

# **BUILDING UNITS AND GROUP TITLES BILL 1994**

## **EXPLANATORY NOTES**

### **GENERAL OUTLINE**

#### **Objective of the Legislation**

The principal objectives of the legislation are:

1. To ensure that the law relating to the establishment and administration of community titles schemes is written in clear english.

A community titles scheme is a scheme which:

- subdivides a building by a building unit plan to create building units, commonly referred to as units;
- subdivides land by a group title plan to create small individual areas of land, commonly referred to as town house developments; or
- subdivides land in stages to create any number or combination of the developments referred to above.

2. To clarify the roles of a letting agent, body corporate manager, caretaker and other service contractors who enter into a contract with the body corporate.

3. From 24 October 1994, to limit the maximum term of such contracts with the body corporate to ten years and to provide a mechanism for their assignment and termination. All contracts other than those relating to letting agents are to be capable of termination after 3 years if those contracts have been entered into within the first three years after registration of the plan.

4. Subject to the preceding object to ensure that existing contracts can run for their term or as mutually agreed between the holder of such a contract and the body corporate.

5. As a result of a recent High Court decision, the matter of *Humphries and Anor v The Proprietors "Surfers Palms North" Group Titles Plan 1955*, any contract entered into between a body corporate and a letting agent from the date of that decision, 4 May 1994, to the date of proclamation of the legislation will be validated by the legislation.

6. To state more clearly the options available to bodies corporate for undertaking delegated functions, that is, whether such functions are carried out by virtue of a contract, salaried employee, agent or self-management.

7. To retain proxy voting as a democratic right of unit/lot owners (both resident and absentee) but to restrict the circumstances and manner in which proxy voting may be used.

8. To state clearly that, in future, all office/reception or storage areas used by service contractors are to be common property for use by the service contractor only during the term of any contract with the body corporate.

9. To ensure that the disclosure provisions of the legislation are such that the rights and responsibilities of an owner in the community titles scheme are made known to purchasers before any contract is signed.

10. To provide for staged development.

11. To establish the Magistrates Court as the body to hear appeals from an order of the referee in the first instance.

12. To include any appropriate amendments of a machinery nature.

### **The Reasons for the Bill**

The Department of Lands prepared a Green Paper in June 1991 on building units and group titles management issues with the objective of addressing a number of issues raised by various interested groups, notably unit owner associations. Also, a report on staged development prepared by my Department's Building Units and Group Titles Special Project Group (having representatives from all relevant organisations) was incorporated into the Paper.

The Green Paper discussed a number of major issues which have been incorporated into this legislation. Those issues are:

#### 1. Management Contracts

Those contracts (service contracts) were set up by the original developer

to bind subsequent lot owners. They covered letting rights, caretaking, service contractors and body corporate managers. Many are for 30 or more years and in some cases place a financial obligation on subsequent owners because of significant escalation clauses for remuneration to be paid to the contractor.

There was no ability to terminate service contracts with the exception of a service contract relating to body corporate managers. The existing legislation provided the opportunity for owners to terminate those contracts after three years provided that termination took place within 30 days after the expiration of the three year period.

Following the submissions made on the Green Paper the High Court in the Humphries Case held that a body corporate had no authority to enter into a contract with a letting agent for the provision of letting services to the members of the body corporate under the Act or its by-laws. The Court did not address the question of the validity of any such by-law which purported to authorise the making of such a contract.

Retrospective provisions are included in the new Bill to allow bodies corporate to enter into service agreements with letting agents.

The purpose of the retrospectivity is to protect any agreements relating to letting agents which are entered into by bodies corporate between 4 May 1994 and the proclamation of the legislation. The community has been advised of the government's intention in this regard. The 4 May is the date on which the High Court handed down its decision.

The new legislation provides that:

- from 24 October 1994, all service contracts are limited to a maximum of 10 years including options;
- all service contracts entered into within the first three years, with the exception of those relating to letting agents, will be capable of being terminated by the body corporate after 3 years. The agenda of the annual general meeting held after the end of the third financial year must include a resolution which relates to the termination of any such contract. If that meeting is not held or the resolution is not contained in the agenda the referee may make an order that a meeting be held with the item in the agenda. The original owner will not be able to use a power of attorney of the type currently included in contracts of sale for the purpose of

extending a contract beyond the three year term. A body corporate will only be able to terminate a contract if the majority of owners vote in favour of the termination;

- contracts are capable of assignment and that no money is payable to a body corporate for consenting to such assignment;
- contracts may be terminated;
- letting agent contracts entered into between the date of the High Court decision, 4 May 1994, and the proclamation of the legislation will be validated in respect of the authority of the body corporate to enter into such contracts.

## 2. Proxy Voting

The present legislation provides for the use of proxies by lot owners and that proxies cannot be exercised by a person who has a financial interest in the matter on which a vote is to be taken.

The Bill includes the following provisions relating to proxies:

- Proxy votes will have a maximum duration of 1 year (except for proxies given to co-proprietors).
- Original owners will have the right to vote on behalf of an owner to ensure that those matters which have been disclosed to a purchaser in a contract of sale are implemented.
- A letting agent, body corporate manager or other service contractor cannot exercise a proxy on behalf of a proprietor. A person, other than as a letting agent or a caretaker, who has a service contract with a body corporate for less than a year is not a service contractor. The original owner cannot exercise a proxy on behalf of an owner except for the purpose of implementing those matters disclosed to a purchaser in a contract of sale and of a prescribed class.
- If all lots in a development are the subject of a lease in registrable form, owners may assign voting rights. This will enable tourist type developments, including leaseback hotels, to operate effectively. However, in exercising those voting rights the lessee will be precluded from dealing with the property of the body corporate in such a way that the owners rights are affected after the expiry or sooner determination of the lease.

- Proxies must be forwarded to the secretary of the body corporate. They may be forwarded by facsimile which must show the transmission details.
- An associate of a person who has a financial interest in a matter before the body corporate also cannot hold proxies.

### 3. Conditions relating to the use of Common Property.

The existing management contracts have given the manager exclusive use of an area of common property. This practice has caused difficulty for bodies corporate when the contract expires. The former manager still retains the right to the exclusive use area which normally is the reception desk and associated office space.

