

Resorts and Other Acts Amendment Bill 2009

Explanatory Notes

Introduction

The *Resorts and Other Legislation Amendment Bill 2009* (the Bill) provides interim measures to address pressing equity and procedural issues as part of broader reforms to modernise the governance and development of the six resorts in Queensland governed by the *Sanctuary Cove Resort Development Act 1985* (SCRA) and the *Integrated Resort Development Act 1987* (IRDA).

While considered best practice at inception, the SCRA and the IRDA no longer reflect contemporary best practice planning or bodies corporate management. The current resorts regime pre-dates the *Integrated Planning Act 1997* (IPA) and the *Body Corporate and Community Management Act 1997* (BCCMA) by 10 years and has not been significantly amended in that time.

The Bill provides relief on a number of equity issues important to residents in the short term, such as representation on bodies corporate, provisions for financial disclosure, disputes resolution and proxy use. The Bill also addresses procedural issues, such as improved consistency in address management, an administrative process to amend land uses in the SCRA and certain minor boundary realignments under the IRDA to allow for improved planning outcomes and land use.

The Bill makes further improvements in relation to transparency and accountability of certain bodies corporate and builds better understanding of roles and responsibilities of members through the introduction of several codes of conduct and related provisions relating to breaches of the code and termination procedures. This includes provisions for more transparent election of certain bodies corporate representatives; clarification of powers of certain bodies corporate and makes approved land use amendments sought by the Sanctuary Cove resort community, with consequent voting entitlement changes.

The Bill makes amendments to the *Iconic Queensland Places Act 2008* to clarify and confirm that building development applications are not captured within the ambit of the legislation.

In addition, the Bill contains amendments to the *Liquor Act 1992* to allow greater flexibility for trading for industrial canteens, remove early trading hours for commercial special facility licences, other than airports and casinos, as well as adjust the regulatory requirements for certain low risk premises.

Short Title of the Bill

The short title of the Bill is the *Resorts and Other Acts Amendment Bill 2009*.

Objectives of the Bill

The policy objective of the Bill is to address immediate equity and procedural issues in the resorts legislation and related Acts, while introducing the resort communities to the concepts underlying a broader reform.

The Bill will:

- in both the SCRA and the IRDA, include provisions to improve transparency and equity in the conduct of the bodies corporate including body corporate representation, use of proxies, dispute resolution, limits on the length of body corporate management contracts and financial disclosure
- include provision in the SCRA of a process, similar to the process already existing in IRDA, that will allow for amendment of land uses to modernise uses established 22 years ago, and facilitate scheme amendment without the need for legislative amendment
- in the IRDA, enable limited site boundary adjustment, to facilitate minor boundary realignments between resort land and adjacent sites to achieve improved planning outcomes
- in the SCRA, the IRDA and the *Mixed Use Development Act 1993* (MUDA), include provisions for the developer to submit an address plan with the relevant local government authority for new developments (e.g. subdivision) and changes to addressing

- improve transparency and accountability at resorts through the introduction of several codes of conduct and related provisions relating to breaches of the code and termination procedures
- provide for more transparent election of certain bodies corporate representatives
- clarify of powers of certain bodies corporate including bringing SCRA into alignment with IRDA, and resorts legislation into alignment with contemporary bodies corporate management legislation
- make approved plan amendments sought by the Sanctuary Cove resort community (with consequent voting entitlement changes)
- clarify and confirm that building development applications are not captured within the ambit of the *Iconic Queensland Places Act 2008*
- amend the *Liquor Act 1992* to allow for flexibility in trading hours for industrial canteens; restrict early trading hours for commercial special facility licences, other than airports and casinos; and clarify licensing requirements for low risk premises such as florists, hairdressers, limousines and retirement villages.

Policy rationale

Resorts legislation

Resort legislation (SCRA and IRDA) pre-dates the IPA by 20 years and has not been significantly amended in that time. The regime for resort development established under the SCRA and the IRDA no longer reflects contemporary best practice planning.

While considered best practice at the time of its inception, this legislative framework complicates planning and development issues with competing rights and multiple interests established under the body corporate structure.

Under this framework, management of resorts is complex and based on an outdated, multi-layered bodies corporate structure which has resulted in a range of inequities for resort residents, including lack of representation on bodies corporate and dispute resolution processes. Issues arising in resort jurisdictions are often detailed and involved, requiring considerable negotiation and time to resolve both planning and body corporate matters.

As an early response to address a range of complex issues which arise under the resort development framework, the Bill aims to provide relief regarding a range of pressing equity issues for resort residents, and facilitate improved planning and development outcomes in the short term while work continues on moving the management and development of resorts into more contemporary frameworks.

The Bill also provides an opportunity to consider address management at resorts and other mixed use developments. There are no formal or standardised addressing processes for development occurring under the IRDA, SCRA and MUDA. The Bill will require submission of address management plans when lodging subdivision applications to the relevant local government for approval. This ensures new developments at resorts conform with addressing standards of the relevant local government.

The *Iconic Queensland Places Act 2008* (IQPA) protects places with characteristics or qualities in their natural or built environment that reflect or contribute in a substantial way to Queensland's character.

The IQPA has four main parts, one of which is the establishment of development assessment panels to assess key development applications in iconic areas. This provides the community with the assurance that the development assessment decision is taken by an independent body that has been created under the auspices of legislation dedicated to preserving iconic values in their community.

The amendment to section 42 of the IQPA simply clarifies and confirms that building development applications are not captured within the ambit of the legislation. Examples of building applications include sheds, carports and pools, which would have no impact on the iconic values of the declared iconic place.

Liquor Act 1992

Significant legislative reforms were undertaken in 2008 via the Liquor and Other Acts Amendment Act 2008 (LOAAA) in order to minimise the harm from liquor in the community. A key objective involved the implementation of a new harm minimisation risk framework and included the introduction of new licence types and the general elimination of previous extended hours trading except where there was identified community need for extended hours.

A number of provisions within the Liquor Act which authorised the sale of liquor outside ordinary trading hours of 10am to midnight were also removed.

Industrial Canteens

The principal activity of an industrial canteen is the sale of liquor on a licensed premises located within a remote industrial locality. A remote industrial locality means a locality at which there is no permanent residential population and where mining, rail or road construction is occurring. An industrial canteen may only sell liquor to a person working at this remote industrial region or their family or guests.

Before the LOAAA, section 95 of the Liquor Act authorised the grant of limited licences to a variety of industries, including industrial canteens. A limited licence authorised the sale of liquor at times specified by the chief executive. Amendments in the LOAAA made industrial canteens a sub-category of the commercial other licence to be subject to ordinary trading hours of 10am to midnight, with an option to apply only for extended trading from 9am to 10am from 1 January 2009.

The trading hours for industrial canteens that were licensed prior to 1 January 2009 were not removed with the general elimination of pre-10am trading hours under the liquor reforms. Under the pre-amended Liquor Act, hours were approved directly for specific industrial canteen licences reflecting the conditions and needs of the community in which they operated. Consequently, existing industrial canteens continue to trade under their pre-existing arrangements, being able to sell liquor during a time specified by the chief executive in the licence.

However, while industrial canteens may continue to trade, since 1 January 2009, the chief executive has been unable to vary their trading hours outside of ordinary trading hours. In addition, any new commercial other (industrial canteens) licences can only be issued subject to the ordinary trading hours of 10am to midnight, with an option to apply for extended trading from 9am to 10am.

Industrial canteens have unique characteristics, particularly to accommodate shift worker arrangements. They operate in low-risk, highly-regulated and remote environments for short trading periods, trading from times as early as 6am and even 4am. Uniform trading hours do not reflect these unique characteristics. A more flexible regulatory regime, where the chief executive sets the trading hours for industrial

canteens to reflect the particular needs and conditions of the community in which they are located as occurred prior to the LOAAA, is required.

Commercial Special Facility Licence

The LOAAA created the licence category of commercial special facility licence. The principal activity of a business conducted under a commercial special facility licence issued after 1 January 2009 is restricted to one of the following facilities: a casino, airport, convention centre, or another type of facility, other than a sporting facility, that makes a significant contribution to the tourist development of the State. Under the amended Liquor Act, ordinary trading hours of 10am to midnight apply to commercial special facility licences, other than airports and casinos.

