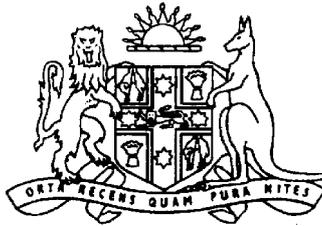


Passed by both Houses



New South Wales

# Lord Howe Island Amendment Bill 2004

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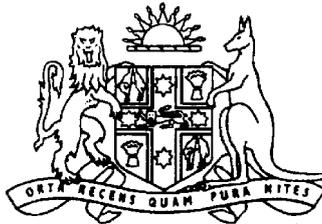
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*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2004*



New South Wales

## **Lord Howe Island Amendment Bill 2004**

Act No , 2004

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An Act to amend the *Lord Howe Island Act 1953* with respect to the constitution and functions of the Lord Howe Island Board, annual rents for leases and proceedings by way of penalty notice; and for other purposes.

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*I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.*

*Chairman of Committees of the Legislative Assembly.*

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Lord Howe Island Amendment Act 2004*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Amendment of Lord Howe Island Act 1953 No 39**

The *Lord Howe Island Act 1953* is amended as set out in Schedule 1.

**4 Amendment of Land and Environment Court Act 1979 No 204**

Section 19 of the *Land and Environment Court Act 1979* is amended by inserting after paragraph (e2):

(e3) appeals under section 22 or 24 of the *Lord Howe Island Act 1953*,

**5 Amendment of Fines Act 1996 No 99**

Schedule 1 to the *Fines Act 1996* is amended by inserting in alphabetical order of names of Acts:

*Lord Howe Island Act 1953*, section 37B

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## Schedule 1 Amendment of Lord Howe Island Act 1953

(Section 3)

### [1] Section 3 Definitions

Omit the definition of *Reside* from section 3 (1). Insert instead:

*Reside* and *residence* mean a residing by the person referred to in the context continuously and in good faith on the land indicated by the context as his or her usual home, without any other habitual residence.

### [2] Sections 4, 5 and 6

Omit the sections. Insert instead:

#### 4 Lord Howe Island Board

- (1) There is constituted a corporation under the name of the “Lord Howe Island Board”.
- (2) The Board is charged with the responsibility of administering the affairs of the Island.
- (3) The Board is to consist of 7 members, of whom:
  - (a) four are to be Islanders, and
  - (b) one is to be a person appointed to represent the interests of business and tourism, and
  - (c) one is to be a person appointed to represent the interests of conservation, and
  - (d) one is to be an officer of the Department of Environment and Conservation.
- (4) The members referred to in subsection (3) (a) are to be appointed by the Minister following an election conducted in accordance with Division 3.
- (5) The members referred to in subsection (3) (b), (c) and (d) are to be appointed by the Minister, and are not to be Islanders.
- (6) For the purposes of any Act, the Board is taken to be a statutory body representing the Crown.
- (7) Schedule 1A has effect with respect to the constitution and procedure of the Board.

## 5 Board's charter

- (1) The Board has the following charter:
- (a) to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the Island community and to ensure that those services and facilities are managed efficiently and effectively,
  - (b) to exercise community leadership,
  - (c) to exercise its powers, authorities, duties and functions in a manner that is consistent with and actively promotes the principles of multiculturalism,
  - (d) to promote and to provide and plan for the needs of children,
  - (e) to manage, protect, restore, enhance and conserve the Island's environment in a manner that is consistent with and promotes the principles of ecologically sustainable development set out in section 6 (2) of the *Protection of the Environment Administration Act 1991*,
  - (f) to manage, protect, restore, enhance and conserve:
    - (i) vacant Crown lands, and
    - (ii) lands reserved or dedicated under section 19 or 19A (including, in particular, the Lord Howe Island Permanent Park Preserve),in a manner that recognises the World Heritage values in respect of which the Island is inscribed on the World Heritage List referred to in the United Nations *Convention Concerning the Protection of the World Cultural and Natural Heritage*,
  - (g) subject to paragraphs (e) and (f), to promote the Island as a tourist destination,
  - (h) to have regard to the long term and cumulative effects of its decisions,
  - (i) to bear in mind that it is the custodian and trustee of public assets and to effectively account for and manage the assets for which it is responsible,

