Western Australia

Strata Titles Act 1985

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Defined terms

Western Australia

Strata Titles Act 1985

An Act —

- **to provide for the subdivision of land by strata titles schemes, the creation of strata titles and the governance and operation of strata titles schemes; and**
- **for related purposes.**

[Long title inserted: No. 30 of 2018 s. 5.]

Part 1 — Preliminary

[Heading inserted: No. 30 of 2018 s. 6.]

1. Short title

This Act may be cited as the *Strata Titles Act 1985*.

2. Commencement

This Act shall come into operation on a day to be fixed by proclamation.

3. Terms used

(1) In this Act unless the contrary intention appears —

2, 3, 4 or 5-lot scheme means a strata titles scheme in which there are, respectively, 2, 3, 4 or 5 lots;

address for service — see section 215;

ADI means an authorised deposit-taking institution within the meaning given in the *Banking Act 1959* (Commonwealth) section 5(1);

administrative fund — see section 100(1)(a);

administrator of a strata company means a person appointed by the Tribunal as an administrator of the strata company under section 205;

amendment of a strata titles scheme —see section 12(2);

amendment in relation to common property or a lot in a strata titles scheme — see subsection (7);

approved form — a document, evidence or information is in an approved form only if it is in the form approved under the regulations or Transfer of Land Act requirements and it complies with any requirements of the regulations or Transfer of Land Act requirements;

assistance animal has the meaning given in the *Disability Discrimination Act 1992* (Commonwealth) section 9(2);

associate — 2 persons are associates if —

(a) 1 is the spouse or de facto spouse of the other; or

(b) 1 is the child or grandchild of the other; or

(c) they have a parent or grandparent in common; or

(d) they are partners; or

(e) they are directors of the same body corporate; or

(f) 1 is employed by the other; or

(g) 1 is a body corporate and the other is a director, officer or employee of the body corporate or a person who is otherwise in a position to control or substantially influence the conduct of the body corporate; or

(h) they are bodies corporate and the same person is a director of both bodies corporate;

Authority means the Western Australian Land Information Authority established by the *Land Information Authority Act 2006* section 5;

building includes structure;

capital value has the meaning given in the *Valuation of Land Act 1978* section 4(1);

chairperson of a general meeting of a strata company means the person presiding at the meeting;

chairperson of a strata company means the member of the council of the strata company holding office as the chairperson of the strata company;

Commissioner of Titles means the person holding or acting in the office of the Commissioner of Titles under the *Transfer of Land Act 1893*;

common property — see section 10;

common property (utility and sustainability infrastructure) easement means an easement under section 64;

conduct by-laws for a strata titles scheme —

(a) means scheme by-laws (other than governance by-laws) dealing with —

(i) the conduct of an owner or occupier of a lot in the scheme or of any other person on the land subdivided by the scheme; or

(ii) the management, control, use or enjoyment of a lot or common property in the scheme;

and

(b) includes the following —

(i) scheme by-laws set out in Schedule 2;

(ii) scheme by-laws that deal with any of the following —

(I) landscaping requirements to be observed by owners of lots;

(II) the maintenance of water, sewerage, drainage, gas, electricity, telephone and other services;

(III) insurance of the common property;

(IV) safety and security;

(V) procedures for the resolution of disputes;

(iii) scheme by-laws classified by the regulations as conduct by-laws;

contract means a contract, agreement or document that legally binds a person, whether conditionally or unconditionally;

contributions means the levies imposed on owners of lots by a strata company to raise amounts for payment into its administrative fund or reserve fund under section 100;

council means the governing body of a strata company;

cubic space — see subsection (3);

designated interest means —

(a) a registered mortgage; or

(b) a registered lease; or

(c) a caveat recorded under the *Transfer of Land Act 1893*; or

(d) the interest of a judgment creditor named in a property seizure and sale order registered under the *Transfer of Land Act 1893* section 133; or

(e) the interest of a person named in a memorial registered under the *Transfer of Land Act 1893* as having a statutory right requiring the consent of the person to any dealing with the land; or

(f) a plantation interest registered under the *Transfer of Land Act 1893*; or

(g) a carbon covenant registered under the *Transfer of Land Act 1893*;

development has the meaning given in the *Planning and Development Act 2005* section 4(1);

disability has the meaning given in the *Disability Discrimination Act 1992* (Commonwealth) section 4(1);

disposition statement — see section 222;

electronic address means —

(a) an email address; or

(b) anything included in this definition by the regulations;

encumbrance has the meaning given in the *Transfer of Land Act 1893* section 4(1);

exclusive use by-laws — see section 43(1);

expiry day for a leasehold scheme — see section 8(3)(c);

financial year for a strata company means —

(a) if the scheme by-laws are silent on the matter, the period of 12 months ending on 30 June; or

(b) if the scheme by-laws specify a period of 12 months ending on a different date as the financial year for the scheme, the period specified in the by-laws;

first mortgagee of a lot in a strata titles scheme means a registered mortgagee who is first entitled in priority and who has given written notice of the mortgage to the strata company for the scheme;

floor includes a stairway or ramp;

floor area of a cubic space means the area occupied on a horizontal plane by the base of that cubic space;

floor plan means a plan for a strata scheme, consisting of 1 or more sheets, which —

(a) defines by lines (in paragraph (c) referred to as ***base lines***) the base of each vertical boundary of every cubic space forming the whole of a lot, or the whole of any part of a lot, to which the plan relates; and

(b) shows —

(i) the floor area of any such cubic space; and

(ii) if any such cubic space forms part only of a lot, the aggregate of the floor areas of every cubic space that forms part of the lot;

and

(c) if lots or parts of lots to which the plan relates are superimposed on other lots or parts of lots to which the plan relates —

(i) shows the base lines in respect of the lots or parts of lots that are so superimposed separately from those in respect of the other lots or parts of lots on which they are superimposed; and

(ii) specifies, by reference to floors or levels, the order in which that superimposition occurs;

Note for this definition:

Also see subsections (2) to (4).

freehold scheme — see section 8(2);

Note for this definition:

A freehold scheme may be a strata scheme or a survey-strata scheme depending on how the lots are defined: see section 9.

fundamental covenant or condition — see section 52(1)(b);

governance by-laws for a strata titles scheme —

(a) means scheme by-laws dealing with —

(i) the governance of the scheme; or

(ii) the subdivision or development of the land subdivided by the scheme (other than a matter of landscaping); or

(iii) exclusive use of common property in the scheme;

and

(b) includes the following —

(i) scheme by-laws set out in Schedule 1;

(ii) leasehold by-laws;

(iii) staged subdivision by-laws;

(iv) exclusive use by-laws;

(v) scheme by-laws made under a planning (scheme by-laws) condition;

(vi) scheme by-laws setting out architectural requirements designed to control or preserve the essence or theme of development;

(vii) scheme by-laws that specify plot ratio restrictions or open space requirements;

(viii) scheme by-laws affecting the provision of, or payment for —

(I) internal fencing on the parcel; or

(II) fencing to which the *Dividing Fences Act 1961* applies;

(ix) scheme by-laws for a 3, 4 or 5-lot scheme that exempt the strata company from a designated function under section 140;

(x) scheme by-laws that deal with —

(I) the constitution or procedures of the council of the strata company; or

(II) the officers of the strata company; or

(III) the procedures of a general meeting of the strata company; or

(IV) the organisation of the affairs of the strata company; or

(V) contributions, levies or money payable by the owner of a lot in the scheme to the strata company; or

(VI) the carrying on of a business or trading activity by the strata company or the method of distributing and sharing any profit or loss;

(xi) scheme by-laws classified by the regulations as governance by-laws;

infrastructure includes public or private access ways, lifts, swimming pools, gymnasiums, shared carparks, loading bays other recreational facilities, infrastructure for utility services and other fixtures and, in each case, associated equipment;

infrastructure contract — see section 64(1)(a);

infrastructure owner — see section 64(3);

insurable asset of a strata titles scheme —

(a) means —

(i) the common property of the scheme (including the fixtures and improvements on the common property); or

(ii) the parts of scheme buildings that comprise lots in the scheme (including the paint and wallpaper); or

(iii) anything included in this definition by the regulations;

but

(b) does not include —

(i) fixtures or improvements on the common property that are not themselves common property; or

(ii) carpet and temporary wall, floor and ceiling coverings in a scheme building; or

(iii) fixtures removable by a lessee at the expiration of a tenancy; or

(iv) anything excluded from this definition by the regulations;

interim development order has the meaning given in the *Planning and Development Act 2005* section 4(1);

item registered or recorded for a strata titles scheme — see section 58(5);

Note for this definition:

For example, an item may comprise an estate, interest, right, encumbrance, notification, memorial or caveat.

judicial member has the meaning given in the *State Administrative Tribunal Act 2004* section 3(1);

key document in relation to a subdivision of land by a strata titles scheme (including a stage of subdivision) means each of the following —

(a) the application for registration of the scheme or amendment of the scheme to give effect to the subdivision and everything that accompanies the application;

(b) the scheme documents, or amendments of the scheme documents, as registered for the subdivision;

(c) planning approvals for the subdivision and development associated with the scheme;

(d) occupancy permits and building approval certificates under the *Building Act 2011* relating to development associated with the subdivision;

(e) official notices relating to the subdivision or development associated with the subdivision;

(f) specifications, diagrams and drawings relating to the parcel or a building on the parcel (including any specifications, diagrams and drawings that show utility conduits, utility infrastructure or sustainability infrastructure);

(g) warranty documents and operational and servicing manuals for infrastructure that ought reasonably to be given to the strata company;

(h) certificates and schedules relating to the insurance required for, or relating to, the scheme taken out or arranged by the scheme developer of the subdivision;

(i) any contracts for the provision of services or amenities to the strata company or to members of the strata company entered into or arranged by the scheme developer for the subdivision or by the strata company;

(j) any leases or licences over the common property of the scheme;

(k) accounting records and other documents that ought reasonably to be given to the strata company;

(l) anything included in this definition by the regulations;

land means land that is under the operation of the *Transfer of Land Act 1893* and held by the registered proprietor of the land in fee simple;

lease of a lot includes a sublease of the lot, but does not, in a leasehold scheme, include the strata lease for the lot;

leasehold by-laws — see section 40;

leasehold scheme — see section 8(3);

Note for this definition:

A leasehold scheme may be a strata scheme or a survey-strata scheme depending on how the lots are defined: see section 9.

legally qualified member has the meaning given in the *State Administrative Tribunal Act 2004* section 3(1);

licensed surveyor has the meaning given in the *Licensed Surveyors Act 1909* section 3;

licensed valuer has the meaning given in the *Land Valuers Licensing Act 1978* section 4;

local government means a local government, regional local government or regional subsidiary;

local planning scheme has the meaning given in the *Planning and Development Act 2005* section 4(1);

location plan for a strata scheme means a plan, consisting of 1 or more sheets, which relates to land and delineates the perimeter of that land and, in relation to that perimeter, the location of any building erected on that land and of any lots or part of lots not within any such building;

lot in a strata scheme means 1 or more cubic spaces forming part of the parcel subdivided by the strata scheme, the base of each such cubic space being designated as 1 lot or part of 1 lot on the floor plan forming part of the strata plan or an amendment of the strata plan being, in each case, cubic space the base of whose vertical boundaries is as delineated on a sheet of that floor plan and which has horizontal boundaries as ascertained under subsection (2), but does not include any structural cubic space except if that structural cubic space —

(a) has boundaries described in accordance with the regulations; and

(b) is shown in that floor plan as part of a lot;

Note for this definition:

Schedule 2A provides for a special rule about the definition of lot in a single tier strata scheme.

lot in a survey-strata scheme means land that is shown as a lot consisting of 1 or more parts on the plan for that scheme;

member of a strata company — see section 14(8);

member of the council of a strata company includes a person appointed under scheme by-laws to act as a member of the council;

monetary order has the meaning given in the *State Administrative Tribunal Act 2004* section 3(1);

mortgage includes a charge for securing money or money's worth;

mortgagee of a lot in a leasehold scheme includes a mortgagee or chargee of the strata leasehold estate in the lot;

notifiable variation means —

(a) a type 1 notifiable variation; or

(b) a type 2 notifiable variation;

occupier of a lot means a person who occupies the lot on a temporary or permanent basis (either solely or jointly with other persons) and includes a person who is unlawfully in occupation of a lot;

officer of a strata company means —

(a) the chairperson of the strata company; or

(b) if, under the scheme by-laws, the strata company has a secretary, the secretary of the strata company; or

(c) if, under the scheme by-laws, the strata company has a treasurer, the treasurer of the strata company;

on common property in relation to infrastructure means situated in or on common property;

open space means the area of a lot that is not occupied by a building, calculated in accordance with the regulations;

order to act means an order of the Tribunal that —

(a) is not a monetary order; and

(b) requires a person to take specified action or to refrain from taking specified action;

ordinary resolution of a strata company — see section 123;

original proprietor of a strata titles scheme means the person registered under the *Transfer of Land Act 1893* as the proprietor of an estate in fee simple in a parcel immediately before it is subdivided by a strata titles scheme;

owner of a leasehold scheme means the person registered under the *Transfer of Land Act 1893* as the holder of the freehold reversion in the land that comprises the parcel (being an interest that will revert to an estate in fee simple on the expiry or termination of the scheme);

owner of a lot means —

(a) for a lot in a freehold scheme —

(i) a person who is registered under the *Transfer of Land Act 1893* as the proprietor of an estate in fee simple in the lot; or

(ii) if the fee simple is divided into a life estate with a remainder or reversionary interest — a person who is registered as the proprietor of a life estate in the lot to the exclusion of the proprietor of the remainder or reversionary interest in the lot; or

(iii) if a mortgagee is in possession of the lot — the mortgagee to the exclusion of the persons referred to in the preceding paragraphs;

or

(b) for a lot in a leasehold scheme —

(i) a person who is registered under the *Transfer of Land Act 1893* as the proprietor of a strata leasehold estate in the lot; or

(ii) if a mortgagee is in possession of the lot — the mortgagee to the exclusion of a person referred to in the preceding paragraph;

parcel means the land subdivided by a strata titles scheme;

planning approval means an approval of the subdivision of land or development required under this Act or the *Planning and Development Act 2005*, and includes the approval or endorsement of approval of the Planning Commission on a scheme plan or amendment of a scheme plan;

Planning Commission means the Western Australian Planning Commission established under the *Planning and Development Act 2005*;

planning (scheme by-laws) condition means a condition of a planning approval requiring a strata titles scheme to have specified scheme by-laws, which may include by-laws that provide that they cannot be amended or repealed without the approval of the Planning Commission, each local government in whose district the parcel is situated or some other specified body (such as a government agency or a utility service provider);

plot ratio, in relation to a lot or parcel, means the ratio of the gross total of the areas of all floors in any building on the lot or parcel to the area of the lot or parcel, and is to be calculated in such manner as is prescribed;

present at a meeting of a strata company — see section 131;

President has the meaning given in the *State Administrative Tribunal Act 2004* section 3(1);

proponent of a termination proposal — see section 173;

Register has the meaning given in the *Transfer of Land Act 1893* section 4(1);

registered lease means a lease registered under the *Transfer of Land Act 1893*;

registered mortgage means a mortgage or charge (including a statutory charge) registered under the *Transfer of Land Act 1893*;

Registrar of Titles means the person holding or acting in the office of the Registrar of Titles under the *Transfer of Land Act 1893*;

replacement value of an insurable asset means —

(a) the amount required to rebuild, replace, repair or restore the asset so that, on completion of the work, the asset is no less extensive and in no worse condition than when the asset was new; and

(b) the amount required for costs of demolition, site clearance and the remuneration of architects, surveyors, engineers and other persons whose services are necessary for the rebuilding, replacement, repair or restoration of the asset;

reserve fund — see section 100(2)(a);

resolution without dissent of a strata company — see section 123;

restricted use condition — see section 32(2)(a);

Note for this definition:

An example of a restricted use is use of a strata titles scheme as a retirement village.

schedule of unit entitlements for a strata titles scheme means the schedule of unit entitlements registered, or proposed to be registered, for the scheme as a scheme document;

scheme building means a building shown on a strata plan and by reference to which the boundaries of lots are defined;

scheme by-laws for a strata titles scheme means the scheme by-laws registered, or proposed to be registered, for the scheme as a scheme document;

Note for this definition:

Scheme by-laws may be governance by-laws or conduct by-laws.

scheme developer —

(a) for the initial subdivision of a parcel by registration of a strata titles scheme, the original proprietor of the scheme is the scheme developer; and

(b) for a subsequent subdivision of land by registration of an amendment of a strata titles scheme to which staged subdivision by-laws apply, the owners of lots that are, on registration of the amendment, subdivided by that subdivision together constitute the scheme developer;

scheme dispute — see section 197;

scheme document — see section 12;

scheme function for a strata titles scheme means —

(a) a function of the strata company; or

(b) a function of the council of the strata company; or

(c) a function of an officer of the strata company;

scheme notice for a strata titles scheme means the scheme notice registered, or proposed to be registered, for the scheme as a scheme document;

scheme participant — see section 197(2);

scheme plan for a strata titles scheme means the strata plan or survey-strata plan registered, or proposed to be registered, for the strata titles scheme as a scheme document;

settlement date for a contract for the purchase and sale of a lot means —

(a) the date on which the purchase price, or the balance of the purchase price, for the lot is paid in exchange for

documents that enable the buyer to be registered as the owner of the lot; or

(b) if the contract for the lot is a terms contract within the meaning given in the *Sale of Land Act 1970* section 5, the date on which the buyer becomes entitled to possession or occupation of the lot;

short form easement or restrictive covenant — see section 33(1);

site value has the meaning given in the *Valuation of Land Act 1978* section 4(1);

special common property — see section 43(1);

special lot — see section 43(1);

special resolution of a strata company — see section 123;

staged subdivision by-laws — see section 42;

statutory easement means an easement under Part 5 Division 3;

strata company means a body corporate established under section 14 on registration of a strata titles scheme;

strata lease for a lot in a leasehold scheme means the lease registered, or proposed to be registered, for the lot as a scheme document;

strata leasehold estate means a leasehold estate held under a strata lease;

strata management contract — see section 144(1)(a);

strata manager — see section 143(1);

strata plan means a scheme plan for a strata scheme;

strata scheme — see section 9;

strata title — see section 13;

strata titles scheme means —

(a) a strata scheme; or

(b) a survey-strata scheme;

Note for this definition:

Section 7 describes the abstract concept of a strata titles scheme and what such a scheme is designed to achieve. Section 9 sets out how the boundaries of lots in a strata titles scheme may be defined. If there is a scheme building divided into lots, the scheme is a strata scheme. If the lots are defined without reference to a building, the scheme is a survey-strata scheme. No matter how the boundaries are defined, the scheme may be either a freehold scheme or a leasehold scheme reflecting the 2 types of tenure described in section 8.

structural cubic space means —

(a) cubic space occupied by a vertical structural member, not being a wall, of a building; or

(b) utility conduits in a building; or

(c) cubic space enclosed by a structure enclosing utility conduits,

but does not include utility conduits that are for the exclusive use or enjoyment of 1 lot;

Note for this definition:

Schedule 2A provides for a special rule about the definition of structural cubic space for single tier strata schemes.

subdivision of land by a strata titles scheme — see section 11;

survey-strata plan means a scheme plan for a survey-strata scheme;

survey-strata scheme — see section 9;

sustainability infrastructure means infrastructure that is designed or is likely to avoid, remedy or mitigate adverse effects on the environment;

Examples for this definition:

Sustainability infrastructure includes solar panels, clothes lines and rainwater tanks.

take, ***taken*** and ***taking*** have, in Part 11 Division 2, the meanings given in the *Land Administration Act 1997* Part 9;

temporary common property means land leased by a strata company under section 92 and registered as temporary common

property in the strata titles scheme as a result of inclusion in the description of temporary common property in the scheme plan;

termination infrastructure report — see section 179(2);

termination proposal — see section 174(1);

termination resolution — see section 182;

termination valuation report — see section 179(3);

Transfer of Land Act requirements means requirements determined under the *Transfer of Land Act 1893* section 182A;

Tribunal means the State Administrative Tribunal;

type 1 notifiable variation means any of the following that occur after a contract for the sale and purchase of a lot in a strata titles scheme is entered into but before the settlement date for the contract —

(a) the area or size of the lot or proposed lot is reduced by 5% or more from the area or size notified to the buyer before the buyer entered into the contract;

(b) the proportion that the unit entitlement, or a reasonable estimate of the unit entitlement, of the lot bears to the sum of the unit entitlements of all the lots is increased by 5% or more, or decreased by 5% or more, from the proportion that the unit entitlement, or the estimate of the unit entitlement, of the lot notified to the buyer before the buyer entered into the contract bears to the sum of the unit entitlements of all the lots as so notified;

(c) anything relating to a proposal for the termination of the strata titles scheme is served on the seller by the strata company;

(d) any other event classified by the regulations as a type 1 notifiable variation;

type 2 notifiable variation means any of the following that occur after a contract for the sale and purchase of a lot in a strata titles scheme is entered into but before the settlement date for

the contract and that do not give rise to a type 1 notifiable variation —

(a) the scheme plan, or proposed scheme plan or amendment of the scheme plan, for the strata titles scheme is modified in a way that affects the lot or the common property;

(b) the schedule of unit entitlements, or proposed schedule of unit entitlements or amendment of the schedule of unit entitlements, for the strata titles scheme is modified in a way that affects the lot;

(c) the scheme by-laws, or proposed scheme by-laws, are modified;

(d) the strata company or a scheme developer —

(i) enters into a contract for the provision of services or amenities to the strata company or to members of the strata company or a contract that is otherwise likely to affect the rights of the buyer; or

(ii) varies an existing contract of that kind in a way that is likely to affect the rights of the buyer;

(e) a lease, licence, right or privilege over the common property in the strata titles scheme is granted or varied;

(f) any other event classified by the regulations as a type 2 notifiable variation;

Note for this definition:

For when an amendment of a strata titles scheme affects a lot or common property see subsection (7).

type 1 subdivision means —

(a) the addition of land from outside the parcel of a strata titles scheme to common property in the scheme (but not including temporary common property); or

(b) the conversion of a lot in a strata titles scheme to common property in the scheme;

type 2 subdivision means the removal from the parcel of a strata titles scheme of land comprised of common property;

type 3 subdivision means a consolidation of 2 or more lots in a strata titles scheme into 1 lot in the scheme (not affecting common property in the scheme);

type 4 subdivision means a subdivision that does not involve the alteration of the boundaries of the parcel and is not a type 1, type 2 or type 3 subdivision;

Note for the definitions of types of subdivision:

1. There are 4 types of amendment of a strata titles scheme that give effect to a subdivision, with varying requirements for resolutions and consents:
   - A type 1 subdivision covers adding land from outside the parcel to the common property (other than as temporary common property) and what was formerly referred to as conversion of lots into common property.
   - A type 2 subdivision covers the removal of common property from the parcel of a strata titles scheme.
   - A type 3 subdivision covers what was formerly referred to as consolidation of lots.
   - A type 4 subdivision covers what was formerly referred to as re-subdivision.
2. Re-subdivision of a lot or common property was defined in section 3(5) of the Act as in force immediately before the *Strata Titles Amendment Act 2018* to include the alteration of the boundaries of —
   - 1 or more lots so as to create only 2 or more different lots; or
   - 1 or more lots so as to create 1 or more different lots and common property; or
   - 1 or more lots and common property so as to create 1 or more different lots or 1 or more different lots and common property; or
   - common property so as to create 1 or more lots or 1 or more lots and common property.

unanimous resolution of a strata company — see section 123;

unit entitlement of a lot — see section 37(1)(a);

utility conduit means a conduit for the provision of a utility service (including pipes, wires, cables and ducts);

utility infrastructure means infrastructure and equipment necessary for, or related to, the provision of a utility service;

utility service means —

(a) the collection and passage of stormwater; or

(b) the supply of water for drinking or any other use; or

(c) a sewerage and drainage service; or

(d) a garbage collection service; or

(e) a gas, electricity or air service, including air conditioning and heating; or

(f) a communication or data service, including telephone, radio, television and internet; or

(g) a service classified by the regulations as a utility service; or

(h) another like service;

utility service easement means an easement under section 63;

vacant lot means a lot that is wholly unimproved apart from having merged improvements within the meaning given in the *Valuation of Land Act 1978* section 4(1);

volunteer strata manager means a strata manager of a strata company who —

(a) is the owner of a lot in the strata titles scheme; and

(b) does not receive any fee, reward or benefit for work performed as a strata manager other than an honorary fee or reward not exceeding, if an amount is fixed by the regulations, that amount; and

(c) personally performs the work of the strata manager;

wall includes a door, window or other structure dividing a lot in a strata titles scheme from common property or from another lot in the scheme;

working day means a day other than a Saturday, a Sunday or a public holiday throughout the State.

(2) The boundaries of a cubic space referred to in paragraph (a) of the definition of ***floor plan*** in subsection (1) —

(a) except as provided in paragraph (b) —

(i) are in the case of a vertical boundary, if the base of a wall corresponds substantially with a line referred to in paragraph (a) of that definition — the inner surface of that wall; and

(ii) are, in the case of a horizontal boundary, if a floor or ceiling joins a vertical boundary of that cubic space — the upper surface of that floor and the under surface of that ceiling;

or

(b) are such boundaries as are described on a sheet of the floor plan relating to that cubic space (those boundaries being described in the manner required by the regulations by reference to a wall, floor or ceiling in a building to which that plan relates or to structural cubic space within that building).

Note for this subsection:

Schedule 2A provides for a special rule about lot boundaries for single tier strata schemes.

(2A) Despite subsection (2), if —

(a) a strata plan creates a boundary external to a building; or

(b) other circumstances specified in the regulations apply,

the floor plan may include dimensions or survey information defining that boundary, in the manner required by the regulations, by reference to the parcel boundary.

(3) A reference in this Act to cubic space includes a reference to space contained in any three-dimensional geometric figure which is not a cube.

(4) The fact that any boundary is defined in a plan in terms of or by reference to —

(a) a wall that is not vertical; or

(b) a floor or ceiling that is not horizontal,

does not prevent that plan from being a floor plan.

[(5) deleted]

(6) Except in so far as the context or subject-matter otherwise indicates or requires, it is a sufficient compliance with any provision of this Act requiring an instrument to be accompanied by another instrument if that other instrument is endorsed on the first-mentioned instrument.

(7) An amendment of a strata titles scheme affects the common property or a lot in the scheme as follows —

(a) an amendment affects the common property to the extent that it involves an amendment of the scheme plan that —

(i) modifies the common property; or

(ii) creates or discharges an easement or restrictive covenant that benefits or burdens the common property;

(b) an amendment affects a lot to the extent that it involves an amendment of the scheme plan that —

(i) modifies the definition of boundaries of the lot; or

(ii) creates or discharges an easement or restrictive covenant that benefits or burdens the lot;

(c) an amendment affects a lot to the extent that it involves an amendment of the schedule of unit entitlements for the scheme that modifies the unit entitlement of the lot.

[Section 3 amended: No. 84 of 1994 s. 46(12); No. 58 of 1995 s. 5[2]*, 95 and 96; No. 14 of 1996 s. 4; No. 61 of 1996 s. 4 and 5; No. 79 of 1996 s. 28; No. 81 of 1996 s. 153(1); No. 74 of 2003 s. 112(2), (3); No. 55 of 2004 s. 1107 and 1156(1); No. 38 of 2005 s. 15; No. 60 of 2006 s. 160(2); No. 30 of 2018 s. 7; No. 9 of 2022 s. 405.]*

[Former sections 3A and 3AB redesignated as clauses 3A and 3AB and relocated to Schedule 2A Part 2: No. 30 of 2018 s. 117.]

***[3AC-3D.** Deleted: No. 30 of 2018 s. 82(b).]*

4. Notes and examples not part of Act

A note or example set out at the foot of a provision of this Act is provided to assist understanding and does not form part of this Act.

[Section 4 inserted: No. 30 of 2018 s. 83.]

5. Act binds Crown

This Act binds the Crown in right of Western Australia and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

[Section 5 inserted: No. 30 of 2018 s. 83.]

