a) a copy of the order certified by the referee to be a true copy; and
- (b) the person's affidavit, taken by a justice, as to the amount not paid under the order and, where the order is to take effect upon any default, as to the making of that default;

whereupon the order shall be deemed to be a judgment that requires payment of money duly made by a Magistrates Court pursuant to the *Magistrates Courts Act 1921* and may be enforced accordingly.

- (2) No court fees shall be payable under subsection (1) up to and including entry of judgment.
- (3) It shall be competent to a person to file a copy of an order pursuant to subsection (1) once only and a second or

subsequent filing purportedly pursuant to that subsection shall be ineffectual.

- (4) The *Limitation of Actions Act 1974* applies in respect of a decision of a referee and in respect of the enforcement of any order made by the referee as it applies in respect of any judgment.

## **116 Time at which order takes effect**

Except—

- (a) where express provision is otherwise made by this Act;  
or
- (b) to the extent that a referee or tribunal specifies in an order under this part;

an order takes effect when a copy of the order, certified by the referee to be a true copy, is served—

- (c) where the order requires a person to do or refrain from doing a specified act—on that person; or
- (d) in any other case—on the body corporate for the parcel to which the order relates.

## **117 Inquiries**

The referee shall, upon inquiry having been made to the referee by a person in writing in or to the effect of the approved form and upon payment of the fee prescribed in respect of the inquiry—

- (a) by notice in writing, inform that person whether or not—
- (i) any application (being an application that has not been finally disposed of at a date and time specified in the notice) has been received by the referee for an order under this Act with respect to the parcel to which the inquiry relates; or



- (ii) any order has been made under this Act within the period of 6 years prior to the inquiry with respect to that parcel, being an order of a class prescribed for the purposes of this subparagraph and specified in the inquiry; and
- (b) where any such application has been received by the referee or any such order has been so made—provide in that notice particulars of the application or order, as the case may be.

### **118 Referee or tribunal not to have jurisdiction where title to land in question**

Notwithstanding any other provision of this part, a referee or tribunal shall not have jurisdiction under this part in any case in which the title to land is in question otherwise than for the purpose of determining any matter before the referee or tribunal, as the case may be, and any determination made by the referee or tribunal shall not have any force or effect except as provided by this Act.

## **Part 6 General**

### **119 Other rights and remedies not affected by this Act**

- (1) Nothing in this Act derogates from any rights or remedies that a proprietor or mortgagee of a lot or a body corporate may have in relation to any lot or the common property apart from this Act.
- (2) Where the Court in which any proceedings to enforce any rights or remedies referred to in subsection (1) is of the opinion that, having regard to the subject matter of the proceedings, the taking of the proceedings was not, in the circumstances of the case, warranted by reason that part 5 makes adequate provision for the enforcement of those rights or remedies, the Court shall order the plaintiff to pay the

defendant's costs in such amount as may be determined by the Court.

## 120 Reservation of name

- (1) A person may make an application in the approved form and in the way prescribed by regulation, accompanied by the relevant titles registry fee, to the land registry for the reservation of a name set out in the application as the name of a building in a proposed building units plan or the name of a parcel in a proposed group titles plan.
- (2) If the registrar of titles is satisfied as to the bona fides of the application and that the proposed name is a name with which the plan could be registered without contravention of section 9 the registrar shall reserve the proposed name in the manner prescribed for a period of 2 years from the date of the lodging of the application.
- (3) If, at any time during the period for which a name is reserved, an application, accompanied by the relevant titles registry fee, is made to the land registry for an extension of that period and the registrar of titles is satisfied as to the bona fides of the application, the registrar may extend that period for a further period of 1 year.
- (4) During a period for which a name is reserved—
  - (a) in respect of a proposed building units plan—another building units plan or a leasehold building units plan within the meaning of the *South Bank Corporation Act 1989*; or
  - (b) in respect of a proposed group titles plan—another group titles plan;shall not be registered under this Act whether originally or on change of name, under the reserved name.
- (5) The reservation of a name under this section in respect of a proposed plan does not in itself entitle a plan to be registered by that name.

- (6) An applicant for the reservation of a name who, during the period for which that name is reserved—
- (a) lodges the plan in respect of which that name is reserved; or
  - (b) decides not to proceed with the registration of the plan in respect of which that name is reserved; or
  - (c) decides not to register the plan in the name so reserved; shall notify the land registry to that effect and—
  - (d) in the case of paragraph (a)—the registrar of titles shall note the registrar’s records accordingly; and
  - (e) in the case of paragraph (b) or (c)—the name shall cease to be reserved.

**121 Body corporate is representative of proprietors in proceedings**

- (1) Where the proprietors of the lots the subject of a plan are jointly entitled to take proceedings against any person or are liable to have proceedings taken against them jointly (any such proceedings being proceedings for or with respect to common property), the proceedings may be taken by or against the body corporate and any judgment or order given or made in favour of or against the body corporate in any such proceedings shall have effect as if it were a judgment or order given or made in favour of or against the proprietors.
- (2) Where a proprietor is liable to make a contribution to another proprietor in respect of a judgment debt arising under a judgment referred to in subsection (1), the amount of that contribution shall bear to the judgment debt the same proportion as the lot entitlement of the lot of the firstmentioned proprietor bears to the aggregate lot entitlement.

### **121A Limited right of action by body corporate**

- (1) A body corporate shall not institute proceedings against any person other than a proprietor without first obtaining the approval therefor of the body corporate by special resolution.
- (2) This section does not apply to an application by a body corporate under section 72 for an order under part 5, division 3.

### **122 Body corporate's power to take proceedings as agent for proprietor in case of structural defects**

Where—

- (a) the condition of any lot in a parcel affects or is likely to affect the support or shelter provided by that lot for another lot in the same building or the common property; and
- (b) the proprietor of the lot in that condition has neglected or refused within a reasonable time to take any proceedings under the *Queensland Building and Construction Commission Act 1991* or for the purpose of exercising any other right or enforcing any other remedy available to the proprietor to have that condition rectified;

the body corporate may, as agent for the proprietor of the lot in that condition but at its own expense, take any of the proceedings referred to in paragraph (b).

### **123 Dividing fences**

- (1) For the purposes of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* the body corporate in respect of a plan shall be deemed to be the owner of the parcel the subject of that plan, other than such part (if any) of that parcel which is the subject of a lease accepted or acquired by the body corporate under section 21.
- (2) The provisions of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* apply in respect of the common

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boundaries between lots in a group titles plan as if the proprietors of the lots were the owners of adjoining land.

## **124 Costs in proceedings by proprietors against body corporate**

- (1) In any proceedings brought by 1 or more proprietors against the body corporate, the Court may order that any moneys (including costs) payable by the body corporate pursuant to an order of the Court made in those proceedings shall be paid, only in respect of such lots as are specified in the order and in such proportions as may be so specified, by the body corporate out of contributions levied for the purpose.
- (2) Where a Court makes an order under subsection (1) the body corporate shall, for the purpose of paying the moneys ordered to be paid by it, levy contributions in accordance with the terms of the order and shall pay the moneys out of the contributions paid pursuant to that levy.
- (3) The provisions of section 32 with such modifications as may be necessary apply to and in respect of contributions levied under subsection (2) in the same way as those provisions apply to contributions levied under that section.

