

# Schedule 1

[Section 42(2)]

## By-laws

*[Part I heading deleted by No. 58 of 1995 s.87.]*

### 1. Duties of proprietor, occupiers, etc.

- (1) A proprietor shall —
  - (a) forthwith carry out all work that may be ordered by any competent public authority or local government in respect of his lot other than such work as may be for the benefit of the building generally and pay all rates, taxes, charges, outgoings and assessments that may be payable in respect of his lot;
  - (b) repair and maintain his lot, and keep it in a state of good repair, reasonable wear and tear, and damage by fire, storm, tempest or act of God excepted.
- (1a) A proprietor shall —
  - (a) notify the strata company forthwith upon any change of ownership, including in the notice an address of the proprietor for service of notices and other documents under this Act; and
  - (b) if required in writing by the strata company, notify the strata company of any mortgage or other dealing in connection with his lot, including in the case of a lease of a lot, the name of the lessee and the term of the lease.
- (2) A proprietor, occupier or other resident of a lot shall —
  - (a) use and enjoy the common property in such a manner as not unreasonably to interfere with the use and enjoyment thereof by other proprietors, occupiers or residents, or of their visitors; and
  - (b) not use the lot or permit it to be used in such manner or for such purpose as causes a nuisance to any occupier of another lot (whether a proprietor or not) or the family of such an occupier;
  - (c) take all reasonable steps to ensure that his visitors do not behave in a manner likely to interfere with the peaceful enjoyment of the proprietor, occupier or other resident of another lot or of any person lawfully using common property; and
  - (d) take all reasonable steps to ensure that his visitors comply with the by-laws of the strata company relating to the parking of motor vehicles.

**2. Power of proprietor to decorate etc.**

A proprietor may, without obtaining the consent of the strata company, paint, wallpaper or otherwise decorate the structure which forms the inner surface of the boundary of his lot or affix locking devices, flyscreens, furnishings, furniture, carpets and other similar things to that surface, if and so long as such action does not unreasonably damage the common property.

**3. Power of strata company regarding submeters**

- (1) Where the supply of gas or electricity to a lot is regulated by means of a submeter, the strata company may require the proprietor or other occupier of the lot to pay the strata company by way of security for the payment of charges arising through the submeter an amount not exceeding \$200 and, if any amount so paid is applied by the strata company under sub-bylaw (2), to pay such further amount or amounts by way of such security as may be necessary to maintain the amount of the security as, subject to this sub-bylaw, the strata company may require.
- (2) The strata company shall lodge every sum received under this by-law to the credit of an interest-bearing account with an ADI (authorised deposit-taking institution) as defined in section 5 of the *Banking Act 1959* of the Commonwealth and all interest accruing in respect of amounts so received shall, subject to this by-law, be held on trust for the proprietor or occupier who made the payment.
- (3) If the proprietor or other occupier of a lot in respect of which a submeter is used for the supply of gas or electricity refuses or fails to pay any charges due for the supply of gas or electricity to that lot, the strata company may apply in payment of those charges all, or such part as is necessary, of any amount paid to the strata company by that proprietor or occupier under this by-law, including any interest that may have accrued in respect of that amount.
- (4) Where a person who has paid an amount under this by-law to a strata company satisfies the strata company that he is no longer the proprietor or occupier of a lot and that the strata company no longer has any liability or contingent liability for the supply of gas or electricity to that lot during the period when that person was a proprietor or occupier of the lot, the strata company shall refund to that person the amount then held on his behalf under this by-law.

**4. Constitution of the council**

- (1) The powers and duties of the strata company shall, subject to any restriction imposed or direction given at a general meeting, be exercised and performed by the council of the strata company and a meeting of the council at which a quorum is present shall be competent to exercise all or any of the authorities, functions or powers of the council.

- (2) Until the first annual general meeting of the strata company, the proprietors of all the lots shall constitute the council.
- (3) Where there are not more than 3 proprietors the council shall consist of all proprietors and where there are more than 3 proprietors the council shall consist of not less than 3 nor more than 7 proprietors as is determined by the strata company.
- (4) Where there are more than 3 proprietors the members of the council shall be elected at each annual general meeting of the strata company or, if the number of proprietors increases to more than 3, at an extraordinary general meeting convened for the purpose.
- (5) In determining the number of proprietors for the purposes of this by-law, co-proprietors of a lot or more than one lot shall be deemed to be one proprietor and a person who owns more than one lot shall also be deemed to be one proprietor.
- (6) If there are co-proprietors of a lot, one only of the co-proprietors shall be eligible to be, or to be elected to be, a member of the council and the co-proprietor who is so eligible shall be nominated by his co-proprietors, but, if the co-proprietors fail to agree on a nominee, the co-proprietor who owns the largest share of the lot shall be the nominee or if there is no co-proprietor who owns the largest share of the lot, the co-proprietor whose name appears first in the certificate of title for the lot shall be the nominee.
- (7) On an election of members of the council, a proprietor shall have one vote in respect of each lot owned by him.
- (8) Except where the council consists of all the proprietors, the strata company may by special resolution remove any member of the council before the expiration of his term of office.
- (9) A member of the council vacates his office as a member of the council —
  - (a) if he dies or ceases to be a proprietor or a co-proprietor of a lot;
  - (b) upon receipt by the strata company of notice in writing of his resignation from the office of member;
  - (c) at the conclusion of an annual general meeting of the strata company at which an election of members of the council takes place and at which he is not elected or re-elected;
  - (d) in a case where he is a member of the council by reason of there being not more than 3 proprietors, upon an election of members of the council (as a result of there being an increase in the number of proprietors to more than 3) at which he is not elected; or
  - (e) where he is removed from office under sub-by-law (8) of this by-law.

- (10) Any casual vacancy on the council may be filled by the remaining members of the council, except that, in a case where a casual vacancy arises because of the removal from office of a member under sub-by-law (8), the strata company may resolve that the casual vacancy shall be filled by the strata company at a general meeting.
- (11) Except where there is only one proprietor, a quorum of the council shall be 2 where the council consists of 3 or 4 members; 3, where it consists of 5 or 6 members; and 4, where it consists of 7 members.
- (12) The continuing members of the council may act notwithstanding any vacancy in the council, but so long as the number of members is reduced below the number fixed by these by-laws as the quorum of the council, the continuing members or member of the council may act for the purpose of increasing the number of members of the council or convening a general meeting of the strata company, but for no other purpose.
- (13) All acts done in good faith by the council shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment or continuance in office of any member of the council, be as valid as if that member had been duly appointed or had duly continued in office.

