



Queensland

Building Units and Group Titles and Other Legislation Amendment Act 2022

Act No. 28 of 2022

An Act to amend the Building Units and Group Titles Act 1980, the Fair Trading Act 1989 and the Mixed Use Development Act 1993 for particular purposes

[Assented to 21 November 2022]



Queensland

Building Units and Group Titles and Other Legislation Amendment Act 2022

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The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Building Units and Group Titles and Other Legislation Amendment Act 2022*.

2 Commencement

Parts 2, 4 and 5 and schedule 1 commence on a day to be fixed by proclamation.

Part 2 Amendment of Building Units and Group Titles Act 1980

3 Act amended

This part amends the *Building Units and Group Titles Act 1980*.

Note—

See also the amendments in schedule 1.

4 Amendment of s 7 (Interpretation)

(1) Section 7, definition *body corporate manager—omit.*

(2) Section 7(1)—
insert—

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

[s 5]

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

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.

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

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

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.

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

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

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

specified Act see section 5A(3).

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

5 Insertion of new pt 4, div 1AA

Part 4—

insert—

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

[s 6]

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.

6 Amendment of s 27 (Constitution of bodies corporate)

- (1) Section 27—

insert—

- (3A) The body corporate must act reasonably in anything it does under subsection (3), including making, or not making, a decision under the subsection.

- (2) Section 27(6)(a) and (b), after ‘;’—

insert—

and

- (3) Section 27(3A) to (7)—

renumber as section 27(4) to (8).

7 Amendment of s 32 (Levies by body corporate on proprietors)

(1) Section 32(6)(c)—

omit, insert—

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

(2) Section 32—

insert—

(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).

8 Insertion of new s 32A

After section 32—

insert—

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

[s 9]

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.

9 **Amendment of s 38D (Duty of body corporate as to keeping records, convening meetings etc.)**

- (1) Section 38D(1)(a), (b) and (c) and (2)(a) and (b), after ‘;’—

insert—

and

- (2) Section 38D(1)(b), after ‘or times’—

insert—

full and accurate

- (3) Section 38D(1)—

insert—

(ca) 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

- (4) Section 38D(1)(ca) and (d)—

renumber as section 38D(1)(d) and (e).

- (5) Section 38D—

insert—

- (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.

10 Insertion of new pt 4, div 2, sdiv 1 and sdiv 2 hdg

Part 4, division 2—

insert—

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

[s 10]

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 corporate under which services or amenities are provided to proprietors.

Example of services or amenities—

a utility service

Subdivision 2 Other provisions

11 Amendment of s 42 (Constitution of committees)

- (1) Section 42(5)(a), after ‘occur;’—

insert—

and

- (2) Section 42(6)—

omit, insert—

- (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

[s 12]

proposed.

12 Insertion of new s 42A

After section 42—

insert—

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.

13 Amendment of s 43 (Vacation of office of member of committee)

(1) Section 43(1)(a) and (b)—

omit, insert—

- (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

(2) Section 43—

insert—

- (1A) 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) Section 43(2), after 'as such'—

insert—

at the time of the appointment

(4) Section 43(5), (6) and (7), 'subsection (4)'—

omit, insert—

subsection (5)

(5) Section 43(1A) to (7)—

renumber as section 43(2) to (8).

[s 14]

14 Amendment of s 45 (Meetings of committees)

Section 45—

insert—

- (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.

15 Insertion of new ss 45A–45C

After section 45—

insert—

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

[s 15]

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.

16 Amendment of s 46 (Committee's decisions to be decisions of body corporate)

(1) Section 46—

insert—

(2A) A committee must act reasonably in making, or not making, a decision.

(2) Section 46(2A) and (3)—

renumber as section 46(3) and (4).

17 Insertion of new s 73A

After section 73—

[s 18]

insert—

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.

18 Insertion of new s 94C

After section 94B—

insert—

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.

19 Amendment of s 110 (Refund of prescribed deposit)

Section 110, ‘vexatious or frivolous in its nature’—

omit, insert—

frivolous, vexatious, misconceived or without
substance

20 Amendment of s 121A (Limited right of action by body corporate)

Section 121A—

insert—

- (2) This section does not apply to an application by a
body corporate under section 72 for an order
under part 5, division 3.