## **125 Apportionment of statutory charges**

- (1) Where by reason of any Act or of anything done under the authority of any Act, any expenditure by a public authority or local government would, if the parcel were not the subject of a plan, be a charge on the land comprised in that parcel, that expenditure is a charge on each lot for an amount bearing to the whole of that expenditure the same proportion as the lot entitlement of that lot bears to the aggregate lot entitlement.
- (2) The proprietor or mortgagee of a lot the subject of a charge referred to in subsection (1) may pay to the authority or local government entitled to the charge the amount thereof and thereupon—
  - (a) the lot and the appurtenant beneficial interest in the common property are freed from the charge; and

- (b) the authority or local government has no legal rights against the proprietor or the proprietor's lot or appurtenant beneficial interest in common property in respect of the subject matter of the charge.

## **126 Notice of application for order under s 25 or 26**

- (1) The Court may, in respect of any proceedings on an application for an order under section 25 or 26, make either or both of the following orders—
  - (a) order that public notice, by advertisement or otherwise, be given of the proceedings;
  - (b) order that service of notice of the application upon any person be dispensed with.
- (2) The Court shall not make an order referred to in subsection (1)(b) in respect of any person unless the Court is satisfied that—
  - (a) that person can not be found in Queensland; or
  - (b) it is uncertain whether that person is living; or
  - (c) service can not be effected upon that person without expense disproportional to the value (if any) of the person's interest.

## **127 Service of documents on body corporate, proprietors and others**

- (1) A summons or other legal process may be served on a body corporate by leaving it with the chairperson or secretary of the body corporate or with any member of the committee.
- (2) A document other than a document referred to in subsection (1) may be served on a body corporate—
  - (a) by leaving it with any person referred to in subsection (1) or in the receptacle provided by the body corporate in accordance with section 37(1)(d); or

- (b) by post on the body corporate at its address recorded on the registered plan or at the address of the parcel.
- (3) Subject to this Act, a notice or other document required or authorised by this Act to be served by a referee, a tribunal, a body corporate, a committee or the secretary of a committee on a proprietor, lessee, mortgagee or occupier of a lot may be served—
- (a) by leaving it with some person apparently of or above the age of 16 years—
    - (i) where the person to be served is an occupier of the lot—at the lot; or
    - (ii) where an address for the service of notices on the person to be served is recorded in the roll—at the address so recorded; or
  - (b) by post on the person to be served, where an address for the service of notices on that person is recorded in the roll, at the address so recorded; or
  - (c) in the case of a proprietor—in any manner authorised by the by-laws for the service of notices on proprietors.
- (4) Notice under section 44(5) may be served on a person—
- (a) personally or by post; or
  - (b) by leaving it with a person apparently of or above the age of 16 years at the place of residence or place of business of the firstmentioned person.

## **128 Powers of entry by public authority or local government**

A public authority or local government which is authorised by any Act to enter upon part of a parcel for the purpose of exercising any power conferred on it may enter upon any other part of that parcel if it is necessary to do so in order to exercise that power.

## **129 Powers of entry of referee in certain cases**

- (1) Where a referee believes on reasonable grounds that—
- (a) an offence against any provision of this Act; or
  - (b) a breach of the by-laws;
- has been or is being committed upon any part of a parcel, the referee may, at any reasonable time on reasonable notice given to an occupier of that part of the parcel enter upon that part for the purpose of ascertaining whether that offence or breach has been or is being committed.
- (2) When exercising the power under subsection (1), the referee may, if the referee thinks fit, be accompanied by—
- (a) the chairperson, secretary or treasurer of the body corporate or other member of the committee; or
  - (b) the body corporate manager (if any) of the parcel concerned.
- (3) A person shall not obstruct or hinder—
- (a) the referee, in the exercise of the power under subsection (1); or
  - (b) a person accompanying the referee in pursuance of subsection (2).

Maximum penalty— $2\frac{2}{3}$  penalty units.

## **130 Voting rights**

- (1) Any powers of voting conferred by or under this Act may be exercised—
- (a) in the case of a proprietor who is an infant—by the proprietor's guardian; or
  - (b) in the case of a proprietor who is for any reason unable to control the proprietor's property—by the person who for the time being is authorised by law to control that property; or



- (c) in the case of a proprietor or a registered mortgagee which is a corporation—by the company nominee.
- (2) Where the Court upon the application of the body corporate or of any proprietor or of any registered mortgagee is satisfied that there is no person able to vote in respect of a lot or that the person able to vote in respect of a lot can not be found, the Court—
- (a) in cases where a unanimous resolution is required by this Act—shall; and
- (b) in its discretion in any other case—may;
- appoint the public trustee or some other fit and proper person for the purpose of exercising such powers of voting under this Act as the Court shall determine.
- (3) The Court may order service of notice of an application under subsection (2) on such persons as it thinks fit or may dispense with service of such notice.
- (4) On making an appointment under subsection (2) the Court may make such order as it thinks necessary or expedient to give effect to the appointment including an order as to the payment of costs of the application, and may vary an order so made.
- (5) The powers of the Court under this section may be exercised by the registrar in the first instance, who may refer the application to a judge and who shall so refer it at the request of the applicant or any respondent.
- (6) In this section and in section 132—
- registrar* means the registrar of the Court at Brisbane, Rockhampton or Townsville, as the case may be, and includes a deputy registrar.

## 131 Voting rights of first mortgagees

Where a proprietor's interest is subject to a registered first mortgage notice of which has been given pursuant to

section 53 to the body corporate, the power of voting conferred upon a proprietor by or under this Act—

- (a) where a unanimous resolution is required—shall be exercised by the mortgagee and shall not be exercised by the proprietor; or
- (b) in other cases—may be exercised by the proprietor unless the mortgagee, or where a mortgagee is a corporation, the company nominee of the corporation, is present personally or by proxy whereupon the mortgagee, or as the case may be, the company nominee may exercise the power of voting personally or by proxy and, if the mortgagee or company nominee does so, the proprietor shall not exercise that power.

### **132 Procedure upon application to Court**

- (1) Every application to the Court under this Act shall be by summons at chambers unless otherwise provided by rules of court made in relation thereto.
- (2) On an application, notice shall be served on such persons as the Court thinks fit or the Court may dispense with such notice.
- (3) The Court may, if it thinks fit, adjourn an application into Court and thereupon may give such directions as to all matters, including filing of pleadings as may appear necessary and proper for a final hearing of the application.
- (4) The Court may delegate to the registrar all or any of its powers under this Act.
- (5) The power to make rules of the Supreme Court includes power to make rules regarding the practice and procedure of the Court under this Act.

### **132A Education and information service**

- (1) The chief executive may provide an education and information service for helping—

- (a) proprietors, bodies corporate and other persons who have rights and obligations under this Act or a schedule 2 applied provision to become aware of the rights and obligations; and
- (b) proprietors, bodies corporate and other persons who have rights and obligations under part 5 or a part 5 applied provision to become aware of the processes for dispute resolution under part 5 or a part 5 applied provision; and
- (c) members of the public to become aware of—
  - (i) the rights and obligations mentioned in paragraph (a); and
  - (ii) the processes for dispute resolution mentioned in paragraph (b); and
- (d) referees to increase their proficiency.

(2) In this section—

***part 5 applied provision*** means a provision of part 5 as applied by any of the following provisions—

- (a) the *Integrated Resort Development Act 1987*, section 179A;
- (b) the *Mixed Use Development Act 1993*, section 214A;
- (c) the *Sanctuary Cove Resort Act 1985*, section 104A.