## **5. Election of council**

The procedure for nomination and election of members of a council shall be in accordance with the following rules —

- (1) The meeting shall determine, in accordance with the requirements of by-law 4(3) of Part I the number of persons of whom the council shall consist.
- (2) The chairman shall call upon those persons present and entitled to nominate candidates to nominate candidates for election to the council.
- (3) A nomination is ineffective unless supported by the consent of the nominee to his nomination, given —
  - (a) in writing, and furnished to the chairman at the meeting; or
  - (b) orally by a nominee who is present at the meeting.
- (4) When no further nominations are forthcoming, the chairman —
  - (a) where the number of candidates equals the number of members of the council determined in accordance with the requirements of by-law 4(3) of Part I, shall declare those candidates to be elected as members of the council;
  - (b) where the number of candidates exceeds the number of members of the council as so determined, shall direct that a ballot be held.

- (5) If a ballot is to be held, the chairman shall —
  - (a) announce the names of the candidates; and
  - (b) cause to be furnished to each person present and entitled to vote a blank paper in respect of each lot in respect of which he is entitled to vote for use as a ballot-paper.
- (6) A person who is entitled to vote shall complete a valid ballot-paper by —
  - (a) writing thereon the names of candidates, equal in number to the number of members of the council so that no name is repeated;
  - (b) indicating thereon the number of each lot in respect of which his vote is cast and whether he so votes as proprietor or first mortgagee of each such lot or as proxy of the proprietor or first mortgagee;
  - (c) signing the ballot-paper; and
  - (d) returning it to the chairman.
- (7) The chairman, or a person appointed by him, shall count the votes recorded on valid ballot-papers in favour of each candidate.
- (8) Subject to rule (9), candidates, being equal in number to the number of members of the council determined in accordance with by-law 4(3) of Part I, who receive the highest numbers of votes shall be declared elected to the council.
- (9) Where the number of votes recorded in favour of any candidate is the lowest of the numbers of votes referred to in rule (8) and —
  - (a) that number equals the number of votes recorded in favour of any other candidate; and
  - (b) if each of those candidates were to be declared elected the number of persons elected would exceed the number of persons required to be elected,

as between those candidates, the election shall be decided by a show of hands of those present and entitled to vote.

## **6. Chairman, secretary and treasurer of council**

- (1) The members of a council shall, at the first meeting of the council after they assume office as such members, appoint a chairman, a secretary and a treasurer of the council.
- (2) A person —
  - (a) shall not be appointed to an office referred to in sub-by-law (1) of this by-law unless he is a member of the council; and
  - (b) may be appointed to one or more of those offices.

- (3) A person appointed to an office referred to in sub-bylaw (1) of this by-law shall hold office until —
  - (a) he ceases to be a member of the council;
  - (b) receipt by the strata company of notice in writing of his resignation from that office; or
  - (c) another person is appointed by the council to hold that office,whichever first happens.
- (4) The chairman shall preside at all meetings of the council at which he is present and, if he is absent from any meeting, the members of the council present at that meeting shall appoint one of their number to preside at that meeting during the absence of the chairman.

**7. Chairman, secretary and treasurer of strata company**

- (1) Subject to sub-bylaw (2), the chairman, secretary and treasurer of the council are also respectively the chairman, secretary and treasurer of the strata company.
- (2) A strata company may at a general meeting authorize a person who is not a proprietor to act as the chairman of the strata company for the purposes of that meeting.
- (3) A person appointed under sub-bylaw (2) may act until the end of the meeting for which he was appointed to act.

**8. Meetings of council**

- (1) At meetings of the council, all matters shall be determined by a simple majority vote.
- (2) The council may —
  - (a) meet together for the conduct of business and adjourn and otherwise regulate its meetings as it thinks fit, but the council shall meet when any member of the council gives to the other members not less than 7 days' notice of a meeting proposed by him, specifying in the notice the reason for calling the meeting;
  - (b) employ on behalf of the strata company such agents and employees as it thinks fit in connection with the control and management of the common property and the exercise and performance of the powers and duties of the strata company;
  - (c) subject to any restriction imposed or direction given at a general meeting of the strata company, delegate to one or more of its members such of its powers and duties as it thinks fit, and at any time revoke the delegation.
- (3) A member of a council may appoint a proprietor, or an individual authorized under section 45 of the Act by a corporation which is a proprietor, to act in his place as a member of the council at any

meeting of the council and any proprietor or individual so appointed shall, when so acting, be deemed to be a member of the council.

- (4) A proprietor or individual may be appointed under sub-by-law (3) of this by-law whether or not he is a member of the council.
- (5) If a person appointed under sub-by-law (3) of this by-law is a member of the council he may, at any meeting of the council, separately vote in his capacity as a member and on behalf of the member in whose place he has been appointed to act.
- (6) The council shall keep minutes of its proceedings.

**9. Powers and duties of secretary of strata company**

The powers and duties of the secretary of a strata company include —

- (a) the preparation and distribution of minutes of meetings of the strata company and the submission of a motion for confirmation of the minutes of any meeting of the strata company at the next such meeting;
- (b) the giving on behalf of the strata company and of the council of the notices required to be given under the Act;
- (c) the supply of information on behalf of the strata company in accordance with section 43(1)(a) and (b) of the Act;
- (d) the answering of communications addressed to the strata company;
- (e) the calling of nominations of candidates for election as members of the council; and
- (f) subject to sections 49 and 103 of the Act the convening of meetings of the strata company and of the council.

**10. Powers and duties of treasurer of strata company**

The powers and duties of the treasurer of a strata company include —

- (a) the notifying of proprietors of any contributions levied pursuant to the Act;
- (b) the receipt, acknowledgment and banking of and the accounting for any money paid to the strata company;
- (c) the preparation of any certificate applied for under section 43 of the Act; and
- (d) the keeping of the books of account referred to in section 35(1)(f) of the Act and the preparation of the statement of accounts referred to in section 35(1)(g) of the Act.

**11. General meetings of strata company**

- (1) General meetings of the strata company shall be held once in each year and so that not more than 15 months shall elapse between the date of one annual general meeting and that of the next.
- (2) All general meetings other than the annual general meeting shall be called extraordinary general meetings.
- (3) The council may when ever it thinks fit and shall upon a requisition in writing made by proprietors entitled to a quarter or more of the aggregate unit entitlement of the lots convene an extraordinary general meeting.
- (4) If the council does not within 21 days after the date of the making of a requisition under this by-law proceed to convene an extraordinary general meeting, the requisitionists, or any of them representing more than one-half of the aggregate unit entitlement of all of them, may themselves, in the same manner as nearly as possible as that in which meetings are to be convened by the council, convene an extraordinary general meeting, but any meeting so convened shall not be held after the expiration of 3 months from the date on which the requisition was made.
- (5) Not less than 14 days' notice of every general meeting specifying the place, the date and the hour of meeting and in case of special business the general nature of that business, shall be given to all proprietors and registered first mortgagees who have notified their interests to the strata company, but accidental omission to give the notice to any proprietor or to any registered first mortgagee or non-receipt of the notice by any proprietor or by any registered first mortgagee does not invalidate any proceedings at any such meeting.
- (6) If a proprietor gives notice in writing to the secretary of an item of business that the proprietor requires to be included on the agenda for the next general meeting of the strata company, the secretary shall include that item on the agenda accordingly and shall give notice of that item as an item of special business in accordance with sub-by-law (5) of this by-law.