To overcome this problem, any future contracts which involve an area of common property will restrict the use of that common property to the duration of the contract. The areas involved will be recorded by the Registrar of Titles and shown on the plan in the same manner as an exclusive use by-law.

A number of other issues have also been incorporated into the legislation. They are:

#### 1. Recording of By-laws.

It is currently the practice of the Registrar of Titles to examine by-laws so that by-laws which are clearly contrary to the provisions of the legislation are not recorded on the plan. For a by-law to be enforceable it must have been recorded on the plan.

The new legislation will clearly define the role of the Registrar of Titles. The Registrar of Titles will be able to record by-laws without determining their legal validity. All copies of the by-laws (including proposed by-laws in the case of the original owner) provided by the Registrar of Titles, a body corporate or a vendor will carry an endorsement to the effect that mere recording does imply validity.

#### 2. Powers of Attorney.

The use of powers of attorney given by purchasers to original proprietors will be restricted in the new legislation. Currently powers of attorney contained in contracts of sale are being used by the original proprietor to control the body corporate even after the majority of lots have been sold.

The new legislation restricts their use to prescribed matters which are disclosed in the contract by the original proprietor.

### 3. Variation of lot entitlements.

Presently, once a plan is registered the lot entitlement of proprietors is established and those entitlements cannot be amended (for example a developer retaining a lot with a low lot entitlement and thereby reducing the levies payable). Effectively intended and unintended anomalies cannot be rectified. Lot entitlements will be capable of variation in the new legislation:

- by agreement between the proprietors in a building units plan who wish to vary their lot entitlements and the total existing lot entitlement of their lots is not altered;
- by unanimous resolution of the body corporate; and
- by order of the Court.

Any variation of lot entitlements requires the consent of any person who has a registered interest, other than an easement, in an affected lot.

### 4. Acquisition of Common Recreational Facilities by a Number of Bodies Corporate.

At present two or more bodies corporate cannot share common recreational facilities. The new legislation will enable a number of bodies corporate to enter into agreements to share such facilities. This enables a body corporate and developers to more efficiently use their resources and should lead to a reduction in levies paid by owners to a body corporate which utilises the new provision.

### 5. Disclosure of Information at Time of Sale.

Existing provisions in the legislation impose obligations on the original owner to disclose information to purchasers and sets out the effect of a failure to disclose or inaccurate disclosure.

The new legislation provides for the disclosure of information concerning the lot and the body corporate to prospective purchasers **prior to the signing of a contract of sale**. These provisions will ensure that a purchaser from an owner including the original owner has access to all information which impacts upon the purchaser's rights and obligations as an owner prior to the signing of the contract. If incorrect information is given

by the original owner the purchaser, if materially affected may withdraw from the sale or if settlement has taken place within the last 6 months require a retransfer of the lot with a refund of the purchase price. In the case of incorrect information being provided by an owner other than the original owner the purchaser has the right to withdraw from the sale prior to settlement but if settlement has taken place normal legal remedies are available.

#### 6. Staged Development.

No effective provisions are included in the present legislation which allow for staged development.

The new legislation will enable controlled staged development using a master plan to set out the type and size of development to be undertaken. The amendment of the master plan is controlled by the legislation to protect purchasers who buy in the early stages of the development.

Staged development may proceed down one of two paths—either multiple bodies corporate or a single body corporate.

Should more than one body corporate be formed then separate administrative and sinking funds must be maintained. Large developments spread over a number of years are expected to use this form of staged development.

To protect purchasers the primary plan will not be able to be amended unless it is in conformity with the master plan, all of the lot owners agree or the Supreme Court orders that a specific amendment can be made.

The new legislation will provide protection to purchasers whilst offering options to developers which take into account the potential size or complexity of the development.

#### 7. Insurance Provisions.

The existing insurance provisions do not allow a body corporate of a group title development to take out insurance over the buildings and other improvements erected on a lot.

The new legislation will require a body corporate of a parcel on which buildings are constructed which have common walls, to take out insurance on those buildings. Members of the body corporate in a group title subdivision where buildings have no common walls will also be able to

pass a by-law which will authorise the body corporate to take out insurance on improvements on lots. These provisions have been drafted following discussions with industry groups and the Insurance Council of Australia.

#### 8. Appeals to the Magistrates Court.

It was decided that for the sake of uniformity and to reduce the number of Tribunals which existed that all appeals from an order of the referee should in future go to the Magistrates Court instead of a Tribunal. Appeals for a Tribunal will now go to the District Court.

#### 9. Changes of a machinery nature.

A chairperson may still rule a motion out of order but full reasons must be given and those reasons must be recorded in the minutes. The meeting has been given the ability to reverse the ruling of the chairperson.

The information to be included in the agenda of meetings has been extended to ensure that members of the body corporate are properly informed in relation to matters to be voted on at meetings.

Records which the body corporate is required to keep are more specifically detailed.

Bodies corporate are required to prepare budgets so that the common property for which they are responsible can be adequately maintained and that the members of the body corporate are afforded a greater say in the financial affairs of the body corporate.

#### 10. The role of the body corporate.

In view of the special nature of a body corporate it has not been given the power to carry on business of a general nature, for example that of a letting agent or a tour operator. It is not intended that a body corporate be authorised to operate in the same manner as a company incorporated under the Corporations Law.

### **Estimated Cost for Government Implementation**

There will be no additional costs incurred by the Government in introducing this legislation, apart from the costs of preparation and introduction of the Bill.

**Consultation**

The following groups have been closely consulted in relation to the Bill.

My Department's Building Units and Group Titles Special Projects Group, which comprises:

- Real Estate Institute of Queensland
- Queensland Law Society
- Local Government Association of Queensland
- Urban Development Institute of Australia
- Body Corporate Managers Institute
- Building Owners and Managers Association
- Gold Coast Unit Owners Association
- Unit Owners Association of Queensland
- Queensland Resident Accommodation Managers Association
- Construction Law Committee, Law Council of Australia
- Association of Consulting Surveyors

In addition comment has been sought from a number of organisations on specific issues. Those organisations are:

- Insurance Council of Australia.
- Australian Bankers Association (Queensland).
- Queensland Association of Permanent Building Societies.
- Australian Finance Conference (Queensland Division).

**NOTES ON PROVISIONS****PART 1—PRELIMINARY**

*Clause 1* contains the short title.