***schedule 2 applied provision*** means a provision of schedule 2 as applied by any of the following provisions—

- (a) the *Integrated Resort Development Act 1987*, section 106(6);
- (b) the *Mixed Use Development Act 1993*, section 172(8) and (9);
- (c) the *Sanctuary Cove Resort Act 1985*, section 27(5).

### **133 Offences**

- (1) Any person (including a body corporate) who contravenes or fails to comply with any provision of this Act, other than schedule 3, commits an offence against this Act and, if no penalty is expressly provided for that offence, shall be liable on conviction to a penalty not exceeding  $6\frac{2}{3}$  penalty units.
- (2) An offence against this Act shall be prosecuted in a summary way under the *Justices Act 1886*.

### **133A Responsibility for acts or omissions of representative**

- (1) This section applies in a proceeding for an offence against this Act.
- (2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—
  - (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.
- (4) In this section—

***representative*** means—

  - (a) of an individual—an employee or agent of the individual; or
  - (b) of an unincorporated body—a member of the body, or an employee or agent of the body; or
  - (c) of a partnership—a partner, employee or agent of the partnership; or

- (d) of a corporation—an executive officer, employee or agent of the corporation.

*state of mind*, of a person, includes—

- (a) the person’s knowledge, intention, opinion, belief or purpose; and
- (b) the person’s reasons for the intention, opinion, belief or purpose.

### **133B Approved forms**

- (1) The registrar of titles may approve forms for use under this Act in relation to a titles registry function performed under this Act.
- (2) The chief executive may approve forms for use under this Act other than in circumstances mentioned in subsection (1).

### **133C Fees for titles registry functions**

The fees provided under the *Queensland Future Fund (Titles Registry) Act 2021* are payable in relation to a titles registry function performed under this Act.

*Note—*

See the *Queensland Future Fund (Titles Registry) Act 2021*, part 3.

### **134 Regulation-making power**

- (1) The Governor in Council may, from time to time, make regulations not inconsistent with this Act for or with respect to—
  - (a) the preparation of plans and documents for the purposes of this Act; and
  - (b) the plans and documents that under this Act may be lodged in the land registry; and
  - (c) the registration in the land registry of plans and documents; and

[s 135]

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- (d) the fees to be paid in respect of applications made to a referee or a tribunal under this Act and the remission of any such fees; and
  - (e) the nomination and election of the offices of chairperson, secretary and treasurer of bodies corporate and of other members of committees; and
  - (f) the practice and procedure to be followed by referees and tribunals; and
  - (g) the enforcement of orders made by referees and tribunals; and
  - (h) any matter or thing which by this Act is required or permitted to be prescribed or is necessary or convenient to be prescribed for carrying out or giving effect to any provision of this Act.
- (2) A regulation made under subsection (1) may impose a penalty not exceeding  $2\frac{2}{3}$  penalty units for an offence against a regulation.
- (3) A regulation made under subsection (1) may make provisions which differ in their application according to such factors as are specified in the regulation.

## **Part 7                      Additional transitional provisions**

### **Division 1                Transitional provision for Audit Legislation Amendment Act 2006**

#### **135      Transitional provision for Audit Legislation Amendment Act 2006**

- (1) This section applies if, before the commencement, a body corporate appointed a person mentioned in pre-amended section 29B(2)(b) to carry out an audit of the books and accounts of the body corporate—

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- (a) for the 2004–2005 financial year and the person has not carried out the audit; or
- (b) for the 2005–2006 financial year.
- (2) For the purpose of the person carrying out the audit, pre-amended section 29B(2)(b) continues to apply as if the *Audit Legislation Amendment Act 2006* had not commenced.
- (3) In this section—
- commencement* means commencement of this section.
- pre-amended*, in relation to section 29B(2)(b), means the provision as in force before the commencement.

## Division 2                      **Transitional provisions for Land Sales and Other Legislation Amendment Act 2014**

### 136      **Definitions for div 2**

In this division—

*amendment Act* means the *Land Sales and Other Legislation Amendment Act 2014*.

*commencement* means the commencement of this division.

*contract*, for the purchase of a proposed lot, means a contract, agreement or other document legally binding or intended to bind a purchaser in relation to the purchase.

### 137      **Application of s 48G**

Section 48G applies only in relation to a grant of an option to purchase a proposed lot entered into after the commencement.

### 138      **Application of s 49**

- (1) Section 49 as in force before the commencement continues to apply in relation to a contract for the purchase of a proposed

lot entered into before the commencement as if the amendment Act had not been enacted.

- (2) Section 49 as in force after the commencement applies only in relation to a contract for the purchase of a proposed lot entered into after the commencement.

### **139 Application, and modified application, of s 49B**

- (1) Section 49B applies only in relation to a contract for the sale of a proposed lot entered into by a purchaser after the commencement.
- (2) However, section 49B as modified under subsection (3) applies in relation to the contract for the sale of the proposed lot if—

- (a) the proposed lot is a proposed lot mentioned in the *Land Sales Regulation 2000*, schedule 2 as in force immediately before the repeal of that regulation; and

*Note—*

Under old LSA, section 28, a period could be prescribed by regulation for giving a registrable instrument for a proposed lot.

- (b) the contract does not provide the date by which it must be settled.
- (3) Section 49B is modified by omitting subsection (1)(b) and inserting the following—
  - ‘(b) if the contract does not provide the date by which it must be settled—the end of the period prescribed in the repealed *Land Sales Regulation 2000*, schedule 2 worked out from the day the contract was entered into.’

- (4) In this section—

*old LSA, section 28* means section 28 of the *Land Sales Act 1984* as in force immediately before the commencement.



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**140 Application of pt 4, div 3, sdiv 2**

Part 4, division 3, subdivision 2 applies only in relation to amounts paid under a contract for the sale of a proposed lot entered into after the commencement.

**141 Continuing application of old LSA, part 3**

- (1) Old LSA, part 3 continues to apply in relation to a contract for the sale of a proposed lot entered into before the commencement as if the amendment Act had not been enacted.
- (2) However, if, at any time before the settlement of a contract to which the part applies, the parties to the contract agree to settle the sale using e-conveyancing, the part is to be read with the following changes—
  - (a) old LSA, section 22(4)(a)—  
*omit, insert—*  
‘(a) the vendor or the vendor’s agent can not require the purchaser to settle; and’;
  - (b) old LSA, section 23(1), ‘, without becoming entitled in terms of the instrument to receive a registrable instrument of transfer in exchange therefor’—  
*omit, insert—*  
‘(but excluding an amount payable at settlement)’;
  - (c) old LSA, section 23(4)—  
*omit;*
  - (d) old LSA, section 25(2)(a)—  
*omit, insert—*  
‘(a) before settlement of the sale of the proposed lot; or’;
  - (e) old LSA, section 25(2)(b)(ii)—  
*omit, insert—*

- ‘(ii) before settlement of the sale of the proposed lot;’;
- (f) old LSA, section 27, heading—  
*omit, insert—*  
**‘27 Purchaser’s rights if purchase not settled within a certain period’;**
- (g) old LSA, section 27(1)(b), ‘the vendor has not given the purchaser a registrable instrument of transfer for the lot’—  
*omit, insert—*  
‘the sale of the proposed lot has not been settled’;
- (h) old LSA, section 27(2), ‘before the vendor gives the purchaser the registrable instrument of transfer for the proposed lot’—  
*omit, insert—*  
‘before the sale of the proposed lot has been settled’;
- (i) old LSA, section 28, heading, ‘for giving of registrable instrument’—  
*omit.*
- (3) In this section—

*e-conveyancing* see the *Property Law Act 1974*, section 58A.