The LOAAA also transitioned the previous special facility licences to commercial special facility licences on 1 January 2009. However, the amendments in the LOAAA restricting trading hours for most licence types to between 10am to midnight did not apply to former special facility licences. As a result, commercial special facility licences which transitioned from special facility licences on 1 January 2009 are able to continue trading pre 10am as authorised under the licence. Therefore, there is now an inconsistency in authorised trading hours for commercial special facility licences other than airports and casinos, as those that transitioned from special facility licences on 1 January 2009 can trade prior to 10am, while new commercial special facility licences granted post 1 January 2009 are subject to ordinary hours provisions. This inconsistency needs to be removed so as to reflect the policy intention that all commercial special facility licences, other than airports and casinos, are to be subject to ordinary hours.

Low Risk Premises

The implementation process for the LOAAA has provided an opportunity to further review certain industry activities against the new harm minimisation risk framework so as to ensure, consistent with government policy, regulation is appropriate and minimises burdens on industry and the community. Where the supply of liquor in certain low risk premises is subsidiary and in small quantities, it poses minimal risk to the community and requiring a licence is an unnecessary regulatory burden. In this regard, hairdressers, limousines and retirement villages are premises where the sale of a small amount of liquor would not impact negatively on the community. These entities are not currently exempted from requiring a licence under section 12 of the Liquor Act if they sell or supply any

quantity of liquor. An exemption under section 12 would clarify licensing requirements for these entities by specifying the amount of liquor they can sell and under what conditions it may be sold before a licence is required under the Liquor Act.

A sale of liquor forming part of a floral arrangement or gift basket to be delivered to a person other than the purchaser is currently exempted from the Liquor Act under section 12 if the quantity is not more than 1 litre and not more than one half of the total value of the arrangement or basket. The sale of liquor as part of floral arrangements and gift baskets does not pose a significant risk to the community. One litre is a very limited amount of liquor and the restriction on the liquor being no more than half the total price is considered somewhat restrictive. Increasing the amount that can be sold to 2 litres and up to 75% of the total price would not pose a significant risk to the community and would reduce the regulatory burden on this particular industry.

How objectives are achieved

Resorts legislation

The Bill achieves the objectives by:

- Providing for more equitable and transparent bodies corporate conduct, including contemporary requirements for representation on bodies corporate, elections, financial disclosure, codes of conduct, proxy use, limits on the term of body corporate management contracts and disputes resolution modelled on provisions in the BCCMA.
- Providing an administrative process to amend the land uses outlined in the SCRA using a process similar to that already existing in IRDA, to allow for modernisation of land uses established 22 years ago and facilitate scheme changes without the need for legislative amendment.
- Providing a specific limited power for minor amendments to resort site boundaries to facilitate improved planning outcomes.
- Amendment of the relevant acts to require submission of address management plans to achieve consistent address management.
- Making approved plan amendments sought by the Sanctuary Cove resort community (with consequent voting entitlement changes).

- Clarifying and confirming that building development applications are not captured within the ambit of the *Iconic Queensland Places Act 2008*.
- Amending the *Liquor Act 1992* to allow for flexibility in trading hours for industrial canteens; restrict early trading hours for commercial special facility licences, other than airports and casinos; and clarify licensing requirements for low risk premises such as florists, hairdressers, limousines and retirement villages.

Iconic Queensland Places Act 2008

The amendment will specifically exclude building applications from having to be referred to the iconic development assessment panels for the making of a reference decision. This will provide greater certainty to development applicants and contribute to an efficient development assessment system.

Liquor Act 1992

The amendments will:

- give industrial canteens greater trading flexibility by allowing the chief executive to specify trading hours for each commercial other (industrial canteen) licence;
- restrict trading hours prior to 10am for commercial special facility licences, other than airports and casinos, in line with the original policy intent.
- clarify licensing requirements for florists, retirement villages, hairdressers and limousines by specifying the amount of liquor, and under what conditions, they may sell without requiring a licence under the Liquor Act.

Alternative method of achieving the policy objectives

Resort Legislation

An interim phase towards modernisation of the SCRA and IRDA was preferred to provide early relief on pressing equity and procedural matters which could easily be addressed; while ensuring thorough consideration and appropriate resolution of the more time-consuming and complex matters of modernisation, which requires consultation with stakeholders over a longer term.

Liquor Act 1992

The policy objectives relevant to the other legislation the subject of the Bill can only be achieved by legislative enactment.

Estimated cost for Government implementation

There will be minor administrative costs to Government associated with the Bill, including potentially those incurred to provide appropriate consideration and processing of potential applications to amend site boundaries and land uses.

Any expenditure associated with implementation of the amendments to the *Liquor Act 1992* will be met through existing budget allocations.

Consistency with Fundamental Legislative Principles

The Bill has been drafted with regard to fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*.

Rights and liberties of individuals

The provision enabling forced transfer of a letting agents' management rights is a powerful provision and potentially affects parties' rights under contracts and instruments of appointment. However, this provision is limited to the mechanism, based on a similar model to the *Managed Investments Act 1998* (Cth), to removal of an under-performing manager under certain conditions in a manner that is not destructive to the body corporate scheme and allows the manager to depart with a financial return for the business the manager has built up.

Principles of natural justice

As the SCRA does not provide a process to amend the Sanctuary Cove Resort approved plan (outlining the zones, uses and future development of Sanctuary Cove resort), amendments to legislation have been made in order to amend the plan to achieve intended development outcomes.

Natural justice is not compromised as a process (equivalent to IRDA as much as possible) was undertaken by Sanctuary Cove Resort to consult lot owners and relevant local government regarding proposed approved plan amendments. In addition, Government has consulted as part of the legislative amendment process.

The Bill introduces a new application process in the SCRA, equivalent to IRDA. To enhance natural justice, this amendment application process in the IRDA and SCRA now also requires mandatory 30 business days for consultation, placing a notice on potentially affected land and submission of certification of consultation within resort communities along with all comments received as part of the consultation.

Immunity from proceeding or prosecution

Protection from civil liability and defamation potentially affects a fundamental principle of law that everyone is equal before the law and should therefore be fully liable for one's acts or omissions, and potentially restricts a person's ability to seek compensation for being defamed.

However, the protection under the Bill from civil liability for members of executive committees is limited to acts and omissions in good faith and without negligence and protection from liability for publishing defamatory material for particular motions for a general meeting on the basis that these persons are carrying out duties and making disclosures as per statutory functions, and about which they have no discretion.

Consultation

Developers, managers, residents and owners of the resorts under the IRDA and the SCRA, have been invited to provide feedback on the provisions leading to the draft Bill. Consultation has also occurred with key government departments that may have an interest in the operation of the Bill.

The Queensland Resources Council and Australian Mines and Metals Association have been consulted in relation to amendments to the *Liquor Act 1992*.

Notes on Provisions

Part 1 Preliminary

Clause 1 states the short title of the Bill.

Clause 2 provides for commencement certain provisions of the Act on a day to be fixed by proclamation.

Part 2 Amendment of Iconic Queensland Places Act 2008

Clause 3 provides that the Bill will amend the *Iconic Queensland Places Act 2008*.

Clauses 4 amends section 42 (Application of Division 3) to clarify and confirm that building development applications are not captured within the ambit of that legislation.

Part 3 Amendment of the Integrated Resort Development Act 1987

Clause 5 provides that the Bill will amend the *Integrated Resort Development Act 1987*.

Clause 6 renumbers schedule 2 to schedule 7

Clause 7 inserts a new section 3A (References to standard module) to advise that the information included in square brackets after a heading is a reference to a similar section of the *Body Corporate and Community Management (Standard Module) Regulation 2008*.

Clause 8 amends section 4 (Application for approval of scheme) to insert (1B) to clarify that an application under Division 2 to vary the boundaries of the site is not an application for scheme approval.

Clause 9 amends section 9 (Application for amendment of approved scheme) to remove any doubt that an application may be made under this division to amend an approved scheme by varying the boundaries of the site of the approved scheme.