- (j) to facilitate the involvement of members of the Board, members of the public, users of facilities and services and the Board's staff in the development, improvement and co-ordination of the Board's powers, authorities, duties and functions,
  - (k) to raise funds for Island community purposes by the fair imposition of charges and fees, by income earned from investments and, when appropriate, by borrowings and grants,
  - (l) to keep the Island community and the State government (and through it, the wider community) informed about its activities,
  - (m) to ensure that, in the exercise of its regulatory powers, authorities, duties and functions, it acts consistently and without bias, particularly where an activity of the Board is affected,
  - (n) to be a responsible employer.
- (2) The Board, in the exercise of its powers, authorities, duties and functions, must pursue its charter but nothing in the charter or this section gives rise to, or can be taken into account in, any civil cause of action.

## **6 Employment of staff**

- (1) The Board's staff are (subject to this section) to be employed under Chapter 2 of the *Public Sector Employment and Management Act 2002*.
- (2) The Board may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a government department or public authority. For the purposes of this Act, a person whose services are made use of under this subsection is a member of the Board's staff.
- (3) The Board may engage consultants for the purposes of getting expert advice.

## **[3] Section 9A Elections**

Omit "pursuant to section 4 (4A) (a)" from section 9A (c).

**[4] Section 11 General functions of Board**

Omit section 11 (2). Insert instead:

- (2) The Board may arrange or provide for the gathering, collection and sale of any produce of the Island.

**[5] Section 13 Powers of Board as to tourists and licensing business**

Omit “subject, in the case of a person providing accommodation for the public, to regulations made in pursuance of subparagraph (iv) of paragraph (a) of subsection (2) of section 38,” from section 13 (b).

**[6] Section 13 (2)**

Insert at the end of the section:

- (2) In relation to persons associated with tourist accommodation or other commercial undertakings, the Board’s power under subsection (1) (b) to require persons to be licensed is subject to the regulations.

**[7] Section 14A**

Insert after section 14:

**14A Personal liability**

A matter or thing done or omitted to be done by:

- (a) the Board or a committee of the Board, or
- (b) a member of the Board, a member of a committee of the Board, a member of staff of the Board or any person acting under the direction of the Board or a committee of the Board,

does not, if the matter or thing was done or omitted to be done in good faith for the purposes of executing this Act, subject the member or a person so acting personally to any action, liability, claim or demand.

**[8] Section 19B Enforcement of plan of management**

Omit “not exceeding 5 penalty units and, in the case of a continuing offence, a further daily penalty not exceeding 0.5 penalty unit” from section 19B (1).

Insert instead “not exceeding 50 penalty units”.

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**[9] Section 21 Leases in perpetuity for residence**

Omit section 21 (9), (10) and (11).

**[10] Section 21A Rent of lease in perpetuity**

Omit the section.

**[11] Section 22 Special leases**

Omit “having regard to its productivity and the proposed use thereof” from section 22 (5).

**[12] Section 22 (8)–(15)**

Omit section 22 (8) and (9). Insert instead:

- (8) The Minister may, on the recommendation of the Board, withdraw from any lease under this section any land required for home sites or public purposes.
- (9) A lessee from whose lease land has been withdrawn under subsection (8) is entitled to compensation, as determined by the Valuer-General, for the loss of that land from the lease and for the loss of the improvements on that land.
- (10) The compensation payable under subsection (9), in so far as it relates to the loss of land, is to be calculated having regard to the unexpired period of the lease or, if the unexpired portion of the lease is less than 5 years, as if the unexpired portion of the lease were 5 years.
- (11) Without limiting any other ground on which the Minister may refuse to renew a lease under this section, the Minister may, on the recommendation of the Board, refuse to renew such a lease if the land concerned is required for home sites or public purposes.
- (12) A lessee in respect of whose lease the Minister:
  - (a) has refused to grant a renewal, and
  - (b) has notified the lessee that the reason for the refusal is that the land concerned is required for home sites or public purposes,

is entitled to compensation, as determined by the Valuer-General, for the loss of his or her expectation that the lease would be renewed.