***[5A-5H.** Deleted: No. 30 of 2018 s. 82(b).]*

Part 2 — Strata titles schemes

[Heading inserted: No. 30 of 2018 s. 83.]

6. Legislative framework

(1) This Act provides for a form of subdivision of land referred to as subdivision by a strata titles scheme, and sets out requirements for that form of subdivision.

(2) Relevant planning approvals must be obtained for the subdivision of land by a strata titles scheme under this Act or the *Planning and Development Act 2005*.

(3) A strata titles scheme is to be incorporated in the Register, and certificates of title for lots in the scheme are to be created for strata titles, under the *Transfer of Land Act 1893*.

(4) Consequently, this Act must be read together with the *Planning and Development Act 2005* and the *Transfer of Land Act 1893* to gain a proper understanding of the legislative framework for the subdivision of land by a strata titles scheme.

(5) This Act also contains provisions about the governance and operation of strata titles schemes and about strata managers.

[Section 6 inserted: No. 30 of 2018 s. 83.]

*[**6A.** Deleted: No. 30 of 2018 s. 82(b).]*

7. Strata titles schemes

A strata titles scheme is a scheme for the creation of strata titles on registration of the scheme so as to —

(a) effect a physical division of a parcel of land into —

(i) 2 or more lots; or

(ii) 2 or more lots and common property;

and

(b) allow for the lots to be owned and sold or otherwise dealt with separately; and

(c) require the common property to be administered by a strata company that comes into existence under this Act on registration of the strata titles scheme; and

(d) limit how the common property may be dealt with.

[Section 7 inserted: No. 30 of 2018 s. 83.]

[Former section 7 renumbered as section 87 and relocated to Part 7 Division 2: No. 30 of 2018 s. 84.]

*[**7A.** Deleted: No. 30 of 2018 s. 82(b).]*

[Former section 7B renumbered as section 89 and relocated to Part 7 Division 2: No. 30 of 2018 s. 84.]

8. Freehold schemes and leasehold schemes

(1) A strata titles scheme may be —

(a) a freehold scheme; or

(b) a leasehold scheme.

Note for this section:

All schemes created under this Act before the commencement of the *Strata Titles Amendment Act 2018* are freehold schemes.

(2) In a ***freehold scheme*** —

(a) there is no separate title for the parcel subdivided by the scheme; and

(b) each lot is a freehold lot; and

(c) the parcel cannot be dealt with (including by registration of a mortgage) or disposed of under the *Transfer of Land Act 1893*.

(3) In a ***leasehold scheme*** —

(a) there is a separate title for the parcel subdivided by the scheme; and

(b) each lot in the scheme is a leasehold lot subject to a strata lease; and

(c) the scheme expires on a specified day (the expiry day for the scheme); and

(d) the expiry day must be a day that is —

(i) at least 20 years (or, if some other period is specified in the regulations, that period) after registration of the scheme; and

(ii) not more than 99 years after registration of the scheme;

and

(e) the expiry day will be specified in the scheme notice; and

(f) within the parameters set out in paragraph (d)(ii), leasehold by-laws for the scheme may provide for postponement of the expiry day; and

(g) if leasehold by-laws provide for postponement of the expiry day, the expiry day may be postponed if the postponement is within the parameters set out in paragraph (d)(ii) and is supported by a resolution under section 41; and

(h) the expiry day is postponed when an amendment of the scheme notice is registered giving effect to the postponement; and

(i) the registered proprietor of the parcel (the ***owner of the leasehold scheme***) is entitled to the reversion in the land on the expiry or termination of the scheme; and

(j) the existence of the leasehold scheme and its expiry day must be endorsed on the certificate of title for the parcel; and

(k) the owner of the leasehold scheme is the lessor and the owner of a lot in the scheme is the lessee under the strata lease for the lot; and

(l) the owner of the leasehold scheme may be the owner of a lot in the scheme despite any law relating to the merger of leasehold and reversionary estates in land; and

(m) the owner of the leasehold scheme cannot separately deal with or dispose of the reversion in a lot or the common property of the strata titles scheme; and

(n) the reversion in the parcel can be transferred, disposed of or mortgaged as a whole, and a memorial or property seizure sale order can be made in relation to the reversion of the parcel as a whole under the *Transfer of Land Act 1893*, but no other dealings can be registered under that Act against the reversion in the parcel.

Note for this subsection:

For the scheme notice, see section 29. For leasehold by-laws, see section 40.

[Section 8 inserted: No. 30 of 2018 s. 83.]

*[**8A-8C.** Deleted: No. 30 of 2018 s. 82(b).]*

9. Lots — strata schemes and survey-strata schemes

(1) The boundaries of lots in a strata titles scheme are defined on the scheme plan for the strata titles scheme.

(2) A lot can be comprised of non-contiguous parts defined on the scheme plan for the strata titles scheme.

Example for this subsection:

The non-contiguous parts may be to allow for a separate car parking space or shed to be part of the lot.

(3) The way in which the boundaries of lots are defined on the scheme plan for a strata titles scheme determines whether the scheme is a ***strata scheme*** or a ***survey-strata scheme***.

(4) The way in which the boundaries of a lot in a strata scheme are defined on the scheme plan must be as set out in the definition

of lot in a strata scheme in section 3(1) and in section 3(2) to (4).

Note for this subsection:

Schedule 2A provides for a special rule for how lots may be defined in a single tier strata scheme.

(5) The way in which the boundaries of a lot in a survey-strata scheme are defined on the scheme plan must be as set out in the definition of ***lot*** in a survey-strata scheme in section 3(1).

(6) A change in the definition of the boundaries of a lot does not, even if the lot is assigned a new identifying number, of itself affect —

(a) for a leasehold scheme — the strata lease for the lot; or

(b) for a leasehold or freehold scheme — any other item registered or recorded for the scheme in the Register.

(7) Damage to, or destruction or removal of a wall, floor, ceiling or other structural element by reference to which a lot in a strata scheme is defined does not of itself affect the definition of the boundaries of the lot (which remain as defined on the scheme plan).

[Section 9 inserted: No. 30 of 2018 s. 83.]

10. Common property

(1) The ***common property*** in a strata titles scheme is —

(a) that part of the parcel of land subdivided by the strata titles scheme that does not form part of a lot in the strata titles scheme; and

(b) temporary common property.

(2) The ***common property*** includes, for a strata scheme, those parts of a scheme building that do not form part of a lot.

(3) The ***common property*** does not include —

(a) any land vested in the Crown under the *Planning and Development Act 2005* section 152; or

(b) any dedicated road under the *Planning and Development Act 2005* section 168.

(4) If a strata plan identifies an encroachment outside the parcel that is to be controlled and managed as common property, the encroachment is to be regarded, for this Act, as if it were common property.

[Section 10 inserted: No. 30 of 2018 s. 83.]

11. Subdivision of land by strata titles scheme

(1) Land is ***subdivided*** by a strata titles scheme —

(a) by registration of the scheme; or

(b) by registration of an amendment of the scheme.

(2) Registration of an amendment of a strata titles scheme gives effect to a ***subdivision*** if it —

(a) effects a change to the definition of a lot in the scheme; or

(b) effects a change to the boundary of the parcel of land subdivided by the scheme.

Note for this section:

1. There are 4 types of amendment of a strata titles scheme that give effect to a subdivision, with varying requirements for resolutions and consents:

- A type 1 subdivision covers adding land from outside the parcel to the common property (other than as temporary common property) and what was formerly referred to as conversion of lots into common property.
- A type 2 subdivision covers the removal of common property from the parcel of a strata titles scheme.
- A type 3 subdivision covers what was formerly referred to as consolidation of lots.

- A type 4 subdivision covers what was formerly referred to as re-subdivision.

2. Re-subdivision of a lot or common property was defined in section 3(5) of the Act as in force immediately before the *Strata Titles Amendment Act 2018* to include the alteration of the boundaries of —
   - 1 or more lots so as to create only 2 or more different lots; or
   - 1 or more lots so as to create 1 or more different lots and common property; or
   - 1 or more lots and common property so as to create 1 or more different lots or 1 or more different lots and common property; or
   - common property so as to create 1 or more lots or 1 or more lots and common property.
3. Schedule 2A provides special provisions relating to subdivision in a single tier strata scheme.

[Section 11 inserted: No. 30 of 2018 s. 83.]

12. Registration of strata titles scheme

(1) A strata titles scheme is registered when the following documents (the ***scheme documents***) are registered and incorporated in the Register —

(a) for a freehold scheme —

(i) a scheme notice;

(ii) a scheme plan;

(iii) a schedule of unit entitlements;

(iv) scheme by-laws;

(b) for a leasehold scheme —

(i) a scheme notice (which must specify the expiry day for the scheme);

(ii) a scheme plan;

(iii) a schedule of unit entitlements;

(iv) scheme by-laws;

(v) a strata lease for each lot.

Note for this subsection:

If the scheme by-laws comprise the by-laws set out in Schedules 1 and 2 without amendment, the scheme by-laws will be taken to be registered without the need for submission of the by-laws to the Registrar of Titles.

(2) A registered strata titles scheme is amended when amendments of the relevant scheme documents, or replacements of the relevant scheme documents, are registered or recorded and incorporated in the Register.

Note for this subsection:

The amendment may be necessary to give effect to a subdivision of land as referred to in section 11(2) or it may be unrelated to a subdivision of land, comprising, for example —

- the amendment of the scheme notice so as to amend the name or address for service of the strata company; or
- the amendment or replacement of the scheme plan for the strata titles scheme for a purpose related to an easement or restrictive covenant or a restricted use condition; or
- the amendment or replacement of the schedule of unit entitlements for the strata titles scheme because of a new valuation of lots; or
- the amendment or replacement of scheme by-laws.

(3) If a registered leasehold scheme is amended to give effect to a subdivision involving the creation of new lots, a strata lease must be registered as a scheme document for each new lot.

[Section 12 inserted: No. 30 of 2018 s. 83.]

[Former section 12A redesignated as clause 12A and relocated to Schedule 2A Part 3: No. 30 of 2018 s. 117.]

13. Strata titles

(1) The title to the land comprised in a lot is referred to as a ***strata title***.

(2) A certificate of title must be created and registered for each strata title under the *Transfer of Land Act 1893*.

Note for this subsection:

A separate certificate of title is not created for common property.

(3) For a leasehold scheme, the existence of the scheme and its expiry day must be endorsed on the certificate of title for each strata title for a lot in the scheme.

(4) On registration of a strata titles scheme or an amendment of a strata titles scheme to give effect to a subdivision of land, strata titles come into existence, cease to exist or are varied as necessary to ensure that —

(a) there is 1 strata title registered for each lot in the scheme or the scheme as amended; and

(b) the strata title for a lot confers the rights on the owner of the lot as set out in this section.

(5) When a new lot is created and a strata title comes into existence, it vests as follows —

(a) in the case of a parcel of land that is being subdivided, in the person who is, immediately before the new lot is created, the registered proprietor of the land under the *Transfer of Land Act 1893*;

(b) in the case of a lot that is being subdivided, in the person who is, immediately before the new lot is created, the owner of that lot;

(c) in the case of common property that is being subdivided, in the persons who are, immediately before the new lot is created, the owners of lots in the strata titles scheme as tenants in common in shares proportional to the unit entitlements of their respective lots.

(6) If a lot that is created vests in 2 or more persons, they hold their share in the lot as tenants in common or as joint tenants in the same manner as they owned the land or lot and, if they owned it as tenants in common, in the same proportions as they owned the land or lot.

(7) When a strata title for a lot in a freehold scheme comes into existence it confers on the owner of the lot —

(a) rights as the proprietor of a fee simple estate in the lot under the *Transfer of Land Act 1893*; and

(b) an undivided share of the fee simple estate in the common property (other than temporary common property) as a tenant in common with the other owners of lots in the scheme, proportional to the unit entitlements of their respective lots; and

(c) an undivided share of the temporary common property as a tenant in common with the other owners of lots in the scheme, proportional to the unit entitlements of their respective lots.

(8) When a strata title for a lot in a leasehold scheme comes into existence it confers on the owner of the lot, subject to Part 4 Division 5 —

(a) rights as the proprietor of a strata leasehold estate in the lot under the *Transfer of Land Act 1893*; and

(b) an undivided share of the strata leasehold estate in the common property as a tenant in common with the other owners of lots in the scheme, proportional to the unit entitlements of their respective lots; and

(c) an undivided share of the temporary common property as a tenant in common with the other owners of lots in the scheme, proportional to the unit entitlements of their respective lots.

(9) The owner of a lot cannot separately deal with or dispose of the owner's share in the common property of the strata titles scheme.

(10) A dealing under the *Transfer of Land Act 1893* affecting the owner's interest in a lot affects, without express reference, the owner's interest in the common property in the same manner and to the same extent.

(11) A strata title is subject to interests registered or recorded under the *Transfer of Land Act 1893* to the extent that they affect the lot or common property to which the strata title relates.

(12) The owner of a lot in a leasehold scheme cannot deal with the strata lease separately from the strata title.

[Section 13 inserted: No. 30 of 2018 s. 83.]

14. Strata company

(1) On registration of a strata titles scheme, a strata company is established for the strata titles scheme.

(2) The name of the strata company is "The Owners of [*the name of the scheme*] (survey-strata scheme/strata scheme [*according to the type of strata titles scheme*] [*the reference number allocated to the scheme by the Registrar of Titles*])".

(3) The name of the strata titles scheme is the name stated in the scheme notice.

(4) The address for service of the strata company is the address for service stated in the scheme notice.

(5) A strata company —

(a) is a body corporate; and

(b) has perpetual succession; and

(c) is capable of suing and being sued in its own name; and

(d) has, subject to this Act, all the powers of a natural person that are capable of being exercised by a body corporate.

(6) The governing body of a strata company is the council of the strata company.

(7) A strata company may have a common seal, but it does not have to do so.

(8) A strata company is comprised of the owners for the time being of the lots in the strata titles scheme (who are the members of the strata company).

[Section 14 inserted: No. 30 of 2018 s. 83.]

Part 3 — Planning and development

[Heading inserted: No. 30 of 2018 s. 83.]

Division 1 — Planning approvals

[Heading inserted: No. 30 of 2018 s. 83.]

Subdivision 1 — Strata schemes

[Heading inserted: No. 30 of 2018 s. 83.]

15. Subdivision approval of strata scheme

(1) An application may be made under this section to the Planning Commission for approval of a strata plan or an amendment of a strata plan to give effect to a subdivision of land by a strata scheme.

(2) The Planning Commission's approval of a strata plan or an amendment of a strata plan under this section may be subject to conditions in the same way as if the approval were an approval of a plan of subdivision given under the *Planning and Development Act 2005*.

(3) The *Planning and Development Act 2005* applies to the conditions as if the approval were an approval of a plan of subdivision given under that Act.

(4) Before a strata plan or an amendment of a strata plan can be registered under this Act, the Planning Commission must issue a certificate endorsing the strata plan or amendment with its unconditional approval of the subdivision.

(5) An application under this section must —

(a) be in the approved form; and

(b) be accompanied by the fee fixed by the regulations.

(6) The regulations may provide for exemptions from the requirement for a strata plan or amendment of a strata plan to be

approved by the Planning Commission for registration of a subdivision of land by a strata scheme.

[Section 15 inserted: No. 30 of 2018 s. 83.]

16. Application of Planning and Development Act

(1) The *Planning and Development Act 2005* sections 135, 146 and 147 do not apply to a subdivision of land by a strata scheme.

(2) If a strata plan, or an amendment of a strata plan, contains any vacant lot, the Planning Commission must comply with the *Planning and Development Act 2005* sections 142, 143 and 144, and section 151 of that Act applies, as if the plan were a plan of subdivision which required the approval of the Planning Commission under that Act.

[Section 16 inserted: No. 30 of 2018 s. 83.]

Subdivision 2 — Survey-strata schemes

[Heading inserted: No. 30 of 2018 s. 83.]

17. Subdivision approval of survey-strata scheme

(1) The *Planning and Development Act 2005* Divisions 1, 2 (other than section 141) and 3 of Part 10 and section 166 apply to the subdivision of land by a survey-strata scheme.

(2) For subdivision of land by a survey-strata scheme, the diagram or plan of survey of the subdivision under section 145 of that Act must be the scheme plan or an amendment of the scheme plan.

(3) The unconditional approval of the Planning Commission of the scheme plan or amendment of the scheme plan is required to enable the plan or amendment to be registered under this Act.

[Section 17 inserted: No. 30 of 2018 s. 83.]

Subdivision 3 — General provisions

[Heading inserted: No. 30 of 2018 s. 83.]

18. Planning (scheme by-laws) condition

The conditions of a planning approval applying to a strata titles scheme may include a planning (scheme by-laws) condition.

[Section 18 inserted: No. 30 of 2018 s. 83.]

19. Planning approval of scheme plan or amendment of scheme plan

(1) An application for the required unconditional approval of the Planning Commission of a scheme plan or an amendment of a scheme plan to give effect to a subdivision of land by a strata titles scheme must be in an approved form and accompanied by —

(a) the scheme notice or any amendment of the scheme notice proposed to be submitted for registration with the scheme plan or amendment of the scheme plan; and

(b) any existing scheme by-laws made under a planning (scheme by-laws) condition; and

(c) for a leasehold scheme, any existing or proposed leasehold by-laws providing for postponement of the expiry day for the scheme; and

(d) for a strata scheme, an occupancy permit or building approval certificate granted under the *Building Act 2011* Part 4 Division 3 for each scheme building shown on the scheme plan or amendment of the scheme plan (as the case requires).

(2) An application for the required unconditional approval of the Planning Commission of a scheme plan or an amendment of a scheme plan to give effect to a subdivision of land by a strata

titles scheme may be refused unless the Planning Commission is satisfied that —

(a) the scheme plan or amendment of the scheme plan is an accurate depiction of the subdivision that has been prepared after completion of the works necessary for the subdivision and, for a strata scheme, the construction or modification of the scheme buildings necessary for the subdivision; and

(b) the subdivision and development has been undertaken consistently with —

(i) the approval of the Planning Commission under this Act or the *Planning and Development Act 2005* (including the conditions of approval); and

(ii) any relevant approval of development under the *Planning and Development Act 2005* (including the conditions of approval);

and

(c) the requirements of the *Building Act 2011* have been complied with for the development; and

(d) any restricted use condition proposed to be imposed by the scheme plan or amendment of the scheme plan is suitable for the scheme; and

(e) scheme by-laws have been or are proposed to be made in accordance with any planning (scheme by-laws) condition.

[Section 19 inserted: No. 30 of 2018 s. 83.]

20. Approval for postponement of expiry day for leasehold scheme

(1) For a leasehold scheme, the approval of the Planning Commission is required for the making, amendment or repeal of leasehold by-laws providing for postponement of the expiry day for the scheme (including for leasehold by-laws registered when the strata titles scheme is registered and not made by the strata company).

(2) The approval may be applied for and given in conjunction with an approval of a plan of subdivision.

(3) If a separate application is made, an application for approval under this section must —

(a) be in the approved form; and

(b) be accompanied by the fee fixed by the regulations.

Note for this section:

See section 8(3) and sections 40 and 41.

[Section 20 inserted: No. 30 of 2018 s. 83.]

21. Approval for modification of restricted use condition

(1) The approval of the Planning Commission is required for the amendment of a scheme plan so as to impose, vary or revoke a restricted use condition.

(2) The approval may be applied for and given in conjunction with an approval of a plan of subdivision.

(3) If a separate application is made, an application for approval under this section must —

(a) be in the approved form; and

(b) be accompanied by the fee fixed by the regulations.

[Section 21 inserted: No. 30 of 2018 s. 83.]

[Former sections 21A-21D redesignated as clauses 21A-21D and relocated to Schedule 2A Part 4 Division 1 Subdivision 1: No. 30 of 2018 s. 117.]

[Former sections 21E-21J redesignated as clauses 21E-21J and relocated to Schedule 2A Part 4 Division 1 Subdivision 2: No. 30 of 2018 s. 117.]

*[**21K-21O.** Deleted: No. 30 of 2018 s. 82(b).]*

[Former sections 21P-21Z redesignated as clauses 21P-21Z and relocated to Schedule 2A Part 4 Division 1 Subdivision 3: No. 30 of 2018 s. 117.]

22. Approval under planning (scheme by-laws) condition

(1) If, in accordance with scheme by-laws required under a planning (scheme by-laws) condition, the amendment or repeal of scheme by-laws requires the approval of the Planning Commission or a local government, an application for that approval can be made under this section.

(2) The approval may be applied for and given in conjunction with an application for a planning approval or by separate application.

(3) If a separate application is made, an application for approval under this section must —

(a) be in the approved form; and

(b) be accompanied by the fee fixed by the regulations.

[Section 22 inserted: No. 30 of 2018 s. 83.]

23. Requirement for local government approval

(1) In addition to approval of the Planning Commission, a subdivision must be approved by each local government in whose district the parcel is situated if the subdivision involves —

(a) 2 or more lots being consolidated into 1 lot; or

(b) 1 or more lots being converted into common property; or

(c) the removal, from the parcel, of land comprised of common property.

(2) If the subdivision is approved, it is subject to any planning (scheme by-laws) condition attached to the local government approval.

[Section 23 inserted: No. 30 of 2018 s. 83.]

Division 2 — Preliminary determinations

[Heading inserted: No. 30 of 2018 s. 83.]

24. Preliminary determinations by local government

[(1) deleted]

(2) On, or at any time after, the submission of an application to the local government for approval of the development constituted by a proposed strata scheme in accordance with a local planning scheme or other requirement imposed by law, an application may be made to the local government for a determination that the local government is satisfied, in relation to the proposed development, that —

(a) separate occupation of the proposed lots will not contravene the provisions of any local planning scheme or interim development order under the *Planning and Development Act 2005*; and

(b) any consent or approval required under any such local planning scheme or interim development order, has been given in relation to the separate occupation of the proposed lots; and

(c) the development of the parcel as a whole, the building and the proposed subdivision of the parcel into lots for separate occupation will not interfere with the existing or likely future amenity of the neighbourhood, having

regard to the circumstances of the case and to the public interest.

(2A) In making determinations of a kind provided for by this section, a local government must have regard to considerations specified in the regulations as being relevant to determinations of that kind.

(3) A local government may fix, charge and recover fees to be paid for determinations under this section.

(4) An applicant for a determination under this section must provide the local government with such information, particulars and details regarding the proposed development, or the building plans and specifications, as the case may require, as the local government may require to enable it to deal with the application.

(5) A determination made by a local government under this section must be in writing and a favourable determination may be issued subject to conditions relating to the proposed development of the parcel.

(6) A determination under this section is valid and binding on the local government for a period of 2 years after it is made unless the local government, at the time of the determination, declares in writing that the determination is valid and binding for such period as is specified, being a period greater than 2 years but not exceeding 3 years.

[Section 24 amended: No. 58 of 1995 s. 25; No. 14 of 1996 s. 4; No. 57 of 1997 s. 115(1); No. 55 of 2004 s. 1113; No. 38 of 2005 s. 15; No. 24 of 2011 s. 174(7)-(9); amended and relocated: No. 30 of 2018 s. 29 and 84.]

Division 3 — Common property

[Heading inserted: No. 30 of 2018 s. 83.]

25. Long term lease of temporary common property

A strata company may not accept a lease of land for the purpose of creating temporary common property for a term or terms exceeding the period specified in the regulations in aggregate (including any option to extend or renew the term of the lease) unless that acceptance has been approved in writing by the local government of the district in which the parcel is situated.

[Section 25 inserted: No. 30 of 2018 s. 83.]

*[**25A, 25B.** Deleted: No. 30 of 2018 s. 82(b).]*

26. Long term lease or licence over common property

A lease or licence, or lease and licence, to use or occupy the common property or part of the common property, in a strata titles scheme for a term or terms exceeding the period specified in the regulations in aggregate (including any option to extend or renew the term of a lease or licence) is not effective unless it has been approved in writing by the local government of the district in which the parcel is situated.

[Section 26 inserted: No. 30 of 2018 s. 83.]

[Former section 26 renumbered as section 28 and relocated to Part 3 Division 4: No. 30 of 2018 s. 84.]

Division 4 — Review of decisions

[Heading inserted: No. 30 of 2018 s. 83.]

27. Review of Planning Commission decision

(1) The Planning Commission must give written notice of its decision on an application made to it under this Part to the applicant.

(2) A person who has made an application under this Part may apply to the Tribunal for a review of a decision of the Planning Commission —

(a) to refuse to approve an application under section 15; or

(b) to impose a condition of an approval under section 15; or

(c) to refuse to vary or revoke a condition of an approval under section 15; or

(d) to refuse to approve an application for approval of the making, amendment or repeal of leasehold by-laws under section 20; or

(e) to refuse to approve an amendment of a scheme plan under section 21;

(f) to refuse to approve an amendment or repeal of scheme by-laws under section 22.

(3) The Tribunal has jurisdiction to carry out the review in accordance with the *Planning and Development Act 2005* Part 14.

(4) Part 13 does not apply to a proceeding under this section (which is a proceeding within the Tribunal's review jurisdiction).

(5) If at the end of the prescribed period after an application is made under this Part (or any longer period agreed with an applicant), the Planning Commission has not made a decision, the applicant may give written notice of default to the Planning Commission.

(6) If a notice of default is given to the Planning Commission, the applicant may apply to the Tribunal for a review, in accordance with the *Planning and Development Act 2005* Part 14, as if the Planning Commission had refused to approve the application on the day on which the notice of default was given to the Planning Commission.

(7) In this section —

prescribed period means 40 days or, if some other period is specified in the regulations, that period.

[Section 27 inserted: No. 30 of 2018 s. 83.]

28. Review of local government decision

(1) A local government must give written notice of its decision on an application made to it under this Part to the applicant.

[(2) deleted]

(3) A notice of refusal by a local government to approve an application made to it under this Part must —

(a) specify the grounds of refusal; and

(b) inform the applicant of the right conferred by this section to apply for a review of the refusal.

(4) Subject to this section, an applicant may apply to the Tribunal for a review, in accordance with the *Planning and Development Act 2005* Part 14, of —

(a) a refusal by a local government to approve an amendment or repeal of scheme by-laws under section 22; or

(b) a refusal by a local government to approve an application under section 23 or 24; or

(c) the attachment of a condition to the approval of an application under section 23 or 24; or

(d) to refuse to approve acceptance of a lease under section 25; or

(e) a decision to refuse to approve a lease or licence under section 26.

(5) Part 13 does not apply to a proceeding under this section (which is a proceeding within the Tribunal's review jurisdiction).

(6) For the purposes of subsection (4), if a local government fails to notify its approval of an application under this Part to the applicant within the prescribed period after being given the application, it is taken to have refused the application at the end of that period.

(7) An application under subsection (4) may be made within 30 days after the day on which the applicant is given notice of the refusal or attachment of a condition or within 30 days after the expiration of the prescribed period referred to in subsection (6), as the case may be.

(8) In this section —

prescribed period means 40 days or, if some other period is specified in the regulations, that period.

[Section 28, formerly section 26, amended: No. 84 of 1994 s. 46; No. 58 of 1995 s. 28, 95 and 96; No. 14 of 1996 s. 4; No. 24 of 2002 s. 28(3)-(9); No. 55 of 2004 s. 1117; No. 38 of 2005 s. 15; No. 24 of 2011 s. 174(10) and (11); amended, renumbered as section 28 and relocated: No. 30 of 2018 s. 30 and 84.]

[Former section 28 renumbered as section 166 and relocated to Part 11 Division 1: No. 30 of 2018 s. 84.]

Part 4 — Scheme documents

[Heading inserted: No. 30 of 2018 s. 83.]

Division 1 — Scheme notice

[Heading inserted: No. 30 of 2018 s. 83.]

29. Scheme notice

(1) A scheme notice for a strata titles scheme must —

(a) specify the name of the scheme; and

(b) specify the address for service of the strata company; and

(c) if it is a leasehold scheme —

(i) identify the scheme as a leasehold scheme; and

(ii) specify the expiry day for the scheme.