*Clause 2.* The Bill will commence on a date to be fixed by proclamation.

*Clause 3.* Provides for a dictionary in which the terms used in the Bill are defined. Other particular terms are defined in other parts of the Bill.

*Clause 4* details the relationship between this Bill and the *Land Title Act 1994*.

**PART 2—SUBDIVISION INTO COMMUNITY TITLES*****Division 1—Primary Plans***

*Clause 5* provides for the division of land by a primary plan.

*Clause 6* sets out in detail the requirements of a primary plan.

*Clause 7* provides for an application to register a primary plan and the material which must accompany such an application.

*Clause 8.* This provision establishes the role of the Registrar of Titles when primary plans are lodged for registration.

***Division 2—Subdivision by community titles plans***

*Clause 9* provides for the subdivision of land by community titles plans (building unit and group title plans).

*Clauses 10.(1)* and *10.(2)* provide for the information that must be included in a building units plan.

*Clauses 10.(3)* establishes the location of boundaries between lots.

*Clause 11.(1)* provides for the certificates that must accompany a building units plan.

*Clause 11.(2)* allows an owner to provide a certificate if the building was built before 1 February 1973 and it cannot be obtained from the persons specified.

*Clauses 11.(3)* and *11.(4)* provide for a penalty to be imposed where a certificate containing false information is provided and the basis on which a complaint against the person may be made.

*Clause 11.(5)* provides that a local government or an officer of local government incurs no civil liability for an incorrect certificate given under this clause.

*Clauses 12.(1)* and *12.(2)* provide for the information that must be included in a group titles plan.

*Clause 13* provides for the certificates that must accompany a group titles plan.

*Clause 14.* This provision sets out who may make an application for the registration of a community titles plan and what must accompany such application.

*Clause 15* provides for the procedures to be followed by the Registrar of Titles prior to and following registration of a community titles plan.

### ***Division 3—Name***

*Clauses 16.(1)* and *16.(2)* provide for the naming of buildings or parcels of land on the registration of community titles plans.

*Clause 16.(3)* provides that the Registrar of Titles may refuse to register a plan if the name of the building or parcel shown on the plan does not comply with the requirements specified in this provision.

*Clauses 17.(1)* and *17.(2)* provide that a name of a building or parcel may be reserved and that if the name is acceptable for registration the Registrar of Titles must reserve it.

*Clause 18* provides for the length of time for which a name may be

reserved, an extension of that time and the basis on which the reservation ceases to apply.

*Clause 19* provides that if a name has been reserved and that name is proposed to be used by a person other than the person for whom it was reserved the plan cannot be registered unless the name shown on the plan is changed.

#### ***Division 4—Lot entitlements***

*Clause 20.* This clause provides for the establishment of a lot entitlement, what form it takes and where it is to be shown.

*Clause 21* makes provision for the variation of lot entitlements.

#### ***Division 5—Statutory easements***

*Clause 22* makes provision for easements for the lateral or subjacent support of lots or common property by lots or common property.

*Clause 23.(1)* and *23.(2)* provides for the creation of easements in favour of a lot for the provision of services to that lot and that such easement must not unreasonably interfere with the use or enjoyment of the lot or part of the common property against which the easement lies.

*Clause 23.(3)* provides for the creation of easements in favour of the common property for the provision of services to the common property.

*Clause 23.(4)* provides that an easement must not interfere unreasonably with the use or enjoyment of lots.

*Clause 24* creates an easement of shelter in favour of a lot in a building unit scheme.

*Clause 25* provides for the creation of easements allowing the projection of parts of a building constructed on a lot in a group title plan over other lots in a group title plan in the circumstances specified in that clause.

*Clause 26* ensures that ancillary rights and obligations which are necessary to make easements effective apply to easements under this clause.

***Division 6—The common property***

*Clause 27* provides a definition that defines common property as those parts of a parcel of land or parts of a building that are not comprised in a lot and the specified service infrastructure.

*Clause 28.* This clause provides for the ownership of common property, how it may be dealt with and the rights of an owner to the common property if the lot has been leased.

*Clause 29* sets out the rights and responsibilities of the body corporate in respect to the common property.

***Division 7—Changes to registered plan***

*Clause 30* makes provision for changes to be made by amendment to a registered plan.

*Clause 31* provides for the form which will be used for the amendment and that it must in the circumstances provided for, in the clause, delineate the new boundaries if appropriate.

*Clause 32.* This clause makes provision for the amendment of plans in a staged development scheme.

*Clause 33.* This clause specifies who can apply for the registration of an amendment to a registered plan.

*Clause 34* provides for the items which must accompany the application for the amendment of a plan.

*Clause 35* provides for the role of the Registrar of Titles in relation to the modification of a registered plan.

***Division 8—Reinstatement scheme***

*Clause 36.* This clause authorises the Supreme Court to make an order for the reinstatement of a building over which a building units plan has been registered if that building has been damaged. It also details the persons who may apply for the order.

*Clause 37* establishes the role of the Registrar of Titles in relation to an application for registration of an order directing the modification of a building units plan.

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

*Clause 38* provides the basis on which a registered plan may be extinguished.

*Clause 39.* This clause states who may make application to extinguish a registered plan and the information which must accompany the application.

*Clause 40* provides for the role of the Registrar of Titles in relation to an application to extinguish a plan and the effect of the registration of such application.

*Clause 41.* This clause provides that a body corporate is dissolved on the extinguishment of the plan. The owners rights are also detailed.

*Clause 42.(1)* makes provision for the continuation or release of a mortgage when a plan is extinguished.

*Clause 42.(2)* provides that where a secondary plan is extinguished the land formerly comprised in that plan becomes a development lot in the scheme.

*Clause 42.(3)* provides that liability for a rate or charge is not affected by the extinguishment.

## **PART 3—MANAGEMENT STRUCTURES AND ARRANGEMENTS**

### ***Division 1—Body corporate***

*Clause 43.* This clause sets out how, when and the basis on which a body corporate is established.

*Clause 44* provides that the Corporations Law does not apply to a body

corporate.

*Clause 45* provides that the name of a body corporate must be comprised of certain words and is the name shown on the registered plan. In addition it authorises a body corporate to sue and be sued in that name.

*Clause 46* provides for the address for service of a body corporate and the ability of the body corporate to change that address.