- (13) The compensation payable under subsection (12) is to be calculated on the basis that the period for which the lease would have been renewed, but for the refusal, would have been 5 years.
- (14) The regulations may make provision, not inconsistent with subsection (13), for or with respect to the making and notification of determinations under subsections (9) and (12).
- (15) A person who is dissatisfied with the Valuer-General's determination of compensation under subsection (9) or (12) may appeal to the Land and Environment Court against the determination.
- (16) An appeal under subsection (15) must be lodged within 90 days after notice of the determination is served on the person concerned.

**[13] Section 22B**

Insert after section 22A:

**22B Annual rents**

- (1) Subject to the regulations, the annual rent for a lease granted under section 21 or 22 is to be as determined from time to time by the Board.
- (2) A new determination under this section with respect to a lease the subject of an existing determination takes effect:
  - (a) on the third anniversary of the date on which the existing determination took effect, or
  - (b) on such later date as may be specified in the new determination.
- (3) Subsection (2) (b) does not permit a determination to specify a date that is earlier than the date on which the determination is made.
- (4) The annual rent for a lease is payable in advance.

**[14] Section 24 Appeal to Land and Environment Court**

Omit "21A, 22,". Insert instead "22B,".

**[15] Section 25 Redetermination of rent upon certain transfers**

Omit "ten" wherever occurring in section 25 (4). Insert instead "3".

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**[16] Section 25 (4)**

Omit “section 21 (9)”. Insert instead “the regulations”.

**[17] Section 32 Trespass on Crown lands or dedicated lands**

Omit “not exceeding 5 penalty units and in the case of a continuing offence to a further daily penalty not exceeding 0.5 penalty unit” from section 32 (1).

Insert instead “not exceeding 50 penalty units”.

**[18] Section 33 Timber to be property of Crown**

Omit “5 penalty units” from section 33 (2).

Insert instead “50 penalty units”.

**[19] Section 34 Lord Howe Island Account**

Omit section 34 (1) (a).

**[20] Section 34 (2) (a)**

Omit the paragraph.

**[21] Section 37B**

Insert after section 37A:

**37B Penalty notices**

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.

- (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (6) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
  - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (7) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (9) In this section, *authorised officer* means a member of staff of the Board who is authorised by the Board to exercise powers, authorities, duties and functions under this section, and includes a police officer.

**[22] Section 38 Regulations**

Insert after section 38 (2) (a) (i):

- (ia) the procedures to be followed by the Board at its meetings and in the conduct of its business,

**[23] Section 38 (2) (a) (iv)**

Omit “public accommodation and”.

Insert instead “tourist accommodation and other”.

**[24] Section 38 (2) (h)**

Omit the paragraph.

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**[25] Section 38 (5)**

Omit the subsection. Insert instead:

- (5) A regulation may create an offence punishable by a penalty not exceeding 50 penalty units.

**[26] Section 40**

Insert after section 39:

**40 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to the *Lord Howe Island Amendment Act 2004*.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

**[27] Schedule 1A**

Insert after Schedule 1:

**Schedule 1A Provisions relating to members and procedure of Board**

(Section 4 (7))

**Part 1 General**

**1 Definitions**

In this Schedule:

*appointed member* means a member referred to in section 4 (3) (b), (c) or (d).

*Chairperson* means the Chairperson of the Board.

*Deputy Chairperson* means the Deputy Chairperson of the Board.

*elected member* means a member referred to in section 4 (3) (a).

*member* means any member of the Board.

## **Part 2 Members**

### **2 Chairperson of Board**

- (1) The Minister may, from time to time, appoint one of the members to be the Chairperson of the Board.
- (2) Subject to this Schedule, the Chairperson holds office as such during his or her current term of office as a member.
- (3) The Chairperson of the Board is taken to have vacated office as Chairperson if the person:
  - (a) resigns that office by instrument in writing addressed to the Minister, or
  - (b) ceases to be a member of the Board, or
  - (c) is removed from that office by the Minister under subclause (4).
- (4) The Minister may remove the Chairperson from office as Chairperson of the Board.