(2) A scheme notice, or an amendment of a scheme notice, for a strata titles scheme must be in the approved form.

[Section 29 inserted: No. 30 of 2018 s. 83.]

[Former section 29 r renumbered as section 167 and relocated to Part 11 Division 2: No. 30 of 2018 s. 84.]

[Former sections 29A and 29B renumbered as sections 168 and 169 and relocated to Part 11 Division 2: No. 30 of 2018 s. 84.]

[Former section 29C renumbered as section 196 and relocated to Part 12 Division 7: No. 30 of 2018 s. 84.]

30. Scheme name and address for service of strata company

(1) A scheme notice, or an amendment of a scheme notice to alter the name of the scheme, must not be registered if the Registrar of Titles is satisfied that the name of the scheme is undesirable.

(2) An amendment of a scheme notice to alter the name of the scheme must not be registered unless the amendment is authorised by special resolution of the strata company.

(3) An amendment of a scheme notice to alter the address for service of the strata company must not be registered unless the amendment is authorised by ordinary resolution of the strata company.

[Section 30 inserted: No. 30 of 2018 s. 83.]

*[**30A.** Deleted: No. 30 of 2018 s. 82(b).]*

31. Postponement of expiry day for leasehold scheme

An amendment of a scheme notice to postpone the expiry day for a leasehold scheme must not be registered unless the postponement is in accordance with leasehold by-laws and is authorised by resolution of the strata company under section 41.

[Section 31 inserted: No. 30 of 2018 s. 83.]

[Former sections 31A-31K redesignated as clauses 31A-31K and relocated to Schedule 2A Part 4 Division 2: No. 30 of 2018 s. 117.]

Division 2 — Scheme plans

[Heading inserted: No. 30 of 2018 s. 83.]

32. Scheme plan

(1) A scheme plan for a strata titles scheme must —

(a) specify the address of the land subdivided by the scheme; and

(b) identify the title to the land subdivided by the scheme; and

(c) specify whether the scheme is a strata scheme or a survey-strata scheme; and

(d) if it is a strata scheme — consist of a floor plan and a location plan; and

(e) if it is a survey-strata scheme — consist of a survey plan of the land subdivided by the scheme prepared in accordance with the regulations; and

(f) enable each lot in the scheme to be separately identified and located; and

(g) define the boundaries of each lot in the manner required under section 9 depending on whether the scheme is a strata scheme or survey-strata scheme; and

(h) if land is or is to be vested in the Crown under the *Planning and Development Act 2005* section 152, delineate that land; and

(i) delineate areas that are roads, or are to be new roads, for the *Planning and Development Act 2005* section 168; and

(j) if it is a strata scheme, identify the nature and extent of any part of a wall or building or material attached to a wall or building that encroaches on land outside the parcel and —

(i) if an encroachment is to be controlled and managed as if it were common property, specify that fact; and

(ii) if an encroachment is to be subject to an easement, specify that easement.

(2) A scheme plan, or an amendment of a scheme plan, for a strata titles scheme may also —

(a) restrict the purposes for which the whole or a part of the parcel may be used (a ***restricted use condition***); and

(b) in the case of an amendment —

(i) describe, by reference to a lease accepted by the strata company under section 92, land that is temporary common property in the scheme; and

(ii) delete land from the description of temporary common property by referring to the surrender by the strata company of the lease of the land under section 92;

and

(c) delineate or record easements (other than statutory easements) and restrictive covenants over the land subdivided by the scheme, including —

(i) short form easements or restrictive covenants; and

(ii) easements created under the *Planning and Development Act 2005* section 167; and

(iii) easements and restrictive covenants created under the *Transfer of Land Act 1893* Part IVA;

and

(d) for a survey-strata scheme, delineate different areas of common property and allocate a reference number (being a unique series of numbers or letters or both numbers and letters) to those areas.

(3) A scheme plan, or an amendment of a scheme plan, for a strata titles scheme —

(a) may consist of multiple plans, drawings and documents containing descriptions or other matters; and

(b) must be in the approved form; and

(c) must be prepared and certified by a licensed surveyor (except for an amendment that relates only to a restricted use condition or temporary common property and does not involve any aspect of survey).

(4) A licensed surveyor must comply with the regulations and Transfer of Land Act requirements in preparing and certifying a scheme plan, or an amendment of a scheme plan, for a strata titles scheme.

[Section 32 inserted: No. 30 of 2018 s. 83.]

33. Short form easements or restrictive covenants

(1) A scheme plan for a strata titles scheme may contain an easement or restrictive covenant of a class specified in the regulations (a ***short form easement or restrictive covenant***) that benefits or burdens land in the parcel as follows —

(a) the type of easement or restrictive covenant must be identified using the description specified in the regulations;

(b) for an easement, its location must be delineated in the manner specified in the regulations;

(c) the lots and common property benefited and burdened by the easement or restrictive covenant must be identified in the manner specified in the regulations;

(d) any other requirements specified in the regulations must be complied with.

(2) The nature of a short form easement or restrictive covenant and the rights and liabilities under the easement or restrictive covenant are as specified in the regulations.

(3) The liabilities specified in the regulations may include positive obligations.

(4) A short form easement or restrictive covenant runs with the land and is binding on the owners, from time to time, of lots in the strata titles scheme.

(5) A short form easement or restrictive covenant comes into force when the scheme plan, or an amendment of the scheme plan, for the strata titles scheme containing the easement or the restrictive covenant is registered.

(6) A short form easement or restrictive covenant is discharged by —

(a) registration of an amendment of the scheme plan to give effect to the discharge; or

(b) termination of the strata titles scheme.

(7) A short form easement or restrictive covenant has effect even if the lot benefited and the lot burdened have the same owner.

(8) The *Property Law Act 1969* section 121 does not apply to a short form easement or restrictive covenant.

(9) This section does not derogate from any other method by which an easement or restrictive covenant may be created over a parcel.

[Section 33 inserted: No. 30 of 2018 s. 83.]

[Former section 33 renumbered as section 103 and relocated to Part 8 Division 1 Subdivision 4: No. 30 of 2018 s. 84.]

34. Requirements for registration of scheme plan

A scheme plan for a strata titles scheme must not be registered unless —

(a) the owner of the parcel is the applicant for registration or has given written consent to the subdivision of the parcel by the strata titles scheme; and

(b) the holder of each designated interest over the whole or a part of the parcel to be subdivided by registration of the scheme —

(i) has been given notice in the approved form of the subdivision and the schedule of unit entitlements; and

(ii) has given written consent to the subdivision;

and

(c) the scheme plan is approved by the Planning Commission (subject to any exemption in regulations under section 15(6)); and

(d) for a strata scheme —

(i) the scheme plan is accompanied by an occupancy permit or building approval certificate under the *Building Act 2011* Part 4 Division 3 for each scheme building; and

(ii) if the scheme plan identifies an encroachment that is not on to a public road, street or way and is to be managed and controlled as if it were common property, an appropriate easement has been granted and lodged with the Registrar of Titles.

[Section 34 inserted: No. 30 of 2018 s. 83.]

[Former section 34 renumbered as section 139 and relocated to Part 8 Division 5: No. 30 of 2018 s. 84.]

35. Requirements for registration of amendment of scheme plan

(1) An amendment of a scheme plan for a strata titles scheme must not be registered unless —

(a) for a leasehold scheme, the owner of the leasehold scheme is the applicant for registration or has given written consent to the amendment; and

(b) to the extent that the amendment gives effect to a type 1 subdivision —

(i) the subdivision is authorised by resolution without dissent of the strata company; and

(ii) each owner of a lot affected by the amendment who is not an applicant for registration of the amendment —

(I) has been given notice in the approved form of the subdivision and any

associated amendment of the schedule of unit entitlements; and

(II) has given written consent to the amendment;

and

(iii) if the owner of a lot affected by the amendment holds a life estate in the land, the person who holds the remainder or reversionary interest in the land —

(I) has been given notice in the approved form of the subdivision and any associated amendment of the schedule of unit entitlements; and

(II) has given written consent to the amendment;

and

(iv) each designated interest in land that is to become common property has been discharged, surrendered, withdrawn or otherwise extinguished;

and

(c) to the extent that the amendment gives effect to a type 2 subdivision —

(i) the subdivision is authorised by resolution without dissent of the strata company; and

(ii) the holder of each designated interest over the whole or a part of the parcel has been given notice in the approved form of the subdivision and any associated amendment of the schedule of unit entitlements and —

(I) has given written consent to the subdivision; or

(II) has not, at the end of 60 days after being given notice, made a written objection to the subdivision setting out the reasons for the objection;

and

(d) to the extent that the amendment gives effect to a type 3 subdivision —

(i) each owner of a lot affected by the amendment who is not an applicant for registration of the amendment —

(I) has been given notice in the approved form of the subdivision and any associated amendment of the schedule of unit entitlements; and

(II) has given written consent to the amendment;

and

(ii) if the owner of a lot affected by the amendment holds a life estate in the land, the person who holds the remainder or reversionary interest in the land —

(I) has been given notice in the approved form of the subdivision and any associated amendment of the schedule of unit entitlements; and

(II) has given written consent to the amendment;

and

(iii) the holder of each designated interest over the whole or a part of a lot affected by the amendment has been given notice in the approved form of the subdivision and any

associated amendment of the schedule of unit entitlements and —

(I) has given written consent to the amendment; or

(II) has not, at the end of 60 days after being given notice, made a written objection to the amendment setting out the reasons for the objection;

and

(e) to the extent that the amendment gives effect to a type 4 subdivision —

(i) the amendment is authorised by unanimous resolution of the strata company; and

(ii) the holder of each designated interest over the whole or a part of the parcel has been given notice in the approved form of the subdivision and any associated amendment of the schedule of unit entitlements and —

(I) has given written consent to the subdivision; or

(II) has not, at the end of 60 days after being given notice, made a written objection to the subdivision setting out the reasons for the objection;

and

(f) to the extent that the amendment gives effect to any type of subdivision — the amendment is approved by the Planning Commission (subject to any exemption in regulations under section 15(6)); and

(g) to the extent that the amendment imposes, varies or revokes a restricted use condition, the imposition, variation or revocation —

(i) has been approved by the Planning Commission under section 21; and

(ii) is authorised by resolution without dissent of the strata company;

and

(h) to the extent that the amendment describes land as temporary common property in the scheme or deletes land from such a description — the acceptance or surrender of the lease of the temporary common property under section 92 is authorised by resolution without dissent of the strata company; and

(i) to the extent that the amendment creates or discharges an easement or restrictive covenant —

(i) for a short form easement or restrictive covenant — the amendment of the scheme plan is approved by the Planning Commission;

(ii) in the case of an amendment affecting the common property — the amendment is authorised by resolution without dissent of the strata company; and

(iii) in the case of an amendment affecting a lot — the owner of the lot has given written consent to the amendment; and

(iv) in any case — the holder of each designated interest over the common property or a lot affected by the amendment has been given notice in the approved form of the amendment and —

(I) has given written consent to the subdivision; or

(II) has not, at the end of 60 days after being given notice, made a written objection to the creation or discharge setting out the reasons for the objection;

and

(j) for a strata scheme —

(i) the amendment of the scheme plan is accompanied by an occupancy permit or building approval certificate under the *Building Act 2011* Part 4 Division 3 for each scheme building constructed or modified in the course of a subdivision to be given effect by registration of the amendment of the scheme; and

(ii) if the amendment of the scheme plan identifies an encroachment that is not on to a public road, street or way and is to be managed or controlled as if it were common property, an appropriate easement has been granted and will be lodged with the Registrar of Titles.

(2) The Tribunal may, on the application of an applicant for registration of an amendment of a strata titles scheme, order that an objection to the amendment of a person with a designated interest be disregarded on the grounds that the objection is unreasonable.

(3) In considering whether an objection is unreasonable, the Tribunal may consider —

(a) the merits of the proposed amendment of the strata titles scheme; and

(b) the grounds for the objection; and

(c) any other factor the Tribunal considers relevant.

(4) If the Tribunal makes such an order, the applicant must lodge a copy of the order certified by the Tribunal with the Registrar of Titles.

(5) The notice of a resolution for an amendment of a scheme plan must include details of the proposed amendment, and any associated amendment of the schedule of unit entitlements, in the approved form.

Note for this section:

For when an amendment of a scheme plan affects the common property or a lot, see section 3(7).

[Section 35 inserted: No. 30 of 2018 s. 83.]

[Former section 35 renumbered as section 91 and relocated to Part 8 Division 1 Subdivision 1: No. 30 of 2018 s. 84.]

[Former section 35A renumbered as section 105 and relocated to Part 8 Division 1 Subdivision 5: No. 30 of 2018 s. 84.]

36. Exemption for staged subdivision

If the amendment of a scheme plan is required as a consequence of completion of a stage of subdivision to which staged subdivision by-laws apply and the subdivision has been undertaken with sufficient compliance with the by-laws as determined in accordance with the regulations —

(a) section 35(1)(a) to (e) do not apply; and

(b) to the extent that the by-laws contemplate the creation or discharge of a particular easement or restrictive covenant on the completion of the stage of subdivision, section 35(1)(i) does not apply to that easement or restrictive covenant.

Note for this section:

Because staged subdivision by-laws cannot apply to subdivision comprised of the removal, from the parcel, of land comprised of common property or the addition, to the parcel, of land from outside the parcel, the question of an exemption can arise in the context of a type 1 subdivision comprised of the conversion of a lot to common property or a type 3 or type 4 subdivision. The question cannot arise in the context of a type 2 subdivision.

[Section 36 inserted: No. 30 of 2018 s. 83.]

[Former section 36 renumbered as section 100 and relocated to Part 8 Division 1 Subdivision 3: No. 30 of 2018 s. 84.]

[36A, 36B. *Deleted: No. 30 of 2018 s. 82(b).]*

Division 3 — Schedule of unit entitlements

[Heading inserted: No. 30 of 2018 s. 83.]

37. Schedule of unit entitlements

(1) The schedule of unit entitlements for a strata titles scheme must —

(a) allocate a whole number (a ***unit entitlement***) to each lot in the strata titles scheme; and

(b) state the number that is the sum of the unit entitlements of all the lots in the strata titles scheme.

Note for this subsection:

The unit entitlement of a lot determines —

- the interest of the owner of the lot in the common property in the strata titles scheme: see section 13; and
- subject to the scheme by-laws, the contributions payable by the owner of a lot in the scheme: see section 100; and
- the voting rights that attach to the lot: see section 120.

(2) When allocated, the proportion that a unit entitlement of a lot bears to the sum of the unit entitlements of all the lots in the strata titles scheme must not be greater than 5% more, or 5% less, than the proportion that the value of the lot bears to the sum of the value of all the lots in the strata titles scheme.

(3) The value of a lot is —

(a) in a strata scheme — the capital value; and

(b) in a survey-strata scheme — the site value.

(4) Without limitation, the regulations may prescribe matters relating to the determination of the value of a lot.

(5) A schedule of unit entitlements, or an amendment of a schedule of unit entitlements, for a strata titles scheme must —

(a) be in the approved form; and

(b) be prepared and certified by a licensed valuer.

(6) A licensed valuer must comply with the regulations and Transfer of Land Act requirements in preparing and certifying a schedule of unit entitlements, or an amendment of a schedule of unit entitlements, for a strata titles scheme.

(7) A schedule of unit entitlements, or an amendment of a schedule of unit entitlements, must not be registered unless it is certified by a licensed valuer within a period specified in the regulations before an application is made for registration of the schedule or amendment.

[Section 37 inserted: No. 30 of 2018 s. 83.]

[Former section 37 renumbered as section 116 and relocated to Part 8 Division 1 Subdivision 7: No. 30 of 2018 s. 84.]

38. Requirements for registration of amendment of schedule of unit entitlements

(1) An amendment of a schedule of unit entitlements may only be registered —

(a) in conjunction with an amendment of the scheme plan to give effect to a subdivision; or

(b) if the amendment is authorised by resolution without dissent of the strata company; or

(c) if the amendment is authorised by order of the Tribunal.

(2) An amendment under subsection (1)(b) must not be registered unless the holder of each designated interest over the whole or a part of the parcel —

(a) has been given notice in the approved form of the amendment; and

(b) either —

(i) has given written consent to the amendment; or

(ii) has not, at the end of 60 days after being given notice, made a written objection to the amendment.

(3) The Tribunal may, on the application of an applicant for registration of an amendment of a strata titles scheme involving the amendment of the schedule of unit entitlements, order that an objection to the amendment of a person with a designated interest be disregarded on the grounds that the objection is unreasonable.

(4) In considering whether an objection is unreasonable, the Tribunal may consider —

(a) the merits of the proposed amendment of the strata titles scheme; and

(b) the grounds for the objection; and

(c) any other factor the Tribunal considers relevant.

(5) The Tribunal may, on the application of a strata company or the owner or registered mortgagee of a lot in a strata titles scheme, authorise the amendment of the schedule of unit entitlements for the scheme if satisfied that, if unit entitlements were to be allocated at the time of the application, the schedule of unit entitlements would require amendment for compliance with section 37(2).

(6) If the Tribunal makes an order under this section, the applicant for the order must lodge a copy of the order certified by the Tribunal with the Registrar of Titles for registration of the amendment of the schedule of unit entitlements.

[Section 38 inserted: No. 30 of 2018 s. 83.]

[Former section 38 renumbered as section 94 and relocated to Part 8 Division 1 Subdivision 1: No. 30 of 2018 s. 84.]

Division 4 — Scheme by-laws

[Heading inserted: No. 30 of 2018 s. 83.]

39. Scheme by-laws on registration

On registration of a strata titles scheme —

(a) subject to paragraph (b), the governance by-laws set out in Schedule 1 and the conduct by-laws set out in Schedule 2 are taken to be registered for the scheme; and

(b) if other scheme by-laws are registered for the scheme, the strata company is taken to have made those by-laws and the by-laws referred to in paragraph (a) are amended or repealed accordingly.

[Section 39 inserted: No. 30 of 2018 s. 83.]

[Former section 39A renumbered as section 115 and relocated to Part 8 Division 1 Subdivision 7: No. 30 of 2018 s. 84.]

40. Leasehold by-laws

(1) ***Leasehold by-laws*** of a leasehold scheme are by-laws that provide —

(a) for postponement of the expiry day for the scheme; or

(b) for compensation payable on the expiry of the scheme.

(2) If a leasehold scheme does not have leasehold by-laws, the expiry day for the scheme cannot be postponed.

(3) The expiry day for a leasehold scheme —

(a) cannot be postponed to a day that is more than 99 years after registration of the scheme; and

(b) cannot be postponed unless the postponement is supported by resolution of the strata company as set out in section 41.

(4) Leasehold by-laws —

(a) may provide that the owner of the leasehold scheme is to be paid an amount for the postponement of the expiry day for the scheme by the owner of each lot in the scheme and, if they do so —

(i) the amount paid by the owners of the lots must be proportional to the unit entitlements of their respective lots; and

(ii) the by-laws —

(I) must set out how the amount is to be calculated; and

(II) must set out when and how the amount is to be paid (which must be at least 4 months before the expiry day); and

(III) must provide that, if the amount is not paid as required under the by-laws, the owner of the leasehold scheme is entitled to re-enter the lot from the end of the expiry day for the scheme that applied before the postponement;

and

(b) may provide for compensation to be payable to the owner of a lot on the expiry of the scheme for improvements to the lot effected by the owner or a former owner of the lot; and

(c) must comply with requirements set out in the regulations.

(5) Leasehold by-laws can only be made, amended or repealed if the owner of the leasehold scheme has given written consent to the by-laws.

Note for this section:

Leasehold by-laws providing for postponement of the expiry day for the scheme can only be made, amended or repealed with the approval of the Planning Commission as set out in section 20.

[Section 40 inserted: No. 30 of 2018 s. 83.]

41. Resolution for postponement of expiry day under leasehold by-laws

(1) If the leasehold by-laws provide for postponement of the expiry day for the leasehold scheme, the expiry day may only be postponed if the postponement is supported by a resolution as follows —

(a) 14 days' notice of the terms of the proposed resolution must be given to each member of the strata company before voting on the resolution opens;

(b) the resolution must specify a proposed new expiry day (in accordance with the leasehold by-laws) that is a day that is not more than 99 years after registration of the scheme;

(c) the votes in favour of the resolution must equal not less than 75% of the number of lots in the scheme;

(d) the resolution must be passed not later than 6 months before the expiry day.

(2) The owner of the leasehold scheme or an owner of a lot in a leasehold scheme may convene a general meeting of the strata company to vote on a resolution for postponing the expiry day for the scheme if the strata company has not done so.

(3) Section 126(a) does not apply to a vote on a resolution for postponing the expiry day for a leasehold scheme.

(4) The strata company must, as soon as reasonably practicable after the passing of a resolution under this section —

(a) serve notice of the resolution, in the approved form, on the owner of the leasehold scheme; and

(b) apply for registration of an amendment of the scheme notice to give effect to the postponement of the expiry day.

[Section 41 inserted: No. 30 of 2018 s. 83.]

42. Staged subdivision by-laws

(1) ***Staged subdivision by-laws*** of a strata titles scheme are by-laws that apply as if they were an agreement by the strata company with a person about subdivision of the strata titles scheme in stages.

Note for this subsection:

Under section 36, compliance with a stage of subdivision as set out in staged subdivision by-laws removes the need for resolutions and consents for registration of an amendment of the strata titles scheme to give effect to the subdivision.

(2) Staged subdivision by-laws must—

(a) describe in detail —

(i) the stages of subdivision that are agreed; and

(ii) any amendments to the scheme plan and schedule of unit entitlements that will be made on completion of each stage of subdivision;

and

(b) identify the lots or common property affected by each stage of subdivision; and

(c) comply with requirements set out in the regulations.

(3) Staged subdivision by-laws cannot apply to subdivision comprised of the removal, from the parcel, of land comprised of common property or the addition, to the parcel, of land from outside the parcel.

(4) Staged subdivision by-laws do not bind the Planning Commission or a local government to give a planning approval for an agreed stage of subdivision.

(5) Staged subdivision by-laws do not bind the scheme developer of a stage of subdivision to undertake the subdivision.

(6) Staged subdivision by-laws can only be made, amended or repealed if —

(a) for a leasehold scheme, the owner of the leasehold scheme —

(i) has been given notice in the approved form of the by-laws; and

(ii) has given written consent to the by-laws;

and

(b) in any case, the holder of each designated interest over the whole or a part of the parcel —

(i) has been given notice in the approved form of the by-laws; and

(ii) either —

(I) has given written consent to the application; or

(II) has not, at the end of 60 days after being given notice, made a written objection to the proposed by-laws.

(7) The Tribunal may, on the application of an applicant for registration of staged subdivision by-laws or an amendment of staged subdivision by-laws, order that an objection to the by-laws of a person with a designated interest be disregarded on the grounds that the objection is unreasonable.

(8) In considering whether an objection is unreasonable, the Tribunal may consider —

(a) the merits of the proposed by-laws; and

(b) the grounds for the objection; and

(c) any other factor the Tribunal considers relevant.

(9) If the Tribunal makes such an order, the applicant must lodge a copy of the order certified by the Tribunal with the Registrar of Titles.

[Section 42 inserted: No. 30 of 2018 s. 83.]

*[**42A-42C.** Deleted: No. 30 of 2018 s. 82(b).]*

43. Exclusive use by-laws

(1) ***Exclusive use by-laws*** of a strata titles scheme are scheme by-laws that confer exclusive use and enjoyment of, or special privileges over, the common property in the strata titles scheme or specified common property in the strata titles scheme (the ***special common property***) on the occupiers, for the time being, of a specified lot or lots in the strata titles scheme (the ***special lots***).

(2) Exclusive use by-laws may include the following —

(a) terms and conditions on which the occupiers of special lots may use the special common property;

(b) particulars relating to access to the special common property and the provision and keeping of any key necessary;

(c) particulars of the hours during which the special common property may be used;

(d) provisions relating to the condition, maintenance, repair, renewal or replacement of the special common property;

(e) provisions relating to insurance of the special common property to be maintained by the owners of special lots;

(f) matters relating to the determination of amounts payable to the strata company by the owners of special lots and the imposition and collection of the amounts.

(3) Subject to the terms of exclusive use by-laws, the obligations that would, apart from this subsection, fall on the strata company under section 91(1)(c) in relation to the special common property fall instead on the owners of the special lots.

(4) An amount payable by a person to a strata company under exclusive use by-laws must be paid (together with interest on any outstanding amount) and may be recovered by the strata company, as if the amount payable were an unpaid contribution levied on the person as a member of the strata company.

(5) Exclusive use by-laws can only be made, amended or repealed if the owner of each lot that is or is proposed to be a special lot has given written consent to the by-laws.

[Section 43 inserted: No. 30 of 2018 s. 83.]

44. Making of scheme by-laws

(1) Subject to this Act, a strata company may, by resolution of the strata company, make governance by-laws or conduct by-laws for the strata titles scheme (including by-laws that amend or repeal the by-laws it is taken to have made on registration of the scheme).

(2) The resolution to make by-laws must be —

(a) for governance by-laws — a resolution without dissent; and

(b) for conduct by-laws — a special resolution.

(3) The power to make by-laws includes power to amend or repeal by-laws in the same manner and on the same conditions as they are made.

(4) If by-laws purport to be made in exercise of a particular power or powers, they are also taken to be made in exercise of all powers under which they can be made.

(5) Scheme by-laws must be in the approved form.

[Section 44 inserted: No. 30 of 2018 s. 83.]

[Former section 44 renumbered as section 135 and relocated to Part 8 Division 4: No. 30 of 2018 s. 84.]

45. Application of scheme by-laws

(1) Scheme by-laws may apply to the following —

(a) the strata company for the strata titles scheme;

(b) a member, for the time being, of the strata company for the strata titles scheme;

(c) an occupier or lessee, for the time being, of a lot, or the common property, in the strata titles scheme;

(d) in the case of leasehold by-laws — the owner of the leasehold scheme;

(e) in the case of exclusive use by-laws — the owners and occupiers, for the time being, of special lots.

(2) Each person to whom scheme by-laws apply must comply with the by-laws as if the by-laws were a deed (signed and sealed by each person to whom they apply) containing mutual covenants to observe and perform the matters set out in the by-laws.

(3) A lease of a lot or common property in a strata titles scheme is taken to contain an agreement by the lessee that the lessee will comply with the scheme by-laws.

(4) The owner, occupier or lessee of a lot or common property in a strata titles scheme must take all steps that are reasonable in the circumstances to ensure that every person who they permit to use or who they invite on to the lot or common property complies with by-laws that apply to the owner, occupier or lessee.

(5) Scheme by-laws are not by-laws or subsidiary legislation within the meaning of the *Interpretation Act 1984*.

(6) An interest created under scheme by-laws does not have effect as an interest registered under the *Transfer of Land Act 1893*.

(7) Nothing in subsection (6) derogates from the operation of leasehold by-laws.

[Section 45 inserted: No. 30 of 2018 s. 83.]

[Former section 45 renumbered as section 136 and relocated to Part 8 Division 4: No. 30 of 2018 s. 84.]

46. Invalidity of scheme by-laws

Scheme by-laws are invalid as follows —

(a) to the extent that there is no power to make the by-laws;

(b) to the extent that they are inconsistent with this Act or any other written law;

(c) to the extent that they are inconsistent with a restricted use condition;

(d) for a leasehold scheme — to the extent that they are inconsistent with the covenants or conditions of a strata lease over a lot in the scheme;

(e) to the extent that they purport to deny or limit the right of a member of the strata company to vote on a proposed resolution of the strata company (except as set out in this Act);

(f) to the extent that they prohibit or restrict the devolution of a lot or a transfer, lease, mortgage or other dealing with a lot;

(g) to the extent that they purport to discharge or modify an easement or restrictive covenant;

(h) to the extent that they prohibit or restrict the keeping on a lot of an animal that is used as an assistance animal by a person with a disability who is an owner or occupier of a lot;

(i) to the extent that they prohibit or restrict the use on the parcel of an assistance animal by a person with a disability;

(j) to the extent that, having regard to the interests of all of the owners of lots in the strata titles scheme in the use and enjoyment of their lots and the common property —

(i) they are unfairly prejudicial to, or unfairly discriminatory against, 1 or more of the owners of lots; or

(ii) they are oppressive or unreasonable.