*old LSA*, followed by a provision number, means the provision with that number in the *Land Sales Act 1984* as in force at any relevant time before the commencement.

## **Division 3                      Savings provision for Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020**

### **142      Saving of operation of expired pt 6A**

- (1) This section applies for the expiry of part 6A.

*Note—*

Part 6A expires on the COVID-19 legislation expiry day. See section 134E, which also expires on the COVID-19 legislation expiry day.

- (2) Part 6A is declared to be a law to which the *Acts Interpretation Act 1954*, section 20A applies.

## **Division 4                      Transitional provision for Queensland Future Fund (Titles Registry) Act 2021**

### **143      Approved forms**

- (1) This section applies to a form approved under the *Building Units and Group Titles Regulation 2008*, section 4 as in force before the commencement if the form is in force immediately before the commencement.
- (2) From the commencement, the form is taken to be—
- (a) if the form was approved for use for section 41 or 117—a form approved by the referee under section 133B(1); or
  - (b) if the form was approved for use in relation to a titles registry function performed under this Act—a form approved by the registrar of titles under section 133B(2); or
  - (c) otherwise—a form approved by the chief executive under section 133B(3).

## **Division 5**                      **Transitional provisions for Building Units and Group Titles and Other Legislation Amendment Act 2022**

### **144**    **Application of s 32A**

Section 32A(2) applies only to a contribution levied by a body corporate that becomes due for payment after the commencement.

### **145**    **Application of s 38D**

Section 38D(1)(d) applies only in relation to a meeting of a body corporate held after the commencement.

### **146**    **Elected persons who are not electable persons**

- (1) This section applies if a person elected as chairperson, secretary or treasurer of a body corporate, or as a member of a committee, immediately before the commencement is not an electable person for the body corporate.
- (2) On the commencement, the person vacates the person's office.
- (3) Section 43(3) to (8) applies in relation to the vacancy.
- (4) In this section—  
*electable person*, for a body corporate, see section 41B.

### **147**    **Application of s 45**

- (1) Section 45(5)(a) applies only in relation to a meeting of a committee held after the commencement.
- (2) Section 45(5)(b) applies only in relation to a resolution passed after the commencement.

**148 Existing applications for orders under part 5**

- (1) This section applies in relation to an application for an order under part 5 made, but not decided, before the commencement.
- (2) The referee may continue to deal with the application under this Act as in force before the commencement as if the *Building Units and Group Titles and Other Legislation Amendment Act 2022* had not been enacted.

**149 Approved forms**

- (1) This section applies to a form approved under section 133B(1) as in force before the commencement if the form is in force immediately before the commencement.
- (2) From the commencement, the form is taken to be a form approved by the chief executive under section 133B(2).

## **Schedule 2      Meetings of, and voting at meetings of, body corporate**

section 29

### **Part 1              First annual general meeting**

#### **1              Interpretation**

In this part—

*business* means the items in the agenda referred to in section 29(2) of this Act.

*meeting* means the first annual general meeting of a body corporate.

#### **2              Inspection of roll by original proprietor**

For the purposes of preparing the notices referred to in section 3, an original proprietor, whether or not the original proprietor has ceased to be a proprietor, or the original proprietor's agent authorised in writing is entitled to inspect the roll without making payment or written application.

#### **3              Notice of meeting and contents thereof**

(1) Notice of the meeting shall be served on each person (other than the original proprietor) who is a proprietor or first mortgagee of a lot, as ascertained from the roll, at least 14 days before the meeting and shall—

(a) set forth the date and time when and the place where the meeting is to be held and set forth as the agenda of the meeting the items referred to in section 29(2) of this Act and, if an item referred to in section 29(2A) of this Act is to be moved, that item and any other appropriate items; and

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- (b) inform each person to whom the notice is addressed that the person or, where the notice is addressed to a corporation, a company nominee of the corporation, may vote at the meeting—
- (i) in the case of a proprietor of a lot subject to a mortgage shown on the roll—only in accordance with section 131 of this Act; and
  - (ii) except in the case of a motion requiring a unanimous resolution or resolution without dissent—only if all contributions levied and payable on the lot, and any other moneys recoverable under this Act by the body corporate from the person to whom the notice has been addressed at the date of the notice (being contributions levied on the person, or moneys recoverable from the person, in respect of the lot of which the person is the proprietor or first mortgagee) have been duly paid before the commencement of the meeting; and
  - (iii) either in person at the meeting or by proxy given in writing to the secretary of the body corporate before a time specified in the notice (being a time not later than the time for the holding of the meeting).
- (2) Notwithstanding subsection (1), where the meeting referred to in that subsection is a meeting of a body corporate continued by the operation of section 5(3) of this Act, notice of that meeting may be served on a proprietor or first mortgagee of a lot whose name does not appear on the roll by prominently displaying the notice, in the case of a building units plan, within the building on some part of the common property or, in the case of a group titles plan, on some part of the common property.
- (3) Where it is served on a first mortgagee of a lot, notice of the meeting shall include the name of the proprietor of the lot and the addresses of the lot.
- (4) A meeting shall not be held at any place outside a radius of 15km from the parcel if, prior to the commencement of the

meeting, 25% of the persons entitled to vote at the meeting object to that place by notice in writing to the secretary of the committee.

#### **4 Restrictions on submitting motions**

- (1) A motion shall not be submitted to the meeting unless it relates to the business of the meeting.
- (2) A person is not entitled to move a motion at a meeting or to nominate a person for election as the chairperson, secretary or treasurer of the body corporate or a member of the committee unless the person is entitled to vote on that motion or in that election.
- (3) For the purposes of subsection (2), a proprietor who but for the existence of a mortgage over the proprietor's lot would be entitled to vote on a motion or in an election or a company nominee of any such proprietor that is a corporation shall be deemed to be entitled to vote on that motion or in that election.

#### **5 Persons entitled to vote at meetings**

- (1) Subject to section 131 of this Act, a person is entitled to vote at a meeting in respect of any lot only if the person is the proprietor of that lot as shown on the roll or, where the proprietor so shown is a corporation, the company nominee of that corporation as shown on that roll.
- (2) Notwithstanding any other provision of this section, a first mortgagee of a lot as shown on the roll, or, where the first mortgagee is a corporation, the company nominee, as shown on that roll, of that corporation is entitled to cast a vote at a meeting in respect of that lot in accordance with section 131 of this Act.
- (3) Notwithstanding section 53(11) of this Act coproprietors or comortgagees shall only be entitled to cast a vote by a person duly appointed in writing as a proxy by them jointly and if notice of the person's appointment has been given to the



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secretary of the body corporate before the commencement of the meeting.

- (4) Only the proprietor entitled to the first of 2 or more successive estates in a lot is, subject to this part, entitled to cast a vote at a meeting.
- (5) A proprietor who is the trustee of a lot is, subject to this part, entitled to cast a vote at a meeting and the persons beneficially interested in the trust are not entitled to cast a vote.
- (6) Notwithstanding any other provision of this Act, a person shall not be entitled to cast a vote at a meeting except in respect of a motion for a resolution which to be effective must be passed by unanimous resolution or resolution without dissent unless—
  - (a) all contributions levied and due and payable at least 30 days before the meeting in respect of the lot in respect of which the person is entitled to vote; and
  - (b) any other moneys recoverable under this Act by the body corporate from the person at the date of the notice given under section 3(1);

have been duly paid before the commencement of the meeting.