### **3 Deputy Chairperson**

- (1) The Board is to appoint one of its members (not being the Chairperson) to be Deputy Chairperson of the Board.
- (2) Subject to this Schedule, the Deputy Chairperson holds office for one year from the date on which he or she takes office.
- (3) The Deputy Chairperson is taken to have vacated office as Deputy Chairperson if the person:
  - (a) resigns that office by instrument in writing addressed to the Board, or
  - (b) ceases to be a member of the Board, or
  - (c) is removed from that office by the Board under subclause (4).

- 
- (4) The Board may remove the Deputy Chairperson from office as Deputy Chairperson of the Board.

**4 Terms of office**

- (1) Subject to this Schedule, an appointed member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (2) Subject to this Schedule, an elected member holds office until his or her successor is appointed but is eligible (if otherwise qualified) for re-appointment.

**5 Remuneration**

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

**6 Vacancy in office of member**

- (1) The office of a member becomes vacant if the member:
- (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) in the case of an elected member, ceases to be an Islander, or
  - (e) in the case of an appointed member, becomes an Islander, or
  - (f) in the case of the appointed member referred to in section 4 (3) (d), ceases to be an officer of the Department of Environment and Conservation, or
  - (g) is removed from office by the Minister under this clause, or
  - (h) is absent from 3 consecutive meetings of the Board of which reasonable notice has been given to the member personally or by post, except on leave granted by the Minister or unless the member is excused by the Minister for having been absent from those meetings, or

- (i) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (j) becomes a mentally incapacitated person, or
  - (k) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may remove or suspend an elected member in respect of whom a report under section 74C of the *Independent Commission Against Corruption Act 1988* recommends that consideration be given to the member's suspension from office with a view to his or her dismissal for serious corrupt conduct (as defined in section 124A (11) of the *Environmental Planning and Assessment Act 1979*).
  - (3) The Minister may remove an appointed member from office at any time for any or no reason and without notice.
  - (4) While an elected member is suspended under subsection (2), the member does not have, and may not exercise, any of the functions of a member.

## **7 Filling of vacancy in office of member**

- (1) If the office of an appointed member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.
- (2) If the office of an elected member becomes vacant, a person is to be appointed to fill the vacancy following an election referred to in section 9A (c).
- (3) Despite subclause (2), if less than 6 months remains before the next election is due under section 9A (b), the Minister is to fill the vacancy in the office of an elected member by appointing to the office such Islander as the Minister considers appropriate.
- (4) A member who is appointed to office under this clause holds office for the unexpired portion of his or her predecessor's term of office.

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## **8 Disclosure of pecuniary and other conflicts of interests**

- (1) If:
- (a) a member has a direct or indirect pecuniary interest, or any other interest, in a matter being considered or about to be considered at a meeting of the Board, and
  - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

- (2) A disclosure by a member at a meeting of the Board that the member:
- (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and that is required to be disclosed under subclause (1).

- (3) Particulars of any disclosure made under this clause must be recorded by the Board in a register of interests kept for the purpose and that register must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Board.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Board otherwise determines:
- (a) be present during any deliberation of the Board with respect to the matter, or
  - (b) take part in any decision of the Board with respect to the matter.

- (5) For the purposes of the making of a determination by the Board under subclause (4), a member who has a direct or indirect pecuniary interest, or any other interest, in a matter to which the disclosure relates must not:
  - (a) be present during any deliberation of the Board for the purpose of making the determination, or
  - (b) take part in the making by the Board of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Board.
- (7) This clause applies to a member of a committee of the Board and the committee in the same way as it applies to a member of the Board and the Board.
- (8) If a meeting of the Board cannot be held for the purpose of making a decision or determination under this Act because, as a result of the operation of subclause (4), the Board is without a quorum, the decision or determination is to be made instead by the Minister after consultation with such Islanders as he or she considers appropriate.
- (9) If a meeting of the Board cannot be held for the purpose of making a recommendation to the Minister with respect to a decision or determination to be made by the Minister under this Act because, as a result of the operation of subclause (4), the Board is without a quorum, the Minister may make the decision or determination, after consultation with such Islanders as he or she considers appropriate, without the need for such a recommendation.
- (10) Immediately after it becomes apparent to the Chairperson that a meeting of the Board cannot be held as referred to in subclause (8) or (9), the Chairperson must cause notice of that fact to be given to the Minister.