Clause 10 replaces section 10 and 11 to require, before the making of an application for a proposed amendment to the approved scheme, the primary thoroughfare body corporate to provide written notice to primary thoroughfare body corporate and principal body corporate members stating the nature of the proposed amendments and that a member may give the primary thoroughfare body corporate written comments about the amendment within 30 business days after the notice is given. The section also requires the primary thoroughfare body corporate to place a notice, on the subject land, providing details of the nature of the proposed amendment and contact details of the primary thoroughfare body corporate; and the application must include a written statement confirming the above requirements were met.

Clause 11 amends section 12 (Minister to consider application) to require the Minister to give the Governor in Council the application and a written notice stating details of the application, who the Minister consulted (if any) and the results of that consultation.

Clause 12 inserts a new section 13A to allow for applications to amend an approved scheme by varying the boundaries of the site of the approved scheme provided that the proposed boundary variance is minor, will not materially change the total area of the site, there will be no change to aggregate lots or voting entitlements, and each affected land owner has given written consent. A successful application would result in a notation on the approved scheme. The section also defines “affected land owner” for the purposes of the section.

Clause 13 amends section 27 (The site) to make subsection 1 subject to subsection 2. A new subsection 2 is then inserted to extend the definition of the site boundaries to include all land within the newly approved scheme, and renumbers sections accordingly.

Clause 14 amends section 44 (Subdivision of initial lots by building units or group titles plan) to insert a new subsection 6 requiring the submission to local government at the time of initial subdivision of a diagrammatic

indication of naming and numbering, or proposed naming and numbering, of roads within the primary thoroughfare shown on the plan.

Clause 15 amends section 45 (Approval of building units or group titles plan) to add at section 45(1)(a)(iii) the diagram mentioned in section 44(6) to the list of items which must accompany the group titles plan for local government approval.

Clause 16 amends section 59 (Subdivision of secondary lots within residential precincts) to insert a new section 59(8) to require the submission to local government at the time of subdivision into secondary lots of a diagrammatic indication of naming and numbering of roads within the primary thoroughfare or secondary thoroughfare shown on the plan.

Clause 17 amends section 61 (Approval by local government) to add the diagram mentioned in section 59(8) to the list of items which must accompany the group titles plan for local government approval.

Clause 18 amends section 101 (Interpretation) to amend the definition of “special resolution” for a meeting of the Primary Thoroughfare Body Corporate.

Clause 19 amends section 103 (Member’s nominee) with a new subsection that directs a person appointed to represent the subsidiary body corporate in a way directed by and that is in the best interests of that body corporate.

Clause 20 amends section 106 (Meetings of primary thoroughfare body corporate) to clarify which parts of the *Building Units and Group Titles Act 1980* apply to meetings of the primary thoroughfare body corporate other than the first annual general meeting.

Clause 21 amends section 113 (Miscellaneous powers of primary thoroughfare body corporate) to insert a new provision that enables the primary thoroughfare body corporate to employ staff for carrying out its functions.

Clause 22 amends section 116 (Duties of primary thoroughfare body corporate) to outline what records must be kept and for how long.

Clause 23 amends section 123 (Constitution of executive committee) to provide for the constitution of the executive committee. Clause 23(1) expands the members of the primary thoroughfare body corporate from 3 to 5 in section 123(4). Clause 23(2) inserts section 123(5) to provide for the maximum numbers that may serve on the executive committee. Clause 23(3) and (4) recognise the expanded membership in section 123(6). Clause 23(5) inserts a new section 123(6A) to clarify that election of

committee members are conducted under schedule 1B of the *Building Units and Group Titles Act 1980*; and a new section 123(7) which outlines eligibility for election to the executive committee.

Clause 24 inserts a provision for a code of conduct that will apply to voting members of the executive committee of the primary thoroughfare body corporate.

Clause 25 provides for removal of a member of the executive committee of the primary thoroughfare body corporate by ordinary resolution.

Clause 26 inserts section 126A that provides for disclosure by a member of an executive committee in various situations that may identify a conflict of interest.

Clause 27 inserts sections 129A and 129B which address protection of executive committee members of the primary thoroughfare body corporate from liability and protection of body corporate and executive members from defamation under certain circumstances.

Clause 28 amends section 130 (Primary thoroughfare body corporate manager) to limit the term of appointment for a body corporate manager for the primary thoroughfare body corporate, after allowing for any rights or options of extension or renewal, to a maximum of three years. Subsections are also renumbered and cross references amended.

Clause 29 inserts a new Part 8, Division 1A (Proxies for principal bodies corporate at general meetings of primary thoroughfare bodies corporate) into Part 8, Division 1, which governs the primary thoroughfare body corporate.

The division inserts new sections 133A to 133F.

Section 133A (Application of division 1A) determines that the division applies to appointment and use of a proxy to represent a principal body corporate that is a member of the primary thoroughfare body corporate at a general meeting of the primary thoroughfare body corporate.

Section 133B (Appointment) determines that a proxy may be appointed, subject to conditions in section 133B(2) that the proxy is only effective if given by hand, post or facsimile, on a properly constituted proxy form, to the secretary of the body corporate before the start of the meeting, or an earlier time fixed by the primary thoroughfare body corporate.

Section 133C (Form of Proxy) sets out the required conditions for the proxy to be valid.

Section 133D (Use of Proxy) sets out conditions of the use of the proxy. Section 133D(1) clarifies that a member holding a proxy can vote both in their own right and also as the proxy. Section 133D(2) sets out the conditions under which the use of a proxy on behalf of the principal body corporate is prohibited. Section 133D(3) sets out that a proxy can be exercised in a show of hands vote or an electronic vote.

Section 133E (Special provisions about proxy use) requires under section 133E(1) that the principal body corporate can not be prevented by contract from exercising a vote nor required by contract to make someone else the body corporate's proxy for voting at a general meeting. Section 133E(2) prevents the original owner of an initial or secondary lot, the body corporate manager or their associates from exercising a proxy.

Section 133F (Offence) determines that a person must not exercise a vote that they do not have the right to exercise and sets a maximum, penalty of 100 penalty units.

Clause 30 amends section 138 (Interpretation) to insert a definition of "nominee" of a principal body corporate by reference to section 140(1) and amends the reference to the definition of special resolution for meetings of the principal body corporate.

Clause 31 replaces section 140 (Member's nominee) with a new section 140 which governs who can represent a subsidiary body corporate (a member of the principal body corporate) to the principal body corporate, and requires that the nominee must be appointed at the annual general meeting, that the nominee must be a member of the subsidiary body corporate and that the nominee must represent the subsidiary body corporate as directed by, and in the best interests of that subsidiary body corporate. It also articulates that a member of the principal body corporate, other than a subsidiary body corporate, may appoint a nominee from time to time.

The section also provides that the proxy takes effect when received by the secretary, that the term lasts for a maximum of one year and that the proxy must be in writing and signed.

The clause also inserts a new section 140A (When an original owner can not be the nominee for the body corporate), which requires that the original owner must not represent the subsidiary body corporate once 50% of lots are sold, and the body corporate can not appoint the original owner or their associate to represent them to the principal body corporate. Section 140A

also sets out procedures to remove the original owner or associate if they are the current nominee.

Clause 32 amends section 143(7) to provide that the provisions of the *Building Units and Group Titles Act 1980* apply to meetings of the principal body corporate.

Clause 33 amends section 148 (Miscellaneous powers of principal body corporate) to enable the principal body corporate to employ staff for performing its functions.

Clause 34 amends section 151 (Duties of principal body corporate) to outline what records must be kept and for how long.

Clause 35 amends section 158 (Constitution of executive committee) to provide for the constitution of the executive committee for the principal body corporate.

Clause 36 inserts section 158A to provide for a code of conduct for members of the executive committee for the principal body corporate.

Clause 37 amends section 159 (Vacation of office of member of executive committee) to provide for removal of a member of the executive committee of the principal body corporate by ordinary resolution.

Clause 38 inserts section 161A that provides for disclosure by a member of an executive committee in various situations that may identify a conflict of interest.

Clause 39 inserts sections 164A and 164B which address protection of executive committee members of the principal body corporate from liability and protection of body corporate and executive members from defamation under certain circumstances.