- (7) The voting rights conferred by this section are subject to section 53(11) and (12) of this Act.

## **6 Quorum**

- (1) Business shall not be considered at a meeting unless the number of persons present at that meeting either personally or by proxy and entitled to vote constitutes a quorum.
- (2) Except as provided in subsection (3), one-fourth of the persons entitled to vote on any matter at a meeting constitutes a quorum for considering that matter.
- (3) Where there is no quorum, as provided in subsection (2), for considering any matter at a meeting within one-half hour after that matter arises for consideration at that meeting, the meeting shall stand adjourned to the same day in the next

week at the same place and time and if there is no quorum, as provided in subsection (2), for considering that matter at the adjourned meeting within one-half hour after that matter arises for consideration, the number of persons present personally or by proxy and entitled to vote constitutes a quorum for considering that matter.

## **7 Motions out of order**

The chairperson of a meeting may rule a motion out of order if the chairperson considers that the motion, if carried, would conflict with this Act or the by-laws or would otherwise be unlawful or unenforceable.

## **8 Method of casting votes**

Except as provided in section 5(3), a vote may be cast at a meeting by a person entitled to vote, either personally or by the person's proxy duly appointed in writing.

## **9 Chairperson to preside**

The chairperson of the body corporate, if present shall preside at the meeting and, in the chairperson's absence, the persons present and entitled to vote at the meeting may elect one of their number to preside at the meeting and the person so elected shall, while the person is so presiding, be deemed to be the chairperson of the body corporate.

## **10 Chairperson to have available names of persons entitled to vote**

The chairperson at a meeting shall have available for inspection, before submitting a matter to a vote at the meeting, a list of the names of the persons who are entitled to vote on that matter.

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**11 Counting of votes on election of chairperson, secretary, treasurer and committee**

Each person entitled to vote on an election of the chairperson, secretary and treasurer of the body corporate and other members of the committee has 1 vote in respect of each lot in respect of which the person is entitled to vote.

**12 Counting of votes**

(1) Subject to this section, a motion submitted at a meeting shall be decided according to the number of votes cast for and against the motion, whether personally or by proxy, each person entitled to vote having 1 vote in respect of each lot in respect of which the person is entitled to vote.

(2) If—

(a) a poll is demanded by any person entitled to vote at a meeting on a motion submitted at that meeting, whether or not the motion has been decided in accordance with subsection (1), and the demand is made by that person personally at the meeting; or

(b) a motion submitted at the meeting is for a resolution which, if it is to be effective, is required by this Act to be a special resolution;

the motion shall be decided according to the value, ascertained in accordance with subsection (3), of the votes cast for and against the motion, whether personally or by proxy.

(3) For the purposes of subsection (2) the value of a vote cast on a motion submitted at a meeting by a person entitled to vote in respect of a lot is equal to the lot entitlement of that lot.

(4) Any one coproprietor or comortgagee may demand a poll and on any poll each coproprietor or comortgagee shall be entitled to such part of the vote applicable to a lot as is proportional to his or her interest in the lot.

(4A) A joint proxy (if any) on a poll shall have a vote proportional to the interests in the lot of such of the coproprietors or

comortgagees as do not vote personally or by individual proxy.

- (5) A poll shall be taken in such manner as the chairperson thinks fit.
- (6) A demand for a poll may be withdrawn by the person who made it.
- (7) In the case of equality in the votes whether on a show of hands or on a poll the chairperson of the meeting shall be entitled to a casting vote in addition to the chairperson's original vote whether or not the chairperson has exercised that original vote.

### **13 Chairperson's declaration of vote**

The declaration of the chairperson of the result of the voting on any motion submitted at a meeting, otherwise than on a poll, shall be conclusive without proof of the votes recorded for or against the motion.

### **14 Amendment or revocation of certain resolutions**

A unanimous resolution, resolution without dissent or special resolution of a body corporate may not be amended or revoked at a meeting except by a subsequent unanimous resolution, resolution without dissent or special resolution, as the case may be.

### **15 Appointment of proxy**

- (1) An instrument appointing a proxy shall be in writing under the hand of the person making the appointment or the person's attorney, and may be either general or for a particular meeting.
- (2) A proxy need not be a proprietor.



- (b) set forth the date and time when and the place where the meeting is to be held; and
  - (c) where it is so served on a first mortgagee of a lot—include the name of the proprietor of the lot and the addresses of the lot; and
  - (d) set forth the business of the meeting and therein, in respect of each motion to be considered by the meeting, specify whether the motion to be carried requires a resolution, special resolution, resolution without dissent or unanimous resolution; and
  - (e) where it is so served pursuant to a requisition referred to in subsection (3)(a), specify a date for the convening of the extraordinary general meeting to which it relates that is not later than 1 month after the date on which the secretary or member, as the case may be, of the committee received the requisition.
- (4AA) Nothing in subsection (4)(a) requires a proprietor to serve on himself or herself notice referred to therein.
- (4A) A general meeting of a body corporate shall not be held at any place outside a radius of 15km from the parcel if, prior to the commencement of the meeting, 25% of the persons entitled to vote at the meeting object to that place by notice in writing to the secretary of the committee.
- (5) Every notice for an annual general meeting shall—
- (a) be accompanied by a copy of the statement of accounts of the body corporate last prepared by the body corporate in accordance with section 38D(1)(c) of this Act and, where the accounts of the body corporate for that period are required by this Act to be audited a copy of a certificate by the auditor certifying whether the statement of accounts—
    - (i) is in agreement with the accounts; and
    - (ii) in the auditor’s opinion fairly sets out the financial transactions for the period to which it relates and shows a true and fair view of the state of affairs at the close of that period; and

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- (b) include a form of motion for adoption of those accounts; and
  - (ba) include a form of motion for the appointment of a qualified auditor to audit the accounts of the body corporate for the next ensuing financial year; and
  - (c) when necessary, be accompanied by a ballot paper for the election of candidates as chairperson, secretary and treasurer of the body corporate and as other members of the committee; and
  - (d) if no nomination is received for any such position prior to the closing date, contain advice that the position will be filled from nominations received from the floor of the meeting.
- (5A) The notice for an annual general meeting may include a motion that the accounts of the body corporate relating to the next ensuing financial year shall not be audited.
- (5B) However, such a motion shall not be carried except by a special resolution.
- (5C) If the motion is so carried the motion referred to in subsection (5)(ba) shall not be proceeded with.
- (5D) Nothing in subsections (5A) to (5C) shall prevent a body corporate resolving by ordinary resolution that the accounts of the body corporate relating to any period specified in the resolution shall be audited.
- (6) Every notice for an annual general meeting or an extraordinary general meeting shall—
- (a) include—
    - (i) a form of motion to confirm the minutes of the last general meeting; and
    - (ii) where the notice is for a meeting required to be convened by a person appointed under section 43(5) of this Act for the purpose of appointment of members of a committee, a form of motion for election of those members; and
    - (iii) a form of each other motion which—