## **9 Effect of certain other Acts**

- (1) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of a member.

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- (2) If by or under any Act provision is made:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,
- the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.
- (3) The office of a member is, for the purposes of any Act, taken not to be an office or place of profit under the Crown.

**10 No compensation for removal from office or failure to re-appoint**

A member who is removed from office or not re-appointed at the end of his or her term of office is not entitled to be paid any compensation by reason of ceasing to hold office.

**Part 3 Procedure**

**11 General procedure**

The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Board.

**12 Quorum**

The quorum for a meeting of the Board is a majority of its members for the time being.

**13 Presiding member**

- (1) The Chairperson (or, in the absence of the Chairperson, the Deputy Chairperson or, in the absence of both, another member elected as chairperson for that meeting by the members present) is to preside at a meeting of the Board.

- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

#### **14 Voting**

A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

#### **15 Transaction of business outside meetings or by telephone**

- (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Board.
- (2) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
- (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),
- the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Board.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

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**[28] Schedule 2 Savings and transitional provisions**

Insert before clause 1:

**Part 1 Preliminary**

**1A Savings and transitional regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Lord Howe Island Amendment Act 2004*

- (2) Such a provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (3) To the extent to which such a provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of that publication.

**Part 2 Provisions consequent on enactment of Lord Howe Island (Amendment) Act 1981**

**[29] Schedule 2, Part 3**

Insert at the end of the Schedule:

**Part 3 Provisions consequent on enactment of Lord Howe Island Amendment Act 2004**

**2 Definition**

In this Part:

*2004 amending Act* means the *Lord Howe Island Amendment Act 2004*.

**3 Revocation of lease conditions with respect to Kentia palms**

The Minister may, without the need for any application by the lessee, revoke any condition of a lease that has the effect of reserving to the Crown any palm trees or palm tree products.

**4 Constitution of Board**

- (1) The substitution of section 4 by the 2004 amending Act does not affect:
  - (a) the existence or identity of the Board, or
  - (b) the office of any member of the Board who held office as such immediately before the substitution of that section.
- (2) In particular:
  - (a) the 3 elected members referred to in former section 4 (3) (a) are taken to hold 3 of the positions referred to in new section 4 (3) (a), and
  - (b) the member referred to in former section 4 (3) (b) is taken to be the member referred to in new section 4 (3) (d), and
  - (c) the member referred to in former section 4 (3) (c) is taken to be the member referred to in new section 4 (3) (c), and
  - (d) the chairperson referred to in former section 4 (3A) is taken to hold office as Chairperson under clause 2 of Schedule 1A, and

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- (e) each of the persons holding office pursuant to this subclause continue in office, subject to Schedule 1A, for the residue of the terms for which they were appointed under former section 4.
  - (3) The Minister is to fill the vacancy in new section 4 (3) (b) (arising from the increase in number of Board members) in accordance with Part 2 of Schedule 1A.
  - (4) The Minister is to fill the new vacancy for an elected member referred to in new section 4 (3) (a) (arising from the increase in number of Board members) by appointing to that office:
    - (a) from among the unsuccessful candidates at the most recent election under Division 3 of Part 2 who are still eligible for election and available for appointment, that candidate who had the most votes at that election, or
    - (b) if no such candidate is still eligible for election and available for appointment, such Islander as the Minister considers appropriate.

## **5 Determinations of rent**

A determination of annual rent under section 21A or 22, as in force immediately before the commencement of section 22B, is taken to be an existing determination for the purposes of section 22B.