**12. Proceedings at general meetings**

- (1) All business shall be deemed special that is transacted at an annual general meeting, with the exception of the consideration of accounts and election of members to the council, or at an extraordinary general meeting.
- (2) Except as otherwise provided in these by-laws, no business may be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.
- (3) One-half of the persons entitled to vote present in person or by duly appointed proxy constitutes a quorum.



- (4) If within half an hour from the time appointed for a general meeting a quorum is not present, the meeting, if convened upon the requisition of proprietors, shall be dissolved and in any other case it shall stand adjourned to the same day in the next week at the same place and time and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the persons entitled to vote and present constitute a quorum.
- (4a) Sub-bylaws (3) and (4) do not apply to a general meeting of a strata company referred to in section 50B.
- (5) The chairman, may with the consent of the meeting, adjourn any general meeting from time to time and from place to place but no business may be transacted at an adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (6) Except where otherwise required by or under the Act, resolutions may be passed at a general meeting by a simple majority vote.
- (7) At any general meeting a resolution by the vote of the meeting shall be decided on a show of hands unless a poll is demanded by any proprietor present in person or by proxy.
- (8) Unless a poll be so demanded a declaration by the chairman that a resolution has on the show of hands been carried is conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against such resolution.
- (9) A demand for a poll may be withdrawn.
- (10) A poll if demanded shall be taken in such manner as the chairman thinks fit and the result of the poll shall be deemed to be the resolution of the meeting at which such poll was demanded.
- (11) In the case of equality in the votes whether on a show of hands or on a poll, the question is determined in the negative.

**13. Restriction on moving motion or nominating candidate**

A person is not entitled to move a motion at a general meeting or to nominate a candidate for election as a member of the council unless the person is entitled to vote on the motion or at the election.

**14. Votes of proprietors**

- (1) On a show of hands each proprietor has one vote.
- (2) On a poll the proprietors have the same number of votes as the unit entitlements of their respective lots.
- (3) On a show of hands or on a poll votes may be given either personally or by duly appointed proxy.
- (4) An instrument appointing a proxy shall be in writing under the hand of the appointer or his attorney and may be either general or for a particular meeting.

- (5) A proxy need not be a proprietor.
- (6) Except in cases where by or under the Act a unanimous resolution or a resolution without dissent is required, no proprietor is entitled to vote at any general meeting unless all contributions payable in respect of his lot have been duly paid and any other moneys recoverable under the Act by the strata company from him at the date of the notice given to proprietors of the meeting have been duly paid before the commencement of the meeting.
- (7) Co-proprietors may vote by proxy jointly appointed by them and in the absence of such a proxy are not entitled to vote on a show of hands, except when the unanimous resolution of proprietors is required by the Act.
- (8) On any poll each co-proprietor is entitled to such part of the vote applicable to a lot as is proportionate to his interest in the lot.
- (9) The joint proxy (if any) on a poll has a vote proportionate to the interests in the lot of such of the joint proprietors as do not vote personally or by individual proxy.

**15. Common seal**

- (1) The common seal of the strata company shall at no time be used except by authority of the council previously given and in the presence of the members of the council or at least 2 members of the council, who shall sign every instrument to which the seal is affixed, but where there is only one member of the strata company his signature shall be sufficient for the purpose of this by-law.
- (2) The council shall make provision for the safe custody of the common seal.

*[16. Repealed]*

*[Part II. Repealed]*

*[Schedule 1 amended by No. 58 of 1995 s.87; No. 14 of 1996 s.4; No. 26 of 1999 s.104; No. 24 of 2000 s.40(12).]*

## Schedule 2

[Section 42(2)]

*[Heading deleted by No. 58 of 1995 s.88.]*

**1. Vehicles**

A proprietor, occupier, or other resident of a lot shall not park or stand any motor or other vehicle upon common property except with the written approval of the strata company.

**2. Obstruction of common property**

A proprietor, occupier, or other resident of a lot shall not obstruct lawful use of common property by any person.

**3. Damage to lawns, etc., on common property**

Except with the approval of the strata company, a proprietor, occupier, or other resident of a lot shall not —

- (a) damage any lawn, garden, tree, shrub, plant or flower upon common property; or
- (b) use any portion of the common property for his own purposes as a garden.

**4. Behaviour of proprietors and occupiers**

A proprietor, occupier, or other resident of a lot shall be adequately clothed when upon common property and shall not use language or behave in a manner likely to cause offence or embarrassment to the proprietor, occupier, or other resident of another lot or to any person lawfully using common property.

**5. Children playing upon common property in building**

A proprietor, occupier, or other resident of a lot shall not permit any child of whom he has control to play upon common property within the building or, unless accompanied by an adult exercising effective control, to be or to remain upon common property comprising a laundry, car parking area or other area of possible danger or hazard to children.

**6. Depositing rubbish, etc., on common property**

A proprietor, occupier, or other resident of a lot shall not deposit or throw upon that lot or any other lot or the common property any rubbish, dirt, dust or other material likely to interfere with the peaceful enjoyment of another proprietor, occupier or resident or of any person lawfully using the common property.

**7. Drying of laundry items**

A proprietor, occupier, or other resident of a lot shall not, except with the consent in writing of the strata company —

- (a) hang any washing, towel, bedding, clothing or other article on any part of the parcel in such a way as to be visible from outside the building, other than for a reasonable period on any lines provided by the strata company for the purpose; or
- (b) display any sign, advertisement, placard, banner, pamphlet or like matter on any part of his lot in such a way as to be visible from outside the building.

**8. Storage of inflammable liquids, etc.**

A proprietor, occupier, or other resident of a lot shall not, except with the approval in writing of the strata company, use or store upon the lot or upon the common property any inflammable chemical, liquid or gas or other inflammable material, other than chemicals, liquids, gases or other materials used or intended to be used for domestic purposes, or any such chemical, liquid, gas or other material in a fuel tank of a motor vehicle or internal combustion engine.

**9. Moving furniture etc., on or through common property**

A proprietor, occupier, or other resident of a lot shall not transport any furniture or large object through or upon common property within the building unless he has first given to the council sufficient notice of his intention to do so to enable the council to arrange for its nominee to be present at the time when he does so.