21 Insertion of new s 132A

After section 132—

insert—

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).

22 Replacement of s 133B (Approved forms)

Section 133B—

omit, insert—

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).

23 Insertion of new pt 7, div 5

Part 7—

insert—

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).

24 Amendment of sch 4 (Provisions applying to committees and office bearers)

- (1) Schedule 4, section 3(a), after ‘;’—

insert—

or

- (2) Schedule 4, sections 6 and 7—

omit, insert—

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—

[s 24]

- (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.

Part 3 **Amendment of Fair Trading Act 1989**

25 Act amended

This part amends the *Fair Trading Act 1989*.

26 Amendment of s 31 (Issuing infringement notice)

- (1) Section 31(2)(a)—

insert—

- (va) section 99B(1), 99C, 99D(1), 99E or 99F(2);

[s 27]

- (2) Section 31(2)(a)(va) to (viii)—
renumber as section 31(2)(a)(vi) to (ix).

27 Amendment of s 33 (Amount of penalty)

Section 33(1), table, after item 6—

insert—

6A	section 99B(1), 99C, 99D(1), 99E or 99F(2)	(a) if the person is a body corporate—55 penalty units; or (b) if the person is not a body corporate—11 penalty units.
----	---	--

Part 4 Amendment of Mixed Use Development Act 1993

28 Act amended

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

Note—

See also the amendments in schedule 1.

29 Insertion of new pt 9, div 1, sdiv 1 hdg

Before section 166—

insert—

Subdivision 1 General

30 Amendment of s 166 (Definitions)

Section 166—

insert—

electable person see section 166C.

31 Insertion of new s 166A and pt 9, div 1, sdiv 2

After section 166—

insert—

166A References to bodies corporate created by the registration of a building units or group titles plan

In this part, a reference to the following terms in relation to a body corporate created by the registration of a building units or group titles plan, has the meaning the term has under the *Building Units and Group Titles Act 1980*—

- (a) body corporate manager of the body corporate;
- (b) committee of the body corporate;
- (c) voting member of a committee of the body corporate.

Subdivision 2 Electable persons

166B Definitions for subdivision

In this subdivision—

associated body corporate, for a body corporate, means another body corporate incorporated or created for the mixed use scheme for which the body corporate was incorporated.

letting agent means—

- (a) for a body corporate under this Act—a letting agent for the site or precinct of the body corporate; or
- (b) for a body corporate created by the registration of a building units or group titles plan—a party to an arrangement with the body corporate of a type mentioned in

[s 31]

the *Building Units and Group Titles Act 1980*, section 7(1), definition *prescribed arrangement*, paragraph (g).

service provider means—

- (a) for a body corporate under this Act—a service contractor for the site or precinct of the body corporate; or
- (b) for a body corporate created by the registration of a building units or group titles plan—a party to an arrangement with the body corporate of a type mentioned in the *Building Units and Group Titles Act 1980*, section 7(1), definition *prescribed arrangement*, paragraph (d).

166C Meaning of *electable person*

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

- (a) the person is an individual who is—
 - (i) a member of the body corporate; or
 - (ii) a nominee of a corporation that is a member of the body corporate; and
- (b) neither the person, the corporation mentioned in paragraph (a)(ii) nor an associate of the person, other than an associate mentioned in section 214E(2)(a) or (b), owes a relevant body corporate debt to the body corporate or an associated body corporate; and
- (c) neither the person, the corporation mentioned in paragraph (a)(ii) 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 service provider or letting agent for the body corporate or an associated body corporate.

32 Amendment of s 167 (Community body corporate)

- (1) Section 167—

insert—

(9A) The body corporate must act reasonably in anything it does under subsection (9), including making, or not making, a decision under the subsection.

- (2) Section 167(11), ‘subsection (10)’—

omit, insert—

subsection (11)

- (3) Section 167(9A) to (12)—

renumber as section 167(10) to (13).

33 Amendment of s 168 (Precinct body corporate)

- (1) Section 168—

insert—

(9A) The precinct body corporate must act reasonably in anything it does under subsection (9), including making, or not making, a decision under the subsection.