[Section 46 inserted: No. 30 of 2018 s. 83.]

47. Enforcement of scheme by-laws

(1) A strata company may —

(a) give a written notice to a person alleged to have contravened the scheme by-laws; or

(b) apply to the Tribunal under this section for an order enforcing scheme by-laws if —

(i) the contravention has had serious adverse consequences for a person other than the person alleged to have contravened the scheme by-laws; or

(ii) the person has contravened the particular scheme by-law on at least 3 separate occasions; or

(iii) the person has been given notice under paragraph (a) and has contravened the notice.

(2) A written notice given by a strata company to a person alleged to have contravened the scheme by-laws must —

(a) specify the particular scheme by-law that is alleged to have been contravened; and

(b) specify the particular facts relied on as evidence of the contravention; and

(c) specify the action that must be taken or refrained from being taken in order to avoid a continuing or further contravention of the particular scheme by-law; and

(d) contain an explanation of the effect of this section in terms set out in the regulations.

(3) An application may also be made to the Tribunal for enforcement of scheme by-laws by —

(a) the owner of a lot in the strata titles scheme; or

(b) if the scheme is a leasehold scheme — the owner of the leasehold scheme; or

(c) a mortgagee of a lot in the strata titles scheme; or

(d) an occupier of a lot in the strata titles scheme.

(4) An application can only be made under subsection (3) on the grounds that —

(a) if a person other than the strata company is alleged to have contravened the scheme by-laws — the person has been given notice under subsection (1)(a) and has contravened the notice; or

(b) the contravention has had serious adverse consequences for a person other than the person alleged to have contravened the scheme by-laws; or

(c) the person has contravened the particular scheme by-law on at least 3 separate occasions.

(5) The Tribunal may, if satisfied that a person has contravened the scheme by-laws, by order require the person to do 1 or more of the following —

(a) pay a specified amount to the strata company by way of penalty for the contravention;

(b) take specified action within a period stated in the order to remedy the contravention or prevent further contraventions;

(c) refrain from taking specified action to prevent further contraventions.

(6) The Tribunal's power to impose a penalty is subject to the following limitations —

(a) a penalty must not be imposed on the strata company;

(b) a penalty may only be imposed if the Tribunal is satisfied of the matters set out in subsection (1)(b) or (4) as the case requires;

(c) the penalty must not exceed an amount fixed by the regulations;

(d) a daily penalty may be imposed for a continuing contravention only if that is authorised by the regulations.

(7) The regulations may —

(a) specify a maximum amount that may be imposed by the Tribunal by way of penalty for contravention of scheme by-laws; and

(b) specify circumstances in which a daily penalty may be imposed for a continuing contravention and a maximum amount that may be imposed as a daily penalty.

(8) If an order is made under this section requiring a member of a strata company to pay an amount to a strata company, the amount may be recovered by the strata company, and interest is payable on any outstanding amount, as if the amount payable were an unpaid contribution levied on the member as a member of the strata company.

(9) An amount otherwise ordered to be paid by way of penalty under this section is recoverable as a debt in a court of competent jurisdiction.

[Section 47 inserted: No. 30 of 2018 s. 83.]

48. Requirements for registration of amendment to give effect to scheme by-laws

(1) A strata company must apply for registration of an amendment of the strata titles scheme to register scheme by-laws as soon as reasonably practicable and, in any event, within 3 months, after they are made, amended or repealed.

(2) An amendment of a strata titles scheme to give effect to scheme by-laws may only be registered if the scheme by-laws have been made, amended or repealed in accordance with this Division.

[Section 48 inserted: No. 30 of 2018 s. 83.]

Division 5 — Strata leases

[Heading inserted: No. 30 of 2018 s. 83.]

49. Relationship with other laws

(1) When a strata lease is registered as a scheme document, the lease is taken to be a registered lease under the *Transfer of Land Act 1893*.

(2) The following provisions do not apply to or in relation to a strata lease —

(a) the *Transfer of Land Act 1893* Part IV Division 2;

(b) the *Property Law Act 1969* sections 72, 73, 74, 75, 76, 79, 80, 81 and 83 and Part VII Division 2;

(c) other provisions of those or other Acts specified in the regulations.

(3) Subsection (2) does not affect the application of the *Transfer of Land Act 1893* or the *Property Law Act 1969* to a lease of a lot in a leasehold scheme.

[Section 49 inserted: No. 30 of 2018 s. 83.]

50. Term of strata lease

(1) A strata lease for a lot in a leasehold scheme commences when the lot is created on the registration of the leasehold scheme or an amendment of the leasehold scheme to give effect to a subdivision and expires on the expiry day for the scheme.

(2) A strata lease is of no effect to the extent that it purports to extend beyond the expiry day for the scheme.

(3) A strata lease is not subject to renewal, but its term is extended by postponement of the expiry day for the scheme.

(4) The fact that the expiry day may be postponed does not render a strata lease invalid for being of uncertain duration or for any other reason.

(5) A strata lease is not subject to forfeiture.

[Section 50 inserted: No. 30 of 2018 s. 83.]

[50A, 50B. *Deleted: No. 30 of 2018 s. 82(b).]*

51. Limitations on powers of owner of leasehold scheme

(1) The owner of a leasehold scheme must not interfere with the use and enjoyment of a lot or common property in the leasehold scheme by the owner of a lot in the scheme.

(2) Subject to subsection (3), the consent of the owner of the leasehold scheme is not required by the owner of a lot in the scheme to deal with or dispose of the strata title for the lot.

(3) The regulations may specify circumstances in which the consent of the owner of the leasehold scheme may be required despite subsection (2).

(4) The owner of a leasehold scheme cannot re-enter a lot in the scheme except if that is authorised by order of the Tribunal or under the leasehold by-laws (for non-payment of an amount for

postponement of the expiry day) or if the owner of the lot surrenders the strata lease.

[Section 51 inserted: No. 30 of 2018 s. 83.]

*[**51A.** Deleted: No. 30 of 2018 s. 82(b).]*

52. Content and form of strata lease

(1) A strata lease —

(a) can only contain covenants or conditions allowed by the regulations; and

(b) if breach of a covenant or condition may lead to an order of the Tribunal for re-entry, the strata lease must identify the covenant or condition as a ***fundamental covenant or condition***; and

(c) cannot grant the owner of the leasehold scheme a right of re-entry of the lot for breach of a covenant or condition (express or implied); and

(d) must be in the approved form.

(2) The covenants or conditions allowed by the regulations cannot include covenants or conditions for the following —

(a) a matter that could be included in leasehold by-laws;

(b) refurbishment of the lot or improvements on the lot;

(c) a matter that is dealt with under this Act including —

(i) financial contributions towards the maintenance, repair, renewal or replacement of common property in the leasehold scheme or property of the strata company; and

(ii) the insurance required for the leasehold scheme;

(d) the acquisition of the owner of a leasehold scheme's freehold reversion in the lot and the common property appurtenant to the lot;

(e) compensation for the value of improvements to the lot;

(f) any other matter specified in the regulations.

(3) If a strata lease cannot provide for, or relate to, something under this section, then it cannot be provided for in any other way, other than under scheme by-laws (if the thing may be the subject of scheme by-laws).

Note for this subsection:

For example, the thing cannot be made the subject of a lease, contract or deed.

[Section 52 inserted: No. 30 of 2018 s. 83.]

53. Amendment of strata lease

(1) A strata lease can only be amended by written agreement between the owner of the leasehold scheme and the owner of the lot to which the strata lease relates.

(2) The regulations may impose additional requirements for the amendment of a strata lease.

(3) The amendment of a strata lease cannot take effect until registration of the amendment.

(4) An amendment of a strata lease must not be registered unless —

(a) if the owner of the leasehold scheme or the owner of the lot is not an applicant, that owner has given written consent to the amendment; and

(b) the strata lease as amended is lodged with the Registrar of Titles.

[Section 53 inserted: No. 30 of 2018 s. 83.]

[Former sections 53A-53D redesignated as clauses 53A-53E and relocated to Schedule 2A Part 5: No. 30 of 2018 s. 117.]

54. Enforcement of strata lease

(1) The owner of a leasehold scheme or the owner of a lot in the leasehold scheme may apply to the Tribunal for enforcement of

a covenant or condition in the strata lease or an obligation under this Division.

(2) However, an application can only be made by the owner of the leasehold scheme if —

(a) the owner of the leasehold scheme has served notice about the breach of the strata lease on the owner of the lot, and the mortgagee of the lot, if any, that complies with the *Property Law Act 1969* section 81(1)(a), (b) and (c); and

(b) the owner of the lot has failed within a reasonable time after the service of the notice on the owner, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the owner of the leasehold scheme, for the breach.

(3) The Tribunal may, if satisfied that the owner of a lot in a leasehold scheme has breached a covenant or condition in the strata lease, by order do 1 or more of the following —

(a) require the owner of the lot to pay compensation to the owner of the leasehold scheme for any pecuniary loss or damage caused by the breach of the strata lease;

(b) require the owner of the lot to do, or refrain from doing, a specified act to remedy the breach;

(c) vest, for the remaining term of the strata lease, or for a shorter term, the strata lease for the lot in a mortgagee of the lot on conditions that the Tribunal is satisfied are just and equitable, including, for example, conditions relating to —

(i) the execution of a dealing or other document; or

(ii) the payment of costs, expenses, damages or compensation; or

(iii) the giving of security;

(d) if the covenant or condition is a fundamental covenant or condition and the Tribunal is satisfied that the owner

of the leasehold scheme cannot be reasonably compensated by an order under a preceding paragraph, authorise the owner of the leasehold scheme to re-enter the lot.

(4) The Tribunal may, if satisfied that the owner of a leasehold scheme has breached a covenant or condition in the strata lease or has contravened this Act, by order do 1 or more of the following —

(a) require the owner of the leasehold scheme to pay compensation to the owner of a lot in the scheme for any pecuniary loss or damage caused by the owner of the leasehold scheme, including by purporting to exercise a right to re-enter the lot in circumstances in which the owner does not have that right;

(b) require the owner of the leasehold scheme to return possession of a lot in the scheme to the owner of the lot.

[Section 54 inserted: No. 30 of 2018 s. 83.]

*[**54A.** Deleted: No. 30 of 2018 s. 82(b).]*

55. Contracting out prohibited

(1) A contract or any other agreement or arrangement is of no effect to the extent that it purports to exclude or restrict the operation of this Division.

(2) A purported waiver of a right, remedy or benefit conferred on a person under this Division is of no effect.

[Section 55 inserted: No. 30 of 2018 s. 83.]

*[**55A.** Deleted: No. 30 of 2018 s. 82(b).]*

Part 5 — Registration and land titles

[Heading inserted: No. 30 of 2018 s. 83.]

Division 1 — Schemes and amendment of schemes

[Heading inserted: No. 30 of 2018 s. 83.]

56. Application for registration

(1) An application for registration of a strata titles scheme or an amendment of a strata titles scheme can be made —

(a) for registration to give effect to a subdivision, by the scheme developer for the subdivision; or

(b) for registration of an amendment of a strata titles scheme, by —

(i) the strata company for the scheme; or

(ii) an owner of a lot in the scheme; or

(iii) if the scheme is a leasehold scheme, the owner of the leasehold scheme.

(2) An application for registration of a strata titles scheme or an amendment of a strata titles scheme must —

(a) be lodged with the Registrar of Titles; and

(b) be in the approved form; and

(c) be accompanied by —

(i) for registration of a scheme — the scheme documents; or

(ii) for an amendment of a scheme — amendments or replacements of the scheme documents that require modification as a consequence of the amendment of the scheme;

and

(d) be accompanied by evidence, in the approved form, that the requirements of this Act for the making and

registration of the scheme documents or amendments of the scheme documents have been complied with; and

Note for this paragraph:

See especially the requirements set out in sections 30 and 31 for the scheme notice, sections 34 and 35 (but subject to section 36) for the scheme plan, section 38 for the schedule of unit entitlements, section 48 for scheme by-laws and section 53 for strata leases.

(e) must be accompanied, if applicable, by —

(i) a statement (in the approved form) of how each item registered or recorded for the scheme in the Register is to be dealt with; and

(ii) disposition statements, instruments or documents necessary for that purpose;

and

(f) be accompanied by the fee fixed by the regulations.

(3) The Registrar of Titles may accept an application for registration of a scheme plan or amendment of a scheme plan, or a scheme plan or amendment of a scheme plan for lodgement, before the plan or amendment is endorsed with the approval of the Planning Commission as required under Part 3 Division 1, but the plan or amendment cannot be registered until it is so endorsed.

(4) The regulations may impose time limits within which an application for registration must be made.

Note for this subsection:

For example, an application involving an amendment of a scheme plan may be required to be made within a specified period after endorsement of the scheme plan by the Planning Commission.

[Section 56 inserted: No. 30 of 2018 s. 83.]

*[**56A.** Deleted: No. 30 of 2018 s. 82(b).]*

57. Effect of registration

(1) On registration of a freehold scheme —

(a) the title to the parcel of land that existed immediately before registration of the scheme ceases to exist; and

(b) the certificate of title for the parcel must be cancelled under the *Transfer of Land Act 1893*.

(2) On registration of a leasehold scheme —

(a) the fee simple of the parcel of land subdivided by the scheme is divided into the strata leases and a reversionary interest in the parcel that reverts to the owner of the leasehold scheme on the expiry or termination of the scheme; and

(b) the certificate of title for the parcel must be endorsed accordingly under the *Transfer of Land Act 1893*.

(3) On registration of a strata titles scheme or an amendment of a strata titles scheme to give effect to a subdivision of land —

(a) the relevant lots are created, cease to exist or are varied as required by the subdivision; and

(b) if a lot in a leasehold scheme ceases to exist, the strata lease for the lot is extinguished; and

(c) the relevant common property (if any) comes into existence, ceases to exist or is varied as required by the subdivision.

(4) A scheme document, or an amendment of a scheme document, has effect from when it is registered or recorded by the Registrar of Titles.

[Section 57 inserted: No. 30 of 2018 s. 83.]

[Former section 57 renumbered as section 84 and relocated to Part 5 Division 4: No. 30 of 2018 s. 84.]

58. Registration process

(1) To register a strata titles scheme or an amendment of a strata titles scheme, the Registrar of Titles must —

(a) allocate a reference number (being a unique series of numbers or letters or both numbers and letters) to the scheme; and

(b) register or record, in the manner that the Registrar considers appropriate for incorporation of the strata titles scheme in the Register under the *Transfer of Land Act 1893*, the scheme documents or amendments of the scheme documents (including, without limitation, by attaching the reference number of the scheme to the scheme plan); and

(c) as appropriate in the circumstances, register or record a disposition statement, transfers or other documents lodged with the application for registration in the manner that the Registrar considers appropriate for incorporation in the Register under the *Transfer of Land Act 1893*; and

(d) on registration of a strata titles scheme or an amendment of a strata titles scheme to give effect to a subdivision of land —

(i) ensure that there is a separate certificate of title registered under the *Transfer of Land Act 1893* for each lot in the strata titles scheme; and

(ii) for a leasehold scheme, ensure that there is —

(I) a strata lease registered for each lot in the scheme; and

(II) a separate certificate of title registered under the *Transfer of Land Act 1893* for the parcel;

and

(iii) create and register or cancel, or enter a memorial on, certificates of title as necessary for those purposes.

(2) A separate certificate of title is not to be created for common property or for a parcel subdivided by a freehold scheme.

[(3) deleted]

(4) The *Transfer of Land Act 1893* section 166 does not apply to a subdivision of land by a strata titles scheme.

(5) Without limiting how the Registrar of Titles incorporates material into the Register, an item will be taken to be registered or recorded for a strata titles scheme in the Register if it is registered or recorded on the scheme plan, a certificate of title for a lot in the scheme, a certificate of title for the parcel in a leasehold scheme, or on a separate record of information relating to the scheme.

Note for this subsection:

For example, an item may comprise an estate, interest, right, encumbrance, notification, memorial or caveat.

[Section 58 inserted: No. 30 of 2018 s. 83; amended: No. 21 of 2022 s. 63.]

59. No presumption of validity of scheme by-laws

(1) The Registrar of Titles may, but is not obliged to, examine scheme by-laws lodged for registration for compliance with this Act.

(2) It must not be presumed that, because the Registrar of Titles has registered scheme by-laws, the by-laws are valid or enforceable.

(3) The State does not guarantee the validity or enforceability of scheme by-laws.

[Section 59 inserted: No. 30 of 2018 s. 83.]

Division 2 — Re-entry or surrender of strata leases

[Heading inserted: No. 30 of 2018 s. 83.]

60. Notice and registration

If a strata lease is re-entered by order of the Tribunal or under the leasehold by-laws (for non-payment of an amount for postponement of the expiry day) or a strata lease is otherwise surrendered to the owner of the leasehold scheme —

(a) the owner of the leasehold scheme must lodge with the Registrar of Titles notice in the approved form of that fact, together with, for re-entry, evidence in the approved form that the requirements of this Act have been met; and

(b) the Registrar of Titles must register the notice; and

(c) on registration of the notice —

(i) the Registrar must register the owner of the leasehold scheme as the owner of the lot; and

(ii) the owner of the leasehold scheme is entitled to vacant possession of the lot; and

(iii) the strata lease is otherwise unaffected.

[Section 60 inserted: No. 30 of 2018 s. 83.]

[Former section 60 renumbered as section 67 and relocated to Part 5 Division 4: No. 30 of 2018 s. 84.]

Division 3 — Statutory easements

[Heading inserted: No. 30 of 2018 s. 83.]

61. Easement for support, shelter and projections — lot

(1) For each lot in a strata titles scheme there is an easement benefiting the lot —

(a) for the subjacent and lateral support of the lot —

(i) by every other lot in the scheme capable of affording support; and

(ii) by all the common property in the scheme capable of affording support;

and

(b) if the scheme is a strata scheme —

(i) for the support and shelter of the parts of a scheme building within the lot by every other part of the scheme building capable of affording support or shelter; and

(ii) for the projection of window sills, windows, window awnings, eaves, guttering and other minor parts of a scheme building within the lot.

(2) The easement entitles the owner of a lot benefited by the easement to examine, maintain, repair, modify and replace the support, shelter or projection to which the easement relates.

(3) The rights conferred by the easement must be exercised so as to minimise, as far as reasonably practicable, interference with the use and enjoyment of lots and common property in the strata titles scheme.

(4) For each lot in a strata titles scheme there is an easement burdening the lot —

(a) for the subjacent and lateral support of —

(i) every other lot in the scheme capable of enjoying support; and

(ii) all the common property in the scheme capable of enjoying support;

and

(b) if the scheme is a strata scheme —

(i) for the support and shelter by the parts of a scheme building within the lot of all other parts of the scheme building capable of enjoying support or shelter; and

(ii) for the projection over the lot by window sills, windows, window awnings, eaves, guttering and other minor parts of a scheme building within another lot or the common property.

(5) An owner or occupier of a lot must not do anything or permit anything to be done that would interfere with rights under the easement burdening the lot under this section.

(6) An easement under this section has effect even if the lot benefited and the lot burdened have the same owner.

[Section 61 inserted: No. 30 of 2018 s. 83.]

[Former section 61 renumbered as section 68 and relocated to Part 5 Division 4: No. 30 of 2018 s. 84.]

62. Easement for support, shelter and projections — common property

(1) For common property in a strata titles scheme there is an easement benefiting the common property —

(a) for the subjacent and lateral support of the common property, by every lot in the strata titles scheme capable of affording support; and

(b) if the scheme is a strata scheme —

(i) for the support and shelter of the parts of a scheme building within the common property by every other part of the scheme building capable of affording support or shelter; and

(ii) for the projection of window sills, windows, window awnings, eaves, guttering and other minor parts of a scheme building within the common property.

(2) The easement entitles the strata company to examine, maintain, repair, modify and replace the support, shelter or projection to which the easement relates.

(3) The rights conferred by the easement must be exercised so as to minimise, as far as reasonably practicable, interference with the use and enjoyment of lots and common property in the strata titles scheme.

(4) For common property in a strata titles scheme there is an easement burdening the common property —

(a) for the subjacent and lateral support of every lot in the strata titles scheme capable of enjoying support; and

(b) if the scheme is a strata scheme —

(i) for the support and shelter by the parts of a scheme building within the common property of all other parts of the scheme building capable of enjoying support or shelter; and

(ii) for the projection over the common property by window sills, windows, window awnings, eaves, guttering and other minor parts of a scheme building within a lot.

(5) A strata company must not do anything or permit anything to be done that would interfere with rights under the easement burdening the common property under this section.

[Section 62 inserted: No. 30 of 2018 s. 83.]

[Former section 62 renumbered as section 69 and relocated to Part 5 Division 4: No. 30 of 2018 s. 84.]

[Former section 62A renumbered as section 70 and relocated to Part 5 Division 4: No. 30 of 2018 s. 84.]

63. Utility service easement

(1) An easement (a ***utility service easement***) exists for the benefit and burden of each lot and the common property in a strata titles scheme to the extent reasonably required for the provision of utility services to each lot and the common property.

(2) A utility service easement entitles the strata company, and the owner of a lot, in the strata titles scheme —

(a) to install and remove utility conduits; and

(b) to examine, maintain, repair, modify and replace utility conduits.

(3) The rights conferred by a utility service easement must be exercised so as to minimise, as far as reasonably practicable, interference with the use and enjoyment of lots and common property in the strata titles scheme.

(4) A strata company must not interfere or permit interference with utility conduits or a utility service provided by means of utility conduits in a way that may prejudice the use or enjoyment of a lot or the common property, other than —

(a) in the reasonable exercise of rights under a utility service easement of which it has the benefit; or

(b) in the performance of its function of controlling and managing common property in the scheme.

(5) An owner or occupier of a lot must not, either within or outside the lot, interfere or permit interference with utility conduits or a utility service provided by means of utility conduits in a way that may prejudice the use or enjoyment of another lot or the

common property in the strata titles scheme, other than in the reasonable exercise of rights under a utility service easement.

(6) A utility service easement has effect even if the lot benefited and the lot burdened have the same owner.

(7) In any dispute about the location of utility conduits under a utility service easement, the objective must be to resolve the matter fairly taking into account the options that are reasonably available to give effect to the easement.

(8) If, in the course of exercising rights under a utility service easement, the owner of a lot comes into possession of documents specifying the location of utility conduits or other information relating to utility conduits that ought reasonably to be kept by the strata company, the owner of the lot must ensure that the documents are provided to the strata company.

(9) If, in the course of exercising rights under a utility service easement, the strata company comes into possession of documents specifying the location of utility conduits or other information relating to utility conduits that ought reasonably to be kept by the strata company, the strata company must keep the documents.

[Section 63 inserted: No. 30 of 2018 s. 83.]

[Former section 63 renumbered as section 71 and relocated to Part 5 Division 4: No. 30 of 2018 s. 84.]

64. Common property (utility and sustainability infrastructure) easement

(1) This section applies if —

(a) a strata company has entered into a contract (an ***infrastructure contract***) with a person under which the person owns and operates utility infrastructure or sustainability infrastructure on common property in the strata titles scheme; and

(b) this section is applied to the infrastructure contract by ordinary resolution of the strata company.

(2) An infrastructure contract must —

(a) specify the common property over which there is an easement under this section; and

(b) specify the infrastructure to which the easement applies.

(3) The person (the ***infrastructure owner***) who, from time to time, owns the infrastructure the subject of an infrastructure contract has an easement over the common property specified in the infrastructure contract that entitles the infrastructure owner —

(a) to install and remove the infrastructure specified in the contract; and

(b) to operate that infrastructure; and

(c) to examine, maintain, repair, modify and replace that infrastructure.

(4) The easement is subject to any conditions set out in the infrastructure contract (as in force from time to time).

(5) The infrastructure contract may be varied by agreement between the strata company and the person who is the infrastructure owner from time to time.

(6) The easement ceases to exist if the infrastructure contract is terminated or otherwise ceases to have effect.

(7) The rights conferred by the easement must be exercised so as to minimise, as far as reasonably practicable, interference with the enjoyment and use of the common property.

(8) The regulations may —

(a) specify special procedures for notice or voting on the resolution required for the application of this section; and

(b) set out terms and conditions that are to be taken to be implied in an infrastructure contract; and

(c) otherwise regulate the rights and obligations of the strata company and the infrastructure owner.

[Section 64 inserted: No. 30 of 2018 s. 83.]

[Former section 64 renumbered as section 72 and relocated to Part 5 Division 4: No. 30 of 2018 s. 84.]

65. Entry under statutory easement

(1) A strata company has a right to enter the common property of its strata titles scheme to exercise its rights under a statutory easement without notice to any person.

(2) If a person needs to enter a lot or common property in order to exercise rights under a statutory easement (other than as set out in subsection (1)), the person must give notice —

(a) for entry to a lot — to the occupier of the lot; and

(b) for entry to common property other than special common property — to the strata company for the strata titles scheme; and

(c) for special common property — to the occupiers of the special lots who have exclusive use and enjoyment of, or special privileges over, the special common property under exclusive use by-laws.

(3) Notice is unnecessary—

(a) in an emergency if there is insufficient time to give notice; or

(b) for entry to a lot, if the occupier of the lot dispenses with the requirement for notice; or

(c) for entry to common property other than special common property if —

(i) the person has the right to enter and enters only for the purposes of inspection; or

(ii) the strata company dispenses with the requirement for notice;

or

(d) for entry to special common property — if the requirement for notice is dispensed with by the occupiers of the special lots.

(4) Notice must be given in the approved form.

(5) The length of the notice must be at least —

(a) for entry by a strata company — 7 days unless a shorter period is agreed to by the occupier of the lot; and

(b) in any other case — 28 days unless a shorter period is agreed to by the occupier of the lot or strata company, as the case requires.

(6) If notice is not given (in an emergency) or the period of the notice has expired and it is not possible for the person, or a person acting on behalf of the person, to gain entry without using force, the person wishing to enter may use such force as is reasonable in the circumstances.

(7) Rights of entry under a statutory easement include rights of entry by the person's agents, employees and contractors, with vehicles, equipment, materials and other items as reasonably necessary for the purpose of exercising rights under the easement.

[Section 65 inserted: No. 30 of 2018 s. 83.]

[Former section 65 renumbered as section 73 and relocated to Part 5 Division 4: No. 30 of 2018 s. 84.]

[Former section 65A renumbered as section 74 and relocated to Part 5 Division 4: No. 30 of 2018 s. 84.]

66. Rectification of damage

(1) Any damage caused to a lot or common property in the course of exercising rights under a statutory easement must be repaired

and made good as soon as practicable by the person exercising those rights.

(2) Subsection (1) does not apply to the extent that the damage was the result of an unreasonable act or omission on the part of the owner of the lot damaged or, in the case of damage to the common property, on the part of the strata company.

Note for this Division:

Schedule 2A sets out an additional statutory easement for single tier strata schemes.

[Section 66 inserted: No. 30 of 2018 s. 83.]

[Former section 66 renumbered as section 75 and relocated to Part 5 Division 4: No. 30 of 2018 s. 84.]

Division 4 — Rates, taxes and charges

[Heading inserted: No. 30 of 2018 s. 83.]

67. Registrar of Titles to deliver copies of plans

(1) Within 28 days after the registration of a scheme plan or an amendment of a scheme plan under this Act the Registrar of Titles must deliver a copy of the plan to —

(a) the Valuer-General; and

(b) each local government and other authority that appears to the Registrar to be authorised to levy rates or taxes in respect of the parcel or part of the parcel.

[(2) deleted]

(3) A copy of a plan or amended plan delivered under this section must be in such form as the Registrar considers appropriate.

[(4) deleted]

[Section 67, formerly section 60, inserted: No. 58 of 1995 s. 57(1)[7]*; amended: No. 14 of 1996 s. 4; No. 25 of 2012 s. 232(2); amended, renumbered as section 67 and relocated: No. 30 of 2018 s. 61 and 84.]*

[Former section 67 renumbered as section 76 and relocated to Part 5 Division 4: No. 30 of 2018 s. 84.]