**10. Floor coverings**

A proprietor of a lot shall ensure that all floor space within the lot (other than that comprising kitchen, laundry, lavatory or bathroom) is covered or otherwise treated to an extent sufficient to prevent the transmission therefrom of noise likely to disturb the peaceful enjoyment of the proprietor, occupier or other resident of another lot.

**11. Garbage disposal**

A proprietor or occupier of a lot —

- (a) shall maintain within his lot, or on such part of the common property as may be authorized by the strata company, in clean and dry condition and adequately covered, a receptacle for garbage;
- (b) comply with all local laws relating to the disposal of garbage;
- (c) ensure that the health, hygiene and comfort of the proprietor, occupier or other resident of any other lot is not adversely affected by his disposal of garbage.

**12. Additional duties of proprietors, occupiers, etc.**

A proprietor, occupier or other resident shall not —

- (a) use the lot that he owns, occupies or resides in for any purpose that may be illegal or injurious to the reputation of the building;
- (b) make undue noise in or about any lot or common property; or
- (c) keep any animals on the lot that he owns, occupies or resides in or the common property after notice in that behalf given to him by the council.

**13. Notice of alteration to lot**

A proprietor of a lot shall not alter the structure of the lot except as may be permitted and provided for under the Act and the by-laws and in any event shall not alter the structure of the lot without giving to the strata company, not later than 14 days before commencement of the alteration, a written notice describing the proposed alteration.

**14. Appearance of lot**

A proprietor, occupier or other resident of a lot shall not, without the written consent of the strata company, maintain within the lot anything visible from outside the lot that, viewed from outside the lot, is not in keeping with the rest of the building.

*[Schedule 2 amended by No. 58 of 1995 s.88; No. 57 of 1997 s.115(5).]*

## Schedule 2A

[Sections 5C and 42]

### Matters that may be provided for in management statement

1. The amendment or repeal of a by-law contained in Schedule 1.
2. The amendment or repeal of a by-law contained in Schedule 2.
3. Any additional by-law that may be made under section 42.
4. The control or preservation of the essence or theme of the development under the scheme.
5. Architectural and landscaping guidelines to be observed by proprietors.
  6. Plot ratio restrictions and open space requirements.
7. The control, management, use and maintenance of any part of the common property, including any special facilities provided on the common property.
8. Provisions relating to any proposed re-subdivision in a scheme being provisions that —
  - (a) comply with the requirements of section 8A(b) and (c) and any other prescribed requirements; and
  - (b) state the proposed unit entitlement of each lot and the proposed aggregate unit entitlement of the scheme following the completion of all proposed re-subdivisions in the scheme.
9. Matters affecting the provision of, and payment for —
  - (a) internal fencing on the parcel; or
  - (b) fencing to which the *Dividing Fences Act 1961* applies, including any obligations of the strata company.
10. The maintenance of water, sewerage, drainage, gas, electricity, telephone and other services.
  11. Insurance of the common property.
  12. Safety and security.
13. The carrying on of any business or trading activity by the strata company, and the method of distributing and sharing any profit or loss.
14. Procedures to be followed for the resolution of disputes as a prerequisite to the making of an application to the referee for relief under this Act.

[Schedule 2A inserted by No. 58 of 1995 s.89; amended by No. 61 of 1996 s.38.]

# Schedule 3

[Section 132]

## Transitional and savings provisions

### 1. Interpretation

- (1) In this Schedule, unless the contrary intention appears —
- “appointed day”** means the day on which this Act comes into operation as fixed under section 2;
- “company”** means a body corporate created by section 13 of the former Act;
- “former Act”** means the *Strata Titles Act 1966*<sup>12</sup>;
- “former by-law”** means a by-law within the meaning of the former Act as that by-law was in force immediately before the appointed day;
- “former common property”** means so much of a former parcel as, immediately before the appointed day, was not comprised in any former lot;
- “former lot”** means a lot under the former Act as it existed immediately before the appointed day;
- “former parcel”** means land which, immediately before the appointed day, comprised the former lots and the former common property the subject of a former strata scheme;
- “former proprietor”** means a person who, immediately before the appointed day, was a proprietor, within the meaning of the former Act, of a former lot; and
- “former strata scheme”** means —
- (a) the manner of division, immediately before the appointed day, of a former parcel into former lots or into former lots and former common property and the manner of allocation, immediately before that day, of unit entitlements under the former Act among the former lots; and
  - (b) the rights and obligations, between themselves, immediately before the appointed day, of former proprietors, other persons having property interests in or occupying former lots and the company,
- as conferred or imposed by the former Act or by anything done under the authority of the former Act.
- (2) For the purposes of the application of any provision of this Act to or in respect of a scheme to which the provisions of this Act apply by reason of clause 6, a reference to an original proprietor, in relation to that scheme, is a reference to the person by whom the parcel (being the parcel comprised in the strata plan within the meaning of the

former Act, the registration of which under the former Act initiated the scheme) was held in fee simple at the time of that registration.

- (3) The express application of any provision of this Act (whether unamended or deemed to be amended) by any provision of this Schedule to or in respect of any act, matter or thing referred to in this Schedule shall not, except in so far as a contrary intention appears, be construed as preventing or limiting the application of any other provision of this Act to that or any other act, matter or thing.
- (4) Where any provision of this Act is deemed to be amended by this Schedule by inserting in that provision any words, those words shall be construed as if they were contained in this Schedule.

## **2. Registration of unregistered former strata plans**

- (1) Notwithstanding section 4 or 5, a strata plan within the meaning of the former Act, may be registered as a strata plan but shall not be so registered unless —
  - (a) it illustrates a division of a building into different parts;
  - (b) the requirements of the former Act have been or are complied with in so far as those requirements relate to the registration of a strata plan;
  - [(c) deleted]*
  - (d) registration is effected within 24 months after the appointed day.
- (2) Without limiting the generality of subclause (1)(b), for the purpose of enabling a person to comply, as referred to in that subclause, with the requirements of the former Act, the provisions of section 20 of the former Act apply to and in respect of an application for a certificate referred to in section 5(6)(c) of the former Act relating to the proposed subdivision illustrated by a strata plan referred to in subclause (1) as if the former Act had not been repealed.
- (3) Where a plan is registered under subclause (1), the land comprised in the plan shall be deemed to have been subdivided under this Act into lots or into lots and common property in the same manner as that land would have been subdivided if that plan had been registered under the former Act, except that —
  - (a) where a boundary of any such lot would, if that plan had been validly registered under the former Act, have been, under section 5(5) of the former Act, the centre of a floor, wall or ceiling, that boundary shall upon the registration of the plan and until it is altered in accordance with this Act be the upper surface of that floor, the inner surface of that wall or the under surface of that ceiling, as the case may be; and
  - (b) where a boundary of any lot is adjusted under paragraph (a), the boundaries of the common property are adjusted reciprocally,



and any such lots or common property shall, for the purposes of this Act, be deemed to be lots or common property, or to be lots or common property with boundaries adjusted as referred to in paragraph (a) or (b), as the case may be.