Clause 40 amends section 165 (Principal body corporate manager) to limit the term of appointment for a body corporate manager for the primary thoroughfare body corporate, after allowing for any rights or options of extension or renewal, to a maximum of three years. Subsections are also renumbered and cross references amended.

Clause 41 inserts a new Part 8, Division 3A and 3B into Part 8, Division 3 which governs principal bodies corporate.

Division 3A (Proxies for general meetings of principal bodies corporate) inserts new sections 168A to 168F.

Section 168A (Application of Division 3A) sets out that the division applies to the appointment and use of a proxy to represent a member of a principal body corporate at a general meeting of the principal body corporate.

Section 168B (Appointment) sets out conditions for the appointment of a proxy. Section 168B(1) clarifies that a person may appoint a proxy. Section 168B(2) determines that the principal body corporate may, by special resolution, prohibit the use of proxies. Section 168B(3) clarifies that subsection (1) is subject to subsection (2). Section 168B(4) limits the number of proxies one person can hold and section 168B(5) sets out that that the proxy is only effective if given by hand, post or facsimile, on a properly constituted proxy form, to the secretary of the body corporate before the start of the meeting, or an earlier time fixed by the principal body corporate.

Section 168C (Form of proxy) sets out the required conditions for the proxy to be valid.

Section 168D (Use of proxy) sets out conditions of the use of the proxy. Section 168D(1) clarifies that a member holding a proxy can vote both in their own right and also as the proxy. Section 168D(2) sets out that if one co-owner of a lot is present, a proxy given by another co-owner of the lot has no effect. Section 168D(3) sets out the conditions under which the use at a general meeting of a proxy on behalf of the principal body corporate is prohibited. Section 168D(4) sets out that a proxy can be exercised in a show of hands vote or an electronic vote.

Section 168E (*Special provisions about proxy use*) requires under section 168E(1) that a member of the principal body corporate cannot be prevented by contract from exercising a vote nor required by contract to make someone else the member's proxy for voting at a general meeting. Section 168E(2) prevents the original owner of an initial or secondary lot, the body corporate manager, or their associates from exercising a proxy unless that person is also a lot owner and subsequently a member of the subsidiary body corporate.

Section 168F (Offence) determines that a person must not exercise a vote that they do not have the right to exercise and sets a maximum penalty of 100 penalty units.

Division 3B (Accounts and Audit) inserts new sections 168G to 168I.

Section 168G (Application of Division 3B) determines that the division applies to a principal body corporate for preparing statement of accounts under section 151(1)(f), which includes the preparation of accounts in a list of duties for the principal body corporate.

Section 168H (Accounts) allows for the preparation of the accounts on a cash or accrual basis, sets out particular inclusions for cash and accrual accounts, and requirements for the statement of accounts. The section also requires that the statement of accounts must accompany the notice of the following annual general meeting.

Section 168I (Audit) sets out the requirements for a valid audit. Section 168I(1) requires that the principal body corporate must have its accounts audited every year. Section 168I(2) requires that the auditor to be appointed must be agreed to by ordinary resolution of the body corporate. Section 168I(3) sets out the conditions for a valid motion on agreeing to the auditor to be appointed. Section 168I(4) sets out that the body corporate can resolve to have its accounting records audited for a particular period or a particular project and appoint an auditor for the audit. Section 168I(5) excludes a member of the executive committee, the body corporate manager or an associate of theirs from being appointed as auditor. Section 168I(6) requires that the auditor must give a certificate regarding the truth and fairness of the accounts or identify deficiencies in the statement. Section 168I(7) requires that the auditor's certificate must be distributed with the notice of the annual general meeting next following the audit certification. Section 168I(8) defines auditor for the purposes of the section.

Clause 42 amends section 173 (Application of division 3 to expanded principal body corporate) to include Divisions 3A and 3B and 5.

Clause 43 inserts a new part 8, division 5 and a new part 8A.

This division inserts sections 175A to 175C which provide for removal from office of voting members of executive committees of the primary thoroughfare body corporate or principal body corporate for a breach of the code of conduct. Section 175A explains the application of division 5. Section 175B provides for the process that must be followed when a body corporate believes a voting member of the executive committee has breached the code of conduct. Section 175C provides for the technical meeting process to be followed for removal of a member at a general meeting.

Part 8A, Division 1, section 175D to 175G provides for the conduct of body corporate managers, service contractors and letting agents. Section 175D is a definition section that explains the various terms applicable to part 8A. Section 175E explains the meaning of ‘financier’ for a letting agent’s contract and when a person ceases to be a ‘financier’. Section 175F explains the application of a ‘letting agent’ or ‘letting agent business’ for the purposes of an approved scheme. Section 175G explains the application of ‘service contractor’ for the purposes of an approved scheme.

Part 8A, Division 2, section 175H to 175I provides for a code of conduct for a body corporate manager and a caretaking service contractor. Section 175H(3) also provides that if there is an inconsistency between the code and the terms of appointment, the code prevails. The code is located in schedule 5. Section 175I

applies the code of conduct for letting agents (located in schedule 6) to letting agents employed by a principle body corporate or a primary thoroughfare body corporate.

Part 8A, Division 3, section 175J to 175R provides for the required transfer of management rights for contravention of the code of conduct.

Section 175J explains the application of division 3. Section 175K provides that contract provisions inconsistent with this division are void to the extent of the inconsistency.

Section 175L provides for the terms of a code contravention notice for letting agents or body corporate managers and caretaking service contractors.

Section 175M provides the grounds which permit the body corporate to transfer a letting agent’s right for failure to comply with a code of conduct contravention notice or a breach of the code of conduct.

Section 175N provides for the transfer of the letting agent’s management rights if a ground exists or if decided by majority resolution of the body corporate for the provided scheme. A definition of a majority resolution for that section is also provided.

Section 175O provides the process for the letting agent to transfer the management rights to a person chosen by the letting agent approved by the body corporate on certain conditions.

Section 175P requires the body corporate to provide a copy of the transfer notice to the letting agent and each person who is a financier for the

contract authorising the letting agent. Section 175Q provides the process to transfer the management rights if section 175O was not followed.

Section 175R provides the terms of the service contract transferred to the transferee under section 175O and 175Q.

Section 175S provides the process for the situation if the remainder of the term of the letting agent's authorisation is less than 7 years when transferred to a person.

Section 175T provides for the body corporate to obtain independent advice about the service contract, based on stated review criteria. Section 175U provides the criteria to be applied in the review of the service contract.

Section 175V requires the body corporate to provide a copy of the review advice to the letting agent within 14 days.

Section 175W provides for the Commercial and Consumer Tribunal to deal with a dispute in relation to the transfer of a letting agent's management rights.

Section 175X provides for the Commercial and Consumer Tribunal to deal with a dispute in relation to a claimed or anticipated contractual matter for body corporate managers, caretaking service contractors and letting agents.

Section 175Y provides for the grounds and process for the primary thoroughfare body corporate or principal body corporate to terminate a person's appointment as a body corporate manager or engagement as a service contractor.

Clause 44 amends section 177 (Minor non-compliance with development control by-laws) so that the principal body corporate may permit the non-compliance of an affected person with a development control by-law where the non-compliance is minor; and inserts a definition of an affected person.

Clause 45 inserts a new Division 1 heading (Resolution of particular disputes), sections 179A to 179D.

Section 179A (Dealing with particular disputes under the *Building Units and Group Titles Act 1980*) clarifies that disputes may be dealt with under that Act but this does not apply to a matter mentioned under section 175W, 175X and 179B and is subject to section 179C.

Section 179B (Dealing with matter relating to development control by-law) clarifies under section 179B(1) matters that the Commercial and Consumer Tribunal may review or otherwise deal with. Section 179B(2) provides for

who can apply to have a matter dealt with and section 179B(3) determines that any person applying must be a materially and directly affected by the matter to which the application relates. Section 179B(4) makes the provision subject to section 179C.

Section 179C (Internal resolution processes to be used before application) requires that reasonable efforts must be made to resolve the matter using an internal dispute resolution process before it can be decided by a referee or tribunal.