*Clause 47* provides for a body corporate to have a seal, how it is to be kept and how it will be affixed to a document.

### ***Division 2—Membership of body corporate***

*Clause 48.* This clause outlines the persons who are members of a body corporate.

### ***Division 3—Body corporate’s general functions and powers***

*Clause 49* provides for the role and functions of a body corporate.

*Clause 50* establishes the general powers of a body corporate.

*Clause 51* precludes a body corporate from carrying on a business but allows it to engage in business activities to the extent necessary to properly carry out its functions.

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

*Clause 52* provides for the establishment of the committee of a body corporate, the number of persons and the positions on it.

*Clause 53* provides for the election of the committee and the persons who are entitled to be elected. This clause also provides that if the secretary or treasurer (or both) are not owners or nominees of corporate owners then they are non-voting members of the committee.

*Clause 54* details the method of appointment of a proxy of a member of the committee and the manner in which the voting rights are exercised by

the proxy.

*Clause 55* provides for the length of the term of a committee member and how a vacancy occurs. It also provides for the appointment of persons to fill casual vacancies on the committee. In addition the referee is given the power to make the orders specified in the clause.

*Clause 56* details the basis of the immunity from liability which applies to committee members and the basis on which such liability attaches to a body corporate.

### ***Division 5—Procedures and powers of the committee***

*Clause 57* provides for the method of convening meetings of the committee and who may call them.

*Clause 58* provides for the calling of meetings by the giving of the specified notice.

*Clause 59* provides for the location where meetings may be held.

*Clause 60* provides for the notice calling the meeting to be accompanied by the agenda and that the committee may also consider other issues raised at the meeting.

*Clause 61* provides for the role of the chairperson and the appointment of a substitute chairperson.

*Clause 62* provides for the quorum necessary for meetings and the method of counting votes cast on any matter.

*Clause 63* provides that in the circumstances specified in the clause a resolution of the committee is a valid resolution even though the meeting is not held.

*Clause 64.* The committee must keep full and accurate minutes of its proceedings. However, the committee may exclude from its minutes material that is protected by professional legal privilege or defamatory.

*Clauses 65.(1)* and *65.(2)* establishes the power of the committee to act for the body corporate in relation to issues other than restricted issues.

*Clause 65.(3)* details the issues which are restricted issues.

*Clause 65.(4)* provides for the possibility of persons acting reasonably

and honestly believing that they are the committee of the body corporate and the effect of their decisions.

*Clause 66.(1)* requires a resolution of the committee to be exhibited on the notice board before being carried out.

*Clauses 66.(2)* and *66.(3)* enable the members of the body corporate to object to the resolution and stop the committee from carrying out such resolution.

*Clause 66.(4)* details the basis on which the committee may carry out the resolution.

*Clause 66.(5)* provides that if the powers of the committee have been delegated to a body corporate manager then the body corporate manager has the powers of the committee.

*Clause 66.(6)* provides that if the right of the committee to carry out a resolution or the body corporate manager to carry out a decision is challenged the person claiming the right to carry out the resolution or decision has the burden of proving that the resolution or decision was exhibited as required.

### ***Division 6—General meetings***

*Clause 67* details the types of general meetings which may be held.

*Clause 68* lists the persons who may call a general meeting.

*Clause 69* provides for the time when general meetings will be held.

*Clause 70* details the place at which the meeting may be held.

*Clause 71* provides for the period within which annual general meetings must be held.

*Clause 72* enables a general meeting to be requested, how it is requested and that it may be called even though the first annual general meeting has not been held.

*Clause 73* provides for the contents of the agenda for general meetings.

*Clause 74* provides for the notice of a general meeting, what it must contain, what must accompany the notice and the matters on which votes may be cast.

***Division 7—Annual general meetings***

*Clause 75.* This clause defines the responsibility of an original owner to convene the first annual general meeting of a body corporate, the period within which it must be held and its agenda. If no such meeting has been held it also gives the referee the power to make an order appointing a person to call the first annual general meeting within a specified time.

*Clause 76* provides for the material to be handed over to a body corporate by the original owner at the first annual general meeting. If material of the type listed in the clause comes into the hands of the original owner after the first annual general meeting that material must be given to the body corporate. A penalty is imposed if the original owner fails to comply with these provisions.

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

*Clause 77* provides for the role of the chairperson at a general meeting of a body corporate.

*Clause 78* authorises a chairperson to rule a motion out of order. Reasons must be given and the meeting may reverse the chairpersons' ruling.

*Clause 79* provides for the quorum which is required for a general meeting.

*Clause 80* establishes the voting rights of a person.

*Clause 81* provides for the manner in which persons may exercise their vote.

*Clause 82* provides for the manner in which a proxy is given and the restrictions which apply to the exercise of a proxy vote. A penalty is provided if a person exercises a proxy knowing that the person is not entitled to exercise it.

*Clause 83* provides for the manner in which voting will be carried out at a general meeting of a body corporate and the voting entitlements of a person entitled to vote. If equal votes are cast for and against a motion the motion is not passed.

*Clause 84* provides that a body corporate is also given authority to appoint a returning officer whose role is defined.

*Clause 85* requires the secretary to have the roll and a list of the persons entitled to vote at the meeting available for inspection at that meeting.

*Clause 86* provides for the amendment of motions at general meetings.

*Clause 87* provides for the chairperson's declaration of the result of voting at a general meeting of a body corporate. The result of voting must be recorded.

*Clause 88* provides that if a resolution of a particular class is required to be passed for a particular purpose a resolution passed for the purpose may only be revoked or amended by a resolution of the required class.

*Clause 89* provides for the taking of minutes of its general meetings by a body corporate.

## **PART 4—MANAGEMENT AND SERVICE CONTRACTS**

### ***Division 1—Appointment of body corporate managers and service contractors***

*Clauses 90.(1)* and *90.(2)* authorise a body corporate, by contract, to appoint a body corporate manager or a service contractor.

*Clause 90.(3)* authorises a body corporate to enter into a separate contract with a letting agent.

*Clause 90.(4)*. A contract appointing a body corporate manager may delegate the specified functions to that person.

*Clauses 91.(1)* and *91.(2)* give authority to a body corporate to enter into or amend a management or a service contract.