- (A) relates to the striking of a special monetary levy on all proprietors; or
  - (B) seeks to alter the rights, privileges or obligations of proprietors; or
  - (C) seeks to alter the annual monetary contribution of proprietors;
- to be considered at the meeting; and
- (b) be accompanied by—
    - (i) a voting paper in respect of each motion referred to in paragraph (a) to be considered and determined at the meeting for use by a person entitled to vote if the person wishes to cast a vote in writing; and
    - (ii) a copy of the minutes of the last general meeting; and
  - (c) inform each person to whom the notice is addressed that the person or, where the notice is addressed to a corporation, a company nominee of the corporation may vote in respect of each motion and, where relevant, on election of the chairperson, secretary and treasurer of the body corporate and other members of the committee—
    - (i) in the case of a proprietor of a lot subject to a mortgage shown on the roll—only in accordance with section 131 of this Act; and
    - (ii) except in the case of a motion requiring a unanimous resolution or a resolution without dissent—only if all contributions levied in respect of the lot and due and payable at least 30 days before the meeting, and any other moneys recoverable under this Act by the body corporate from the person to whom the notice is addressed at the date of the notice (being contributions levied on the person, or moneys recoverable from the person, in respect of the lot of which the person is the proprietor or first mortgagee) have been duly paid before the commencement of the meeting; and



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- (iii) either—
- (A) in person at the meeting; or
  - (B) by a person appointed in writing given to the secretary of the body corporate before a time specified in the notice (being a time not later than the time for the holding of the meeting) as a proxy; or
  - (C) in respect of some or all of the motions set out in the notice by casting the person's vote on the voting paper referred to in paragraph (b) accompanying the notice; or
  - (D) in respect of the election of the chairperson, secretary or treasurer of the body corporate and other members of the committee, by furnishing to the secretary of the body corporate the ballot paper given to the person in accordance with subsection (5)(c) indicating the person's vote thereon.
- (6A) A person is not entitled to submit a motion for inclusion in the agenda of a meeting, to move a motion at the meeting or to nominate a person for election as the chairperson, secretary or treasurer of the body corporate or a member of the committee unless the person is entitled to vote on that motion or in that election.
- (6B) For the purposes of subsection (6A), a proprietor who but for the existence of a mortgage over the proprietor's lot or the proprietor's failure to pay any contribution levied or other amount recoverable by the body corporate, would be entitled to vote on a motion or in an election or a company nominee of any such proprietor that is a corporation shall be deemed to be entitled to vote on that motion or in that election.
- (7) A motion shall not be submitted at a general meeting unless notice of the motion has been given in accordance with this section.
- (8) A reference in subsection (7) to a motion includes a reference to a motion to amend a motion unless there is no vote cast in

writing, as referred to in section 5(b), in respect of the motion sought to be amended.

- (9) The chairperson of a general meeting may with the consent of the meeting adjourn any general meeting from time to time and from place to place but no business shall be transacted at an adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (10) No business shall be raised at a meeting unless that business is set forth in the notice of the meeting.

## **2 Persons entitled to vote at general meetings**

- (1) Subject to section 131 of this Act, a person is entitled to vote in respect of any lot on any motion submitted at a general meeting of a body corporate or on an election of the chairperson, secretary and treasurer of the body corporate and other members of the committee only if the person is the proprietor of that lot as shown on the roll or, where the proprietor so shown is a corporation, the company nominee of that corporation as shown on that roll.
- (2) Notwithstanding any other provision of this section, a first mortgagee of a lot, as shown on the roll, or, where the first mortgagee is a corporation, the company nominee, as shown on that roll, of that corporation is entitled to vote in respect of that lot on any motion submitted at a general meeting of a body corporate or on an election of the chairperson, secretary and treasurer of the body corporate and members of the committee in accordance with section 131.
- (3) Notwithstanding section 53(11) of this Act, coproprietors or comortgagees including, where a coproprietor or comortgagee is a corporation, the company nominee of that corporation as shown on the roll shall only be entitled to cast a vote by a person duly appointed in writing as a proxy by them jointly and if notice of the person's appointment has been given to the secretary of the body corporate before the commencement of the meeting at which the vote is cast or by furnishing to the secretary of the body corporate a voting paper referred to in section 1(6)(b) indicating their joint vote on that motion or,

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where relevant, a ballot paper, duly completed, referred to in section 1(5)(c).

- (4) Only the proprietor entitled to the first of 2 or more successive estates in a lot or, where that proprietor is a corporation, the company nominee of that corporation as shown on the roll is, subject to this part, entitled to cast a vote on a motion submitted at a general meeting of a body corporate or on an election of the chairperson, secretary and treasurer of the body corporate and other members of the committee.
- (5) A proprietor who is the trustee of a lot or, where that proprietor is a corporation, the company nominee of that corporation as shown on the roll is, subject to this part, entitled to cast a vote on a motion submitted at a general meeting of a body corporate or on an election of the chairperson, secretary and treasurer of the body corporate and other members of the committee and the persons beneficially interested in the trust are not entitled to cast such a vote.
- (6) Notwithstanding any other provision of this Act, at a general meeting of the body corporate a person shall not be entitled to vote in respect of—
  - (a) any motion other than a motion which to be effective must be passed by unanimous resolution or resolution without dissent; or
  - (b) the election of the chairperson, secretary or treasurer of the body corporate or the other members of the committee;

unless—

- (c) all contributions levied and due and payable at least 30 days before the meeting in respect of the lot in respect of which the person is entitled to vote; and
- (d) any other moneys recoverable under this Act by the body corporate from the person or the proprietor of the lot at the date of the notice given under section 1(4);

have been duly paid before the commencement of the meeting.

- (7) The voting rights conferred by this section are subject to section 53(11) and (12) of this Act.

### **3 Quorum**

- (1) A motion submitted at a general meeting of a body corporate shall not be considered at that meeting and an election of the chairperson, secretary and treasurer of the body corporate and other members of the committee shall not be held at a meeting of the body corporate unless the number of persons present at that meeting either personally or by proxy and entitled to vote, together with the number of voters whose votes are cast in writing on that motion or election, constitute a quorum for considering that motion or holding that election.
- (2) Except as provided in subsection (3), one-fourth of the persons entitled to vote on a motion or on an election of chairperson, secretary and treasurer of the body corporate and other members of the committee constitute a quorum for considering that motion or holding that election.
- (3) Where there is no quorum, as provided in subsection (2), for considering any motion or holding an election of chairperson, secretary and treasurer of the body corporate and other members of the committee at a general meeting of a body corporate within one-half hour after that motion or business arises for consideration at that meeting, the meeting shall stand adjourned to the same day in the next week at the same place and time and if there is no quorum, as provided in subsection (2), for considering that motion or holding that election at the adjourned meeting within one-half hour after that motion or business arises for consideration, the number of persons present personally or by proxy and entitled to vote, together with the number of voters whose votes are cast in writing on that motion or on that election, constitute a quorum for considering that motion or business.
- (4) A general meeting of a body corporate is, subject to this section, validly held notwithstanding that the only person present at the meeting is the chairperson of the body corporate.

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#### **4 Motions out of order**

At a general meeting of a body corporate the chairperson may rule that a motion submitted at the meeting is out of order if—

- (a) the chairperson considers that the motion, if carried, would conflict with this Act or the by-laws or would otherwise be unlawful or unenforceable; or
- (b) except in respect of a motion to amend a motion—section 1(7) has not been complied with with respect to the motion; or
- (c) in respect of a motion to amend a motion—there is any vote cast in writing, as referred to in section 5(b), in respect of the motion sought to be amended.

#### **5 Method of casting votes**

Except as provided in section 2(3), a vote on a motion submitted at a general meeting of a body corporate or on an election of the chairperson, secretary and treasurer of the body corporate and other members of the committee may be cast—

- (a) by the person entitled to vote, either personally or by the person's proxy duly appointed in writing; or
- (b) by furnishing to the secretary of the body corporate a voting paper referred to in section 1(6)(b) indicating the vote of the person entitled to vote on that motion or a ballot paper, duly completed, referred to in section 1(5)(c), as the case may be.