68. Particulars on plan to be conclusive for rating and taxing purposes

For the making, levying, imposing, assessing or recovery of rates, charges or taxes in respect of a parcel or part of a parcel —

(a) the particulars shown in the copy of the scheme plan or amended plan delivered as required by section 67, is conclusive evidence of those particulars; and

(b) the production by a local government or any other authority authorised to levy rates and taxes in relation to the parcel or any part of the parcel of what purports to be the copy of the plan or amended plan so delivered is evidence that it is the copy so delivered.

[Section 68, formerly section 61, amended: No. 58 of 1995 s. 58; No. 14 of 1996 s. 4; amended, renumbered as section 68 and relocated: No. 30 of 2018 s. 62 and 84.]

69. Rating for strata schemes

(1) If the Valuer-General values the unimproved value of a parcel subdivided by a strata scheme under the *Valuation of Land Act 1978* for rating and taxing purposes, the parcel must, despite that or any other Act, be valued as a single parcel of land and as if it were owned by a single owner.

(2) For the purposes of any such valuation as is referred to in subsection (1) and all purposes incidental to the valuation, including objection to and review of the valuation, but not otherwise, the parcel and improvements on the parcel are taken to be owned by the strata company only.

(3) During the period from the registration of the strata scheme and until a valuation of the parcel on the basis that the strata company is owner comes into force under the *Valuation of Land*

Act 1978, the valuation then in force is taken, for the purposes of this section, to be a valuation of the parcel made by the Valuer-General as if the strata company is owner.

(4) Subject to subsection (5), if a local government or other authority (the rating authority) authorised to make and levy rates on the parcel, uses a valuation of the unimproved value of the parcel made by the Valuer-General on the basis that the strata company is owner, the following provisions have effect —

(a) the unimproved value of the parcel shown in the valuation must be apportioned by the local government or the rating authority, as the case may be, between the lots comprised in the parcel in proportion to the unit entitlements of the respective lots in the strata scheme;

(b) the strata company is not liable in relation to the parcel for any rate made and levied by the local government or the rating authority, as the case may be;

(c) the owner of each lot comprised in the parcel is taken to be the owner in fee simple in possession of the lot as if it were a separate parcel of land having a value equal to that apportioned to it under paragraph (a) and is, subject to any exemptions or concessions that may be applicable, liable accordingly for any rate made and levied by the local government or the rating authority, as the case may be, on the owners of land.

(5) If —

(a) part only of a lot is liable to any rate, that rate must be made and levied on an amount that bears the same proportion to the value of the lot as the rental value of the part so liable bears to the rental value of the lot; and

(b) part of a parcel is rateable in respect of water, sewerage or drainage services, then the rateable value of that part is to be the value of the parcel after deducting the value of any lot assessed and rated separately and in which the

water, sewerage or drainage service, as the case may be, is exclusively for the use and benefit of the lot.

[Section 69, formerly section 62, amended: No. 58 of 1995 s. 59 and 95; No. 14 of 1996 s. 4; No. 55 of 2004 s. 1123; amended, renumbered as section 69 and relocated: No. 30 of 2018 s. 63 and 84.]

[69A-69E. *Deleted: No. 30 of 2018 s. 82(b).]*

70. Rating for survey-strata schemes

(1) This section applies to the determination of the unimproved value of land in a survey-strata scheme by the Valuer-General under the *Valuation of Land Act 1978* for rating and taxing purposes.

(2) Each lot in a survey-strata scheme must be valued as a separate parcel of land and the strata company is not liable for a rate made and levied by the local government or the rating authority, as the case may be, in respect of the lot.

(3) In valuing a lot in a survey-strata scheme the Valuer-General must take into account benefits and disadvantages applicable to the lot as part of a survey-strata scheme.

(4) If part only of a lot is liable to a rate, that rate must be made and levied on an amount that bears the same proportion to the value of the lot as the rental value of the part so liable bears to the rental value of the lot.

[Section 70, formerly section 62A, inserted: No. 58 of 1995 s. 60; amended: No. 57 of 1997 s. 115(4); amended, renumbered as section 70 and relocated: No. 30 of 2018 s. 64 and 84.]

[70A, 70B. *Deleted: No. 30 of 2018 s. 82(b).]*

71. Rating on gross rental value

(1) If the Valuer-General values the gross rental value of a parcel under the *Valuation of Land Act 1978* for rating and taxing

purposes, each lot of the parcel must, despite that or any other Act, be valued separately as a single lot.

(2) Subject to subsection (3), if a local government or other authority (the rating authority) authorised to make and levy rates on the parcel uses a valuation of the gross rental value of the lots of the parcel —

(a) the strata company is not liable in relation to the parcel or any lot for a rate made and levied by the local government or the rating authority, as the case may be; and

(b) the owner of each lot comprised in the parcel is, subject to any exemptions or concession that may be applicable, liable for a rate made and levied by the rating authority.

(3) If part only of a lot is liable to a rate, that rate must be made and levied on an amount that bears the same proportion to the value of the lot as the rental value of the part so liable bears to the rental value of the lot.

[Section 71, formerly section 63 amended: No. 14 of 1996 s. 4; amended, renumbered as section 71 and relocated: No. 30 of 2018 s. 65 and 84.]

72. Owner may seek a review of unimproved value of parcel

(1) Despite section 69(2) and without prejudice to the rights of objection and review conferred on the strata company, if the Valuer-General values the unimproved value of a parcel under the *Valuation of Land Act 1978* for rating and taxing purposes, each owner of a lot within the parcel is entitled to object to and seek a review of the valuation of the parcel in accordance with Part IV of the *Valuation of Land Act 1978* as if that owner were a person liable to pay a rate or tax assessed in respect of the parcel.

(2) On receiving an objection to the valuation of a parcel made by the owner of a lot within the parcel under subsection (1), the Valuer-General —

(a) must inform the strata company of the objection and the grounds on which it has been made; and

(b) may consolidate the objection with any other objection made in respect of the same valuation of that parcel and may deal with the objections together.

[Section 72, formerly section 64, amended: No. 55 of 2004 s. 1124; amended, renumbered as section 72 and relocated: No. 30 of 2018 s. 66 and 84.]

73. Land tax and metropolitan region improvement tax: strata schemes

For all purposes in relation to the imposition, assessment or recovery of land tax or metropolitan region improvement tax in respect of a parcel subdivided by a strata scheme, the following provisions have effect —

(a) the unimproved value of the parcel shown in the valuation must be apportioned by the Commissioner of State Revenue between the lots comprised in the parcel in proportion to the unit entitlements of the respective lots;

(b) the strata company is not liable in respect of the parcel for land tax or metropolitan region improvement tax;

(c) for the purposes of the *Land Tax Assessment Act 2002* and the *Planning and Development Act 2005*, and subject to any concessions or exemptions that may be applicable, each lot is taken to be a separate parcel of land with an unimproved value equal to that apportioned to it under paragraph (a).

[(2) deleted]

[Section 73, formerly section 65, amended: No. 58 of 1995 s. 61; No. 45 of 2002 s. 23(2) and (3); No. 38 of 2005 s. 15; amended, renumbered as section 72 and relocated: No. 30 of 2018 s. 67 and 84.]

74. Land tax and metropolitan region improvement tax: survey-strata schemes

(1) This section applies to the imposition, assessment or recovery of land tax or metropolitan region improvement tax under the *Land Tax Assessment Act 2002* and the *Planning and Development Act 2005* in respect of the land in a survey-strata scheme.

(2) For the purposes referred to in subsection (1) —

(a) each lot must be treated as a separate parcel of land, with an unimproved value as determined under section 70, but subject to any concessions or exemptions that may be applicable; and

(b) the strata company is not liable for land tax or metropolitan region improvement tax in respect of the lot.

[(c) deleted]

[Section 74, formerly section 65A, inserted: No. 58 of 1995 s. 62; amended: No. 45 of 2002 s. 23(4); No. 38 of 2005 s. 15; amended, renumbered as section 74 and relocated: No. 30 of 2018 s. 68 and 84.]

75. Charges for water supplied

If, in relation to a strata titles scheme, an authority (including a licensee within the meaning given in the *Water Services Act 2012* section 3(1)) provides 1 water supply connection to the parcel and the quantity of water used by each lot is not measured, the charges that may become payable according to the quantity of water used are payable by and may be recovered by the authority from the strata company.

[Section 75, formerly section 66, amended: No. 24 of 1987 s. 166; No. 58 of 1995 s. 96; No. 25 of 2012 s. 232(3); amended, renumbered as section 75 and relocated: No. 30 of 2018 s. 69 and 84.]

76. Water service charges under the *Water Services Act 2012*

For the purposes of this Division —

(a) a statutory water service charge (within the meaning given in the *Water Services Act 2012* section 71(1)) that applies in respect of land is taken to be a rate made and levied by an authority (that is, the licensee to whom the charge is payable); and

(b) the licensee is taken to be an authority authorised to make and levy the rate on the land.

[Section 76, formerly section 67, inserted: No. 25 of 2012 s. 232(4); amended and renumbered as section 76: No. 30 of 2018 s. 70 and 84.]

Part 6 — Scheme developer

[Heading inserted: No. 30 of 2018 s. 83.]

77. First statutory general meeting

(1) The scheme developer of the initial subdivision of land by registration of a strata titles scheme must, within 3 months after registration of the scheme, convene a general meeting of the strata company for the scheme.

(2) The scheme developer must do so even if the scheme developer is no longer a member of the strata company and even if there are no other members of the strata company.

(3) If there is another member of the strata company, a member of the strata company may convene the meeting if the scheme developer fails to do so.

(4) The first statutory general meeting is to be conducted as an annual general meeting of the strata company and the obligations that would usually fall on the strata company fall instead on the scheme developer.

(5) The person who convenes the meeting is to preside at the meeting or nominate someone to preside at the meeting.

[Section 77 inserted: No. 30 of 2018 s. 83.]

*[**77A.** Deleted: No. 55 of 2004 s. 1127.]*

*[**77B.** Deleted: No. 30 of 2018 s. 82(b).]*

78. Key documents

(1) The scheme developer of a subdivision of land by a strata titles scheme must ensure that —

(a) all the key documents for the subdivision that come into the possession or control of the scheme developer are retained; and

(b) all the key documents for the subdivision that the scheme developer possesses or controls are given to the strata company —

(i) at the first general meeting of the strata company following the subdivision; or

(ii) if the key document comes into the possession or control of the scheme developer after that meeting — as soon as reasonably practicable after it comes into the possession or control of the scheme developer.

(2) The scheme developer is bound by this section whether or not the scheme developer is the owner of a lot in the strata titles scheme when the general meeting is held.

[Section 78 inserted: No. 30 of 2018 s. 83.]

79. Disclosure of remuneration and other benefits

(1) This section applies to the following —

(a) a contract for the provision of services or amenities to the strata company or to members of the strata company entered into or arranged by a scheme developer for the subdivision or by the strata company;

(b) any other contract that binds the strata company;

(c) a lease or licence of the common property of the strata titles scheme.

(2) A scheme developer of a subdivision of land by a strata titles scheme must disclose in writing to the strata company for the scheme the following for each contract, lease or licence to which this section applies —

(a) details of any remuneration or other benefit (including savings connected with installation or commissioning of infrastructure for the provision of services under the contract) that the scheme developer or an associate of the scheme developer has received or has a reasonable

expectation of receiving arising out of the contract, lease or licence;

(b) details of any other direct or indirect pecuniary interest that the scheme developer or an associate of the scheme developer has in the contract, lease or licence, other than as a member of the strata company.

(3) The disclosure —

(a) must be made as soon as reasonably practicable after the scheme developer becomes aware of the facts giving rise to the requirement to disclose; and

(b) must include information as to the value of the remuneration or other benefit.

[Section 79 inserted: No. 30 of 2018 s. 83.]

80. Defects in scheme buildings or infrastructure

(1) On establishment of a strata company for a strata scheme, the strata company is subrogated to all the rights and remedies of the scheme developer in respect of —

(a) in a strata scheme — each scheme building; and

(b) in a strata scheme or survey-strata scheme — infrastructure comprising common property of the scheme.

(2) If, within 10 years after completion of a scheme building or infrastructure comprising common property of a strata titles scheme, a proposed resolution is put to a strata company about a defect in the scheme building or infrastructure, a member of the strata company must be excluded from voting on the resolution if the member is —

(a) the scheme developer of a subdivision of land by the strata titles scheme in which the building was constructed or modified; or

(b) an associate of such a person.

(3) If a member is excluded under subsection (2), the unit entitlement of the lot of the member must be disregarded in determining whether the proposed resolution is passed as a resolution of the strata company.

[Section 80 inserted: No. 30 of 2018 s. 83.]

[Former Division 2A (s. 80A-80E) deleted: No. 55 of 2004 s. 1129.]

81. Contracting out prohibited

(1) A contract or any other agreement or arrangement is of no effect to the extent that it purports to exclude or restrict the operation of this Part.

(2) A purported waiver of a right, remedy or benefit conferred on a person under this Part is of no effect.

[Section 81 inserted: No. 30 of 2018 s. 83.]

Part 7 — Lot owners and occupiers

[Heading inserted: No. 30 of 2018 s. 83.]

Division 1 — General

[Heading inserted: No. 30 of 2018 s. 83.]

82. Offence to contravene restricted use condition

An owner or occupier of a lot in a strata titles scheme commits an offence if the owner or occupier uses, or permits to be used, an area or space in a manner that contravenes a restricted use condition set out on the scheme plan for the scheme.

Penalty for this subsection:

(a) a fine of $10 000;

(b) a daily penalty of a fine of $1 000 for each day or part of a day during which the offence continues.

[Section 82 inserted: No. 30 of 2018 s. 83.]

83. Use and enjoyment

The owner or occupier of a lot must not use, or permit the use of, the lot or common property of the strata titles scheme in a way that interferes unreasonably with the use or enjoyment of another lot or the common property by a person who is lawfully on the lot or common property.

[Section 83 inserted: No. 30 of 2018 s. 83.]

84. Insurance for lot

(1) The owner of a lot in a strata titles scheme may enter into a contract of insurance (a ***contract of mortgage insurance***) against damage to or destruction of the lot or a building or other improvement on the lot for an amount equal to the amount secured by mortgages of the lot at the date of any loss referred to in the contract.

(2) If a contract of mortgage insurance is in force —

(a) payment must be made by the insurer under the contract to the mortgagees whose interests are noted in the contract in order of their respective priorities, subject to the terms and conditions of the contract; and

(b) subject to the terms and conditions of the contract, the insurer is liable to pay the lesser of the following —

(i) the value stated in the contract; or

(ii) the amount of the loss; or

(iii) the amount sufficient, at the date of the loss, to discharge mortgages of the lot;

and

(c) if the amount so paid by the insurer equals the amount necessary to discharge a mortgage of the lot, the insurer is entitled to an assignment of that mortgage; and

(d) if the amount so paid by the insurer is less than the amount necessary to discharge a mortgage of the lot, the insurer is entitled in order to secure the amount so paid to have the mortgage transferred to the insurer and the mortgagee as tenants in common in undivided shares proportional to the amount paid by the insurer and the balance necessary to discharge the mortgagee's interest.

(3) A contract of mortgage insurance is not liable to be brought into contribution with any other such contract of mortgage insurance unless both contracts cover the same lot and relate to the same mortgage debt.

(4) Nothing in this Act limits the right of the owner of a lot to effect insurance for the lot.

[(5) deleted]

[Section 84, formerly section 57, amended, renumbered as section 84 and relocated: No. 30 of 2018 s. 60 and 84.]

85. Person to act for lot owner in certain circumstances

(1) If the owner of a lot in a strata titles scheme cannot be located after reasonable enquiry or the owner lacks the capacity to vote or consent to a matter under this Act, an application for an order under this section may be made to the Tribunal by the strata company or a person who the Tribunal considers has a proper interest in the matter.

(2) The Tribunal may, on an application under this section, by order —

(a) dispense with the requirement for the owner to vote or consent on a particular matter; or

(b) authorise the Public Trustee under the *Public Trustee Act 1941* or another specified person (with that person's consent) to exercise all or specified powers of the person under this Act as the owner of a lot.

[Section 85 inserted: No. 30 of 2018 s. 83.]

Division 2 — Structural alteration of lots

Note for this Division:

This Division does not derogate from the requirement for subdivision approval if the definition of a lot is modified.

[Heading and Note inserted: No. 30 of 2018 s. 83.]

86. Terms used in this Division

In this Division —

structural alteration of a lot means —

(a) the erection of a structure within the lot; or

(b) an alteration of a structural kind to, or extension of, a structure within the lot;

structure includes anything classified as a structure by the regulations.

[Section 86 inserted: No. 30 of 2018 s. 83.]

87. Structural alteration of lot in strata scheme

(1) The owner of a lot in a 2-lot scheme that is a strata scheme must not cause or permit the structural alteration of the lot except with the prior written approval of —

(a) the owner of the other lot; and

(b) for a leasehold scheme, the owner of the leasehold scheme.

(2) The owner of a lot in a strata scheme, other than a 2-lot scheme, must not cause or permit the structural alteration of the lot except —

(a) with the prior approval, expressed by resolution without dissent, of the strata company and, for a leasehold scheme, the prior written approval of the owner of the leasehold scheme; or

(b) if —

(i) the prior written approval to the structural alteration has been given by the owner of each lot in the scheme, and, for a leasehold scheme, the owner of the leasehold scheme; and

(ii) all approvals are either unconditional or are subject to the same conditions; and

(iii) a copy of each approval is served on the strata company.

(3) If an application is made under this section for approval for the structural alteration of a lot, the owner of any other lot in the strata scheme or the owner of the leasehold scheme may refuse to give approval on a ground permitted by subsection (5), but not otherwise.

(4) If an application is made to a strata company under this section —

(a) notice of the proposed resolution on the application must contain or be accompanied by a statement, in the

approved form, of the effect of paragraphs (c) and (d); and

(b) if a vote on the resolution is taken at a general meeting, the chairperson must, before the vote is taken, read out the statement referred to in paragraph (a); and

(c) the vote for a lot may be cast —

(i) against a resolution to approve the application; or

(ii) in support of a resolution to refuse approval of the application,

on a ground permitted by subsection (5), but not otherwise; and

(d) a vote referred to in paragraph (c) is of no effect unless the person casting the vote discloses as a ground for the person's vote 1 or more of the grounds permitted by subsection (5).

(5) The grounds on which approval may be refused are —

(a) that the carrying out of the proposal will breach the plot ratio restrictions or open space requirements for the lot; or

(b) in the case of a lot that is not a vacant lot, that the carrying out of the proposal —

(i) will result in a structure that is visible from outside the lot and that is not in keeping with the rest of the development; or

(ii) may affect the structural soundness of a building; or

(iii) may interfere with a statutory easement;

or

(c) any other ground specified in the regulations.

[(6) deleted]

[Section 87, formerly section 7, inserted: No. 58 of 1995 s. 13; amended, renumbered as section 87 and relocated: No. 30 of 2018 s. 10 and 84.]

88. Structural alteration of lot in survey-strata scheme

(1) The owner of a lot in a 2-lot scheme that is a survey-strata scheme must not cause or permit the structural alteration of the lot if, on completion of the work, the structures on the lot will not conform to plot ratio restrictions or open space requirements for the lot, except with the prior written approval of —

(a) the owner of the other lot; and

(b) for a leasehold scheme, the owner of the leasehold scheme.

(2) The owner of a lot in a survey-strata scheme, other than a 2-lot scheme, must not cause or permit the structural alteration of the lot if, on completion of the work, the structures on the lot will not conform to plot ratio restrictions or open space requirements for the lot, except with —

(a) the prior approval of the strata company, expressed by resolution without dissent; and

(b) for a leasehold scheme, the prior written approval of the owner of the leasehold scheme.

[Section 88 inserted: No. 30 of 2018 s. 83.]

89. Approvals and objections to structural alterations

(1) An application for the approval of the structural alteration of a lot must set out details of the proposal and such other information as may be prescribed.

(2) If an application is made to a strata company under subsection (1), voting on the application must open within 35 days after the application is received (the ***allowed period***).

(3) If voting on the application does not open as required by subsection (2), the applicant may convene a general meeting, in the same manner as nearly as possible as that in which meetings are to be convened by the council, and submit the application to that meeting.

(4) Despite subsection (2), a council may submit an application to a general meeting convened by the council after the allowed period if that meeting is held before a meeting is convened by the applicant under subsection (3).

(5) The owner of a lot or the owner of a leasehold scheme is taken to have approved the structural alteration of a lot as set out in an application for approval served on the owner if —

(a) the owner serves on the applicant written consent to the alteration; or

(b) the owner has not, at the end of 42 days after being given the application, made a written objection to the alteration; or

(c) for a strata scheme, the owner has made such an objection but the objection does not specify the grounds of the objection or the grounds specified are not grounds on which the owner may object under section 87.

(6) A strata company is taken to have approved the structural alteration of a lot as set out in an application for approval served on the strata company if —

(a) the strata company serves on the applicant written consent to the alteration expressed by resolution without dissent; or

(b) despite section 87(2) —

(i) the strata company has not, at the end of 77 days after being given the application, made a written objection to the alteration; or

(ii) for a strata scheme, the strata company has made such an objection but the objection does not

specify the grounds of the objection or the grounds specified are not grounds on which members of the strata company may object under section 87.

[(7) deleted]

[Section 89, formerly section 7B, inserted: No. 58 of 1995 s. 13; amended, renumbered as section 89 and relocated: No. 30 of 2018 s. 11 and 84.]

90. Order dispensing with approval for structural alteration of lot

(1) The Tribunal may, on the application of an owner of a lot in a strata titles scheme, by order, exempt a particular structural alteration to the lot from the application of this Division.

(2) An order may be made under this section —

(a) whether or not the necessary approval for the alteration has been sought; and

(b) even if there has been a valid refusal to give the necessary approval.

(3) An order can only be made under this section if the Tribunal is satisfied —

(a) that the structural alteration of the lot is reasonable, having regard to the merits of the alteration and the interests of all of the owners of the lots in the use and enjoyment of their lots and the common property; and

(b) to the extent that the structural alteration has already been carried out, it will not cause any significant inconvenience or detriment to the owners of other lots.

[Section 90 inserted: No. 30 of 2018 s. 83.]

Part 8 — Strata company

[Heading inserted: No. 30 of 2018 s. 83.]

Division 1 — Functions

[Heading inserted: No. 30 of 2018 s. 83.]

Subdivision 1 — Property

[Heading inserted: No. 30 of 2018 s. 83.]

91. General duty

(1) A strata company must —

[(a) deleted]

(b) control and manage the common property for the benefit of all the owners of lots; and

(c) keep in good and serviceable repair, properly maintain and, if necessary, renew and replace —

(i) the common property, including the fittings, fixtures and lifts used in connection with the common property; and

(ii) any personal property owned by the strata company,

and to do so whether damage or deterioration arises from fair wear and tear, inherent defect or any other cause.

[(d)-(k) deleted]

(2) A strata company may improve or alter the common property in a manner that goes beyond what is required under subsection (1).

Note for this subsection:

Expenditure above a certain amount incurred for the purposes set out in subsection (2) must be authorised by special resolution, except for expenditure on sustainability infrastructure, which may be authorised by ordinary resolution: see section 102.

(3) A strata company may sue and be sued for rights and liabilities related to the common property in the strata titles scheme as if it were the owner and occupier of the common property.

[Section 91, formerly section 35, amended: No. 58 of 1995 s. 37, 94 and 95; No. 14 of 1996 s. 4; amended, renumbered as section 91 and relocated: No. 30 of 2018 s. 47 and 84.]

92. Temporary common property

(1) A strata company may, by resolution without dissent, for the purpose of creating temporary common property —

(a) for a freehold scheme — accept a lease of a lot in the scheme or of land that is contiguous to the parcel or separated only by a road, railway or waterway; and

(b) for a leasehold scheme — accept a lease (that expires on or before the expiry day for the scheme) of a lot in the scheme or of land that is contiguous to the parcel or separated only by a road, railway or waterway.

(2) Except as provided in the regulations, the land that is leased must not be subject to a designated interest.

(3) A strata company may, by resolution without dissent (made with the concurrence of the lessor if required under the lease), surrender a lease accepted by it under this section.

(4) If a resolution is passed under this section, the strata company may enter into the necessary transaction in its own name.

[Section 92 inserted: No. 30 of 2018 s. 83.]

93. Transactions affecting common property or parcel

(1) Subject to subsection (3), a strata company may enter into a transaction to which this section applies and execute documents related to the transaction in its own name, as if —

(a) for a freehold scheme — it were the owner of an estate in fee simple in the land; or

(b) for a leasehold scheme — it were the owner of a leasehold estate in the land under a registered lease that expires on the expiry day for the scheme.

(2) This section applies to the following transactions for a strata titles scheme —

(a) the acceptance of a transfer of land that —

(i) is contiguous to the parcel or separated only by a road, railway or waterway; and

(ii) is not subject to a mortgage or other encumbrance; and

(iii) is to be added to the common property in the scheme in connection with a subdivision that is to be given effect by registration of an amendment of the scheme;

(b) the disposal of land comprising common property (other than temporary common property) in the scheme in connection with a subdivision that is to be given effect by registration of an amendment of the scheme;

(c) a lease of common property in the scheme;

(d) the surrender of or re-entry under a lease of common property in the scheme;

(e) the execution, acceptance, discharge or surrender of an easement or restrictive covenant burdening or benefiting the parcel.

(3) The strata company may enter into a transaction to which this section applies if —

(a) the transaction is authorised by a resolution without dissent; or

(b) the transaction is required for completion of a stage of subdivision to which staged subdivision by-laws apply and the subdivision has been undertaken with sufficient

compliance with the by-laws as determined in accordance with the regulations.

Note for this subsection:

Staged subdivision by-laws cannot apply to subdivision comprised of the removal, from the parcel, of land comprised of common property or the addition, to the parcel, of land from outside the parcel. Consequently, paragraph (b) can only apply in the context of a type 1 subdivision comprised of the conversion of a lot to common property or a type 3 or type 4 subdivision.

(4) This section does not affect the making of an exclusive use by-law by the strata company.

(5) The *Property Law Act 1969* section 121 does not apply to a right, arising from an instrument executed under this section, to access or to the use of light or air.

[Section 93 inserted: No. 30 of 2018 s. 83.]

94. Power of strata company to carry out work

(1) If a notice issued, or order made, under a written law has been served on the owner of a lot requiring that owner to carry out any work on or in relation to that lot and the notice or order is not complied with, the strata company may carry out the work.

(2) A strata company may carry out work that an owner or occupier of a lot fails or neglects to carry out if the work is —

(a) required to be carried out by that person under a term or condition of exclusive use by-laws; or

(b) necessary to remedy a contravention of a duty that the person has under a statutory easement.

(3) If an owner or occupier of a lot fails or neglects to carry out work on or in relation to that lot required to be carried out by order of a court or tribunal, the strata company may carry out the work specified in the order.

(4) If the strata company carries out work under subsection (1), other than work performed for the benefit of the scheme

building generally, or under subsection (2), it may recover the cost of so doing, as a debt in a court of competent jurisdiction —

(a) from the owner or occupier referred to in subsection (1) or (2); or

(b) if the work is carried out under —

(i) subsection (1), from a person who, after the work is carried out, becomes the owner of the lot on or in relation to which the work was carried out; or

(ii) subsection (2), from a person who, after the work is carried out, becomes the owner of the lot referred to in subsection (2).

(5) If an order has been made to which subsection (3) refers and the order is not complied with, the strata company may recover from the person against whom the order was made the cost of carrying out the work, as a debt in a court of competent jurisdiction.

(6) If any part of a scheme building comprised in a lot contains a structural defect which affects or is likely to affect the support or shelter provided by that lot for another lot in that building or the common property and the defect is not due to any contravention of a duty that a person has under a statutory easement, the strata company may, at its own expense, carry out such work as is necessary to rectify the defect.

[Section 94, formerly section 38, amended: No. 14 of 1996 s. 4; No. 55 of 2004 s. 1119; amended, renumbered as section 94 and relocated: No. 30 of 2018 s. 51 and 84.]