*Clauses 91.(3)* and *91.(4)* provide that certain specified persons are not entitled to vote on matters relating to management or service contracts.

*Clause 92*. This clause requires a management or service contract to be in

writing and the matters which must be provided for in it.

*Clause 93.(1)* provides for the term of appointment of a body corporate manager or a service contractor.

*Clause 93.(2)* provides that the term of appointment must run from a date within 6 months after the passing of the resolution approving the terms of the contract.

### ***Division 2—Transfer***

*Clause 94* provides for the body corporate to approve in relation to the transfer of management or service contracts.

### ***Division 3—Terminating body corporate management contracts and service contracts***

*Clause 95* provides for the termination of certain management or service contracts at a specified time and the effect of such termination.

*Clause 96* provides for the termination of a management or service contract if the contractor breaches any of the provisions contained in the clause.

### ***Division 5—Use of common property***

*Clause 97* provides that a body corporate may authorise the use of common property by a body corporate manager or service contractor for the purposes specified. The right to use the common property ceases when the contract terminates.

*Clause 98* details the role of the Registrar of Titles when rights to the use of an area of common property have been given to a body corporate manager or service contractor.

**PART 5—FINANCIAL MANAGEMENT*****Division 1—Budget***

*Clause 99.* This clause requires a body corporate to prepare and adopt a budget and outlines the matters to be dealt with in it.

***Division 2—Levies***

*Clause 100* provides for the contributions that are to be levied on owners.

*Clause 101* authorises a body corporate to approve the granting of a discount for early payment of levies.

*Clause 102* authorises a body corporate to impose a penalty for the late payment of levies.

*Clause 103* provides that a notice setting out the contributions payable to a body corporate must be forwarded to the owner.

*Clause 104.* This clause details the rights of a body corporate if contributions have not been paid.

***Division 3—Administrative and sinking funds***

*Clause 105* provides for the establishment of an administrative and a sinking fund by a body corporate, the moneys to be paid into each fund and the basis on which funds are administered.

*Clause 106.* This clause details the manner in which the moneys in the administrative and sinking funds will be applied.

*Clause 107* provides for special provisions to apply to certain staged development schemes.

***Division 4—Borrowing***

*Clause 108* authorises a body corporate to borrow money and specifies the restrictions which are to apply including any imposed by regulation.

***Division 5—Control of spending***

*Clause 109.* This clause limits major expenditure by the committee. The relevant limit is defined as an amount arrived at by multiplying the number of lots by an amount prescribed by regulation or the amount fixed by special resolution of the body corporate. That limit may be exceeded in specified circumstances.

*Clause 110* requires expenditure proposals which are to be put to a general meeting of a body corporate to be accompanied by quotations.

***Division 6—Accounts and audit***

*Clause 111* provides for the accounts which are to be kept by a body corporate.

*Clause 112* provides for the auditing of the books of a body corporate. Primary bodies corporate must have their books audited. Other bodies corporate may resolve not to have their books audited for any one year or to have its books audited at any time.

**PART 6—PROPERTY MANAGEMENT*****Division 1—Body corporate's responsibilities***

*Clause 113.* This clause specifies the duties of a body corporate in relation to the common property.

*Clause 114* provides for the responsibilities of a body corporate in a

building unit scheme in relation to the building.

*Clause 115* provides that a body corporate has certain responsibilities relating to the receipt of mail, the provision of a mail box and a notice board.

### ***Division 2—Acquisition and disposal of common property***

*Clause 116* authorises a body corporate to acquire land and specifies the basis on which land may be acquired.

*Clause 117* provides for the disposal of common property or an interest in it by a body corporate.

### ***Division 3—Easements***

*Clause 118* authorises a body corporate to grant, accept or surrender an easement. It also establishes the role of the Registrar of Titles in relation to dealings with easements by a body corporate.

### ***Division 4—Improvements to common property***

*Clause 119* authorises a body corporate to make improvements to common property and the basis on which they may be made.

*Clause 120.(1)*. This clause provides authority for the committee of a body corporate to allow owners of lots to make an improvement to common property for the benefit of an owner's lot.

*Clause 120.(2)* provides that a major improvement to common property by an owner cannot be made without the approval of the body corporate by resolution without dissent.

*Clause 120.(3)* provides that the above provisions do not apply to a situation where all owners have leased their lots back to the one lessee, for example, a leaseback hotel.

*Clauses 120.(4)* and *120.(5)* authorises a body corporate to impose conditions on approvals given and that an owner must comply with them.

*Clause 121* provides that improvements to primary or secondary common property must be consistent with the primary plan.

#### ***Division 5—Amenities and services***

*Clause 122* authorises a body corporate to acquire amenities for the benefit of lot owners. The amenities could include moorings for vessels or a tennis court on the common property of another body corporate.

*Clause 123* authorises a body corporate to acquire personal property for the use and enjoyment of owners or occupiers of lots. A limit is placed on the amount that may be expended.

*Clause 124* provides for the provision of services, of a type prescribed by regulation, by a body corporate to lot owners.

#### ***Division 6—Power to act for owners and occupiers***

*Clause 125* authorises a body corporate to carry out work which owners or occupiers of lots should carry out and to recover the costs incurred by the body corporate. Such work could be work required to be carried out by a local government or by a by-law of the body corporate.

*Clause 126* defines the power of a body corporate to take action to remedy defective building work.

#### ***Division 7—Power to enter lot***

*Clause 127* provides for a power of entry to a lot to be exercised by a person authorised by the body corporate, the basis on which the power may be exercised and the penalty for obstruction.

## **PART 7—CONDUCT OF OCCUPIERS**

*Clause 128.* An occupier of a lot must not interfere or permit interference with those things which provide support or shelter to another lot or the common property.

*Clause 129* provides that an occupier must not interfere or permit interference with services to a lot or common property.

*Clause 130* provides that an occupier must not use or allow a lot or the common property to be used in a way that causes a nuisance or interferes with the use of the common property.

*Clause 131* provides for the maintenance by owners of their lots and parts of the service infrastructure within their lot that provides services to that lot.

## **PART 8—BY-LAWS**

*Clause 132.(1)* provides that the first by-laws of a body corporate are those contained in the Schedule 1 to the Bill.