- (4) A lot created by the registration of a plan under subclause (1) does not include any structural cubic space unless that structural cubic space was stipulated in that plan as forming part of that lot.
- (5) Where, under any provision of this Act, any act, matter or thing depends on or results from (either directly or indirectly) the registration of a strata plan, that provision operates in relation to the registration of a plan under subclause (1) in the same way as it operates in relation to the registration of a strata plan.
- (6) Subject to this clause, a reference in this Act to a strata plan includes a reference to a plan registered under subclause (1) as a strata plan.
- (7) The address endorsed, as referred to in section 5(1)(i) of the former Act, upon a plan registered under subclause (1) shall, for the purposes of this Act, be deemed to be the address for the service of notices on the strata company concerned until that address is altered in accordance with this Act.
- (8) The endorsement, as referred to in section 18 of the former Act, upon a plan registered under subclause (1) shall, for the purposes of this Act, be deemed to be the schedule referred to in section 5(1)(c).
- (9) A reference to a lot shown in a plan capable of being registered under subclause (1) made in any instrument executed before the registration of that plan under subclause (1) (being an instrument relating to the sale or other disposition of an estate or interest in the lot so shown) shall, on and after the registration of that plan, be construed as a reference to the lot which corresponds to the lot so shown.

**3. Former lots and former common property to be derived lots and derived common property**

- (1) Where immediately before the appointed day —
  - (a) a former lot had any boundary that under section 5(5) of the former Act was the centre of a floor, wall or ceiling, that former lot, on the appointed day, becomes for the purposes of this Schedule a derived lot corresponding to that former lot and having, subject to subclause (2), as its boundaries —
    - (i) instead of any boundary that was the centre of a floor, wall or ceiling, the upper surface of that floor, the inner surface of that wall or the under surface of that ceiling, as the case may be; and
    - (ii) except as provided by subparagraph (i), the same boundaries as that former lot;

and

- (b) a former lot had no boundary that under section 5(5) of the former Act was the centre of a floor, wall or ceiling, that former lot, on the appointed day, becomes for the purposes of this Schedule a derived lot corresponding to that former lot and having as its boundaries the same boundaries as that former lot.
- (2) A derived lot does not include any structural cubic space unless that structural cubic space was stipulated, in the relevant strata plan, as forming part of the former lot to which that derived lot corresponds.
- (3) On the appointed day, former common property becomes, for the purposes of this Schedule, derived common property corresponding to that former common property but has as its boundaries —
  - (a) where any derived lot has any of its boundaries ascertained in accordance with subclause (1)(a)(i) or (b), boundaries adjusted reciprocally; and
  - (b) except as provided by paragraph (a), the same boundaries as that former common property.
- (4) A reference to a former lot made in any instrument executed before the appointed day (being an instrument relating to the sale or other disposition of an estate or interest in that former lot) shall, on and after the day, be construed as a reference to the derived lot which corresponds to that former lot.

#### **4. Continuation of companies**

A company created under the former Act, in relation to a former strata scheme —

- (a) shall continue notwithstanding the repeal of the former Act;
- (b) shall, on the appointed day, be deemed to be the strata company constituted under section 32(1) in respect of the scheme that corresponds to that former strata scheme and to which the provisions of this Act apply by reason of clause 6; and
- (c) notwithstanding section 32(1), shall have as its name its name under the former Act.

#### **5. Continuation of estates or interests in former lots and former common property and rights in former common property**

A person who, immediately before the appointed day —

- (a) had an estate or interest in a former lot, has on that day the same estate or interest in the derived lot which corresponds to that former lot; or
- (b) had an estate or interest (not being a right or special privilege referred to in clause 13) in former common property, has on that day the same estate or interest in the derived common property which corresponds to that former common property.

**6. Application of Act to former strata schemes, former parcels, derived lots and common property**

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

- (a) a former strata scheme as if it were a strata scheme;
- (b) a former parcel as if it were a parcel;
- (c) a derived lot as if it were a lot; and
- (d) derived common property as if it were common property.

**7. Registration of transfers or leases of derived common property registrable under section 10 of former Act**

(1) Where a transfer or lease of any common property under the former Act —

- (a) would under section 10 of the former Act have been registrable had this Act not been enacted but had not, before the appointed day, been so registered; and
- (b) was executed pursuant to an agreement entered into by the company before the appointed day,

that transfer or lease, upon its lodgement in the office of the Registrar of Titles, shall be dealt with under section 19(8) as if it were a dealing referred to in section 19(2).

- (2) For the purposes of section 19(4), a lease referred to in subclause (1) shall be deemed to have been granted under section 19(2).
- (3) In the event of the registration of an instrument by the Registrar of Titles the effect of which is to render the certificate of title to a former lot incorrect in so far as that certificate of title to a former lot certifies the share of the common property held by the proprietor of the former lot, the Registrar of Titles shall amend that certificate of title so as to replace that certificate by a certificate of the kind referred to in section 17(2).

**8. Reallocation of unit entitlement**

(1) Section 16 shall, on and from the appointed day, apply to and in respect of a former strata scheme as if —

- (a) in the case of an application for the amendment of an initial allocation of unit entitlement, subsection (2)(b) of that section were omitted and the following provision substituted —

“

- (b) a certificate given by a licensed valuer certifying that, or to the effect that, the unit entitlement of a lot in the former strata scheme bears in relation to the aggregate unit entitlement of all lots in that scheme a proportion greater than 5% more or 5% less than

the capital value of that lot bears to the aggregate capital value of all lots in the scheme.

”;

and

- (b) subsection (7) of that section did not prohibit a Land Valuation Tribunal from making an order under that section within 5 years of the registration of the strata plan.
- (2) In the event of the registration by the Registrar of Titles of an amended schedule of unit entitlement under section 15 or 16 on or after the appointed day in respect of a former strata scheme, the Registrar of Titles shall amend the certificates of title to former lots within that strata scheme so as to replace that part of each certificate which certifies the share of the common property held by the proprietor of the former lot concerned by a certificate of the kind referred to in section 17(2).