- (2) Section 168(11), ‘subsection (10)’—

omit, insert—

subsection (11)

- (3) Section 168(9A) to (12)—

[s 34]

renumber as section 168(10) to (13).

34 Amendment of s 169 (Members' nominees)

(1) Section 169(2) and (3)—

omit, insert—

- (2) If the member is a subsidiary body corporate, the member must—
 - (a) appoint a person under subsection (1) at its first annual general meeting; and
 - (b) ensure that at all times there is a person appointed under subsection (1) for the member.
- (3) For any period that, despite subsection (2)(b), no person is appointed under subsection (1) for a member that is a subsidiary body corporate, the chairperson of the executive committee, or committee, of the subsidiary body corporate is taken to be appointed under subsection (1) for the member.
- (3A) A nominee appointed by a subsidiary body corporate must be—
 - (a) both—
 - (i) a member of the subsidiary body corporate; and
 - (ii) a voting member of the executive committee, or committee, of the subsidiary body corporate; or
 - (b) a body corporate manager of the subsidiary body corporate to whom the subsidiary body corporate has delegated 1 or more of its powers.
- (3B) However, subsection (4)(a)(ii) does not apply if the subsidiary body corporate has no executive

committee or committee.

- (2) Section 169(5), after ‘appointed’—

insert—

, or taken to be appointed,

- (3) Section 169(7), ‘(4) or (6)(b)’—

omit, insert—

(6) or (8)(b)

- (4) Section 169—

insert—

- (8) In this section—

member, of a subsidiary body corporate that is a body corporate created by the registration of a building units or group titles plan, means a proprietor of a lot shown on the plan.

- (5) Section 169(3A) to (8)—

renumber as section 169(4) to (10).

35 Amendment of s 172 (Meetings of bodies corporate)

- (1) Section 172(3)(b), ‘section 177(1)(h)’—

omit, insert—

section 177(1)(i)

- (2) Section 172—

insert—

(10B) Further, the *Building Units and Group Titles Act 1980*, schedule 2, part 2, section 2(6) does not apply, for a meeting of a body corporate, to a member of the body corporate that—

(a) is a subsidiary body corporate of the body corporate; and

(b) at the time of the meeting—

[s 35]

- (i) owes an overdue amount to the body corporate; and
- (ii) is owed an overdue amount by 1 or more undeveloped lot members of the subsidiary body corporate that is equal in value to at least 50% of the overdue amount mentioned in subparagraph (i); and
- (iii) has at least 1 member that is not an undeveloped lot member or an associate of an undeveloped lot member.

Example for subsection (10B)—

At the time of a meeting of a body corporate, a subsidiary body corporate of the body corporate owes the body corporate \$500,000. At the same time, two undeveloped lot members owe the subsidiary body corporate \$400,000, an amount that is at least 50% of the amount owed by the subsidiary body corporate to the body corporate. The *Building Units and Group Titles Act 1980*, schedule 2, part 2, section 2(6) does not apply to the subsidiary body corporate for the meeting.

- (10C) If subsection (10B) applies to a subsidiary body corporate for a meeting of a body corporate—
 - (a) the subsidiary body corporate must, if requested by the body corporate, provide evidence of the matters mentioned in subsection (10B)(b)(ii) and (iii); and
 - (b) an undeveloped lot member mentioned in subsection (10B)(b)(ii) who is a nominee of the subsidiary body corporate may not represent, or vote on behalf of, the subsidiary body corporate at the meeting; and
 - (c) if paragraph (b) applies, the subsidiary body corporate must appoint a person who is not an undeveloped lot member to represent,

and to vote on behalf of, the subsidiary body corporate at the meeting.

(3) Section 172—

insert—

(21) In this section—

member, of a subsidiary body corporate that is a body corporate created by the registration of a building units or group titles plan, means a proprietor of a lot shown on the plan.

overdue amount, for a body corporate or subsidiary body corporate, means—

- (a) an amount of a contribution levied by the body corporate or subsidiary body corporate that is unpaid and has been due for payment for 30 or more days; or
- (b) any other amount recoverable by the body corporate or subsidiary body corporate that is unpaid.

undeveloped lot member, in relation to a subsidiary body corporate, means a member of the subsidiary body corporate who is an owner of a lot that has not been improved by, or is not part of, a building or other structure that is reasonably capable of being used for a purpose for which the lot may be used under the plan of development for the scheme applying to the lot.