The clause also inserts a new Division 2 (Other Matters) which inserts new section 179D (Associates) which defines the term associates and lists the types of relationships which create an association.

Clause 46 inserts a new Part 12 (Transitional provisions for *Resorts and Other Acts Amendment Act 2009*) which inserts Divisions 1, 2 and 3 sections 184 to 193.

Section 184 defines “commencement” and “effective day” for the part.

Section 185 (Existing number of committee members may continue until effective day) provides that the current executive can remain until the “effective day”.

Section 186 (Deferred application of particular provisions) clarifies that certain provisions in relation to the primary thoroughfare body corporate and principal body corporate do not apply until the effective day.

Section 187 (Application of code of conduct for existing voting members of executive members) to clarify that the code of conduct of the executive committee, when applicable on the effective day, does not apply retrospectively to a person who was a voting member of the executive committee before the effective day.

Section 188 (Auditing accounts for first annual general meeting after effective day) allows that if accounts were already begun before commencement or a person was authorised to begin preparing accounts, and the annual general meeting has not happened, section 168I does not apply.

Section 189 (End of appointment of original owner of secondary lot as nominee for subsidiary body corporate) outlines the requirements for replacing a nominee if they are an original owner.

Section 190 (Deferred application of particular provisions) clarifies that certain provisions in relation to body corporate managers, service

contractors and letting agents do not apply until the effective day. These provisions include codes of conduct, transfer of management rights for contravention of code of conduct, disputes of contractual matters and termination of appointment, engagement or authorisation (Part 8A, divisions 2, 3, 4 and 5); and codes of conduct for body corporate managers, caretaking service contractors and letting agents (Schedule 5 and 6).

Section 191 (Application of code of conduct for existing managers and contractors) clarifies that if a person was appointed as the body corporate manager or engaged as a caretaking service contractor before the effective day, the code of conduct applies to that person only in relation to acts done or omissions made on or after the effective day.

Section 192 (Application of code of conduct for existing letting agents) to clarify that if a person was appointed as letting agent before the effective day, the code of conduct applies to that person only in relation to acts done or omissions made on or after the effective day.

Section 193 (Existing term of appointment for body corporate manager) to clarify that if a body corporate manager was appointed before the effective day, the term of the appointment ends on the day provided for in the instrument of appointment and this section applies despite sections 130(5) and (6) and 165(5) and (6).

Clause 47 amends Schedule 2 (Dictionary) to insert a number of definitions and renumbers Schedule 2 as Schedule 7.

Clause 48 inserts new schedules 2 to 6. Schedule 2 provides requirements for placing notices of proposed scheme amendments on subject land.

Schedule 3 provides requirements for the election of executive committees of primary thoroughfare and principal bodies corporate including definitions, election of members of executive committee, nomination procedures outside of the first annual general meeting, requirements for nominations, conduct of elections by secret ballot, open ballot, election of ordinary members of executive committee, conduct of ballot including general requirements, scrutiny of votes, deciding executive member positions, deciding ordinary member positions and declaration of voting results.

Schedule 4 provides the code of conduct for voting members of executive committees of a primary thoroughfare or principal body corporate. Schedule 5 provides the code of conduct for body corporate managers and

caretaking service contractors. Schedule 6 provides the code of conduct for letting agents.

Part 4 Amendment of Liquor Act 1992

Clause 49 states that this part amends the *Liquor Act 1992*.

Clause 50 omits section 9(1A) and inserts a new section 9(1A) which includes a premises to which an industrial canteen licence relates as a premises that is not subject to ordinary trading hours between 10am and 12 midnight.

Clause 51(1) amends section 12(2)(j)(iv). Paragraph (iv) which provides for 1 litre of liquor to be sold as part of a floral arrangement or gift basket is omitted and a new paragraph (iv) is inserted. The new paragraph provides for up to 2 litres of liquor, which may include no more than 1 litre of spirits, which may be sold as part of a floral arrangement or gift basket.

Clause 51(2) amends section 12(2)(j)(v) by omitting ‘more than half of the gift’s sale price’ and inserting ‘more than 75% of the gift’s sale price, or a lesser amount prescribed under a regulation.’

Clause 51(3) amends section 12(2) by inserting paragraphs (k), (l) and (m). Under paragraph (k) the Liquor Act will not apply to the sale of liquor by a retirement village if the sale is to a resident of the retirement village or their guest and does not exceed two standard drinks per person per day. Under paragraph (l) the Liquor Act will not apply to the sale of liquor by a hairdresser or barber if the sale is to a client for consumption on the premises, as a subsidiary service as part of hairdressing or barber services, does not exceed two standard drinks per client per day, and is not consumed between the hours of 5a.m. and 10a.m. or consumed at any time on Christmas Day, Good Friday, or at any time before 1p.m. on Anzac Day. Under paragraph (m) the Liquor Act will not apply to the sale of liquor by a limousine licensee to a passenger for consumption in a limousine during the journey in which the limousine was hired to travel, and does not exceed two standard drinks per passenger per day and is not consumed between the hours of 5a.m. and 10a.m. or consumed at any time on Christmas Day, Good Friday, or at any time before 1p.m. on Anzac Day.

Clause 51(4) inserts new definitions in section 12(4) for limousine, limousine licensee, resident, retirement village and standard drink.

Clause 52 amends section 71B(1), authorising a commercial other (industrial canteen) licensee to sell liquor to a relevant person during the times stated in the licence. These times will be specified on the licence by the chief executive.

Clause 53 inserts new part 12, Division 9. It inserts a new transitional provision (section 296). Section 296(1) states that the section applies to a commercial special facility licence, other than those licences which relate to an airport or casino, and which are authorised to sell liquor under the licence between 5am and 10am. Section 296(2) removes any authorisation to sell liquor between 5am and 10am of licences to which this section applies. Section 296(3) states that subsection (2) does not apply if a licence to which this section applies is granted extended hours trading approval or an extended hours permit under the Liquor Act. Section 296(4) clarifies that no compensation is payable because of the operation of subsection (2).

Part 5 Amendment of the Mixed Use Development Act 1993

Clause 54 provides for amendment of the *Mixed Use Development Act 1993*.

Clause 55 amends section 79 (Lodgement of building units or group titles plan) to insert section 79(5) requiring the submission to local government of a diagrammatic indication of naming and numbering of roads within the primary thoroughfare shown on the plan.

Clause 56 amends section 80 (Approval of building units or group titles plan) to add the diagram mentioned in section 79(5) to the list of items which must accompany the group titles plan for local government approval.

Clause 57 amends section 101 (Subdivision by building units or group titles plan) to insert a new section 101(7) to require the submission to local government of a diagrammatic indication of naming and numbering of roads within the community thoroughfare or precinct thoroughfare shown on the plan.

Clause 58 amends section 102 (Approval of building units or group titles plan) to add the diagram mentioned in section 101(7) to the list of items which must accompany the group titles plan for local government approval.

Part 6 Amendment of the Sanctuary Cove Resort Act 1985

Clause 59 provides for amendment of the *Sanctuary Cove Resort Act 1985*.

Clause 60 amends section 4 (Interpretation) to replace the title with “Definitions”, remove definitions of “Albert Shire Council”, “residential zone” and “zone” and insert various new definitions.

Clause 61 inserts new sections 4A to 4C. Section 4A (Meaning of Approved Use for zone), is amended to define “approved use” for a zone as a use or changed use under part 2AA that is approved under regulation. Section 4B defines the meaning of proposed use plan of the site or adjacent site. Section 4C advises that the information included in square brackets after a heading is a reference to a similar section of the *Body Corporate and Community Management (Standard Module) Regulation 2008*.

Clause 62 amends section 5 (The site) to replace the existing subsection (1), renumber the existing subsections and inserts a new subsection (1A). The new section 5(1) defines the site and section 5(1A) clarifies that if the initial plan of survey is amended, the site is the area of land shown on the amended plan. 5(3) is also amended to update language regarding local government legislation.