*Clause 132.(2)* authorises a body corporate to make by-laws by special resolution for the purposes specified which include:

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

*Clause 132.(3)* provides that if a by-law is passed which restricts the commercial use to which a lot may be put the owner of that lot must agree in writing to the restriction.

*Clause 132.(4)* provides that if a lot is available for residential purposes a by-law cannot restrict the type of residential use to which it is put.

*Clause 132.(5)* provides that a by-law, other than an exclusive use

by-law, cannot impose a monetary liability on an owner or occupier.

*Clause 133.(1)* authorises a body corporate, by resolution without dissent, to make a by-law, with the consent of the owner of a lot, conferring on that owner the exclusive use of or special privileges in relation to an area of common property.

*Clause 133.(2)* provides that such a by-law must identify the relevant part of the common property and may authorise a person to allocate it at a later date.

*Clause 133.(3)* provides that the owner must agree in writing to the by-law either before it is made or the allocation is made.

*Clauses 133.(4) and 133.(5)* provide that such a by-law may impose conditions and if it does not provide for the maintenance of the area the owner is responsible for maintenance.

*Clauses 133.(6) to 133.(9)* provide for the exchange of rights under an exclusive use by-law, the giving of notice to the body corporate, the recording of the change by the Registrar of Titles and the payment of costs associated with the change.

*Clause 133.(10)*. This clause states that an exclusive use by-law is enforceable against the owner of a lot.

*Clauses 133.(11) to 133.(13)* provide that such a by-law may authorise an owner to make improvements to the area. If no specific provision is made the by-law does not authorise the making of improvements to the area. In situations where no authorisation is given the body corporate may authorise the improvements under clause 91.

*Clause 133.(14)* provides for the recovery of any monetary liability imposed under an exclusive use by-law.

*Clauses 134.(1) and 134.(2)* require a body corporate to lodge a written notice containing the by-law with the Registrar of Titles within 3 months after passing the by-law. If the notice is not lodged within that time the by-law lapses.

*Clause 134.(3)* provides that a by-law comes into force either when the Registrar of Titles records it or on a later date specified in the by-law.

*Clause 134.(4)* provides that the Registrar of Titles does not have to examine a by-law to determine its validity. The validity or enforceability of a by-law that has been recorded is not guaranteed by the State and by-laws

must be endorsed with a caution to that effect.

*Clauses 104.(1) and 135.(2)* provide for the legal effect of by-laws. A by-law is enforceable against owners, occupiers and invitees. It cannot restrict the transfer of a lot.

*Clause 135.(3)*. This clause provides that in a staged development scheme the by-laws of the primary body corporate will prevail if there is any inconsistency between the by-laws of the primary and secondary bodies corporate.

*Clause 135.(4)* provides that such a by-law made during the currency of a leaseback arrangement expires on the date the leaseback arrangement comes to an end unless all owners agree in writing to the by-law.

*Clause 136* authorises the keeping of a guide dog on a lot.

## **PART 9—INSURANCE**

*Clause 137* provides for the insurance of lots and common property. Insurance taken out by a body corporate must be for the full replacement value of the common property and in a building units scheme any buildings.

*Clause 138* provides that in a group titles development if there are common walls between buildings on separate lots then insurance covering the cost of reinstatement of the buildings and any costs incidental thereto must be taken out by the body corporate.

*Clause 139* provides that a body corporate in a group title development where there are no common walls between lots, if authorised by by-law, may take out insurance over buildings and improvements on the lots. If an owner wants to take part in the scheme the owner must notify the body corporate of the value of the property to be insured and must pay the cost of insurance to the body corporate based on the value and the risk associated with that property.

*Clause 140* requires a body corporate to maintain a public risk insurance policy for an amount which is not less than the amount prescribed by regulation.

*Clause 141* provides for the responsibility of the original owner in relation to insurance. Insurance of the type referred to in Clauses 106, 106A and Clause 107 must be taken out for the first year after registration of the plan. If that insurance is not taken out a body corporate may recover its cost from the original owner. A penalty is provided for in the legislation if the original owner fails to take out and maintain the relevant insurance.

*Clause 142* authorises the body corporate to take out additional insurance of the type listed.

*Clause 143.(1)* requires the insurer to note the interest of a mortgagee of a lot on any policy of insurance relating to the lot which has been taken out by a body corporate.

*Clauses 143.(2) and 143(3)* provide that any claim the owner has to money payable under a policy referred to in subclause (1) is to be applied to the discharge of the mortgage debt. However, if the body corporate determines that the proceeds of insurance are to be used for the repair, reinstatement or replacement of the damaged property the mortgagee is not entitled to such proceeds.

*Clauses 143.(4) to 143.(5)* authorise an owner to take out insurance to insure a mortgagee against damage to the lot. The manner in which the proceeds of any such policy are to be applied are also specified.

*Clause 144* provides for additional insurance which may be taken out by an owner to cover damage to a lot. If an owner were to replace a fixture within a lot additional insurance could be taken out to ensure that the owner is compensated if the fixture is damaged for the additional value of that fixture.

*Clause 145* provides for the manner in which insurance money for damage paid to a body corporate must be used.

## **PART 10—VALUATION, RATING AND TAXING**

*Clause 146* provides that for the purpose of rates, taxes or charges each lot in a group subdivision is regarded as a separate piece of land.

*Clause 147* provides that valuations made for the purpose of imposing

rates, taxes or charges are not required to be made for each lot but are to be made for the parcel as a whole. For the purpose of the valuation, and objection and appeal against the valuation the body corporate is taken to be the owner.

*Clause 148* provides that rates and charges payable to a local government that are based on the unimproved value of land will in the case of a lot in a group subdivision be calculated by apportioning the unimproved value of the parcel between the lots in proportion to their lot entitlement. No rates or charges based on the unimproved value of land are payable on the common property. A body corporate is only liable for charges for water, garbage collection and other services provided to the common property and lot owners are liable for any of those charges which are specifically provided to their lot. A body corporate may make arrangements with a local government to take on liability for owners or occupiers of lots for services provided that benefit the owners or occupiers (e.g. bulk garbage collection).

*Clause 149* provides for the liability to pay rates or charges when the boundaries of a lot have been amended.

*Clause 150* authorises a local government to recover statutory charges arising as a result of work carried out by a local government. Those charges are a charge on the land. Provision is also made in relation to the apportionment of those charges.