36 Amendment of s 174 (Levies by bodies corporate on members)

(1) Section 174(1)(a), ‘section 177(1)(h)’—

omit, insert—

section 177(1)(i)

(2) Section 174(4)—

[s 37]

insert—

- (d) must be paid to the body corporate as a monetary amount.

(3) Section 174—

insert—

- (6) Despite subsection (4)(d), a contribution levied by a body corporate on a member 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 member.
- (7) Subsection (6) 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.
- (8) Neither the member nor an associate of the member is entitled to vote on the motion for the resolution mentioned in subsection (7)(a).

37 Amendment of s 177 (Duties of bodies corporate)

- (1) Section 177(1)(a)(i), ‘; or’—

omit, insert—

; and

- (2) Section 177(1)(a)(ii), ‘164.’—

omit, insert—

164; and

- (3) Section 177(1)(b)(iii), after ‘;’—

insert—

and

- (4) Section 177(1)(e)(i)(A), before ‘minutes’—

insert—

full and accurate

- (5) Section 177(1)—

insert—

(fa) give a copy of the minutes of each of its meetings to each member of the body corporate and mortgagee of a lot within 21 days after the meeting is held; and

- (6) Section 177(1)(h)(ii), ‘paragraph (l)’—

omit, insert—

paragraph (m)

- (7) Section 177(1)(i) and (j), ‘paragraph (h)’—

omit, insert—

paragraph (i)

- (8) Section 177(1)(k), ‘paragraph (i)’—

omit, insert—

paragraph (j)

- (9) Section 177(1)(l)(ii), ‘paragraph (j)’—

omit, insert—

paragraph (k)

- (10) Section 177(1)—

insert—

(la) if the body corporate has entered into an agreement under section 176(c) or (d) for the provision, by it or another person, of an amenity or service that is an essential utility

[s 37]

service—take all reasonable steps to ensure continuity of the amenity or service; and

Examples of taking reasonable steps to ensure continuity of an amenity or service—

- carrying out repairs to an amenity or service
- ensuring that a service contractor carries out repairs to an amenity or service

(11) Section 177(1)(fa) to (m)—

renumber as section 177(1)(g) to (o).

(12) Section 177(2), ‘subsection (1)(h) or (l)’—

omit, insert—

subsection (1)(i) or (m)

(13) Section 177(3)(b), ‘subsection (1)(l)’—

omit, insert—

subsection (1)(m)

(14) Section 177(4), ‘subsection (1)(h)’—

omit, insert—

subsection (1)(i)

(15) Section 177(5), ‘subsection (1)(g)’—

omit, insert—

subsection (1)(h)

(16) Section 177—

insert—

(6) Subsection (1)(g) 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.

(7) In this section—

essential utility service means the provision of sewerage services, electricity, gas or water.

38 Amendment of s 183 (Delegation by corporate members of bodies corporate)

Section 183—

insert—

(2) Subsection (1) does not affect the requirements under section 169 for the appointment of nominees of a member that is subsidiary body corporate to represent the member, and vote on behalf of the member, at meetings of the body corporate.

39 Amendment of s 185 (Constitution of executive committee)

Section 185(7A)—

omit, insert—

(7A) A person is eligible for election as chairperson, secretary or treasurer, or as another member of the executive 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.

40 Insertion of new s 185B

After section 185A—

insert—

185B Non-voting members of executive committee

(1) The following persons are, without further election or appointment, members of the

[s 41]

executive committee of a body corporate—

- (a) a body corporate manager appointed by the body corporate;
 - (b) a caretaking service contractor engaged by the body corporate.
- (2) Subsection (1) applies even though the person is not an electable person for the body corporate.
- (3) A person who is a member of an executive committee under this section is not entitled to vote at a meeting of the executive committee.
- (4) Subsection (3) applies even if the person is a member of the body corporate or a nominee of a corporation that is a member of the body corporate.
- (5) A person who is a member of an executive committee under this section is not to be counted—
- (a) under section 185(4) for determining the number of members of the executive committee; or
 - (b) under section 188(1) for determining whether a quorum is constituted at a meeting of the executive committee.