#### **6 Withdrawal of voting paper**

Notwithstanding that a person entitled to vote at a general meeting of a body corporate has cast a vote on a motion submitted at that meeting or on an election of the chairperson, secretary and treasurer of the body corporate and other members of the committee by indicating the person's vote on that motion on a voting paper referred to in section 1(6)(b) or ballot paper referred to in section 1(5)(c), if the person attends that meeting either personally or by another person holding a proxy, the person may before commencement of the business

of the meeting notify the chairperson or secretary of the body corporate that the person withdraws that voting paper or ballot paper and, where the person does so—

- (a) for the purpose of determining whether there is a quorum for consideration of any such motion or for the holding of any such election at the meeting, the person's voting paper or ballot paper, as the case may be, shall be disregarded; and
- (b) for the purpose of counting the votes on that motion or that election, the person's voting paper or ballot paper shall be disregarded; and
- (c) the person or the person's proxy duly appointed in writing may vote on that motion or that election at the meeting in the same manner as if the person had not furnished that voting paper or ballot paper.

## **7 Chairperson to preside**

The chairperson of a body corporate shall preside at a general meeting of the body corporate at which the chairperson is present and, in the chairperson's absence from any such meeting, the persons present at that meeting and entitled to vote on motions submitted at that meeting may elect a person present at the meeting to preside at that meeting and the person so elected shall, while the person is so presiding, be deemed to be the chairperson of the body corporate.

## **8 Scrutineers**

At a general meeting, the chairperson may appoint persons as scrutineers who shall be entitled to inspect all voting papers and ballot papers furnished to the secretary of the body corporate under section 5(b) and relating to business at that meeting.

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**9 Chairperson to have available names of persons entitled to vote**

The chairperson at a general meeting of the body corporate shall have available for inspection, before submitting a motion to the meeting or the holding of the election of the chairperson, secretary and treasurer of the body corporate and other members of the committee, a list of the names of the persons who are entitled to vote on that motion or at that election.

**10 Counting of votes on election of chairperson, secretary, treasurer and committee**

Each person entitled to vote on an election of the chairperson, secretary and treasurer of a body corporate and other members of the committee has 1 vote in respect of each lot in respect of which the person is entitled to vote.

**11 Counting of votes on motions**

- (1) Subject to this section, a motion submitted at a general meeting of a body corporate shall be decided according to the number of votes cast for and against the motion, whether personally, by proxy or in writing, each person entitled to vote having 1 vote in respect of each lot in respect of which the person is entitled to vote.
- (2) If—
  - (a) a poll is demanded by any person entitled to vote at a general meeting of a body corporate on a motion submitted at that meeting, whether or not the motion has been decided in accordance with subsection (1), and the demand is made by that person personally at the meeting or on the voting paper on which the person votes in respect of that motion; or
  - (b) a motion submitted at such a meeting is for a resolution which, if it is to be effective, is required by this Act to be a special resolution;

the motion shall be decided according to the value, ascertained in accordance with subsection (3), of the votes cast for and against the motion, whether personally, by proxy or in writing.

- (3) For the purposes of subsection (2) the value of a vote cast on a motion submitted at a general meeting of a body corporate by a person entitled to vote in respect of a lot is equal to the lot entitlement of that lot.
- (4) Any one coproprietor or comortgagee may demand a poll and on any poll each coproprietor or comortgagee shall be entitled to such part of the vote applicable to a lot as is proportional to his or her interest in the lot.
- (4A) A joint proxy (if any) on a poll shall have a vote proportional to the interests in the lot of such of the coproprietors or comortgagees as do not vote personally or by individual proxy.
- (5) A poll shall be taken in such manner as the chairperson thinks fit.
- (6) A demand for a poll may be withdrawn by the person who made it.
- (7) In the case of equality in the votes whether on a show of hands or in a poll the chairperson of the meeting shall be entitled to a casting vote in addition to the chairperson's original vote whether or not the chairperson has exercised that original vote.

## **12 Chairperson's declaration of vote**

The declaration of the chairperson of the result of the voting on any motion submitted at a general meeting of the body corporate, otherwise than on a poll, shall be conclusive without proof of the votes recorded for or against the motion.

## **13 Requisition for motion to be included on agenda for general meeting**

- (1) Any person entitled to vote at a general meeting of a body corporate may by notice in writing served on the secretary of



the committee require inclusion in the agenda of the next general meeting of the body corporate (other than a meeting in respect of which notices have already been given under section 1(4)) of a motion set out in the firstmentioned notice and the secretary shall comply with the notice.

- (2) For the purposes of subsection (1), a proprietor who but for the existence of a mortgage over the proprietor's lot or the proprietor's failure to pay any contribution levied or other amount recoverable by the body corporate would be entitled to vote at a general meeting of the body corporate or a company nominee of any such proprietor that is a corporation shall be deemed to be entitled to vote at that meeting.

#### **14 Amendment or revocation of resolution**

A unanimous resolution, resolution without dissent or special resolution of a body corporate may not be amended or revoked except by a subsequent unanimous resolution, resolution without dissent or special resolution, as the case may be.

#### **15 Duties of original proprietor until officers elected**

Until the offices of chairperson, secretary and treasurer of the body corporate are filled the powers, authorities, duties and functions conferred or imposed on the holders of those offices shall be exercised and performed by the original proprietor or by the original proprietor's agent duly authorised in writing.

#### **16 Meetings of body corporate before first annual general meeting**

- (1) Until the first annual general meeting of the body corporate, the original proprietor of the body corporate may convene an extraordinary general meeting and shall do so on receipt of a requisition signed by 1 or more persons entitled to vote in respect of 1 or more lots, the lot entitlement or the sum of the lot entitlements of which is at least one-fourth of the aggregate lot entitlement.

- (2) The provisions of this part (other than section 1(2), (2A), (3) and (5)) apply to and in respect of a meeting referred to in subsection (1) so far as those provisions are not inconsistent with, or incapable of applying to, such a meeting.

## **17 Appointment of proxy**

- (1) An instrument appointing a proxy shall be in writing under the hand of the person making the appointment or the person's attorney, and may be either general or for a particular meeting.
- (2) A proxy need not be a proprietor.

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## Schedule 3      By-laws

### section 30

#### 1      **Noise**

A proprietor or occupier of a lot shall not upon the parcel create any noise likely to interfere with the peaceful enjoyment of the proprietor or occupier of another lot or of any person lawfully using common property.

#### 2      **Vehicles**

Save where a by-law made pursuant to section 30(7) of this Act authorises a proprietor or occupier so to do, the proprietor or occupier of a lot shall not park or stand any motor or other vehicle upon common property except with the consent in writing of the body corporate.

#### 3      **Obstruction**

A proprietor or occupier of a lot shall not obstruct lawful use of common property by any person.

#### 4      **Damage to lawns etc. on common property**

A proprietor or occupier of a lot shall not—

- (a) damage any lawn, garden, tree, shrub, plant or flower being part of or situated upon common property; or
- (b) except with the consent in writing of the body corporate, use for his or her own purposes as a garden any portion of the common property.