**9. General meetings of certain continued companies**

- (1) Where, in relation to a company continued as a strata company by the operation of clause 4, the original proprietor is not, on the appointed day, the proprietor of any lots the subject of the strata scheme or is the proprietor of lots the subject of the strata scheme the sum of whose unit entitlements is less than two-thirds of the aggregate unit entitlement and —
- (a) a general meeting of that company has not been held before the appointed day, a general meeting of that strata company shall be held within 3 months after the appointed day and that general meeting shall, for the purposes of this Act (section 49(3) excepted) be the first annual general meeting of the strata company; or
  - (b) an annual general meeting of that company has been held before the appointed day, the last annual general meeting of that company held before that day shall, for the purposes of by-law 11(1) in Part I of Schedule 1 be deemed to have been the first annual general meeting.
- (2) If a meeting of the strata company is not held in accordance with subclause (1)(a), a referee may, pursuant to an application by a proprietor or mortgagee of a lot appoint, by order, a person to convene and hold a general meeting within such time as may be specified in the order and the meeting convened by that person shall for the purposes of this Act (section 49(3) excepted) be the first annual general meeting of the strata company.
- (3) An order made under subclause (2) may include such ancillary or consequential provisions as the referee thinks fit.
- (4) The original proprietor shall deliver to the strata company (being a strata company a general meeting of which is required to be held under subclause (1)(a)), within 14 days after notice in writing is given to him by the strata company or if the documents referred to in

paragraphs (a) and (b) are not then in his possession within 14 days after they come into his possession or under his control —

- (a) all plans, specifications, drawings showing water pipes, electric cables, drainage pipes, ventilation ducts or air conditioning systems, certificates (other than certificates of title for lots), diagrams (including lift wiring diagrams) and other documents (including any policy of insurance) obtained or received by him and relating to the parcel or building; and
- (b) any books of account, notices or other records relating to the former strata scheme or the strata scheme,

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

Penalty: \$1 000.

- (5) Section 43(1)(b)(iii) shall be deemed to be amended by inserting after “section 49(3)” the following “or under clause 9(4) of Schedule 3”.

**10. Meetings of former companies held within 2 months after appointed day**

Notwithstanding the by-laws in Part I of Schedule 1, for the purposes of any general meeting of a strata company continued by the operation of clause 4, being a general meeting held before the expiration of 2 months after the appointed day —

- (a) the procedure for the convening and holding of meetings of such a strata company and the right of persons to vote at and to requisition meetings of such a strata company shall be the same as they were under the former Act; and
- (b) where a notice is given to the strata company under section 50(7), the mortgagee specified in the notice shall have the same voting rights as he would have had if the meeting had been held in accordance with the former Act and if the notice were a notice given under section 24(7) of the former Act.

**11. Notices served by public or local government authority before the appointed day**

The reference in section 38 to a notice served on the proprietor of a lot by a public authority or local government includes a reference to a notice served, before the appointed day, by such an authority or local government on the proprietor of a former lot which has become a derived lot.

**12. Effect of former by-laws**

- (1) Subject to this clause, the former by-laws relating to a former strata scheme shall, notwithstanding the repeal of the former Act, continue

in force in respect of the corresponding scheme to which the provisions of this Act apply by reason of clause 6 except to the extent of any inconsistency of the former by-laws with any provision of this Act other than Schedules 1 and 2.

- (2) Subject to this clause and clause 13A, upon the expiration of 12 months (“**the termination day**”) after the commencement of section 90(2) of the *Strata Titles Amendment Act 1995* —
  - (a) any by-laws continued in force by subclause (1) or any by-laws so continued in force, as amended or repealed in accordance with subclause (3), cease to have effect; and
  - (b) sections 42, 42A and 42B and Schedules 1 and 2 apply in respect of the strata scheme concerned.
- (3) Subject to subclause (4), until the termination day the former by-laws relating to a former strata scheme may be added to, amended or repealed in the manner provided by this Act, and any such addition, amendment or repeal shall have effect upon notification being recorded, in the form prescribed under section 42(4), on the relevant strata plan registered under the former Act.
- (4) A company continued as a strata company by operation of clause 4 may determine, by resolution without dissent, that subclause (2) applies for the purposes of the strata scheme as from a day that is sooner than the termination day.
- (5) Subject to subclause (6), a company continued as a strata company for a scheme by operation of clause 4 may determine that —
  - (a) despite subclause (2)(a), a by-law that is consistent with this Act, other than Schedules 1 and 2, is to continue to have effect after the termination day; and
  - (b) despite subclause (2)(b), Schedule 2 or any provision of that Schedule does not apply in respect of that scheme.
- (6) The power to make a determination under subclause (5)(b) does not apply to any by-law in Schedule 2 if immediately before the commencement of section 90 of the *Strata Titles Amendment Act 1995* that by-law applied to the strata company.
- (7) A determination under subclause (5) does not have effect unless notification is recorded before the termination day, in the form prescribed under section 42(4), on the relevant strata plan registered under the former Act.
- (8) A former by-law made by a strata company under this Act or the former Act and recorded on the strata plan does not cease to have effect by operation of subclause (2) or (4) unless the by-law is inconsistent with this Act, other than Schedules 1 and 2.

- (9) A by-law —
  - (a) continued under subclause (5)(a) and recorded under subclause (7); or
  - (b) referred to in subclause (8),

has effect despite the provisions of section 42(2) and Schedules 1 and 2, and those provisions are modified accordingly.

- (10) Section 93 applies, with all necessary modifications, to enable —
  - (a) an order of a referee to be applied for where —
    - (i) a strata company has purportedly exercised a power conferred by subclause (5) but has acted beyond power; or
    - (ii) a power so conferred should have been exercised by a strata company but the company has failed to do so;
  - and
  - (b) an order to be made by a referee —
    - (i) declaring a by-law purportedly continued under this clause to be invalid;
    - (ii) reinstating a by-law that should have been continued by a strata company under this clause; or
    - (iii) making applicable all provisions or any provision of Schedule 2 if it should not have been made inapplicable by a strata company under this clause, as the case may require.
- (11) An application for an order referred to in subclause (10) cannot be made after the expiration of 3 years from the commencement of section 90(2) of the *Strata Titles Amendment Act 1995*, but a referee may extend that period if a proprietor applies for an extension and satisfies the referee that the justice of the case requires that the period be extended.
- (12) Nothing in this clause is to be read as preventing a strata company from doing anything that it is authorized to do under section 42(2).

### **13. Maintenance of exclusive use, or special privileges in respect of common property**

- (1) Where immediately before the appointed day a proprietor of a former lot was entitled, pursuant to former by-law 3(f), to a right of exclusive use and enjoyment of, or special privileges in respect of, any of the former common property, the proprietor for the time being of the lot shall continue to be entitled to that right or those special privileges in accordance with the terms of the grant and any such grant shall be determinable on reasonable notice unless the company otherwise resolved by unanimous resolution.