95. Power of strata company to enter any part of parcel

(1) A strata company may enter any part of the parcel for the purpose of —

(a) carrying out work that the strata company is required or permitted to carry out under this Act; or

(b) carrying out work that the strata company is required to carry out under an order of a court or tribunal; or

(c) carrying out work that the strata company is required to carry out under a notice issued, or other order made, under any other written law; or

(d) inspecting that part or any other part of the parcel; or

(e) ascertaining whether scheme by-laws or this Act has been, or is being, complied with.

(2) Sections 65 and 66 apply to entry to common property or a lot by a strata company under this section as if the strata company were exercising rights under a statutory easement.

(3) A person must not obstruct or hinder a person exercising a power under this section.

[Section 95 inserted: No. 30 of 2018 s. 83.]

96. Recovery of records, keys and property

(1) A strata company may give written notice to a person requiring the person to deliver all records, keys or other property of the strata company in the person's possession or control to a specified person within a specified period (being a period that is reasonable in the circumstances).

(2) A person commits an offence if the person fails, without reasonable excuse to deliver property in the person's possession or control as required by the notice.

Penalty for this subsection: a fine of $3 000.

(3) A person cannot exercise any claim or lien against or on the property of a strata company that the person is required, under this section, to deliver to the strata company.

[Section 96 inserted: No. 30 of 2018 s. 83.]

Subdivision 2 — Insurance

[Heading inserted: No. 30 of 2018 s. 83.]

97. Required insurance

(1) A strata company must ensure that the following insurance is in place for the strata titles scheme —

(a) all insurable assets of the scheme must be insured against fire, storm and tempest (excluding damage by sea, flood or erosion), lightning, explosion and earthquake —

(i) to replacement value; or

(ii) to replacement value up to, for an event of a specified kind, a maximum amount specified in the contract of insurance that is a reasonable limitation in the circumstances;

and

(b) the strata company must be insured against damage to property, death, bodily injury or illness for which the strata company could become liable in damages to an amount of not less than $10,000,000 or, if some other amount is determined under the regulations, that amount.

Note for this subsection:

1. The owner of a lot in a survey-strata scheme is responsible for insurance of the kind referred to in paragraph (a) for infrastructure on the lot.
2. The owner of a lot is responsible for insurance of the kind referred to in paragraph (b) for damages for which the owner could become liable.

(2) However, if a strata company has taken all reasonably practicable steps available to it to obtain the required insurance but no insurer is willing to enter into a contract of insurance on reasonable terms that meets the requirements, the strata company must obtain whatever insurance it can obtain on reasonable terms that most closely meets the requirements.

(3) The Tribunal may, on application by a strata company, exempt it from compliance with this section subject to conditions specified in the exemption.

(4) A strata company may enter into a contract of insurance relating to the insurable assets of its strata titles scheme and execute documents relating to the contract in its own name, as if it were the owner of the assets.

(5) Subject to subsection (6), if a strata company receives money from an insurer in the event of damage to or destruction of an insurable asset of the strata titles scheme, that money must be applied by the strata company in rebuilding, replacing, repairing or restoring the insurable asset so far as that may lawfully be done.

(6) Subsection (5) does not apply if —

(a) the strata titles scheme is a survey-strata scheme; and

(b) the strata company passes a resolution without dissent —

(i) determining that a specified part or all of the money is not to be used for the purposes of rebuilding, replacing, repairing or restoring the insurable asset of the strata titles scheme; and

(ii) specifying how that money is to be distributed amongst members of the strata company or used;

and

(c) the insurable asset of the strata titles scheme or, if the insurable asset has been destroyed or removed, the area affected by the damage or destruction, is left in a safe condition.

(7) Nothing in this section derogates from —

(a) any other requirement imposed on a strata company to obtain insurance (for example, for workers' compensation or by resolution of the strata company); or

(b) the power of the strata company to obtain other insurance in its capacity as a body corporate.

Note for this section:

Schedule 2A contains special provisions for a single tier strata scheme for the required insurance.

[Section 97 inserted: No. 30 of 2018 s. 83.]

98. Notice to member of strata company

(1) If it is reasonably necessary in order for a strata company to obtain the required insurance on reasonable terms, the strata company may give written notice to a member of the strata company requiring the member to do 1 or more of the following —

(a) to take specified action within a specified period;

(b) to refrain from taking specified action;

(c) to pay a specified amount to the strata company within a specified period, being an amount equal to that part of the premium payable by the strata company for the required insurance attributable solely to the risk associated with something within the member's control.

(2) A member of a strata company given such a notice may negotiate with the strata company to take some step other than that specified in the notice to enable the required insurance to be obtained by the strata company on reasonable terms.

(3) The strata company must negotiate with the member with a view to achieving a fair and reasonable outcome.

[Section 98 inserted: No. 30 of 2018 s. 83.]

99. Member may obtain required insurance

(1) If a strata company fails to comply with section 97, a member of the strata company may effect and maintain, in the name of the strata company, such insurance as the strata company ought to effect and maintain under that section.

(2) Costs incurred by a member of a strata company under subsection (1) may be recovered, on application to the Tribunal, as a debt owed to the member by the strata company.

(3) A member of a strata company may accept, at the option of the member, a credit against contributions or other amounts owed by the member to the strata company in full or partial satisfaction of the amount owed under subsection (2).

[Section 99 inserted: No. 30 of 2018 s. 83.]

*[**99A.** Deleted: No. 30 of 2018 s. 82(b).]*

Subdivision 3 — Financial management

[Heading inserted: No. 30 of 2018 s. 83.]

100. Administrative and reserve funds and contributions

(1) A strata company must —

(a) establish a fund (an ***administrative fund***) for administrative expenses that is sufficient in the opinion of the strata company for the control and management of the common property, for the payment of any premiums of insurance and the discharge of any other obligation of the strata company; and

(b) determine the amounts to be raised for payment into the administrative fund; and

(c) raise amounts so determined by levying contributions on owners of lots —

(i) in proportion to the unit entitlements of their respective lots; or

(ii) if the scheme by-laws provide for a different basis for levying contributions, in accordance with that basis;

and

(d) recover from the owner of a lot, by action in a court of competent jurisdiction if necessary, any sum of money expended by the company for repairs or work done by it or at its direction in complying with a notice issued, or order made, under a written law in respect of the lot.

[(1a) deleted]

(2) A strata company must, if it is a designated strata company, and may, in any other case —

(a) establish a fund (a ***reserve fund***) for the purpose of accumulating funds to meet contingent expenses, other than those of a routine nature, and other major expenses of the strata company likely to arise in the future; and

(b) determine the amounts to be raised for payment into the reserve fund; and

(c) may raise amounts so determined by levying contributions on the owners in proportion to the unit entitlements of their respective lots.

(2A) A designated strata company must ensure —

(a) that there is a 10 year plan that sets out —

(i) the common property and the personal property of the strata company that is anticipated to require maintenance, repair, renewal or replacement (other than of a routine nature) in the period covered by the plan; and

(ii) the estimated costs for the maintenance, repairs, renewal or replacement; and

(iii) other information required to be included by the regulations;

and

(b) that the 10 year plan is revised at least once in each 5 years and that, when revised, the plan is extended to cover the 10 years following the revision.

(3) Except in so far as and to the extent that the scheme by-laws may empower the council of that company to exercise the functions in subsections (1)(a), (b) and (c) and (2), those functions must be performed by and in accordance with resolutions passed by the strata company.

(4) Any contribution levied under this section —

(a) becomes due and payable to the strata company in accordance with the terms of the decision to make the levy; and

(b) if not paid when it becomes due and payable, bears interest on the amount unpaid at the rate of simple interest specified in the regulations, unless the company determines (either generally or in a particular case) that an unpaid contribution bears no interest or interest at a lesser rate; and

(c) including interest accrued under paragraph (b), may be recovered as a debt by the strata company in a court of competent jurisdiction and the strata company may agree to a compromise of such a debt.

(5) Interest paid or recovered under subsection (4) or (6) forms part of the fund to which the contribution belongs.

(6) The owner of a lot is liable in respect of any contribution levied under this section and any interest on the contribution, jointly and severally with any person who was liable to pay that contribution and interest when that owner became the owner of that lot, to pay so much of that contribution and interest as was unpaid when the owner became the owner of that lot.

(7) In this section —

designated strata company means —

(a) a strata company for a scheme with 10 or more lots; or

(b) a strata company included in this definition by the regulations.

[Section 100, formerly section 36, amended: No. 58 of 1995 s. 39; No. 14 of 1996 s. 4; amended, renumbered as section 100 and relocated: No. 30 of 2018 s. 49 and 84.]

101. Accounting records and statement of accounts

(1) A strata company must keep proper accounting records of its income and expenditure.

(2) A strata company must prepare a statement of accounts for each financial year showing —

(a) the assets and liabilities of the strata company at the end of the financial year; and

(b) the income and expenditure of the strata company for the financial year.

[Section 101 inserted: No. 30 of 2018 s. 83.]

102. Budget

(1) A strata company must prepare a budget for each financial year and submit it for approval to its annual general meeting.

(2) The budget must be prepared —

(a) taking into account, if applicable, the 10 year plan for the reserve fund; and

(b) in accordance with any requirements set out in the regulations and the scheme by-laws.

(3) The strata company may, by ordinary resolution at its annual general meeting or at a subsequent general meeting, approve a budget with or without modification.

(4) The strata company may, by ordinary resolution, vary its approved budget.

(5) If a budget or a variation of a budget provides for expenditure on common property under section 91(2) (other than

expenditure on sustainability infrastructure) exceeding an amount determined under the regulations —

(a) information regarding that expenditure must be provided to the members of the strata company as required by the regulations; and

(b) the budget or variation must be approved by special resolution.

(6) A strata company must not make any expenditure that is not authorised by an approved budget except for expenditure as follows —

(a) expenditure of an amount not exceeding, in a financial year, for each lot in the strata titles scheme —

(i) the amount fixed by the strata company by special resolution; or

(ii) if the strata company has not fixed the amount by special resolution, the amount fixed by the regulations;

(b) expenditure (not being of the kind referred to in subsection (5)) made on the following conditions being met —

(i) notice in the approved form of the purpose and amount of a proposed expenditure is given to the owners and first mortgagees of all lots in the strata titles scheme; and

(ii) if the regulations so require, quotations or tenders for the expenditure are submitted to those owners and first mortgagees; and

(iii) within 14 days after the requirements in the preceding subparagraphs are met, objection to the proposed expenditure has not been notified in writing to the strata company by the owners or first mortgagees of —

(I) 25% or more of the lots in the scheme; or

(II) lots of which the total unit entitlement is 25% or more of the sum of the unit entitlements of all the lots in the scheme;

(c) expenditure required by a court or tribunal or by a notice or order given under a written law to the strata company.

(7) For subsection (6)(b), if an objection is notified under subsection (6)(b)(iii) by a first mortgagee of a lot, an objection notified by the owner of that lot must be disregarded.

(8) This section has effect subject to any regulations or scheme by-laws that require a special resolution, resolution without dissent or unanimous resolution or other steps to be taken for expenditure of a particular class.

[Section 102 inserted: No. 30 of 2018 s. 83.]

Subdivision 4 — Representation and judgment debts

[Heading inserted: No. 30 of 2018 s. 83.]

103. Strata company is representative of owners in proceedings

(1) If the owners of the lots in a strata titles scheme are jointly entitled to take proceedings against a person or are liable to have proceedings relating to common property taken against them jointly, the proceedings may be taken by or against the strata company and any judgment or order given or made in favour of or against the strata company in the proceedings has effect as if it were a judgment or order given or made in favour of or against the owners.

(2) If an owner of a lot is liable to make a contribution to another owner for a judgment debt arising under a judgment referred to in subsection (1), the amount of that contribution must bear to the judgment debt the same proportion as the unit entitlement of

the lot of the first-mentioned owner bears to the sum of the unit entitlements of all the lots.

[Section 103, formerly section 33, amended: No. 58 of 1995 s. 96; amended, renumbered as section 103 and relocated: No. 30 of 2018 s. 45 and 84.]

***[103A-103R.** Deleted: No. 30 of 2018 s. 82(b).]*

Subdivision 5 — Records and correspondence

[Heading inserted: No. 30 of 2018 s. 83.]

104. Records and correspondence

(1) A strata company must —

(a) keep a copy of each of the following —

(i) the current scheme documents;

(ii) any proposed amendments of the scheme documents of which it is aware and that remain current;

and

(b) make and keep for a period fixed by the regulations —

(i) minutes of its general meetings and meetings of its council; and

(ii) records of its resolutions and decisions of its council; and

(iii) such other records as are required by the regulations;

and

(c) keep for a period fixed by the regulations —

(i) records and statements of account made or kept under section 101; and

(ii) notices of its general meetings and meetings of its council; and

(iii) notices of proposed resolutions and material submitted to members of the strata company in connection with proposed resolutions; and

(iv) notices of disclosures made under section 79, 145(2) or 147; and

(v) all correspondence, other notices and orders it or its council sends or receives; and

(vi) each lease accepted under section 92 and any instrument of surrender of such a lease; and

(vii) a copy of each contract entered into by the strata company and any variation, extension or termination of such a contract, including (without limitation) the following —

(I) a strata management contract;

(II) an insurance contract;

(III) an infrastructure contract for a common property (utility and sustainability infrastructure) easement;

(IV) a contract for services or amenities provided to the strata company or members of the strata company;

and

(viii) each lease, licence or other document granting a special privilege over the common property (other than exclusive use by-laws); and

(ix) each key document it has received; and

(x) each document it has kept or received under section 63(8) or (9);

and

(d) keep the following in a manner that facilitates access to the information, in particular, for use by the members of the council and officers of the strata company —

(i) the terms of any current resolution about the use of the common seal of the strata company or authorising persons to execute documents on its behalf;

(ii) the current balance of the administrative fund and, if applicable, the reserve fund of the strata company;

(iii) the current budget (showing estimated income and expenditure) of the strata company;

(iv) the terms of the most recent resolution determining contributions, the period for which they are determined, the basis on which the contributions are apportioned amongst the members of the strata company and the date on which they fall due;

(v) the most recent 10 year plan, if applicable;

(vi) any termination proposal submitted to the strata company that remains current.

(2) The regulations may impose additional requirements for the making or keeping of records by a strata company or about the manner in which this section is to be complied with.

(3) A strata company must ensure that —

(a) a letterbox with the name of the strata company clearly shown on it is continuously available and suitably placed on the parcel; and

(b) a mechanism for corresponding with the strata company electronically is reasonably available to —

(i) members of the strata company; and

(ii) occupiers of lots in the strata titles scheme.

[Section 104 inserted: No. 30 of 2018 s. 83.]

105. Roll to be kept by strata company

(1) A strata company must prepare and maintain a roll containing the particulars required by subsection (4).

Penalty for this subsection: a fine of $3 000.

(2) The roll may be kept in any medium.

(3) A strata company may make or amend entries in the roll on the basis of —

(a) the information in documents registered under this Act; or

(b) subject to subsection (5), information provided by, or on behalf of, an owner or a mortgagee of a lot.

(4) The particulars to be entered in the roll are —

(a) the name of the strata company; and

(b) the name and address for service of each member of the council, or officer, of the strata company; and

(c) the name and address for service of the owner of each lot; and

(d) the name and address for service of each strata manager of the strata company; and

(e) the name and address for service of any lessee or tenant of a lot notified to the strata company; and

(f) the name and address for service of any mortgagee of a lot notified to the strata company.

(5) A strata company must not amend the roll —

(a) to reflect the discharge of a mortgage except on the basis of —

(i) information provided by, or on behalf of, the mortgagee; or

(ii) the production of a certified copy of a certificate of title showing the mortgage as having been discharged;

or

(b) to show a change of address of a mortgagee except on the basis of information provided by, or on behalf of, the mortgagee.

[Section 105, formerly section 35A, inserted: No. 58 of 1995 s. 38(1); amended, renumbered as section 105 and relocated: No. 30 of 2018 s. 48 and 84; amended: No. 21 of 2022 s. 64.]

106. Address for service if no roll maintained in 2, 3, 4 or 5-lot scheme

(1) If, in accordance with section 140, a roll is not maintained by a strata company for a 2, 3, 4 or 5-lot scheme, the owner of a lot in the scheme must give written notice to the strata company and the owner of each other lot of the owner's address for service.

Penalty for this subsection: a fine of $3 000.

(2) If, on a change of ownership, the owner of a lot in a scheme for which a roll is not maintained notifies an address for service to the strata company and the owner of each other lot, each of the other owners must give written notice to the new owner of their respective addresses for service.

Penalty for this subsection: a fine of $3 000.

[Section 106 inserted: No. 30 of 2018 s. 83.]

Subdivision 6 — Provision of information

[Heading inserted: No. 30 of 2018 s. 83.]

107. Application by person with proper interest in information

(1) A person with a proper interest in information about a strata titles scheme, or a person authorised in writing by such a

person, may apply in writing to the strata company for the scheme for —

(a) information under section 108; or

(b) inspection of material under section 109; or

(c) a certificate under section 110.

(2) A person has a ***proper interest in information about a strata titles scheme*** if the person is —

(a) a member of the strata company for the scheme; or

(b) a buyer who has entered into a contract for the sale and purchase of a lot in the strata titles scheme; or

(c) a mortgagee of a lot in the strata titles scheme; or

(d) a person of a class specified in the regulations.

(3) A strata company may charge a fee for an application under this section.

(4) However, any fee that is charged must not exceed an amount fixed by the regulations.

[Section 107 inserted: No. 30 of 2018 s. 83.]

108. Contact information

A strata company commits an offence if it does not, within 14 days after being given an application for contact information under section 107, provide the applicant with the following as stated in the application —

(a) the name and address for service of a member of the council of the strata company;

(b) the name and address for service of an officer of the strata company;

Penalty: a fine of $3 000.

[Section 108 inserted: No. 30 of 2018 s. 83.]

109. Inspection of material

(1) A strata company commits an offence if, on application for inspection under section 107, it does not make material to which this section applies available for inspection by the applicant at a place and time —

(a) agreed between the strata company and the person; or

(b) if agreement is not reached within 3 days after the strata company is given the application, specified in a written notice given by the strata company to the person.

Penalty for this subsection: a fine of $3 000.

(2) The time specified in a notice under subsection (1)(b) must be between 9am and 5pm on a day not more than 10 days after the strata company is given the application.

(3) The material may be made available in electronic or hard copy form.

(4) A person inspecting material under this section —

(a) may take extracts from, or make a copy of, the material, including by photographing it, subject to any limitations specified in the regulations; and

(b) must not, without the consent of the strata company, remove physical material from the custody of the strata company; and

(c) must not alter, damage, conceal or destroy any material or entry.

(5) The strata company may, but is not obliged to, provide a copy of any material at the request of the applicant, and, if it does so, it may charge a fee for the copy of an amount not exceeding an amount fixed by the regulations.

(6) This section applies to the following —

(a) material kept under section 104;

(b) the roll kept under section 105;

(c) other documents in the possession or control of the strata company.

[Section 109 inserted: No. 30 of 2018 s. 83.]

110. Certificates

(1) A strata company commits an offence if it does not, within 14 days after being given an application for a certificate under section 107, provide the applicant with a certificate certifying, as at the date of the certificate, the following matters as stated in the application —

(a) whether or not a strata management contract is in effect and, if so, when the contract starts and ends;

(b) details of any contracts of insurance maintained by the strata company, including the name of the insurer, the contract number, the type and amount of cover, and the expiry day;

(c) whether any transfer, lease or other disposition has been entered into or exclusive use by-laws have been made in favour of a person over the common property but not registered by the Registrar of Titles, and, if so, the name of the person and the nature and effect of the transaction or by-laws.

Penalty for this subsection: a fine of $3 000.

(2) A strata company commits an offence if it does not, within 14 days after being given an application for a certificate under section 107, provide the applicant with a certificate certifying, as at the date of the certificate, the following matters as they relate to a lot specified in the application —

(a) the amount and due date of contributions determined for the lot —

(i) at the most recent annual general meeting of the strata company; and

(ii) at any time subsequent to that meeting; and

(iii) in the previous 12 months;

(b) any amount owed to the strata company by the owner or occupier of the lot that is outstanding, the date on which it became outstanding, and the nature of the payment;

Note for this paragraph:

For example, the amount may be an amount of —

- contributions; or
- an amount payable under exclusive use by-laws; or
- an amount payable for work undertaken on the part of the owner of the lot; or
- any penalty or other amount ordered to be paid by the Tribunal; or
- any amount payable for utility services or other services or amenities.

(c) the rate of interest payable in respect of the outstanding amount.

Penalty for this subsection: a fine of $3 000.

(3) A certificate under this section is conclusive evidence of the matters stated in the certificate, as at the date of the certificate, in favour of a person taking an estate or interest in a lot for valuable consideration.

[Section 110 inserted: No. 30 of 2018 s. 83.]

111. Legal professional privilege and defamation

(1) Nothing in this Subdivision requires a strata company —

(a) to give or certify any information that is the subject of legal professional privilege; or

(b) to make available a document or a part of a document if that would disclose information that is the subject of legal professional privilege.

(2) It is a defence to an action for defamation if the defendant proves that —

(a) the defamatory matter was contained in information or a document mentioned in this Subdivision; and

(b) the publication consisted of giving or certifying the information, or making the document available, in accordance with this Subdivision.

[Section 111 inserted: No. 30 of 2018 s. 83.]

Subdivision 7 — Miscellaneous powers

[Heading inserted: No. 30 of 2018 s. 83.]

112. Compliance with scheme by-laws

A strata company has the function of complying with the scheme by-laws and enforcing compliance with those by-laws by others to whom they apply.

[Section 112 inserted: No. 30 of 2018 s. 83.]

113. Enforcement of road laws

A strata company may enter into a contract or arrangement with a local government about the enforcement of laws relating to roads on the parcel.

[Section 113 inserted: No. 30 of 2018 s. 83.]

114. Enforcement of local laws

A strata company may enter into a contract or arrangement with a local government about the enforcement of a local law on the parcel.

[Section 114 inserted: No. 30 of 2018 s. 83.]

115. Power to terminate certain contracts for amenities or services

(1) There is implied in every contract to which this section applies a provision that the strata company may terminate the contract, by written notice to every other party to the contract, after 5 years have passed since the contract was made.

(2) No cause of action against any person arises from the exercise of the power referred to in subsection (1).

(3) A contract or any other agreement or arrangement must not exclude the operation of subsection (1) and to the extent that it purports to do so it is of no effect.

(4) This section applies to a contract if —

(a) it relates to the provision of amenities or services to the strata company or the owners of lots; and

(b) it is made after the commencement of section 41 of the *Strata Titles Amendment Act 1995*; and

(c) it was made before registration of the strata titles scheme or when any owner held 50% or more of the unit entitlement of the lots.

(5) The Tribunal may, on the application of a person made in respect of a contract, by order extend the period of 5 years provided for by subsection (1), so far as it applies to that contract, if satisfied that the contract —

(a) is fair to all owners of lots in the strata titles scheme; and

(b) will remain fair to all those owners during the extended period.

(6) An extended period under subsection (5) is not to exceed the term specified in the contract or a period of 10 years from the time when the contract was made, whichever is the lesser.

[(7) deleted]

[Section 115, formerly section 39A, inserted: No. 58 of 1995 s. 41; amended: No. 55 of 2004 s. 1121, 1156(1) and (3) and 1158; amended, renumbered as section 115 and relocated: No. 30 of 2018 s. 52 and 84.]

116. Powers of strata company generally

(1) Without limiting the powers of a strata company to perform its functions, a strata company may —

(a) purchase, hire or otherwise acquire personal property for use by owners of lots in connection with their enjoyment of the common property or for use by the strata company in the performance of its functions; and

(b) sell or otherwise dispose of personal property owned by it; and

(c) borrow money required by it in the performance of its functions; and

(d) secure the repayment of money borrowed by it, and the payment of interest on that money, by negotiable instrument, or mortgage of unpaid contributions (whether imposed or not), or mortgage of any property owned by it, or by a combination of those means; and

(e) invest money in its administrative fund or reserve fund in the manner permitted by law for the investment of trust funds or by the regulations; and

(f) if the strata company considers it necessary, effect a compromise of an action for the recovery of money due to the strata company; and

(g) make a contract with the owner or occupier of a lot for the provision of amenities or services by it to the lot or to the owner or occupier; and

(h) accept or acquire a lease, licence or permit for the purpose of providing moorings or landings for vessels; and

(i) grant a lease, licence or other rights over common property for the purpose of utility infrastructure or sustainability infrastructure; and

(j) for the purpose of performing any of its functions, develop and turn to account any technology, software, or

intellectual property that relates to the function and, for that purpose, apply for, hold, exploit, and dispose of any patent, patent rights, copyright, or similar rights; and

(k) arrange for the auditing of any accounting records.

(2) Any interest received on an investment made under subsection (1) forms part of the fund to which the investment belongs.

[Section 116, formerly section 37, amended, renumbered as section 116 and relocated: No. 30 of 2018 s. 50 and 84.]

Subdivision 8 — Limitations

[Heading inserted: No. 30 of 2018 s. 83.]

117. Limitations on exercise of powers

(1) A strata company must not —

(a) acquire or dispose of land, or an interest in land, except as authorised under section 92 or 93; or

(b) mortgage common property; or

(c) act as a guarantor; or

(d) establish a corporation or subsidiary of a corporation; or

(e) engage in an activity that a strata company must not engage in under the regulations.

(2) A strata company must not, except as authorised by resolution without dissent, perform or exercise a function that the regulations allow to be exercised only as authorised by resolution without dissent.

[Section 117 inserted: No. 30 of 2018 s. 83.]

118. Common seal and execution of documents

(1) If a strata company has a common seal —

(a) the seal may be used only as authorised by ordinary resolution of the strata company; and

(b) its use must be attested by the signatures of 2 members of the council of the strata company.

(2) A strata company may, by ordinary resolution, authorise any of the following to execute documents on its behalf subject to any conditions or limitations specified in the resolution —

(a) a member of the council of the strata company; or

(b) members of the council of the strata company acting jointly; or

(c) a strata manager of the strata company.

(3) A document is duly executed by a strata company if —

(a) the common seal of the strata company is applied to it in accordance with this section; or

(b) the document is signed on behalf of the strata company by a person or persons in accordance with an authority conferred under this section.

(4) For a document in an electronic form that bears a facsimile of the common seal and a facsimile of the signatures required to attest its use, the sealed document as it appears electronically, or as it appears when printed on paper, has the same effect as if the common seal had been applied and attested in accordance with this section, unless there is evidence that the document was not executed by the strata company.

[Section 118 inserted: No. 30 of 2018 s. 83.]

Division 2 — Objectives

[Heading inserted: No. 30 of 2018 s. 83.]

119. Objectives

(1) In performing its functions, a strata company is to have the objective of implementing processes and achieving outcomes that are not, having regard to the use and enjoyment of lots and common property in the strata titles scheme —

(a) unfairly prejudicial to or discriminatory against a person; or

(b) oppressive or unreasonable.

(2) In achieving that objective, a strata company —

(a) must take into account any failure of a person to act consistently with this Act or the scheme by-laws; and

(b) must consider the merits of any proposal put to it and the options that are reasonably available in any particular circumstances; and

(c) must be aware that —

(i) a resolution or other conduct may be overturned for failure to meet that objective despite the fact that it reflects the will of the majority of members of the strata company as expressed through the exercise of their voting powers; and

(ii) the fact that a person has chosen to become the owner of a lot does not prevent the person challenging the performance of a function for failure to meet that objective.

(3) Without limitation, a strata company acts oppressively or unreasonably in passing or not passing a resolution if —

(a) the resolution would not have been passed, or not have been passed as a particular type of resolution, but for the fact that a person was improperly denied a vote on the resolution; or

(b) the resolution would have been passed, or would have been passed as a particular type of resolution, if a person had properly been given an opportunity to vote on the resolution.

[Section 119 inserted: No. 30 of 2018 s. 83.]

Division 3 — Procedures

[Heading inserted: No. 30 of 2018 s. 83.]