Clause 63 replaces section 7 and 8 regarding the proposed use plan of the site. Section 7(1) provides for the primary thoroughfare body corporate to lodge with the local government a plan of survey showing the zones of the site in the form set out in schedule 7. Section 7(2) provides for the local government to lodge an amended plan if the lodged plan of survey differs from schedule 7. Section 7(3) requires that the plan of survey must include a schedule stating the maximum number of group title lots and building unit lots for each residential zones and all residential zones within the site. Section 7(4) provides for the local government to approve the plan if satisfied. Section 7(5) requires the local government to keep the proposed use plan and provide copies to the registrar of titles and chief executive. Section 7(6) provides for deciding the number of group title lots or building

unit lots into which a particular zone may be subdivided for residential purposes. Section 7(7) provides for the primary thoroughfare body corporate to lodge an amending plan varying the boundaries of the zones. Section 7(8) provides for the local government to approve the plan if satisfied and section 7(9) clarifies that if approved, the amending plan becomes the proposed use plan.

Clause 64 amends section 9 (Town planning provisions) to delete subsections (1) and (2), renumber the subsections and update language regarding local government and planning acts. The clause also inserts a definition of “erect”.

Clause 65 amends section 10 (Initial subdivision within the site) to update language in relation local government, correct a cross reference in section 10(8)(b) and clarify when a plan of survey may be lodged with the registrar of titles.

Clause 66 amends section 12A (The adjacent site) to replace subsection (1), insert a new subsection (1A) to clarify definition of the adjacent site, subsequent to boundary amendments, refer to the initial plan of survey, renumbers subsections and consequentially renumbers references to other subsections and updates language in relation to local government.

Clause 67 replaces section 12C and amends section 12D with a new section 12C (Proposed use plan of the adjacent site). Section 12C(1) provides for the primary thoroughfare body corporate to lodge with the local government a plan of survey showing the zones of the adjacent site as set out in schedule 8. Section 12C(2) provides for the local government to lodge an amended plan of survey if it differs from schedule 8. Section 12C(3) requires that the plan of survey must include a schedule stating the maximum number of group title lots and building unit lots for each residential zones and all residential zones within the site. Section 12C(4) provides for the local government to approve the plan if satisfied the plan of survey adequately defines the boundaries of all the zones within the adjacent site. Section 12C(5) requires the local government to keep the proposed use plan and provide copies to the registrar of titles and chief executive. Section 12C(6) provides for deciding the number of group title lots or building unit lots into which a particular zone may be subdivided for residential purposes. Subsection 12C(7) provides for the primary thoroughfare body corporate to lodge an amending plan varying the boundaries of the zones. Section 12C(8) provides for the local government to approve the plan if satisfied and section 12C(9) clarifies that if approved, the amending plan becomes the proposed use plan.

Clause 68 amends section 12E (Town planning provisions) to update language regarding local government and planning, define “erect” and reword subsection (4) to remove reference.

Clause 69 amends section 12F (Initial subdivision within the adjacent site) to update language regarding local government and planning, and corrects a cross reference in section 12F(8)(b).

Clause 70 inserts a new part 2AA (Amendments by application to Minister) and inserts new sections 12I to 12P.

Section 12I (Amendment applications) allows for the primary thoroughfare body corporate to apply to the Minister to change an approved use for a zone under section 12I(1)(a). Section 12I(1)(b) amends the proposed use plan of the site or the adjacent site by replacing zone names or varying zone boundaries. Section 12I(1)(c) amends the initial plan of survey by varying the boundary of the site. Section 12I(d) amends the initial plan of survey by varying the boundary of the adjacent site. Section 12I(2) clarifies that plans mentioned in section 12I(1)(b) to (d) is a relevant plan.

Section 12J (Members to be notified of proposed amendment) sets out the procedure for submitting an application to the Minister, including appropriate consultation mechanisms and required documentation, and allows that the Minister can further consult with a person likely to be affected. It also provides for members to be notified of proposed amendment to an approved plan; and requirements for an application to amend an approved plan.

Section 12K (Requirements for application) sets out the requirements for a valid application including notice requirements.

Section 12L (Minister to consider application) provides that the Minister must consider the application including written comments included in the application, consult with any local government, department of government or statutory authority, that in the Minister’s opinion is likely to be affected by the application. It also requires the Minister to provide the Governor in Council the application and a written notice stating details of the Minister’s consultation, if any; and the results of the consultation.

Section 12M (Decision on application) provides that the Governor in Council may approve the amendment, require amendments or modifications or conditions or refuse to approve the amendment.

Section 12N (Minor variation of site boundaries) allows for the site boundaries of the site or the adjacent site to be amended if the boundary

variation is minor, will not materially change the total area of the site, will not change the aggregate number of lots or voting entitlements, and each affected land owner has given written consent. The definition of “affected land owner” is also provided.

Section 12O (Approval of change of use for zone) provides that the amendment does not take effect until it has been approved under a regulation.

Section 12P (Approval of amendment of relevant plan) sets out notification and inspection requirements with respect to the amended plan.

Clause 71 amends section 15 (Subdivision of secondary lots) to require the submission to local government at the time of secondary subdivision of a diagrammatic indication of naming and numbering of roads within the primary and secondary thoroughfares shown on the plan, and updates wording in relation to local government. It also replaces reference to Floating Dwelling House Zone with Harbour 1 Residential zone.

Clause 72 amends section 15A (Plan of survey where variation of boundary approved) to update cross references and language in relation to local government and clarify that local government approval of a variation of a boundary of a zone is not required if the variation has been approved by Governor in Council under section 12P.

Clause 73 amends section 20 (Subdivision of land where wholly or partly submerged) to replace reference to Floating Dwelling House Zone with Harbour 1 Residential Zone.

Clause 74 amends section 21A (Subdivision of land outside residential zones) to update language in relation to local government and requires the submission to local government of a diagrammatic indication of naming and numbering of roads in these zones.

Clause 75 amends section 22 (Interpretation) replaces the heading and inserts definitions of “financial year”, “nominee” and “original owner”.

Clause 76 replaces section 24 (Member’s nominee) and inserts new sections 24 and 24A.

Section 24 (Member’s nominee) governs who can represent a subsidiary body corporate (a member of the principal body corporate) to the principal body corporate, and requires that nominee must be appointed at the annual general meeting; the nominee must be a member of the subsidiary body corporate; the nominee must represent the subsidiary body corporate as directed by, and in the best interests of that subsidiary body corporate; that

the term lasts for a maximum of one year; and the proxy must be in writing. It also sets out start and end of the appointment and articulates that a member of the principal body corporate, other than a subsidiary body corporate, may appoint a nominee from time to time.

Section 24A (When an original owner can not be the nominee for the body corporate) requires that the original owner must not represent the subsidiary body corporate once 50% of lots are sold, and the body corporate can not appoint the original owner or their associate to represent them to the principal body corporate. Section 24A also sets out procedures to remove the original owner or associate if they are the current nominee.

Clause 77 clarifies section 27(5A) to provide that the provisions in the *Building Units and Group Titles Act 1980* schedules relating to the rights and obligations of mortgagees and mortgagors shall not apply and the application of the *Building Units and Group Titles Act 1980* schedule 2, part 2 is subject to schedule 3 and schedule 9, definition ordinary resolution.

Clause 78 inserts a provision in section 32 (Miscellaneous powers of principal body corporate) that enables the principal body corporate to employ staff for performing its functions.

Clause 79 amends section 33 (Duties of principal body corporate) to set out requirements regarding record keeping.

Clause 80 amends section 41 (Constitution of executive committee) to provide for an expansion in the number of members who may serve on a body corporate committee.

Clause 81 inserts a new section 41A which clarifies the application of the code of conduct in schedule 4 to voting members of the executive committee of the principal body corporate

Clause 82 inserts a new subsection in 42(1) (Vacation of office of member of executive committee) to clarify vacation of office if the person is removed by ordinary resolution of the principal body corporate.

Clause 83 inserts a new section 44A (Conflict of interest of executive committee member) to require executive committee members and proxy holders of the principal body corporate to disclose conflicts of interest and prevent voting entitlement where a conflict of interest exists.

Clause 84 amends section 47A (Principal body corporate manager) to limit the term of appointment for a body corporate manager for the primary thoroughfare body corporate, after allowing for any rights or options of

extension or renewal, to a maximum of three years. Subsections are also renumbered and cross references amended.