#### 5      **Damage to common property**

- (1) A proprietor or occupier of a lot shall not mark, paint, drive nails or screws or the like into, or otherwise damage or deface, any structure that forms part of the common property except

with the consent in writing of the body corporate, but this by-law does not prevent a proprietor or person authorised by the proprietor from installing—

- (a) any locking or other safety device for protection of his or her lot against intruders; or
  - (b) any screen or other device to prevent entry of animals or insects upon his or her lot.
- (2) Provided that the locking or other safety device or, as the case may be, screen or other device is constructed in a competent manner, is maintained in a state of good and serviceable repair by the proprietor and does not detract from the amenity of the building.

## **6 Behaviour of invitees**

A proprietor or occupier of a lot shall take all reasonable steps to ensure that his or her invitees do not behave in a manner likely to interfere with the peaceful enjoyment of the proprietor or occupier of another lot or of any person lawfully using common property.

## **7 Depositing rubbish etc. on common property**

A proprietor or occupier of a lot shall not deposit or throw upon the common property any rubbish, dirt, dust or other material likely to interfere with the peaceful enjoyment of the proprietor or occupier of another lot or of any person lawfully using the common property.

## **8 Appearance of building**

In the case of a building units plan, a proprietor or occupier of a lot shall not, except with the consent in writing of the body corporate, hang any washing, towel, bedding, clothing or other article or display any sign, advertisement, placard, banner, pamphlet or like matter on any part of his or her lot in such a way as to be visible from outside the building.

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**9 Storage of flammable liquids etc.**

A proprietor or occupier of a lot shall not, except with the consent in writing of the body corporate, use or store upon his or her lot or upon the common property any flammable chemical, liquid or gas or other flammable material, other than chemicals, liquids, gases or other material used or intended to be used for domestic purposes, or any such chemical, liquid, gas or other material in a fuel tank of a motor vehicle or internal-combustion engine.

**10 Garbage disposal**

A proprietor or occupier of a lot shall—

- (a) save where the body corporate provides some other means of disposal of garbage, maintain within his or her lot, or on such part of the common property as may be authorised by the body corporate, in clean and dry condition and adequately covered, a receptacle for garbage; and
- (b) comply with all local government local laws and ordinances relating to the disposal of garbage; and
- (c) ensure that the health, hygiene and comfort of the proprietor or occupier of any other lot is not adversely affected by his or her disposal of garbage.

**11 Keeping of animals**

Subject to section 30(12) of this Act, a proprietor or occupier of a lot shall not, without the approval in writing of the body corporate, keep any animal upon his or her lot or the common property.

## **Schedule 4      Provisions applying to committees and office bearers**

section 48B

### **1      Committee's power to employ agents and servants**

Subject to sections 46, 48 and 50 of this Act, a committee may employ for and on behalf of the body corporate such agents and servants as it thinks fit in connection with the exercise and performance of the powers, authorities, duties and functions of the body corporate.

### **2      Noticeboard**

A committee shall cause a noticeboard to be affixed to some part of the common property.

### **3      Meetings and delegation of powers and duties**

The committee may—

- (a) subject to sections 4 and 5, meet together for the conduct of business, adjourn and otherwise regulate its meetings as it thinks fit; or
- (b) subject to any restriction imposed or direction given at a general meeting, delegate to 1 or more of its members such of its powers and duties as it thinks fit and at any time revoke such delegation.

### **4      Meeting at request of members**

The secretary of the body corporate or in the secretary's absence, any member of the committee, at the request of not less than one-third of the members of the committee, shall convene a meeting of the committee within the period of time (if any) specified in the request or, if not so specified, within 7 days of the making of the request.

## **5 Place of meeting**

A meeting of the committee shall not be held at any place outside a radius of 15km from the parcel if, prior to the commencement of the meeting, any person entitled to vote at that meeting objects to that place by notice in writing to the secretary of the committee.

## **6 Notice of committee meetings**

- (1) The secretary of the committee must serve notice of a meeting of the committee on—
  - (a) each member of the committee; and
  - (b) each proprietor; and
  - (c) each first mortgagee of a lot.
- (2) The notice must be served—
  - (a) at least 7 days before the meeting; or
  - (b) at least 2 days before the meeting, if all voting members of the committee—
    - (i) vote, at the last meeting of the committee held before the proposed meeting, in favour of the reduced notice period for the proposed meeting; or
    - (ii) agree in writing to the reduced notice period for the proposed meeting.
- (3) The notice must—
  - (a) state when and where the meeting is to be held; and
  - (b) be accompanied by the agenda for the meeting.
- (4) A copy of the notice must be placed on the noticeboard at least 24 hours before the meeting.
- (5) Subsection (1) does not apply in relation to a person who—
  - (a) has given the secretary of the committee a written notice instructing the secretary that the person does not wish to be given notice of meetings of the committee; and
  - (b) has not withdrawn the instruction.

## **7 Voting in writing by members of committee**

- (1) This section applies if—
  - (a) the secretary of the committee—
    - (i) places a copy of a motion for a proposed resolution on the noticeboard; and
    - (ii) serves a copy of the motion on each member of the committee; and
    - (iii) gives a copy of the motion to each proprietor and first mortgagee of a lot; and
  - (b) a majority of the members of the committee approve the resolution in writing.
- (2) The resolution is, subject to section 45(3) of this Act, as valid as if it had been duly passed at a duly convened meeting of the committee.
- (3) Subsection (1)(a)(iii) does not apply—
  - (a) in relation to a proprietor or first mortgagee of a lot who—
    - (i) has given the secretary of the committee a written notice instructing the secretary that the person does not wish to be given copies of motions; and
    - (ii) has not withdrawn the instruction; or
  - (b) in an emergency.
- (4) Sections 45A and 45B of this Act apply in relation to a voting member of a committee voting under this section in the same way as they apply in relation to a voting member of a committee voting at a meeting of the committee that is held.

## **8 Minute of certain resolutions to be included in committee's minutes**

The committee shall cause to be included in its minutes a minute of all resolutions passed pursuant to section 7.



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**9 Acts etc. of committee valid notwithstanding vacancies**

Any act or proceeding of a committee done in good faith is, notwithstanding that at the time when the act or proceeding was done, taken or commenced there was—

- (a) a vacancy in the office of a member of the committee; or
- (b) a defect in the appointment, or a disqualification of a member;

as valid as if the vacancy, defect or disqualification did not exist and the committee were fully and properly constituted.

**10 Powers and duties of secretary**

The powers and duties of a secretary of a body corporate include—

- (a) the preparation and distribution of minutes of meetings of the body corporate and the submission of a motion for confirmation of the minutes of any meeting of the body corporate at the next such meeting; and
- (b) the giving on behalf of the body corporate and of the committee of the notices required to be given under this Act; and
- (c) the maintenance of the roll; and
- (d) the supply of information on behalf of the body corporate in accordance with section 40(1)(a) and (b) of this Act; and
- (e) the answering of communications addressed to the body corporate; and
- (f) the calling of nominations of candidates for election as chairperson, secretary and treasurer of the body corporate and other members of the committee; and
- (g) subject to sections 5(7B), 29(1) and (6) and 43(3) of this Act and section 3(b), the convening of meetings of the body corporate and of the committee.

## **11 Powers and duties of treasurer**

The powers and duties of a treasurer of a body corporate include—

- (a) the notifying of proprietors of any contributions levied pursuant to this Act; and
- (b) the receipt, acknowledgement and depositing at a financial institution of and the accounting for any money paid to the body corporate; and
- (c) the preparation of any certificate applied for under section 40(1)(c) of this Act; and
- (d) the keeping of the books of account referred to in section 38D(1)(b) of this Act and the preparation of the statement of accounts referred to in section 38D(1)(c) of this Act.