Subdivision 1 — Voting and resolutions

[Heading inserted: No. 30 of 2018 s. 83.]

120. Voting

(1) The owner of each lot in a strata titles scheme is entitled to 1 vote on a proposed resolution of the strata company.

(2) However, the owner of a lot is not entitled to cast the vote attached to the lot if —

(a) the resolution is not required to be a unanimous resolution or a resolution without dissent and is not a resolution for postponing the expiry day for a leasehold scheme or a termination resolution; and

(b) there is an outstanding amount recoverable under this Act owed to the strata company by the owner of the lot.

(3) A proposed resolution can be put to the members of a strata company —

(a) at a general meeting; or

(b) outside of a general meeting.

(4) A resolution can be proposed only by a member of the strata company who is entitled to vote on the resolution.

(5) The vote attached to a lot can, and can only, be cast, if at the time it is cast, the person is entitled to cast the vote attached to the lot.

(6) The owner of a lot may cast the vote attached to the lot in person or by duly appointed proxy.

(7) However, if a vote is taken at a general meeting at which both the owner of a lot and a proxy entitled to cast the vote attached

to the lot are present and the owner is not a co-owner of the lot, the owner of the lot must cast the vote.

(8) The voting system, whether it is electronic or by other means, must —

(a) enable votes to be cast in a manner designed to protect the integrity of the voting system; and

(b) comply with any requirements specified in the regulations.

[Section 120 inserted: No. 30 of 2018 s. 83.]

121. Voting period

(1) If a resolution is required to be a unanimous resolution, resolution without dissent or special resolution, the period allowed for voting must be 28 days or, if the regulations specify some other period, that period.

(2) If a vote on a resolution that is required to be a unanimous resolution, resolution without dissent or special resolution is taken at a general meeting —

(a) the voting period opens at the meeting and closes 28 days (or if the regulations specify some other period, that period) after the meeting; and

(b) if, for 1 or more lots, there was no-one present at the meeting in person or by proxy who could cast the vote attached to the lot — written notice of the outcome of the vote at the meeting is given to the owner of each such lot; and

(c) if the vote for a lot was not cast at a meeting, the vote may be cast by written notice to the strata company before the voting period closes.

[Section 121 inserted: No. 30 of 2018 s. 83.]

122. Counting of votes

(1) Votes are to be counted (and recorded) as follows —

(a) for a unanimous resolution or a resolution without dissent, the votes must be counted by the number of votes cast;

(b) for a special resolution, the votes must be counted both by the number of votes cast and by the number of unit entitlements of the lots for which votes are cast;

(c) for an ordinary resolution, the votes must be counted by the number of votes cast unless any person entitled to cast a vote demands that they be counted by the number of unit entitlements of the lots for which votes are cast, in which case, they must be counted in that manner.

(2) A demand that a vote be counted by the number of unit entitlements of the lots for which votes are cast can be made —

(a) if the vote is being taken at a general meeting, orally or in writing before the resolution is put to the vote; and

(b) if the vote is being taken outside of a general meeting, when the vote is cast.

(3) Such a demand may only be withdrawn by the person who made the demand.

[Section 122 inserted: No. 30 of 2018 s. 83.]

[Former section 122 renumbered as section 211 and relocated to Part 14.]

[Former section 122A renumbered as section 212 and relocated to Part 14: No. 30 of 2018 s. 84]

123. Resolutions

(1) A resolution of a strata company is a ***unanimous resolution*** if —

(a) 14 days' notice of the terms of the proposed resolution is given to each member of the strata company before voting on the resolution opens; and

(b) the vote attached to each lot in the scheme is cast in favour of the resolution.

(2) Subject to subsection (3), a resolution of a strata company is a ***resolution without dissent*** if —

(a) 14 days' notice of the terms of the proposed resolution is given to each member of the strata company before voting on the resolution opens; and

(b) no vote attached to a lot in the scheme is cast against the resolution.

(3) For a 2-lot scheme, a resolution is only to be regarded as a ***resolution without dissent*** if it is a unanimous resolution.

(4) Subject to subsections (5) and (6), a resolution of a strata company is a ***special resolution*** if —

(a) 14 days' notice of the terms of the proposed resolution is given to each member of the strata company before voting on the resolution opens; and

(b) the votes in favour of the resolution equal —

(i) when counted by number — not less than 50% of the number of lots in the scheme; and

(ii) when counted by unit entitlements — not less than 50% of the unit entitlements of the lots in the scheme;

and

(c) the votes against the resolution equal —

(i) when counted by number — less than 25% of the number of lots in the scheme; and

(ii) when counted by unit entitlements — less than 25% of the unit entitlements of the lots in the scheme.

(5) For a 2-lot scheme, a resolution is only to be regarded as a ***special resolution*** if it is a unanimous resolution.

(6) For a 3, 4 or 5-lot scheme, a resolution of the strata company is a ***special resolution*** if —

(a) 14 days' notice of the terms of the proposed resolution is given to each member of the strata company before voting on the resolution opens; and

(b) the votes in favour of the resolution equal—

(i) when counted by number —

(I) for a 3-lot scheme — not less than 2; and

(II) for a 4-lot scheme — not less than 3; and

(III) for a 5-lot scheme — not less than 4;

and

(ii) when counted by unit entitlements — not less than 50% of the unit entitlements of the lots in the scheme.

(7) A resolution of a strata company is an ***ordinary resolution*** if —

(a) for a resolution passed other than at a general meeting, 14 days' notice of the terms of the proposed resolution is given to each member of the strata company before voting on the resolution opens; and

(b) it is passed when counted as required under section 122 (1)(c) —

(i) by number — by more than 50% of the number of lots for which votes are cast; or

(ii) by unit entitlements — by more than 50% of the sum of the unit entitlements of the lots in the scheme for which votes are cast.

Note for this subsection:

For an ordinary resolution, the question is determined against the resolution on an equal number of votes whether counted by number or by unit entitlements.

[Section 123 inserted: No. 30 of 2018 s. 83.]

[Former section 123 renumbered as section 213 and relocated to Part 14: No. 30 of 2018 s. 84.]

*[**123A.** Deleted: No. 30 of 2018 s. 82(b).]*

[Former section 123B renumbered as section 214 and relocated to Part 14: No. 30 of 2018 s. 84.]

*[**123C.** Deleted: No. 30 of 2018 s. 82(b).]*

124. Voting by proxy

(1) An instrument appointing a proxy to cast a vote must be in writing and executed by the appointer or the appointer's attorney.

(2) Subject to any limitations expressed in the instrument of appointment, the appointment of a proxy is for all general meetings and for all purposes.

(3) The instrument of appointment of a proxy may limit the appointment —

(a) to a specified general meeting or to voting on a specified resolution; or

(b) to general meetings held, or votes taken, within a specified period; or

(c) to a specified purpose; or

(d) in any other specified way.

(4) A proxy may be, but is not required to be, a member of the strata company.

(5) The regulations may impose limitations on a strata manager being appointed as a proxy, including limitations as to the number of lot owners or unit entitlements of lots for which a strata manager may be appointed as a proxy.

[Section 124 inserted: No. 30 of 2018 s. 83.]

[Former section 124 renumbered as section 170 and relocated to Part 11 Division 3: No. 30 of 2018 s. 84.]

125. Disqualification from voting as proxy

(1) If a member of a strata company who is an individual and sole owner of a lot is present at a general meeting of the strata company, the member must cast the vote for the lot personally rather than by proxy.

(2) A person must not vote as a proxy of another person on a resolution relating to the provision of goods, amenity or service to the strata company if the person so voting (the ***proxy***) has a direct or indirect pecuniary or other interest in the provision of the goods, amenity or service.

(3) Subsection (2) does not apply if —

(a) notice of the proposed resolution included, if applicable, the particulars described in subsection (4); and

(b) the instrument appointing the proxy expressly authorises the proxy to vote on the resolution and specifies whether the proxy is to vote for or against it.

(4) If the resolution relates to the strata company making, varying or extending a strata management contract, the notice of the resolution must specify —

(a) the name of the strata manager; and

(b) when the proposed contract, or the contract as proposed to be varied or extended (as the case may require) is to start and end; and

(c) each proposed variation, if applicable; and

(d) the remuneration that is payable under the contract or the way in which the remuneration that is payable under the contract is to be calculated.

[Section 125 inserted: No. 30 of 2018 s. 83.]

126. Exercise of voting power in certain cases

The entitlement of the owner of a lot to vote on a proposed resolution is subject to the following —

(a) if the lot is subject to a registered mortgage —

(i) the first mortgagee of the lot may, in person or by proxy, cast the vote on behalf of the owner of the lot; and

(ii) the owner may cast the vote if the first mortgagee does not do so;

and

(b) in any event —

(i) if the owner of the lot has not attained 18 years of age, the owner may not cast the vote but the owner's guardian may do so on behalf of the owner; and

(ii) if the owner of the lot is, for any reason, unable to control the owner's property, the person who is, for the time being, authorised by law to control the owner's property may cast the vote on behalf of the owner; and

(iii) if there are co-owners of the lot, the co-owners may only cast the vote through jointly appointing a single proxy (who may be 1 of the co-owners).

[Section 126 inserted: No. 30 of 2018 s. 83.]

[Former section 126 renumbered as section 217 and relocated to Part 14: No. 30 of 2018 s. 84.]

Subdivision 2 — Meetings of strata company

[Heading inserted: No. 30 of 2018 s. 83.]

127. Annual general meetings of strata company

(1) A strata company must hold an annual general meeting once in each 12 month period and not more than 15 months after its previous annual general meeting.

(2) Subsection (1) does not apply to a strata company for a 2-lot scheme but a strata company for a 2-lot scheme may make by-laws having the same effect as subsection (1).

(3) The following matters must be included as an item of business on the agenda for each annual general meeting of a strata company (including the first annual general meeting) —

(a) election of council members;

(b) consideration of accounts;

(c) the presentation of copies of certificates and schedules for the insurance required under this Act, current as at the date of the meeting.

(4) All business transacted at an annual general meeting other than that referred to in subsection (3) is taken to be special business.

[Section 127 inserted: No. 30 of 2018 s. 83.]

128. Extraordinary general meetings of strata company

(1) An extraordinary general meeting of a strata company is a general meeting of the strata company other than an annual general meeting.

(2) An extraordinary general meeting of a strata company —

(a) may be convened by the council of the strata company as the council thinks fit; and

(b) must be convened by the council of the strata company on the written request of owners entitled to 25% or more

of the unit entitlements of the lots in the strata titles scheme.

(3) The owners making a request under subsection (2)(b), or any of them holding more than 50% of the unit entitlements of the lots in the strata titles scheme, may convene an extraordinary general meeting if the council does not, within 21 days after the request was made, take steps to convene the meeting.

(4) To the extent practicable, a meeting referred to in subsection (3) must be convened in the same manner as that in which meetings are to be convened by the council.

(5) A meeting convened under subsection (3) must not be held after the expiration of the period of 3 months starting on the day on which the request was made.

(6) All business transacted at an extraordinary general meeting is taken to be special business.

[Section 128 inserted: No. 30 of 2018 s. 83.]

129. Notice requirements for all general meetings

(1) All owners of lots in a strata titles scheme and first mortgagees of those lots must be given at least 14 days' notice of every general meeting of the strata company for the scheme.

(2) The notice must include —

(a) the date, time and venue of the meeting; and

(b) for an annual general meeting, notice of each item of business referred to in section 127(3); and

(c) for special business, notice of the general nature of that business; and

(d) notice of each method of voting, whether by means of an electronic communication or otherwise, that is acceptable to the strata company.

(3) Accidental omission to give notice of a general meeting to the owner or first mortgagee of a lot or non-receipt of the notice by the owner or first mortgagee of a lot does not invalidate any proceedings at the meeting.

(4) The owner of a lot may give written notice to a member of the council of the strata company of an item of business that the owner requires to be included on the agenda for a general meeting of the strata company and that item must be included on the agenda for the meeting and notice must be given of that item as an item of special business under subsection (2)(c).

[Section 129 inserted: No. 30 of 2018 s. 83.]

*[**129A.** Deleted: No. 30 of 2018 s. 82(b).]*

[Former sections 129B-129D renumbered as sections 219-221 and relocated to Part 14: No. 30 of 2018 s. 84.]

130. Quorum at general meetings

(1) No business may be transacted at a general meeting unless a quorum is present at the time when the meeting proceeds to business.

(2) At a general meeting of a strata company for a 2-lot scheme, a quorum is constituted if there are present persons who are entitled to cast the vote attached to each of the lots.

(3) At a general meeting of a strata company for a strata titles scheme other than a 2-lot scheme, a quorum is constituted if there are present persons who are entitled to cast the votes attached to 50% of the lots in the scheme.

(4) If a quorum is not present after 30 minutes has elapsed from the time appointed for a general meeting of a strata company for a strata titles scheme other than a 2-lot scheme, the persons entitled to vote who are present at the meeting are taken to constitute a quorum for the purposes of that meeting.

(5) A person who is a proxy of a person entitled to cast the vote attached to a lot is to be counted for the purposes of determining whether a quorum is present.

[Section 130 inserted: No. 30 of 2018 s. 83.]

[Former section 130 renumbered as section 224 and relocated to Part 14: No. 30 of 2018 s. 84.]

131. Holding meetings remotely

(1) A person (including a proxy of a member of a strata company) may, in accordance with any requirements of the scheme by-laws, attend, and vote, at a meeting of a strata company by telephone, video link, internet connection or similar means of remote communication (provided that provision of relevant facilities does not place an unreasonable burden on the strata company).

(2) A person attending a meeting by remote communication is taken to be present at the meeting.

[Section 131 inserted: No. 30 of 2018 s. 83.]

[Former sections 131A and 131B renumbered as sections 225 and 226 respectively and relocated to Part 14: No. 30 of 2018 s. 84.]

132. Conducting business at general meetings

(1) A general meeting may be adjourned by the chairperson, with the consent of the 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.

(2) 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.

[Section 132 inserted: No. 30 of 2018 s. 83.]

133. Resolutions of general meetings

Resolutions passed at a general meeting may be ordinary resolutions unless this Act requires otherwise.

[Section 133 inserted: No. 30 of 2018 s. 83.]

134. Performance of restricted council functions in general meeting

If, by ordinary resolution of a strata company, the council of the strata company is prohibited from performing a function, the function may be performed by the owners of lots in general meeting of the strata company.

[Section 134 inserted: No. 30 of 2018 s. 83.]

Division 4 — Councils

[Heading inserted: No. 30 of 2018 s. 83.]

135. Functions and constitution of councils

(1) The functions of a strata company, subject to this Act and to any restriction imposed or direction given by ordinary resolution, are to be performed by the council of the strata company.

(2) The council of a strata company must be constituted and perform its functions in accordance with this Act and the scheme by-laws.

(3) On an election of the council at a general meeting of the strata company —

(a) a person who is entitled to vote in the election and who is present in person or by proxy at the meeting may demand that the votes in the election be counted by unit entitlement of the lots; and

(b) if no such demand is made, the votes in the election are to be counted by number.

(4) 1 of the members of the council of a strata company must hold office as the chairperson of the strata company.

Note for this section:

Section 143 provides that the functions of a strata company or the council or an officer of a strata company may be performed by a strata manager.

[Section 135, formerly section 44, amended, renumbered as section 135 and relocated: No. 30 of 2018 s. 53 and 84.]

136. Corporate body may be officer or council member

(1) A corporation is eligible to be an officer of a strata company or a member of the council of a strata company.

(2) A corporation may authorise an individual to perform on its behalf a function conferred under this Act on the corporation as an officer of the strata company or as a member of the council and may revoke the authority of an individual so authorised.

(3) If an individual performs a function that the individual is authorised to perform by a corporation under subsection (2), the function is taken to be performed by the corporation.

[Section 136, formerly section 45, amended, renumbered as section 136 and relocated: No. 30 of 2018 s. 54 and 84.]

137. Council members: general duties and conflicts of interest

(1) This section applies to a person who is —

(a) a member of the council of a strata company (including when acting as an officer of the strata company); or

(b) an individual authorised under section 136(2) by a corporation to perform the corporation's functions as a member of the council, or an officer, of a strata company.

(2) A person to whom this section applies —

(a) must at all times act honestly, with loyalty and in good faith in the performance of functions as a member of the council or an officer of the strata company; and

(b) must at all times exercise the degree of care and diligence in the performance of those functions that a reasonable person in the person's position and the circumstances of the strata company would reasonably be expected to exercise; and

(c) must not make improper use of the person's position —

(i) to gain, directly or indirectly, an advantage for the person or any other person; or

(ii) to cause detriment to the strata company.

(3) A person to whom this section applies —

(a) must inform the council in writing of any direct or indirect pecuniary or other interest that the person has that conflicts or may conflict with the performance of a function as a member of the council or, if applicable, as an officer of the strata company; and

(b) must do so as soon as is practicable after the person becomes aware of the relevant facts; and

(c) in the case of a member of the council, must not vote on a matter in which the member has an interest required to be disclosed under paragraph (a).

(4) Subsection (3) does not apply to an interest arising solely from the fact that the member is the owner of a lot in the scheme.

[Section 137 inserted: No. 30 of 2018 s. 83.]

Division 5 — Miscellaneous

[Heading inserted: No. 30 of 2018 s. 83.]

138. Performance of council functions in general meeting if no council or quorum

If, at any time, there is no council of a strata company or there are insufficient members of the council to constitute a quorum in accordance with the scheme by-laws, the functions of the council may be performed by the owners of the lots in general meeting of the strata company.

[Section 138 inserted: No. 30 of 2018 s. 83.]

139. Contract formalities

(1) In so far as the formalities of making, varying, extending, discharging or terminating a contract are concerned, a person acting under the express or implied authority of a strata company may make, vary, extend, discharge or terminate a contract in the name of or on behalf of the strata company in the same manner as if that contract were made, varied, extended, discharged or terminated by a natural person.

(2) The making, variation, extension, discharge or termination of a contract in accordance with subsection (1) is effectual in law and binds the strata company and other parties to the contract.

(3) This section does not affect —

(a) section 115; or

(b) section 151; or

(c) the operation of a law that requires some consent or sanction to be obtained, or some procedure to be complied with, in relation to the making, variation, extension, discharge or termination of a contract.

[Section 139, formerly section 34, amended, renumbered as section 139 and relocated: No. 30 of 2018 s. 46 and 84.]

140. Special rules for 2, 3, 4 or 5-lot schemes

(1) A strata company for a 2-lot scheme —

(a) may, but is not required to, perform a designated function; and

(b) cannot establish an administrative fund unless required to do so by scheme by-laws.

(2) The scheme by-laws for a 3, 4 or 5-lot scheme may exempt the strata company from a designated function.

(3) However, the Tribunal may, on application by a member of the strata company, require a strata company to perform a designated function despite this section.

(4) In this section —

designated function means a function conferred under any of the following sections or included in this definition by the regulations —

Section	Description for information only
Section 100(1)(a)	Administrative fund
Section 101	Accounting records and statement of account
Section 104(1)(b)	Minutes of meetings
Section 104(3)(a)	Letterbox
Section 105(1)	Roll to be kept by strata company.

[Section 140 inserted: No. 30 of 2018 s. 83.]

141. Protection from liability

(1) This section applies to a person who is or has been —

(a) a member of the council of a strata company (including when acting as an officer of the strata company); or

(b) an individual authorised under section 136(2) by a corporation to perform the corporation's functions as a member of the council, or an officer, of a strata company.

(2) No civil liability attaches to a person to whom this section applies for anything that the person has, in good faith, done or omitted to be done —

(a) in the performance of a function under this Act or scheme by-laws; or

(b) in the reasonable belief that the act or omission was in the performance of a function under this Act or scheme by-laws.

(3) A liability that would, but for subsection (2), attach to a person attaches instead to the strata company.

[Section 141 inserted: No. 30 of 2018 s. 83.]

142. Exclusion of Corporations Act

The following matters are declared to be excluded matters for the purposes of the *Corporations Act 2001* (Commonwealth) section 5F in relation to the whole of the Corporations legislation to which Part 1.1A of that Act applies —

(a) a strata company;

(b) an act or omission of a person, body or other entity in relation to a strata company.

[Section 142 inserted: No. 30 of 2018 s. 83.]

Part 9 — Strata managers

[Heading inserted: No. 30 of 2018 s. 83.]

143. Authorisation of functions of strata manager

(1) A strata company may, subject to this Part, authorise a person (a ***strata manager***) to perform a specified scheme function.

(2) An authorisation under this section —

(a) is subject to any conditions specified by the strata company; and

(b) may be varied or revoked by the strata company.

(3) If the performance of a function of a strata company requires a unanimous resolution, resolution without dissent, special resolution or ordinary resolution, the strata manager may perform the function only if a vote has been taken on a proposed resolution and it has been passed as a resolution of the relevant kind.

(4) A legal practitioner does not act as a strata manager in providing services that can, under the *Legal Profession Uniform Law (WA)*, be provided only by a legal practitioner.

(5) A strata manager cannot be authorised to perform any of the following functions —

(a) authorising a person to perform a scheme function other than as an agent, employee or contractor of the strata manager;

(b) determining contributions;

(c) entering into a contract with another strata manager, varying, extending or terminating such a contract or making a decision relating to such a contract or the meaning of such a contract;

(d) terminating a contract for services or amenities under section 115;

(e) commencing proceedings on behalf of the strata company in the Tribunal or in a court or other tribunal;

(f) authorising the strata company's common seal to be applied to a document;

(g) authorising a person to sign documents on behalf of the strata company or on behalf of the council or an officer of the strata company;

(h) a scheme function declared by the regulations to be a scheme function that may not be performed by a strata manager.

(6) An act or thing done by a person under an authorisation under this section —

(a) has effect as if it were done by the strata company, council or officer of the strata company (as the case requires); and

(b) is taken to have been done by the strata company, council or officer of the strata company (as the case requires).

(7) The authority of a strata manager to perform a scheme function does not prevent the function from being performed by the strata company, council or officer (as the case requires).

(8) However, if the strata company, council or officer performs such a function, the strata company, council or officer must notify the strata manager authorised to perform the function of that fact.

[Section 143 inserted: No. 30 of 2018 s. 83; amended: No. 9 of 2022 s. 406.]

144. Requirements to be met by strata manager

(1) Despite an authorisation under section 143, a person is not authorised to perform functions as a strata manager unless —

(a) a contract or volunteer agreement (a ***strata management contract***) is in force between the strata manager and the strata company; and

(b) the requirements of the regulations are met by the strata manager and each agent, employee or contractor of the strata manager for —

(i) the conduct of, and verification of the conduct of, criminal record checks; and

(ii) educational or other qualifications; and

(iii) any other matter relevant to the performance of functions as a strata manager;

and

(c) the strata manager maintains professional indemnity insurance as required by the regulations.

(2) Subsection (1)(c) does not apply to a volunteer strata manager.

(3) The regulations cannot require a volunteer strata manager to have particular educational or other qualifications.

[Section 144 inserted: No. 30 of 2018 s. 83.]

145. Strata management contracts: minimum requirements

(1) A strata management contract must be in writing and must —

(a) state the strata manager's name and address for service; and

(b) state the strata company's name and address for service; and

(c) state the Australian Company Number or Australian Business Number of each party with such a number; and

(d) specify when the contract starts and ends; and

(e) specify each scheme function to be performed by the strata manager under the contract; and

(f) specify any conditions that are to apply to the performance of the functions; and

(g) provide that the strata manager must give the strata company written reports about the strata manager's performance of functions under the contract and set out the reporting requirements as to content and timing of the reports; and

(h) specify the remuneration that is payable under the contract or the manner in which the remuneration that is payable under the contract is to be calculated; and

(i) specify the accounts to be used under section 148(1); and

(j) set out the text of, or give notice drawing attention to, section 151; and

(k) provide for any other matter that is required by the regulations.

(2) Before entering into a strata management contract, the strata manager must disclose in writing to the strata company —

(a) any direct or indirect pecuniary or other interest that the strata manager has that conflicts or may conflict with the performance of the strata manager's functions; and

(b) the amount or value of any remuneration or other benefit that the strata manager has a reasonable expectation of receiving (other than from the strata company) in connection with the performance of the strata manager's functions.

(3) Any variation to, or extension or renewal of, a strata management contract must be in writing.

(4) This section does not limit the matters that may be included in a strata management contract.

(5) If the strata management contract is a volunteer agreement with a volunteer strata manager, it need not comply with subsection (1)(c) or (g).

[Section 145 inserted: No. 30 of 2018 s. 83.]

146. General duties and conflict of interest

(1) A strata manager of a strata company —

(a) must at all times act honestly and in good faith in the performance of the strata manager's functions; and

(b) must at all times exercise a reasonable degree of skill, care and diligence in the performance of the strata manager's functions; and

(c) must have a good working knowledge of this Act; and

(d) must not make improper use of information acquired as the strata company's strata manager —

(i) to gain, directly or indirectly, an advantage for the strata manager or any other person; or

(ii) to cause detriment to the strata company or a member of the strata company;

and

(e) must not make improper use of the position of strata manager —

(i) to gain, directly or indirectly, an advantage for the strata manager or any other person; or

(ii) to cause detriment to the strata company or a member of the strata company;

and

(f) must take reasonable steps to ensure that the strata manager's agents, employees and contractors comply with this Act when performing the strata manager's functions.

(2) A strata manager of a strata company —

(a) must inform the strata company in writing of any direct or indirect pecuniary or other interest that the strata manager has that conflicts or may conflict with the performance of the strata manager's functions; and

(b) must do so as soon as is practicable after the strata manager becomes aware of the relevant facts.

[Section 146 inserted: No. 30 of 2018 s. 83.]

147. Disclosure of remuneration and other benefits

(1) A strata manager of a strata company —

(a) must inform the strata company in writing of the amount or value of any remuneration or other benefit that the strata manager receives, or has a reasonable expectation of receiving (other than from the strata company) in connection with the performance of the strata manager's functions; and

(b) must do so as soon as is practicable after the strata manager becomes aware of the relevant facts.

(2) Subsection (1) does not apply to remuneration or any other benefit that is less than an amount or value specified in or calculated in accordance with the regulations.

[Section 147 inserted: No. 30 of 2018 s. 83.]

148. Operation of accounts

(1) A strata manager (other than a volunteer strata manager) must pay all money received on behalf of a strata company into 1 of the following accounts —

(a) a separate ADI trust account for the strata company;

(b) a pooled ADI trust account solely for the strata companies for which the person is a strata manager;

(c) if the strata company has its own ADI account and has authorised the strata manager to use the account, that account.

(2) If a strata company has a volunteer strata manager, the strata company must have an ADI account and the volunteer strata manager must pay all money received on behalf of a strata company into an ADI account of the strata company.

(3) A strata manager must be able to account separately for money that the strata manager is paid or receives on behalf of a strata company.

(4) A strata manager may pay out of an account mentioned in subsection (1) an amount that is payable by the strata company on whose behalf money is received.

(5) Money paid into a trust account is not available for the payment of the debt of any creditor of the strata manager and cannot be attached or taken in execution under an order or process of any court at the instance of a creditor of the strata manager.

(6) The regulations may provide for other matters relating to the operation of trust accounts by strata managers.

[Section 148 inserted: No. 30 of 2018 s. 83.]

149. Accounting information

(1) A strata company can, by written notice, require a strata manager to provide the following information to the strata company —

(a) the name and number of each account operated by the strata manager in performing scheme functions and the name and identifying number or code of the ADI with which each account is held;

(b) the balance in each such account standing to the credit of the strata company on a specified date;

(c) particulars of cheques drawn or amounts transferred out of an account by the strata manager on behalf of the strata company but for which amounts have not, as at a specified date, been paid out of the account;

(d) particulars relating to the payment of money to, or the receipt of money by, the strata manager on behalf of the strata company;

(e) particulars relating to the manner and time of disposal of money paid to, or received by, the strata manager on behalf of the strata company that is not still held by the strata manager;

(f) particulars relating to a specified transaction that has been entered into by the strata manager on behalf of the strata company.

(2) The strata manager must comply with the notice within a reasonable time but, in any event, within 7 days after the day the notice was given.