- (2) Where immediately before the appointed day a proprietor of a former lot was entitled, pursuant to a grant contained in a former by-law, to a right of exclusive use and enjoyment of, or special privileges in respect of, any of the former common property, the proprietor for the time being of the lot shall continue to be entitled to that right or those special privileges in accordance with the terms of the by-law.
- (3) For the removal of doubt it is declared that section 20 of the *Town Planning and Development Act 1928* has never applied to any grant referred to in subclause (1) or (2).

**13A. Exclusive use and privileges to lapse unless provided for by by-law or referee's order**

- (1) Where immediately before the commencement of section 90(3) of the *Strata Titles Amendment Act 1995* —
  - (a) a proprietor of a lot was entitled to any right or special privilege by operation of clause 13; but
  - (b) that right or special privilege is not recorded on the strata plan,

that right or special privilege is extinguished at the expiration of 12 months after that commencement except to the extent that it is provided for by a by-law or order made under this clause and recorded by the Registrar of Titles under section 42(4).

- (2) A proprietor for the time being of a lot who considers that he is entitled to a right or special privilege referred to in subclause (1) that is not recorded on the strata plan may serve notice on the strata company requiring it to make a by-law, in terms specified in the notice, confirming that right or special privilege.
- (3) Notwithstanding section 42, the strata company may make a by-law referred to in subclause (2) otherwise than pursuant to a resolution without dissent or a special resolution.
- (4) An order may be applied for and made under section 93 in respect of a by-law made following a requisition under subclause (2).
- (5) Where a strata company on which a requisition has been served under subclause (2) —
  - (a) fails to make a by-law in accordance with the requisition within one month after the service of the requisition; or
  - (b) having made such a by-law and having been tendered the prescribed fee, does not cause the by-law to be recorded in accordance with section 42(4) within a reasonable time,

the proprietor who made the requisition may, subject to subclause (7), make an application to a referee for an order under subclause (8).



- (6) The provisions of Part VI apply to an application made to a referee under this clause and to an order made by the referee in the same way as they apply to an application and an order made under that Part.
- (7) An application under subclause (5) cannot be made after the expiration of 3 years from the commencement of section 90(3) of the *Strata Titles Amendment Act 1995*, but a referee may extend that period if a proprietor applies for an extension and satisfies the referee that the justice of the case requires that the period be extended.
- (8) Where on an application under subclause (5) the referee is of the opinion that —
  - (a) the applicant was entitled to a right or special privilege by operation of clause 13; but
  - (b) the right or special privilege is not recorded in the strata plan,

he may order that the applicant is entitled to such rights or special privileges as may be specified in the order and in that order shall specify the method by which the by-law, giving effect, by virtue of subclause (10), to the terms of the order, may be amended, added to or repealed.

- (9) Section 115 applies to an order under subclause (8) as if it were referred to in subsection (1)(a) of that section.
- (10) An order under subclause (8), when recorded under section 115, has effect, subject to any order with respect thereto made by a superior court, as if its terms were a by-law.
- (11) A by-law —
  - (a) made pursuant to a requisition under subclause (2); or
  - (b) giving effect, by virtue of subclause (10), to the terms of an order under subclause (8),

being a by-law expressed to be for the benefit of a specified lot, shall while it remains in force enure as appurtenant to, and for the benefit of, that lot.

- (12) A by-law —
  - (a) made pursuant to a requisition under subclause (2); or
  - (b) giving effect, by virtue of subclause (10), to the terms of an order under subclause (8),

shall be deemed, for the purposes of this Act, to be a by-law referred to in section 42(8).

**13B. Strata companies to notify proprietors of operation of clause 13A**

- (1) A strata company for a scheme shall give notice in the prescribed form to the proprietor of each lot in the scheme.

- (2) The notice shall be given not later than 6 months after the commencement of section 90(3) of the *Strata Titles Amendment Act 1995*.
- (3) The prescribed form shall —
  - (a) state the effect of clause 13A(1);
  - (b) advise any proprietor affected by that clause to take action under that clause for the protection of his rights as soon as is practicable; and
  - (c) provide for the full text of clause 13A to be attached to the form when notice is given under subclause (1).
- (4) Failure of a strata company to give notice under this clause does not affect the operation of clause 13A(1) but is a ground for the grant of an extension of time under clause 13A(7).

**14. Recovery of contributions levied under former Acts**

- (1) Any contribution levied under the former Act by a company and unpaid at the appointed day may be recovered by the continued strata company as if it were a contribution levied under this Act and bears interest from the appointed day as if it were a contribution levied under this Act.
- (2) Any determination made under the former Act by a company specifying amounts to be raised by regular periodic contributions shall be deemed to be a determination made under section 36(1)(b).

**15. Modification of section 35(1)(j) in relation to companies**

In relation to a company continued as a strata company by the operation of clause 4, section 35(1)(j) shall be deemed to be amended by inserting after “Division 4” the following —

“ , as modified by clause 21 of Schedule 3, ”.

**16. Inspection of former records, etc.**

- (1) A company continued as a strata company by the operation of clause 4 shall, for the purposes of the strata scheme concerned, cause to be retained until the expiration of the prescribed period, any records, minutes of meetings, notices and books of account kept or received by it before the appointed day and in its custody or under its control on that day and upon application under section 43(1) made in respect of a lot the subject of the strata scheme concerned shall make those records, minutes, notices and books available for inspection by the applicant or his agent at a time and place ascertained in accordance with section 43(1)(b).
- (2) Section 43(2) applies to the making of an inspection referred to in subclause (1) in the same way as it applies to the making of an inspection referred to in section 43(1)(b).

**17. Administrative funds of continued companies**

- (1) Where a determination made under section 13(6)(b) of the former Act by a company continued as a strata company by the operation of clause 4 was in force immediately before the appointed day, that determination shall be deemed to be the determination required by section 36(1)(b) to be made by that strata company.
- (2) Where a fund was, immediately before the appointed day, kept under section 13(6)(a) of the former Act by a company continued as a strata company by the operation of clause 4, that fund shall, on the appointed day, be deemed to be the fund required under section 36(1)(a) to be established by that strata company.

**18. Modification of section 43(1)(c) in relation to continued companies**

For the purposes of section 43(1)(c), any contribution levied under the former Act by a company and unpaid before the appointed day shall be deemed to be a contribution levied under section 36(1)(c).

**19. Continuation of councils of former companies**

- (1) The council constituted under the former Act of a company continued as a strata company by the operation of clause 4 shall, subject to this Act, be, on and from the appointed day, the council of that strata company.
- (2) A person who is a member of a council of a company referred to in subclause (1) shall, for the purposes of by-law 4 in Part I of Schedule 1, be deemed to have been elected as a member of that council if he was elected as a member of the council of the company created under the former Act.
- (3) By-law 6(1) in Part I of Schedule 1 shall, in relation to a council referred to in subclause (1), be deemed to be amended by omitting therefrom the words “they assume office as such members” and by inserting instead the words “the appointed day”.