Clause 85 inserts a new subsection 47A and 47AA to provide protection from liability and liability for defamation of executive committee members who act in good faith under certain circumstances.

Clause 86 inserts a new Part 3 Divisions 2B to 2D.

Division 2B (Proxies for general meetings of principal body corporate) inserts new sections 47B to 47G.

Section 47B (Application of Division 2B) sets out that the division applies to the appointment and use of a proxy to represent a member of a principal body corporate at a general meeting of the principal body corporate.

Section 47C (Appointment) sets out conditions for the appointment of a proxy. The section clarifies that a person may appoint a proxy; determines that the principal body corporate may, by special resolution, prohibit the use of proxies; clarifies that subsection (1) is subject to subsection (2); limits the number of proxies one person can hold; and sets out that that the proxy is only effective if given by hand, post or facsimile, on a properly constituted proxy form, to the secretary of the body corporate before the start of the meeting, or an earlier time fixed by the principal body corporate.

Section 47D (Form of proxy) sets out the required conditions for the proxy to be valid.

Section 47E (Use of proxy) sets out conditions of the use of the proxy. The section clarifies that a member holding a proxy can vote both in their own right and also as the proxy; sets out that if one co-owner of a lot is present, a proxy given by another co-owner of the lot has no effect; sets out the conditions under which the use at a general meeting of a proxy on behalf of the principal body corporate is prohibited; sets out that a proxy can be exercised in a show of hands vote or an electronic vote; and defines majority resolution for the purposes of the section.

Section 47F (Special provisions about proxy use) requires that a member of the principal body corporate cannot be prevented by contract from exercising a vote nor required by contract to make someone else the member's proxy for voting at a general meeting. Section 47F(2) prevents the original owner of an initial or secondary lot, the body corporate manager, or their associate from exercising a proxy unless that person is also a lot owner and subsequently a member of the subsidiary body

corporate to clarify these provisions apply for proxy use for a subsidiary body corporate of the principal body corporate.

Section 47G (Offence) determines that a person must not exercise a vote that they do not have the right to exercise and sets a maximum penalty of 100 penalty units.

The new Division 2C (Accounts and Audit) inserts new sections 168H to 168J.

Section 47H (Application of division 2C) determines that the division applies to a principal body corporate for preparing statement of accounts under section 33(1)(f), which includes the preparation of accounts in a list of duties for the principal body corporate.

Section 47I (Accounts) allows for the preparation of the accounts on a cash or accrual basis, sets out particular inclusions for cash and accrual accounts, and requirements for the statement of accounts. The section also requires that the statement of accounts must accompany the notice of the following annual general meeting.

Section 47J (Audit) sets out the requirements for a valid audit. The section requires that the principal body corporate must have its accounts audited every year; requires that the auditor to be appointed must be agreed to by ordinary resolution of the body corporate; sets out the conditions for a valid motion on agreeing to the auditor to be appointed; sets out that the body corporate can resolve to have its accounting records audited for a particular period or a particular project and appoint an auditor for the audit; excludes a member of the executive committee, the body corporate manager or an associate of theirs from being appointed as auditor; requires that the auditor must give a certificate regarding the truth and fairness of the accounts or identifying deficiencies in the statement; requires that the auditor's certificate must be distributed with the notice of the annual general meeting next following the audit certification; and defines auditor for the purposes of the section.

The new Division 2D provides for removal from office of voting members of executive committee of the principal body corporate for breach of code of conduct. New clauses 47K to 47L provide for notices or breach of code of conduct and removal of voting member at general meeting.

Clause 87 amends section 60 (Establishment of pedestrian mall) to replace reference to Floating Dwelling House Zone with Harbour 1 Residential Zone.

Clause 88 replaces s64A (Maintenance etc. of canals) to remove obsolete references.

Clause 89 amends section 64B (Surrender of secondary thoroughfare as a canal) to update language regarding local government and remove references to obsolete legislation.

Clause 90 amends section 65 (Interpretation) to replace the title with “Definitions for part 5” and insert a definition of “financial year”.

Clause 91 amends section 67 (Member’s nominee) to clarify the reference to a subsidiary body corporate and inserts a new subsection (4) to clarify that a person appointed to represent the subsidiary body corporate must do so in a way that the subsidiary body corporate directs and is in the best interests of the subsidiary body corporate.

Clause 92 amends section 70 (Meetings of primary thoroughfare body corporate) to provide that the provisions in the *Building Units and Group Titles Act 1980* schedules relating to the rights and obligations of mortgagees and mortgagors shall not apply and the application of the *Building Units and Group Titles Act 1980* schedule 2, part 2 is subject to schedule 3 and schedule 9, definition ordinary resolution.

Clause 93 inserts a new provision in section 76 (Miscellaneous powers of primary thoroughfare body corporate) that enables the primary thoroughfare body corporate to employ staff for performing its functions.

Clause 94 amends section 77 (Duties of the primary thoroughfare body corporate) to outline requirements regarding record keeping.

Clause 95 amends section 85 (Constitution of executive committee) to provide for an expansion in the number of members who may serve on a body corporate committee.

Clause 96 inserts a new section 85A which clarifies the application of the code of conduct in schedule 4 to voting members of the executive committee of the primary thoroughfare body corporate.

Clause 97 a new subsection 86(1)(j) (Vacation of office of member of executive committee) to clarify vacation of office if the person is removed by ordinary resolution of the primary thoroughfare body corporate and renumbers accordingly.

Clause 98 inserts a new section 88A (Conflict of interest of executive committee member) to require executive committee members and proxy

holders of the primary thoroughfare body corporate to disclose conflicts of interest and prevent voting entitlement where a conflict of interest exists.

Clause 99 amends section 91A (Primary thoroughfare body corporate manager) to limit the term of appointment for a body corporate manager for the primary thoroughfare body corporate, after allowing for any rights or options of extension or renewal, to a maximum of three years. Subsections are also renumbered and cross references amended.

Clause 100 inserts new sections 91A and 91AA to provide for limited liability and liability for defamation for executive committee members who act in good faith under certain circumstances.

Clause 101 inserts a new Part 5 Division 2B (Proxies for principal body corporate at general meetings of the primary thoroughfare body corporate) which inserts new sections 91B to 91G.

Section 91B (Application of Division 2B) sets out that the division applies to the appointment and use of a proxy to represent the principal body corporate at a general meeting of the primary thoroughfare body corporate.

Section 91C (Appointment) sets out conditions for the appointment of a proxy. The section clarifies that a person may appoint a proxy; and sets out that that the proxy is only effective if given by hand, post or facsimile, on a properly constituted proxy form, to the secretary of the body corporate before the start of the meeting, or an earlier time fixed by the principal body corporate.

Section 91D (Form of proxy) sets out the required conditions for the proxy to be valid.

Section 91E (Use of proxy) sets out conditions of the use of the proxy. The section clarifies that a member holding a proxy can vote both in their own right and also as the proxy of the principal body corporate; sets out the conditions under which the use of a proxy on behalf of the principal body corporate is prohibited; sets out that a proxy can be exercised in a show of hands vote or an electronic vote.

Section 91F (Special provisions about proxy use) requires that a member of the principal body corporate cannot be prevented by contract from exercising a vote nor required by contract to make someone else the body corporate's proxy for voting at a general meeting. Section 91F(2) prevents the original owner of an initial or secondary lot, or their associate from exercising a proxy unless that person is also a lot owner and a member of the subsidiary body corporate to clarify these provisions apply for proxy

use for a subsidiary body corporate of the primary thoroughfare body corporate.

Section 91G (Offence) determines that a person must not exercise a proxy or vote on behalf of the principal body corporate at a general meeting that they know they do not have the right to exercise and sets a maximum penalty of 100 penalty units.

Clause 101 also inserts a new Part 5, Division 2C which inserts sections 91H and 91I to provide for removal from office of voting members of executive committee of the primary thoroughfare body corporate for breach of code of conduct.

Clause 102 inserts a new part 5A, Divisions 1 to 5 in relation to conduct of body corporate managers, service contractors and letting agents. Division 1, sections 94A to 94D provides definitions for part 5A.