## **PART 11—RECORDS**

### *Division 1—Notices*

*Clause 151* provides for the owner, lessee or a letting agent of the owner to notify the body corporate of the matters to be prescribed by regulation. Those matters will include the address of that person. This will enable a body corporate to quickly contact the appropriate person in an emergency situation.

Failure to notify or comply with a notice renders the person liable to a penalty.

*Clause 152* requires a mortgagee in possession of a lot to notify the body corporate if no action is to be taken under the mortgage.

Failure to notify renders the mortgagee liable to a penalty.

*Clause 153* authorises a body corporate to require a person to give notice under this Division.

Failure to notify renders the person liable to a penalty.

*Clause 154* requires a body corporate to keep notices.

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

*Clause 155* provides for the maintenance of a roll by the body corporate. The information to be contained in the roll includes lot entitlements, addresses for service of lot owners, the names of nominees of corporate owners and the name and address of the original owner.

*Clause 156* provides that a body corporate must keep a record of all moveable property it acquires that is of a value that is greater than that prescribed by regulation or acquired by way of gift.

*Clause 157* requires a body corporate to keep a register of service contracts. The information to be kept in the register will, for example, assist an owner provide some of the information referred to in clause 163.

*Clause 158* requires a body corporate to keep a register of transactions which allow a service contractor to use common property or allow an owner to make improvements to common property.

*Clause 159* requires a body corporate to keep a consolidated copy of its by-laws. A body corporate on request must provide a copy of the by-laws. An owner must on the request of an occupier provide a copy of the by-laws. All copies of the by-laws must bear the endorsement prescribed under the regulations.

*Clause 160* provides for the documents which are to be retained by a body corporate.

*Clause 161* provides that a body corporate must provide information from its records to an interested person on the payment of the prescribed fee.

*Clause 162.* This clause requires a body corporate to allow members of the committee to obtain reasonable access to its records and a body corporate must give access to its records to the referee.

## **PART 12—SALE OF LOTS**

*Clauses 163 and 164* require an owner to provide a purchaser with the information specified.

*Clause 165* requires that the statement containing the information must be signed by the vendor or a person authorised to sign on the vendor's behalf.

*Clause 166* enables copies of information to be attached to statements given to a purchaser by the vendor.

*Clause 167* imposes an obligation on a vendor, if prior to settlement the vendor becomes aware of any inaccuracy or change in the information contained in the statement, to notify the purchaser of any such inaccuracy or change.

*Clause 168* provides that a statement given under this Part forms part of the contract.

*Clause 169* provides that so far as the purchaser is concerned the vendor has warranted the accuracy of the statement.

*Clause 170* provides that a purchaser may, prior to settlement, avoid the contract if materially prejudiced by a failure to comply with the disclosure provisions in the legislation. A purchaser from an original owner may avoid the contract, within the time specified, even though settlement has taken place.

*Clause 171* provides for the repayment of money if the contract is avoided before settlement. Provision is also made for the reconveyance of the property and the payment of associated costs, in a purchase from an original owner, if the contract is avoided within the specified time.

*Clause 172.* This clause restricts the use of a power of attorney given by a purchaser to an original owner to those matters which an original owner has disclosed in writing to the purchaser before the power is conferred.

## **PART 13—EXEMPTIONS**

*Clause 173* authorises a body corporate to exempt itself from certain provisions of the legislation which will be prescribed by regulation.

## **PART 14—DISPUTES**

### *Division 1—Referees*

*Clause 174* provides for the appointment of a person as a referee.

*Clause 175* authorises a referee to delegate powers under the legislation.

*Clause 176* provides for the protection of a referee or a referee's delegate in carrying official functions. Such a person has the same privileges and immunities from liability as a Magistrate exercising the jurisdiction of a Magistrates Court.

### *Division 2—Applications to referee*

*Clause 177* provides for the procedures to be followed when an application is made to a referee.

*Clause 178* provides for the giving of notice to the body corporate and the affected person by a referee when an application for an order is made. On receipt of the notice the body corporate must place a copy of it on the notice board and give a copy to each person entitled to vote at general meetings of the body corporate.

*Clause 179* authorises an applicant, with the permission of the referee, to withdraw an application for an order at any time prior to the making of the order.

*Clause 180* authorises a person with a proper interest in the matter to inspect an application or submissions made in relation to that application or obtain copies of them.

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

*Clause 181* provides that a referee must investigate an application to decide whether to make an order. However, the referee may dismiss an application or terminate an investigation if it appears that it is frivolous, vexatious or misconceived.

*Clause 182* provides the investigative powers of the referee. The referee, for example, may enter and inspect the common property and after reasonable notice to the occupier, enter and inspect a lot. Penalty provisions apply where a person obstructs a referee in the conduct of an investigation.

***Division 4—Mediation by referee***

*Clause 183* provides for mediation of a dispute by a referee. If a dispute is settled by agreement, the referee may make an order to give effect to the agreement. Unless the parties agree a party at a mediation conference called under this clause is not to be legally represented at that conference or in any other proceedings in which the referee is acting as a mediator.

***Division 5—Referee's orders***

*Clauses 184* and *185* provide for the matters on which a referee may make an order. Some examples are:

- to order a body corporate to have repairs carried out;
- to order that a by-law is void because the body corporate lacked power to pass such a by-law; and
- to order a person in charge of an animal to remove it from the premises.

*Clause 186* require orders affecting a by-law or licence to be lodged with the Registrar of Titles.

*Clause 187* authorises a referee to make an interim order. An interim order is made because of the urgent nature of the circumstances to which the application relates.

*Clause 188* authorises the referee to make an order which requires a person to repair damage or pay compensation.

*Clause 189* authorises a referee to appoint an administrator to carry out the duties of the body corporate, its committee or a member of the committee under the legislation.

*Clause 190* authorises a referee to change a body corporate's financial year and the dates on which later financial years begin.

*Clause 191.* This clause makes provision for the time when an order takes effect.

*Clause 192* limits the power of a referee. A referee does not have power to resolve a question about title to land.

### ***Division 6—Enforcement of orders***

*Clause 193* provides that a referee must give a copy of an order to the persons specified including the applicant, the body corporate and the person against whom the order is made thereby ensuring that an affected person has the ability to resort to the appeal provisions contained in Division 7 of the Bill.