**20. Operation of by-law 1, Part I of Schedule 1**

By-law 1(1)(c) in Part I of Schedule 1 extends to authorizing the giving by a proprietor to a company continued as a strata company by the operation of clause 4 of a notice after the occurrence of any event specified in that by-law notwithstanding that that event occurred before the appointed day.

**21. Modification of Part IV, Division 4**

- (1) Section 54 does not apply to or in respect of a company continued as a strata company by the operation of clause 4, which has in force on the appointed day a policy of insurance expiring not later than one year

after the appointed day and effected by it in accordance with section 13(4)(c) of the former Act, until the expiry of that policy.

- (2) Section 55(1)(a) does not apply to or in respect of a company continued as a strata company by the operation of clause 4, which has in force on the appointed day a policy of insurance expiring not later than one year after the appointed day and effected by it in accordance with section 13(4)(d) of the former Act, until the expiry of that policy.
- (3) Sections 56(2) and 58 apply to and in respect of a policy of insurance entered into in accordance with the former Act before the appointed day between a company continued as a strata company by the operation of clause 4 and an insurer in the same way as those sections apply to and in respect of a contract of insurance entered into between a strata company and an insurer pursuant to Division 4 of Part IV.
- (4) Notwithstanding the repeal of the former Act, section 17 of the former Act continues to apply to and in respect of a policy of insurance referred to in that section entered into before the appointed day until the expiry of that policy as if this Act had not been enacted.

**22. Evidentiary effect under section 61 of particulars furnished under section 21(3) of former Act**

The particulars of the unit entitlements of any former lots shown on a certified copy of the strata plan referred to in section 21(3) of the former Act or on any amendment of that plan and furnished to any authority referred to in section 21(3) of the former Act shall for the purposes of section 61 be deemed to be particulars furnished to that authority under section 60 of the unit entitlements of the derived lots that correspond to those former lots.

**23. Destruction of or damage to building under former Act**

- (1) Any proceedings under section 19(1) of the former Act which were pending before the Supreme Court immediately before the appointed day may be continued and completed as if they were proceedings under section 31.
- (2) Any declaration made under section 19(1)(b) of the former Act before the appointed day shall, notwithstanding the repeal of the former Act, continue to operate and shall have the same force and effect as if this Act had not been enacted.
- (3) Any proceedings for an order referred to in section 19(3) of the former Act which were pending before the Supreme Court immediately before the appointed day may be continued and completed as if they were proceedings under section 28.
- (4) Any order made under section 19(3) of the former Act before the appointed day shall, notwithstanding the repeal of the former Act, continue to operate and shall, subject to subclause (5), have the same force and effect as if this Act had not been enacted.

- (5) An order referred to in section 19(3) of the former Act may be varied in the same way as if it were an order made under section 28.
- (6) Notwithstanding the repeal of the former Act, section 11 of the former Act and the regulations made under that section continue to apply to and in respect of a building which was destroyed under the former Act and the parcel on which that building was situated.

**24. Administrators under former Act**

- (1) A person who, immediately before the appointed day, held office as an administrator under section 23 of the former Act shall, notwithstanding the repeal of the former Act, continue to have the powers and duties he had, as the holder of that office, immediately before the appointed day.
- (2) The provisions of section 23 of the former Act continue to apply to and in respect of a person holding office as referred to in subclause (1) notwithstanding the repeal of the former Act.
- (3) Where immediately before the appointed day an application under section 23(1) of the former Act was pending, the Supreme Court shall remit the application to such referee as it thinks fit on such terms and conditions (including terms and conditions relating to the payment of the costs of the application up to the date of the remittal) as it thinks fit and any application so remitted shall be deemed to be an application capable of being made under section 102.

**25. Recovery of rates paid by company**

A company continued as a strata company may recover any amount referred to in section 14(2) of the former Act paid by it, whether before or after the appointed day, as if section 14(3) of the former Act had not been repealed by this Act.

**26. Regulations — Transitional**

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

*[Schedule 3 amended by No. 42 of 1986 s.12; No. 58 of 1995 s.90; No. 14 of 1996 s.4; No. 61 of 1996 s.39.]*

## Schedule 4

[Section 42C]

### Transitional provisions for by-laws of strata companies other than companies to which Schedule 3 applies

#### 1. Interpretation

In this Schedule —

“**post-1985 company**” means a company referred to in section 42C(1);

“**transition period**” means the period of 12 months after the commencement of section 43(1) of the *Strata Titles Amendment Act 1995*.

#### 2. Transitional provisions

- (1) Section 42C, as modified by subclause (2), applies to a post-1985 company after the expiration of the transition period but the company may determine by resolution without dissent that it is to apply as so modified from an earlier day.
- (2) A by-law made by a post-1985 company and recorded on the strata plan, notwithstanding section 42C, continues in force except to the extent of any inconsistency with this Act, other than Schedules 1 and 2.
- (3) Subject to subclause (4), a post-1985 company may determine that, notwithstanding section 42C, Schedule 2 or any provision of that Schedule does not apply in respect of the strata scheme.
- (4) The power to make a determination under subclause (3) does not apply to any by-law in Schedule 2 if immediately before the commencement of section 91 of the *Strata Titles Amendment Act 1995* that by-law applied to the strata company.
- (5) A determination under subclause (3) does not have effect unless notification is recorded before the expiry of the transition period, in the form prescribed under section 42(4), on the relevant strata plan.
- (6) A by-law referred to in subclause (2) has effect despite the provisions of Schedules 1 and 2, and those provisions are modified accordingly.
- (7) Section 93 applies, with all necessary modifications, to enable —
  - (a) an order of a referee to be applied for where —
    - (i) a strata company has purportedly exercised the power conferred by subclause (3) but has acted beyond power; or
    - (ii) the power so conferred should have been exercised by a company but the company has failed to do so;

and

- (b) an order to be made by a referee making applicable all provisions or any provision of Schedule 2 if it should not have been made inapplicable by determination made under subclause (3).
- (8) An application for an order referred to in subclause (7) cannot be made after the expiration of 3 years from the commencement of section 44 of the *Strata Titles Amendment Act 1995*, but a referee may extend that period if a proprietor applies for an extension and satisfies the referee that the justice of the case requires that the period be extended.
- (9) Nothing in this Schedule is to be read as preventing a strata company from doing anything that it is authorized to do under section 42(2).

*[Schedule 4 added by No. 58 of 1995 s.91.]*