Division 2, sections 94E to 94F clarifies that the code of conduct in schedule 5 applies to body corporate managers and service contractors and that compliance with the provisions of the code is taken to be a condition of the appointment or contract. Section 94F also clarifies that the code of conduct in schedule 6 applies to letting agents.

Division 3 inserts sections 94G to 94T in relation to required transfer of letting agent management rights for contravention of code of conduct. Section 94G explains the application of division 3. Section 94H provides that contract provisions inconsistent with this division are void to the extent of the inconsistency.

Section 94I provides for the content of a contravention notice. Section 94J provides grounds which permit the body corporate to transfer a letting agent's right for failure to comply with a code of conduct contravention of breach of the code of conduct.

Section 94K provides for the transfer of the letting agent's management rights if a ground exists or if decided by majority resolution of the body corporate for the approved scheme.

Section 94L provides for the process for transfer of management rights for the letting agent and grounds for the body corporate to approve the new letting agent.

Section 94M requires the body corporate to provide a copy of the transfer notice to the letting agent and each person who is a financier for the contract authorising the letting agent. New Section 94N provides the process to transfer the management rights if section 94L was not followed.

Section 94O provides the terms of service contract transferred to the transferee under section 94L or 94N.

Section 94P under Subdivision 3 provides the process for the situation if the remainder of the term of the letting agent's authorisation is less than 7 years when transferred to a person.

Sections 94Q to 94V under Subdivision 4 relate to reviewing terms of letting agent's service contract.

Section 94Q provides for the body corporate to obtain review advice about the service contract, based on stated review criteria. Section 94R provides the criteria to be applied in the review of the service contract. Section 94S requires the body corporate to provide a copy of the review advice to the letting agent within 14 days and to provide a copy.

Sections 94T to 94V under Subdivision 5 relate to disputes about transfer of management rights.

Sections 94T and 94U provide for the Commercial and Consumer Tribunal to deal with disputes in relation to the transfer of a letting agent's management rights and claimed or anticipated contractual matters regarding body corporate managers, caretaking service contractors and letting agents.

Section 94V provides for termination for failure to comply with remedial action notice and sets out content and process for such a notice.

Clause 103 amends section 96 (Minor non-compliance with development control by-laws) so that the primary thoroughfare body corporate may permit the non-compliance of an affected person with a development control by-law where the non-compliance is minor and inserts a new subclause to define an affected person.

Clause 104 amends section 97 (Interpretation) to replace Floating Dwelling House Zone with Harbour Zone.

Clause 105 amends section 102 (Construction of floating dwelling houses and special dwelling houses) to omit floating dwelling house.

Clause 106 amends section 103 (Application of laws of the State) to remove references to floating dwelling houses and to clarify that the *Coastal Protection and Management Act 1995* and the *Integrated Planning Act* do not apply to development or proposed development as part of the site as a harbour facility.

Clause 107 replaces Section 104 (Dispute resolution) with new Division 1 Resolution of particular disputes, sections 104A to 104D.

Section 104A (Dealing with particular disputes under *Building Units and Group Titles Act 1980*) clarifies that disputes may be dealt with under that Act but this does not apply to a matter mentioned under section 94T, 94U and 104B and is subject to section 104C.

Section 104B (Dealing with matter relating to development control by laws) clarifies matters that the Commercial and Consumer Tribunal may review or otherwise deal with and who can apply to have a matter dealt with. The section determines that a person has standing to make the application if the person is directly and materially affected person; and makes the provision subject to section 104C.

Section 104C (Internal resolution processes to be used before application) provides that a referee or tribunal must not decide an application unless reasonable efforts have been made to resolve the matter using an internal dispute resolution process.

The clause also inserts a new Division 2 heading (Other matters) and a new section 104D (Associates). Section 104D (Associates) defines the term associates and lists the types of relationships which create an association.

Clause 108 inserts a new Part 10 (Transitional provisions for *Resorts and Other Acts Amendment Act 2009*), which adds sections 113 to 128.

Section 113 defines commencement and effective day for the purposes of the section.

Section 114 (References to proposed use plan of site) clarifies the reference to the proposed use plan of the site until approved under section 8(4) or 8(7).

Section 115 (References to proposed use plan of adjacent site) clarifies the reference to the proposed use plan of the adjacent site until approved under section 12D(4) or 12D(7).

Section 116 (Former floating dwelling house zone) deals with the former Floating Dwelling House Zone if the plan is amended.

Section 117 (Transitional amendment of initial plan of survey of site to reflect new zone boundaries) provides for lodging an amending plan of survey of the site with the registrar of titles.

Section 118 (Transitional amendment of initial plan of survey of adjacent site to reflect new zone boundaries) provides for lodging an amended plan of survey of the adjacent site with the registrar of titles.

Section 119 (Transitional amendment of other plans of survey or group title plans to reflect new zone boundaries) provides for lodging an amending plan of survey with the registrar of titles for plan of survey or group titles plan for the subdivision or resubdivision of a secondary lot; or a group titles plan for the resubdivision of a lot shown on a group titles plan.

Section 120 (Existing number of committee members may continue until effective day) provides that current executive stays in place until effective day.

Section 121 defers the application of various sections.

Section 122 (Application of code of conduct for existing voting members of executive committees) provides that the code of conduct applies only from the effective day.

Section 123 (Auditing accounts for first annual general meeting after evaluation day) allows that if accounts were already begun before commencement or a person was authorised to begin preparing accounts, and the annual general meeting has not happened, section 47J does not apply.

Section 124 (End of appointment of original owner of secondary lot as nominee for subsidiary body corporate) outlines the requirements for replacing a nominee if they are an original owner at the time of commencement.

Section 125 (Deferred application of particular provisions) defers the application of provisions in relation to Part 5A, divisions 2 (Codes of conduct), 3 (Required transfer of management rights for contravention of code of conduct), 4 (Disputes about contractual matters) and 5 (Termination of appointment, engagement or authorisation) and schedules 5 (Code of conduct for body corporate managers and caretaking service contractors) and 6 (Code of conduct for letting agents) until the effective day.

Section 126 (Application of code of conduct for existing managers and contractors) provides that for existing managers and contractors, the code only applies from the effective day forward.

Section 127 (Application of code of conduct for existing letting agents) provides that for existing letting agents, the code only applies from the effective day forward.

Section 128 (Existing term of appointment for body corporate manager) clarifies that if a body corporate manager was appointed before the effective day, the term of the appointment ends on the day provided for in the instrument of appointment and this section applies despite sections 47A(8) and (9) and 91AB(8) and (9).

Clause 109 amends Schedule A (Uses permitted within the zones) to amend various definitions and omits the amended Schedule A from the Act. It is proposed this content is moved to Sanctuary Cove Regulations for Governor in Council consideration.

Clause 110 removes Schedules B to E and inserts new Schedule 1 to 9.

Schedule 1 (Names of uses for zones) moves the names of zones into one list as Part 1, and the uses permitted within zones into one list as Part 2, removes the current table, and moves the definitions of uses for zones as Part 3.

Schedule 2 (Requirements for notices of proposed amendments) provides requirements for placing notices on subject land under section 12J(1)(c).

Schedule 3 provides requirements for the election of executive committees of body corporate including nomination procedures outside of the first annual general meeting, requirements for nominations, conduct of elections by secret ballot, open ballot, election of ordinary members of executive committee, conduct of ballot including general requirements, scrutiny of votes, deciding executive member positions, deciding ordinary member positions and declaration of voting results.

Schedule 4 provides the code of conduct for voting members of executive committees.

Schedule 5 provides the code of conduct for body corporate managers and caretaking service contractors.

Schedule 6 provides the code of conduct for letting agents.

Schedule 7 provides for the zones of the site.

Schedule 8 provides for the zones of the adjacent site.

Schedule 9 provides the Dictionary”.

**Schedule: Minor and consequential
 amendments.**

Iconic Queensland Places Act 2008

Clauses 1 and 2 replace “development” with “particular development” in Section 2(2)(b), and the Division 4 heading.

Integrated Resort Development Act 1987

Clause 1 updates various references to the Integrated Planning Act.

Sanctuary Cove Resort Act 1985

Clauses 1 to 5 update various references to local government.