41 Amendment of s 186 (Vacation of office of member of executive committee)

- (1) Section 186(1)(a) and (b)—

omit, insert—

- (a) if the person ceases to be an electable person for the body corporate under section 166C(a)(i) or (c)(i) or (ii); or
- (b) for a person who is a nominee of a corporation that is a member of the body corporate, if—

-
- (i) the corporation notifies the body corporate, in writing, that the person's office, as a member of the executive committee, is vacated; or
 - (ii) the corporation ceases to be a member of the body corporate; or
- (2) Section 186(2)—
omit, insert—
- (2) However, if a person elected as secretary or treasurer of the body corporate is not a member of the executive committee under section 185(9), the person's office cannot be vacated under subsection (1)(b)(i) or (ii).

42 Amendment of s 188 (Meetings of executive committee)

Section 188—

insert—

- (5) The secretary of the executive committee must give a copy of the minutes of each of its meetings to each member of the body corporate and mortgagee of a lot.
- (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 within 21 days after the meeting is held.

[s 43]

43 Insertion of new ss 188AA–188AC

After section 188—

insert—

188AA Notice of executive committee meetings

- (1) The secretary of the executive committee must serve notice of a meeting of the committee on—
 - (a) each member of the committee; and
 - (b) each member of the body corporate; and
 - (c) each 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 executive 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) Subsection (1) does not apply in relation to a person who—
 - (a) has given the secretary of the executive 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.

188AB When voting member ineligible to vote at executive committee meetings

- (1) For this section, a voting member of an executive committee is a *debtor member* for a meeting of the executive committee if—
 - (a) the member is a member of the body corporate and at the time of the meeting the member owes a relevant body corporate debt to the body corporate; or
 - (b) the member is the nominee of a corporation that is a member of the body corporate and at the time of the meeting, the corporation owes a relevant body corporate debt to the body corporate.
- (2) A debtor member for a meeting of an executive committee must not vote at the meeting—
 - (a) in the member's own right; or
 - (b) as a person appointed under section 185(10) to act in another executive committee member's place.
- (3) Also, a person who is appointed under section 185(10) to act in the place of a debtor member for a meeting of an executive 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 an executive committee from being counted, under section 188, for deciding whether there is a quorum for the meeting.

[s 44]

188AC When executive committee member may receive particular benefits

A member of an executive committee may receive a direct or indirect benefit from a service contractor only if—

- (a) the benefit is the supply of, or payment for—
 - (i) a service that the body corporate has engaged the contractor to provide; or
 - (ii) a service that an owner of a lot has engaged the contractor to provide at market price; or

Example for subparagraph (ii)—

a gardening or maintenance service provided by a service contractor to lot owners

- (b) for a service contractor that is a caretaking service contractor—the benefit is the supply of, or payment for, a letting agent business service conducted by the contractor; or
- (c) the body corporate has authorised the member, by ordinary resolution, to receive the benefit.

44 Amendment of s 189 (Executive committee's decisions to be decisions of body corporate)

- (1) Section 189—

insert—

(2A) The executive committee must act reasonably in making, or not making, a decision.

- (2) Section 189(2A) and (3)—

renumber as section 189(3) and (4).

45 Insertion of new pt 15

After part 14—

insert—

**Part 15 Transitional provisions
for Building Units and
Group Titles and Other
Legislation
Amendment Act 2022**

231 Application of s 169

- (1) This section applies if a nominee appointed by a subsidiary body corporate under section 169(1) immediately before the commencement does not meet the requirements of section 169(4).
- (2) On the commencement, the appointment of the nominee ends.

Note—

See section 169(3) in relation to any time during which no person is appointed under section 169(1) for a member.

232 Application of s 177

Section 177(1)(g) applies only in relation to a meeting of a body corporate held after the commencement.