*Clause 194* provides that an order to pay money may be enforced as if it were a judgment of the Magistrates Court in which it is registered.

*Clause 195* provides that a person who contravenes a referee's order commits an offence and prescribes a penalty.

### ***Division 7—Appeals from referee***

*Clause 196* provides for the right of appeal, to a Magistrates Court, against an order or decision of a referee.

*Clause 197.* This clause provides for the manner in which an appeal is commenced, the time within which it must be commenced and the duties of a referee following receipt of the notice of appeal.

*Clause 198* authorises a referee or the Magistrates Court to grant a stay of an order or decision appealed against to ensure the effectiveness of the

appeal.

*Clause 199* provides for the manner in which an appeal will be heard. An appeal must, for example, be conducted with a minimum of formality and a person may be represented at the appeal.

*Clause 200* provides for the powers of the Magistrates Court in deciding an appeal. Those powers include the confirmation or variation of the order under appeal. The Magistrates Court cannot make an order for costs of the appeal.

### ***Division 8—Appeals from Magistrates Court***

*Clause 201.* A person effected by an appeal has the right to appeal to the District Court on a question of law. The appeal must be started within 6 weeks of the decision appealed against.

### ***Division 9—Miscellaneous***

*Clauses 202* and *203* provide for the payment of a penalty by a person who makes a false or misleading statement or gives a false or misleading document to a referee.

*Clause 204* provides that a referee must on payment of the prescribed fee inform the applicant in writing of any application for an order made within the previous 6 years or of any undisposed application about a particular community titles scheme.

*Clause 205* provides that proceedings for the enforcement of an order must be taken in the Magistrates Court in the Magistrates Court District in which the group subdivision scheme is located.

*Clause 206* authorises the making of rules relating to the registration of a referee's order and its enforcement in a Magistrates Court and appeals to a Magistrates Court under the *Magistrates Court Act 1921*.

**PART 15—MISCELLANEOUS**

*Clause 207* defines an associate of a person.

*Clause 208* provides that a transaction is valid and binding on the body corporate if a person in good faith and without actual notice of an irregularity enters into the transaction with a person who has apparent authority to bind the body corporate.

*Clause 209* provides that a body corporate is regarded as the owner of the parcel for the purposes of the *Land Act 1962* and both the body corporate and owners are subject to the *Dividing Fences Act 1953*.

*Clause 210* authorises a body corporate to take legal proceedings including those for the recovery of a liquidated debt against the owner of a lot.

*Clause 211* authorises a body corporate to represent owners of lots in proceedings under the *Local Government (Planning and Environment) Act 1990*. An owner may still be separately represented in those proceedings.

*Clause 212* authorises a court to order that money payable by the body corporate be paid by the owners of specified lots in proportions fixed by the court.

*Clause 213* provides for the service of legal process or other documents on a body corporate by personal service on the secretary or another member of the committee. A body corporate's address for service is that shown on the plan. An owner's address for service is that recorded on the body corporate's roll or if no address is recorded, the address of the lot.

*Clause 214* provides that if a person has the statutory power to enter land or premises in relation to a lot, that person may also enter and remain on the common property for the purpose of exercising that power.

*Clause 215* precludes a person from contracting out of the provisions of the Bill.

*Clause 216* provides for the procedures to be followed when an application is made to the Supreme Court under the Bill.

*Clause 217* provides that fees may be prescribed for payment by regulation.

*Clause 218* provides for the approval of forms for use under the Bill by the chief executive.

*Clause 219* provides that a reference to a body corporate manager or service contractor includes a reference to the person's personal representatives, successors and assigns.

*Clause 220* provides for the transmission details to be shown on any facsimile.

*Clause 221* is the regulation making power.

## **PART 16—TRANSITIONAL PROVISIONS**

*Clause 222* provides for the continuation of specified agreements entered into under the provisions of the former Act. However the provisions of this Act apply to contracts entered on or after 24 October 1994.

*Clause 223* provides for the saving of existing community titles schemes. Plans lodged under the provisions of the former Act which have not been registered will be dealt with under the provisions of the former Act. Plans registered under the former Act will be taken to be a plan registered under this Bill. A body corporate created, its committee elected, by-laws passed and a meeting called under the provisions of the former Act will continue to have effect under this Bill.

*Clause 224* provides for the saving of existing by-laws.

*Clause 225* provides for the saving of special rights granted to owners by a body corporate.

*Clause 226* provides for current actions by or about the referee to be finalised under this Act.

*Clause 227* provides that a reference to former Acts, defined in Schedule 3 of this Bill, is a reference to this Bill.

## **PART 17—REPEAL AND AMENDMENTS**

*Clause 228* deals with the repeal of the *Building Units and Group Titles Act 1980*.

*Clause 229* deals with the amendment of Acts mentioned in Schedule 2 of the Bill.

### **SCHEDULE 1**

#### **BY-LAWS**

This Schedule lists the by-laws which apply to bodies corporate on registration of a plan. They cover noise, vehicles on common property, obstructing the use of common property, damage to lawns and gardens and gardening on common property, damage to common property, behaviour of invitees, leaving of rubbish and other material on common property, retaining and maintaining the appearance of a lot, storage of flammable materials, garbage disposal and the keeping of animals.

### **SCHEDULE 2**

#### **AMENDMENT OF ACTS**

This Schedule deals with the consequential amendment of the following Acts:

- *Auctioneers and Agents Act 1971*
- *Fire Services Act 1990*
- *Integrated Resort Development Act 1987*

- *Land Sales Act 1984*
- *Land Tax Act 1915*
- *Land Title Act 1994*
- *Local Government Act 1993*
- *Local Government (Planning and Environment) Act 1990*
- *Mixed Use Development Act 1993*
- *Mortgages (Secondary Market) Act 1984*
- *Registration of Plans (H.S.P. (Nominees) Pty. Limited) Enabling Act 1980*
- *Registration of Plans (Stage 2)(H.S.P. (Nominees) Pty. Limited) Enabling Act 1984*
- *Retirement Villages Act 1988*
- *Sanctuary Cove Resort Act 1985*
- *Stamp Act 1894*
- *State Housing Act 1945*

## **SCHEDULE 3**

### **DICTIONARY**

This Schedule defines the terms used in the Bill.