233 Elected persons who are not electable persons

- (1) This section applies if a person elected as chairperson, secretary or treasurer, or another member of the executive committee of a body corporate, immediately before the commencement is not an electable person for the

[s 46]

body corporate.

- (2) On the commencement, the person vacates the person's office.
- (3) Section 186(3) to (11) applies in relation to the vacancy.
- (4) In this section—
electable person, for a body corporate, see section 166C.

234 Application of s 188

Section 188(5) applies only in relation to a meeting of an executive committee held after the commencement.

46 Amendment of sch 1 (Election of executive committee members of bodies corporate)

Schedule 1, section 3(2)(b), from 'owes'—

omit, insert—

is not an electable person for the body corporate.

47 Amendment of sch 5 (Dictionary)

- (1) Schedule 5, definitions *letting agent* and *relevant body corporate debt*—

omit.

- (2) Schedule 5—

insert—

associated body corporate, for part 9, division 1, subdivision 2, see section 166B.

electable person see section 166C.

letting agent—

- (a) for part 9, division 1, subdivision 2—see section 166B; or
- (b) otherwise—see section 201T(1).

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

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

Examples of another amount—

- an annual payment for the exclusive use and control 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 provider, for part 9, division 1, subdivision 2, see section 166B.

Part 5 Other amendments

48 Acts amended

Schedule 1 amends the Acts it mentions.

Schedule 1 Other amendments

section 48

Building Units and Group Titles Act 1980

1 Section 7(1), definition *original plan*, paragraphs (a) and (b), after ‘;’—

insert—

or

2 Sections 15(a), 17(a), 19(1)(a) and (b) and 21(2)(a), after ‘;’—

insert—

and

3 Section 22(1)(a), after ‘;’—

insert—

or

4 Section 22(7)(a) and (b), after ‘;’—

insert—

and

5 Section 23(1)(a), (b) and (c), after ‘;’—

insert—

or

- 6 Section 25(3), ‘including’—**
omit, insert—
including, for example, conditions about
- 7 Section 25(3)(a), (7)(a) and (7A)(a), (b) and (c), after ‘;’—**
insert—
or
- 8 Sections 26(9)(a), 30(7B)(a) and (b) and 37(1)(c)(i), (ii), (iii) and (iv), after ‘;’—**
insert—
and
- 9 Section 38(2) and (5), after ‘pay’—**
insert—
the following amounts
- 10 Section 40(1)(b), after ‘make’—**
insert—
the following
- 11 Section 40(5), definition *prescribed person*, paragraph (a), after ‘;’—**
insert—
or
- 12 Section 53(8)(b)(i), after ‘;’—**
insert—
and

- 13 Sections 67(a) and (b) and 78(1)(a) and (b), after ‘;’—**
insert—
or
- 14 Section 95(1), after ‘referee on’—**
insert—
each of the following persons
- 15 Sections 103, penalty, paragraph (a), 130(1)(a) and (b) and 131(a), after ‘;’—**
insert—
or
- 16 Schedule 2, part 1, section 3(1)(a), after ‘;’—**
insert—
and
- 17 Schedule 2, part 2, section 1(6)(a)(ii), ‘section 43(4)’—**
omit, insert—
section 43(5)
- 18 Schedule 3, section 10(a) and (b), after ‘;’—**
insert—
and
- 19 Schedule 3, section 11, after ‘section 30(12)’—**
insert—
of this Act

Mixed Use Development Act 1993

- 1 Section 172A(5), example, ‘section 177(1)(g)’—**
omit, insert—
section 177(1)(h)
- 2 Section 181(1)(c)(i) and (ii), ‘section 177(1)(h)’—**
omit, insert—
section 177(1)(i)
- 3 Section 181(1)(c)(iii), ‘section 177(1)(l)—**
omit, insert—
section 177(1)(m)
- 4 Section 200(1), ‘section 177(1)(h)’—**
omit, insert—
section 177(1)(i)
- 5 Section 201N(2)(a), ‘section 177(1)(i) and the account established under section 177(1)(k)’—**
omit, insert—
section 177(1)(j) and the account established under section 177(1)(l)
- 6 Section 201N(2)(b), ‘section 177(1)(h) and (l)’—**
omit, insert—
section 177(1)(i) and (m)