(3) However, a strata manager does not have to provide the strata company with information in relation to a matter as it was, or that occurred, more than 7 years before notice requiring the information is given.

[Section 149 inserted: No. 30 of 2018 s. 83.]

150. Audits

(1) A strata manager who operates an account in performing scheme functions must, if the strata company has an auditor, give the auditor access to statements of the account, or otherwise authorise the auditor's access to statements of the account, if required by the auditor to do so.

(2) A strata manager of a strata company must provide such an auditor with —

(a) any document in the strata manager's possession or control relating to money paid to, or received by, the

strata manager on behalf of the strata company that the auditor reasonably requires; and

(b) any other information relating to money paid to, or received by, the strata manager on behalf of the strata company that the auditor reasonably requires.

[Section 150 inserted: No. 30 of 2018 s. 83.]

151. Termination of strata management contract

(1) There are proper grounds for termination of a strata management contract by a strata company if —

(a) the strata manager has contravened this Act; or

(b) the strata manager has contravened the contract; or

(c) the strata manager is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or

(d) the strata manager is a Chapter 5 body corporate within the meaning given in the *Corporations Act 2001* (Commonwealth) section 9; or

(e) the strata manager, or a director or chief executive officer of the strata manager, is convicted in this State of an offence punishable by imprisonment for 12 months or longer and the strata company is satisfied that the offence affects the strata manager's suitability to perform the strata manager's functions; or

(f) the strata manager, or a director or chief executive officer of the strata manager, is convicted outside this State, in Australia or elsewhere, of an offence that, if it had been committed in this State, would be punishable by imprisonment for 12 months or longer and the strata company is satisfied that the offence affects the strata manager's suitability to perform the strata manager's functions.

(2) If a strata company is satisfied that there are proper grounds for termination of a strata management contract, the strata company may terminate the contract by giving the strata manager written notice of termination —

(a) specifying the date (being not less than 28 days after the date of the notice) on which the termination will take effect; and

(b) informing the strata manager of the right to apply to the Tribunal for review of the decision to terminate the contract.

(3) Before a strata company terminates a strata management contract under subsection (2), the strata company must give the strata manager a notice (a ***show cause notice***).

(4) A show cause notice must —

(a) be in writing; and

(b) state that the strata company proposes to terminate the strata management contract; and

(c) specify the grounds on which it is proposed to terminate the strata management contract; and

(d) set out particulars of the facts relied on as evidence of those grounds; and

(e) invite the strata manager to make written submissions to the strata company as to why the strata management contract should not be terminated; and

(f) specify the period (being at least 14 days after the date of the notice) within which the written submissions must be received by the strata company.

(5) A strata company must give proper consideration to any written submissions made by the strata manager within the period specified in the show cause notice.

(6) Nothing in this section affects the operation of section 115 in relation to a strata management contract or any other right that the strata company may have to terminate the contract.

[Section 151 inserted: No. 30 of 2018 s. 83.]

152. Return of records and other property

(1) If a strata management contract is terminated, the strata manager must return to the strata company —

(a) all records of the strata company, including records of account, in the strata manager's possession or control; and

(b) all keys and other property of the strata company in the strata manager's possession or control.

(2) The property must be returned to the strata company within 28 days after the day on which the contract is terminated (even if the strata manager has made an application for review of the decision to terminate the contract).

(3) The strata company may agree to the property being made available for collection by another strata manager engaged by the strata company or being returned in some other manner.

(4) A strata manager cannot exercise any claim or lien against or on the property of a strata company that the strata manager is required, under this section, to return to the strata company.

[Section 152 inserted: No. 30 of 2018 s. 83.]

153. Provision of information about industry

The regulations may require a strata manager (other than a volunteer strata manager) to lodge a periodic return at the office of the Authority containing aggregated information about strata titles schemes managed by the strata manager (being information ordinarily kept by a strata manager and readily available) for the purposes of the Authority —

(a) publishing, if it chooses to do so, a list of strata managers; and

(b) using the information to develop policy and advise the Minister on matters related to strata managers.

[Section 153 inserted: No. 30 of 2018 s. 83.]

154. Contracting out prohibited

(1) A contract or arrangement is of no effect to the extent that it purports to exclude or restrict the operation of this Part.

(2) A purported waiver of a right, remedy or benefit conferred on a person under this Part is of no effect.

[Section 154 inserted: No. 30 of 2018 s. 83.]

155. Protection from liability

(1) No civil liability attaches to a volunteer strata manager for anything that the person has, in good faith, done or omitted to be done —

(a) in the performance of a function under this Act or scheme by-laws; or

(b) in the reasonable belief that the act or omission was in the performance of a function under this Act or scheme by-laws.

(2) A liability that would, but for subsection (1), attach to a person attaches instead to the strata company.

[Section 155 inserted: No. 30 of 2018 s. 83.]

Part 10 — Protection of buyers

[Heading inserted: No. 30 of 2018 s. 83.]

156. Information to be given before contract

(1) Before a buyer signs a contract for the sale and purchase of a lot in a strata titles scheme, the seller of the lot must give the buyer the following —

(a) the name and address of the seller;

(b) the following information relating to the strata titles scheme —

(i) the scheme notice, scheme plan, scheme by-laws and schedule of unit entitlements for the strata titles scheme;

(ii) scheme by-laws that have been made by the strata company but not yet registered as a scheme document;

(iii) for a leasehold scheme, the strata lease for the lot;

(iv) the name and address for service of the strata company;

(v) either —

(I) the minutes of the most recent annual general meeting and of any subsequent extraordinary general meetings of the strata company; or

(II) a statement that the strata company does not keep minutes of its meetings; or

(III) a statement of why the seller has been unable to obtain the minutes;

(vi) either —

(I) the statement of accounts last prepared by the strata company; or

(II) a statement that the strata company does not prepare a statement of accounts; or

(III) a statement of why the seller has been unable to obtain a statement of accounts;

(vii) a copy of any notice received by the seller from the strata company in relation to any current termination proposal for the strata titles scheme;

(c) the following information relating to the lot —

(i) its exact location shown on the scheme plan for the strata titles scheme;

(ii) its definition, as contained in the scheme plan for the strata titles scheme;

(iii) the unit entitlement of the lot (and the sum of the unit entitlements of all of the lots in the scheme);

(iv) if contributions have been determined by the strata company within the previous 12 months, the amount and due date of the contributions payable by the lot owner;

(v) if contributions have not been so determined, a reasonable estimate of the amount of the contributions likely to be payable for the 12 months following the proposed settlement date;

(vi) details of any debt owed by the owner of the lot to the strata company, including how the debt arose, the date on which it arose and the amount outstanding;

(vii) if the lot is a special lot, details of the exclusive use by-laws that apply to the lot;

(d) any other information required by the regulations.

(2) If the lot has not yet been created, a reference in subsection (1) —

(a) to a scheme document is to be read as a reference to the latest version of the draft scheme document or amendment of a scheme document as relevant to the lot as proposed to be created; and

(b) to a unit entitlement of the lot or amount is to be read as a reference to a reasonable estimate of that unit entitlement or amount; and

(c) to any other matter (such as contributions payable) is to be read as a reference to a reasonable expectation about the matter as relevant to the lot as proposed to be created.

(3) Subsection (4) applies if —

(a) the strata titles scheme has not been registered; or

(b) the first annual general meeting of the strata company has not been held; or

(c) the scheme developer owns 50% or more of the lots in the strata titles scheme or lots with an aggregate unit entitlement of 50% or more of the sum of the unit entitlements of all the lots in the scheme.

(4) Before a buyer signs a contract for the sale and purchase of a lot in circumstances in which this subsection applies, if the scheme developer is the seller of the lot, the seller must also give the buyer —

(a) a statement of the estimated income and expenditure of the strata company for the 12 months after the proposed settlement date; and

(b) details of any disclosure that the scheme developer is required to make under section 79; and

(c) details of any contract (or proposed contract) for the provision of services or amenities to the strata company or to members of the strata company entered into or

arranged by the scheme developer or by the strata company, including —

(i) its terms and conditions; and

(ii) the consideration and the estimated costs to the members of the strata company;

and

(d) details of the terms and conditions of any lease, licence, right of exclusive use and enjoyment or special privilege (or proposed lease, licence, right of exclusive use and enjoyment or special privilege) over common property.

(5) The seller must comply with this section either —

(a) by giving the buyer a notice in the approved form; or

(b) by including the information and statements in the contract to be signed by the buyer in the manner set out in the regulations.

(6) In any court or tribunal proceedings arising out of or connected with a contract for the sale and purchase of a lot, the onus of proving that the required information and statements were given in accordance with this section lies on the seller.

[Section 156 inserted: No. 30 of 2018 s. 83.]

157. Information to be given after contract

(1) If a notifiable variation occurs after a buyer signs a contract for the sale and purchase of a lot, the seller must, by notice in writing, inform the buyer of particulars of the notifiable variation that a reasonable person would consider sufficient to enable the buyer to make an adequately informed assessment as to whether the buyer is materially prejudiced by the notifiable variation.

(2) The regulations may provide that if the notice contains specified particulars of a notifiable variation of a specified type it will be

conclusively presumed to contain the particulars required by subsection (1).

(3) The seller must comply with subsection (1) —

(a) if the seller becomes aware of the notifiable variation less than 15 working days before the settlement date for the contract — as soon as practicable; and

(b) in any other case — not later than 10 working days after the seller becomes aware of the notifiable variation.

(4) Subsection (1) does not apply if —

(a) the seller has in the contract informed the buyer of any proposed action or matter that would be a notifiable variation; and

(b) the action or matter when completed does not differ from that described in the contract; and

(c) the seller gives the buyer written notice of completion of the action or matter within the time required by subsection (5), with particulars which a reasonable person would consider sufficient to enable the buyer to make an adequately informed assessment as to whether the action or matter as completed differs from that described in the contract.

(5) For subsection (4)(c), the time required for notice of completion is —

(a) if the seller becomes aware of the completion of the action or matter less than 15 working days before the settlement date for the contract — as soon as practicable; and

(b) in any other case — not later than 10 working days after the seller becomes aware of completion of the action or matter.

(6) In any court or tribunal proceedings arising out of or connected with a contract for the sale and purchase of a lot, the onus of

proving that a notice required by subsection (1) or a notice referred to in subsection (4)(c) was given in accordance with this section lies on the seller.

[Section 157 inserted: No. 30 of 2018 s. 83.]

158. Delay in settlement for failure to give information

(1) A buyer may, by written notice to the seller, postpone the settlement date for a contract for the sale and purchase of a lot if the seller has not complied with section 156 or 157.

(2) The settlement date may be postponed by no more than 15 working days after the latest date on which the seller complies with the relevant requirements (even though that may be after the contract has been entered into).

[Section 158 inserted: No. 30 of 2018 s. 83.]

159. Avoidance of contract for failure to give information

(1) A buyer may avoid a contract for the sale and purchase of a lot at any time before the settlement date for the contract —

(a) if the seller has not complied with section 156; and

(b) if the seller were now to comply with that section, the buyer would receive information or a document that would disclose material prejudice to the buyer (proof of which lies on the buyer).

(2) However, if the seller gives the buyer a notice substantially complying with section 156 before the buyer avoids the contract under this section, the buyer may avoid the contract under this section only if the buyer does so within 15 working days after the seller's notice is given to the buyer.

[Section 159 inserted: No. 30 of 2018 s. 83.]

160. Avoidance of contract on notification of variation for material prejudice

A buyer may avoid a contract for the sale and purchase of a lot at any time within 15 working days after the seller gives the buyer a notice under section 157(1) if —

(a) the notifiable variation is not one to which section 157(4) applies; and

(b) the buyer is materially prejudiced by the information or document disclosed (proof of which lies on the buyer).

[Section 160 inserted: No. 30 of 2018 s. 83.]

161. Avoidance of contract for failure to disclose type 1 notifiable variation

(1) A buyer may avoid a contract for the sale and purchase of a lot at any time before the settlement date for the contract if —

(a) a type 1 notifiable variation occurs in relation to the contract; and

(b) the seller does not substantially comply with the requirement under section 157 to give notice of the variation to the buyer within the required time.

(2) However, if the seller gives a notice substantially complying with the requirement under section 157 before the buyer avoids the contract under this section, the buyer may not avoid the contract under this section more than 15 working days after the seller's notice is given.

[Section 161 inserted: No. 30 of 2018 s. 83.]

162. Avoidance of contract for failure to disclose type 2 notifiable variation

(1) A buyer may avoid a contract for the sale and purchase of a lot at any time before the settlement date for the contract —

(a) if —

(i) a type 2 notifiable variation occurs in relation to the contract; and

(ii) the seller does not substantially comply with the requirement under section 157 to give notice of the variation to the buyer within the required time;

and

(b) if the seller were now to comply with that section, the buyer would receive information or a document that would disclose material prejudice to the buyer (proof of which lies on the buyer).

(2) However, if the seller gives a notice substantially complying with the requirement under section 157 before the buyer avoids the contract under this section, the buyer may not avoid the contract under this section more than 15 working days after the seller's notice is given.

[Section 162 inserted: No. 30 of 2018 s. 83.]

163. Proposed lot contract

(1) This section applies to a contract for the sale and purchase of a lot in a strata titles scheme entered into before the lot is created on registration of the scheme or an amendment of the scheme.

(2) A contract to which this section applies must —

(a) require any deposit or other amount payable by the buyer prior to registration of the strata titles scheme or amendment of the strata titles scheme to be paid by the buyer to a legal practitioner, real estate agent or

settlement agent to be held on trust for the buyer until the scheme is registered; and

(b) specify the practitioner or agent to whom payment is to be made by the buyer and how the payment may be made.

(3) The buyer may, at any time before registration of the strata titles scheme or amendment of the strata titles scheme, avoid a contract to which this section applies if —

(a) the contract does not comply with subsection (2); or

(b) the scheme or amendment is not registered —

(i) within a period after the date of the contract agreed in writing by the buyer and seller; or

(ii) in the absence of such an agreement, within 6 months after that date.

(4) In this section —

date of the contract means the day on which the contract was signed or, if the parties signed it on different days, the last of those days;

real estate agent means a person licensed as a real estate agent under the *Real Estate and Business Agents Act 1978*;

settlement agent means a person licensed as a settlement agent under the *Settlement Agents Act 1981*.

[Section 163 inserted: No. 30 of 2018 s. 83; amended: No. 9 of 2022 s. 407.]

164. Avoidance of contract — manner and effect

(1) A notice of avoidance of a contract for the sale and purchase of a lot must —

(a) be given by the buyer to the seller in writing; and

(b) specify the grounds on which the contract is avoided, including details of the material prejudice to the buyer if required as grounds for avoidance.

(2) On the avoidance under this Part of a contract for the sale and purchase of a lot —

(a) the buyer may recover from the seller as a debt all money paid by the buyer under the contract; and

(b) a person who is holding a deposit or other amount on behalf of the buyer for the contract must repay the deposit or other amount to the buyer, minus any amount due to the seller as rent for any period during which the buyer was in occupation of the lot or entitled to receive the rents and profits of the lot.

[Section 164 inserted: No. 30 of 2018 s. 83.]

165. Contracting out prohibited

(1) A contract or arrangement is of no effect to the extent that it purports to exclude or restrict the operation of this Part.

(2) No penalty is payable by a buyer under a contract or arrangement for exercising a right under this Part.

(3) A purported waiver of a right, remedy or benefit conferred on a buyer by this Part is of no effect.

[Section 165 inserted: No. 30 of 2018 s. 83.]

Part 11 — Variation of strata titles scheme by Tribunal

[Heading inserted: No. 30 of 2018 s. 83.]

Division 1 — On damage or destruction

[Heading inserted: No. 30 of 2018 s. 83.]

166. Variation of strata scheme on damage or destruction of building

(1A) An application for an order under this section for a strata scheme can be made by —

(a) the strata company; or

(b) the owner of a lot in the scheme; or

(c) a registered mortgagee of a lot in the scheme; or

(d) for a leasehold scheme, the owner of the leasehold scheme.

(1) If a scheme building is damaged or destroyed, the Tribunal may make an order for or with respect to the variation of the existing strata scheme or the substitution for the existing strata scheme of a new strata scheme.

(2) An insurer who has effected insurance on the scheme building, or any part of the building, against damage to or destruction of the building has the right to appear, in person or by counsel, on an application to the Tribunal under this section.

(3) Without limiting subsection (1), an order made under that subsection may include directions for any 1 or more of the following matters —

(a) the reinstatement in whole or in part of the building;

(b) the transfer or conveyance of the interests of the owners of lots that have been damaged or destroyed to the other owners of lots in proportion to their unit entitlements;

(c) the substitution for the existing schedule of unit entitlements of a new schedule of unit entitlements;

(d) the application of insurance money received by the strata company in respect of damage to or destruction of the scheme building;

(e) the payment of money to or by the strata company, the owner of a lot or, for a leasehold scheme, the owner of the leasehold scheme;

(f) the amendment of the strata plan, in such manner as the Tribunal thinks fit, so as to include any addition to the common property;

(g) the payment to a mortgagee of a lot of money received by the strata company from an insurer of the scheme building;

(h) any matter in respect of which it is, in the opinion of the Tribunal, just and equitable in the circumstances of the case to make provision in the order;

(i) the imposition of such terms and conditions as the Tribunal thinks fit.

(4) The Tribunal may amend an order made under this section.

(5) An order made under this section takes effect as follows —

(a) except as provided in paragraph (b), on the day specified in the order or the day when the order is lodged for registration with the Registrar of Titles, whichever is the later;

(b) in the case of an order made under this section as applied by section 167, on the day on which the taking referred to in the order takes effect.

[(6)-(7) deleted]

[Section 166, formerly section 28, amended: No. 58 of 1995 s. 30 and 93(1); No. 74 of 2003 s. 112(5); amended, renumbered as section 166 and relocated: No. 30 of 2018 s. 31 and 84.]

Division 2 — On compulsory acquisition

[Heading inserted: No. 30 of 2018 s. 83.]

167. Variation of strata scheme on taking

Subject to any necessary modifications, section 166 applies and the Tribunal has jurisdiction accordingly in any case of the taking of part of the land in a parcel in a registered strata plan in the manner and to the extent that section 166 applies and the Tribunal has jurisdiction in the case of damage to or destruction of a scheme building.

[Section 167, formerly section 29, amended: No. 58 of 1995 s. 31 and 93(1); No. 74 of 2003 s. 112(5); amended, renumbered as section 167 and relocated: No. 30 of 2018 s. 32 and 84.]

168. Variation of survey-strata scheme on taking

(1A) An application for an order under this section for a survey-strata scheme can be made by any of the following —

(a) the strata company;

(b) the owner of a lot in the scheme;

(c) a registered mortgagee of a lot in the scheme;

(d) for a leasehold scheme, the owner of the leasehold scheme.

(1) If part of a parcel subdivided by a survey-strata scheme is taken, the Tribunal may make an order for or with respect to the variation of the existing scheme or the substitution for the existing scheme of a new scheme.

(2) Without limiting subsection (1), an order made under that subsection may include directions for any 1 or more of the following matters —

(a) the substitution for the existing schedule of unit entitlements of a new schedule of unit entitlements; and

(b) the payment of money to or by the strata company or the owner of a lot or, in the case of a leasehold scheme, the owner of the leasehold scheme; and

(c) the amendment of the survey-strata plan, in such manner as the Tribunal thinks fit, so as to include any addition to the common property; and

(d) any matter in respect of which it is, in the opinion of the Tribunal, just and equitable in the circumstances of the case to make provision in the order; and

(e) the imposition of such terms and conditions as the Tribunal thinks fit.

(3) The Tribunal may amend an order made under this section.

[(4)-(5) deleted]

[Section 168, formerly section 29A, inserted: No. 58 of 1995 s. 32; amended: No. 74 of 2003 s. 112(6); amended, renumbered as section 168 and relocated: No. 30 of 2018 s. 33 and 84.]

169. Acquiring authority to lodge redefining plan after partial taking

(1) If part of a parcel subdivided by a strata titles scheme is taken, the acquiring authority must, as soon as is practicable after the taking takes effect, cause to be prepared and lodged with the Registrar of Titles a plan that complies with requirements specified in the regulations (the ***redefining plan***).

(2) On registration of the redefining plan —

(a) the redefining plan is taken to be part of the scheme plan as previously registered; and

(b) the Registrar of Titles must amend the registered scheme plan in the manner specified in the regulations.

[(3) deleted]

(4) In subsection (1) —

acquiring authority, in relation to the taking of land, means —

(a) the Minister who makes the taking order in relation to the land under section 177 of the *Land Administration Act 1997*; or

(b) if the land is taken for the purposes of a local government, the local government.

[Section 169, formerly section 29B, inserted: No. 58 of 1995 s. 32; amended: No. 74 of 2003 s. 112(5)-(8); amended, re renumbered as section 169 and relocated: No. 30 of 2018 s. 34 and 84.]

Division 3 — Notice of applications

[Heading inserted: No. 30 of 2018 s. 83.]

170. Notice of application for order under section 166, 167 or 168

(1) The Tribunal may, in proceedings on an application for an order under section 166, 167 or 168, make either or both of the following orders —

(a) an order that public notice, by advertisement or otherwise, be given of the proceedings;

(b) an order that service of notice of the application upon any person be dispensed with.

(2) Except as authorised by the rules of the Tribunal, the Tribunal must not make an order referred to in subsection (1)(b) in respect of a person unless the Tribunal is satisfied that —

(a) that person cannot be found in Western Australia; or

(b) it is uncertain whether that person is living; or

(c) service cannot be effected on that person without expense disproportional to the value, if any, of the person's interest.

[Section 170, formerly section 124, amended: No. 58 of 1995 s. 82 and 93(1); amended, renumbered as section 170 and relocated: No. 30 of 2018 s. 75 and 84.]

Part 12 — Termination of strata titles scheme

[Heading inserted: No. 30 of 2018 s. 83.]

Division 1 — Introduction

[Heading inserted: No. 30 of 2018 s. 83.]

171. Forms of termination

(1) A strata titles scheme terminates (as set out in Division 6) as follows —

(a) a leasehold scheme terminates on the expiry day for the scheme as referred to in Division 2;

(b) a leasehold or freehold scheme terminates —

(i) if there is a termination proposal and the process referred to in Division 3 is followed; or

(ii) if all lots in the scheme are owned by the same person and the process referred to in Division 4 is followed.

(2) Divisions 5 and 6 contain provisions relevant to the forms of termination of a strata titles scheme set out in Divisions 2, 3 and 4.

(3) A strata titles scheme also terminates as set out in Division 7 on the taking under the *Land Administration Act 1997* of all of the lots in a strata titles scheme and, for a leasehold scheme, the reversionary interest of the owner of the leasehold scheme.

[Section 171 inserted: No. 30 of 2018 s. 83.]

Division 2 — Expiry of leasehold scheme

[Heading inserted: No. 30 of 2018 s. 83.]

172. Notification of expiry

(1) The owner of a leasehold scheme must, at least 1 month before the expiry of the scheme, lodge with the Registrar of Titles

notice, in the approved form, of the impending expiry of the leasehold scheme.

(2) If the owner of a leasehold scheme fails to give the necessary notice, it may be given by an owner of a lot in the scheme and the owner may recover the cost of doing so as a debt in a court of competent jurisdiction from the owner of the leasehold scheme.

Note for this section:

Expiry of a leasehold scheme does not require an approval of a subdivision of land as the expiry is approved as part of the process of initial subdivision by the scheme.

[Section 172 inserted: No. 30 of 2018 s. 83.]

Division 3 — Termination proposal

[Heading inserted: No. 30 of 2018 s. 83.]

173. Proponent

The termination of a strata titles scheme may be proposed by a person (the ***proponent***) who is —

(a) the owner of a lot in the strata titles scheme; or

(b) a person who has a contractual right to purchase a lot in the strata titles scheme; or

(c) a body corporate formed by 2 or more such persons.

[Section 173 inserted: No. 30 of 2018 s. 83.]

174. Outline of termination proposal

(1) The proponent of a proposal to terminate a strata titles scheme (a ***termination proposal***) must submit an outline of the proposal to —

(a) the strata company for the scheme; and

(b) if it is a leasehold scheme, the owner of the leasehold scheme.

(2) However, an outline of a termination proposal cannot be submitted to a strata company or owner of a leasehold scheme —

(a) during any period commencing when an ordinary resolution has been passed by the strata company in support of an outline of another termination proposal and ending when that proposal cannot proceed further under this Division; or

(b) during any period (not exceeding 12 months) for which the strata company has, by ordinary resolution, prohibited termination proposals being submitted to it; or

(c) during any period for which the Tribunal has, on application by the strata company or the owner of the leasehold scheme, prohibited termination proposals being submitted.

(3) A strata company to which an outline of a termination proposal is submitted in accordance with this section must, within 14 days after being given the proposal —

(a) serve it on each person who is —

(i) the owner of a lot in the strata titles scheme; or

(ii) a registered mortgagee of a lot in the strata titles scheme;

and

(b) lodge with the Registrar of Titles notice of receipt of the outline in the approved form.

(4) The strata company must, on completion of the requirements under subsection (3), give written notice of that fact to the proponent of the termination proposal.

(5) Any modification of an outline of a termination proposal proposed by the proponent of the proposal must be submitted and served in the same manner as for the outline.

[Section 174 inserted: No. 30 of 2018 s. 83.]

175. Content of outline of termination proposal

(1) An outline of a termination proposal must —

(a) specify the name and address for service of the proponent of the proposal; and

(b) identify the strata titles scheme proposed to be terminated; and

(c) provide an explanation of the reasons for proposing termination of the strata titles scheme, including (without limitation), if the difficulty of raising sufficient contributions for repair of scheme buildings or infrastructure on common property is a reason for the proposal, a statement of that reason; and

(d) describe, in general terms, any proposals for contracts to be offered to owners of lots in the strata titles scheme; and

(e) describe, in general terms, what is proposed in terms of subdivision and development of the land following termination of the strata titles scheme; and

(f) describe the planning approvals required for the proposal described under paragraph (e) and the extent to which the proposal does not comply with a relevant planning scheme or interim development order in force under the *Planning and Development Act 2005*; and

(g) indicate, in general terms, the stages and timeframes for progress of the proposal if it proceeds; and

(h) provide an explanation, in the approved form, of the process for, and consequences of, termination of a strata titles scheme under this Division; and

(i) provide, in accordance with the regulations, details of proposed arrangements for obtaining independent advice or representation referred to in section 190; and

(j) include any other information required by the regulations.

(2) This section does not limit the matters that can be included in an outline of a termination proposal.

(3) An outline of a termination proposal must be in the approved form.

[Section 175 inserted: No. 30 of 2018 s. 83.]

176. Ordinary resolution and support of owner of leasehold scheme required to proceed further

(1) A termination proposal can only proceed further if, within 3 months after an outline of the proposal has been submitted as required under section 174 —

(a) for a freehold scheme — the strata company passes an ordinary resolution supporting consideration of a full proposal; and

(b) for a leasehold scheme —

(i) the owner of the leasehold scheme gives written notice to the strata company supporting consideration of a full proposal; and

(ii) the strata company passes an ordinary resolution supporting consideration of a full proposal.

(2) For a 2-lot scheme, an ordinary resolution is taken to be passed supporting consideration of a full proposal if the vote attached to 1 of the lots is cast in favour of the resolution (regardless of the unit entitlement of the lot).

[Section 176 inserted: No. 30 of 2018 s. 83.]

177. Approval of plan of subdivision

(1) If the requirements of section 176 are met and a termination proposal can proceed further —

(a) the proponent of the proposal can then make an application under the *Planning and Development Act 2005* Part 10 for approval of a plan of subdivision for the proposal (that is, for the parcel to cease being subdivided by a strata titles scheme); and

(b) the owner of the land is taken to have consented to the proponent making the application under the *Planning and Development Act 2005*.

(2) The *Planning and Development Act 2005* applies to the application subject to —

(a) the modification that a reference to subdivision is to be read as including a reference to termination of a strata titles scheme; and

(b) any other appropriate modifications.

[Section 177 inserted: No. 30 of 2018 s. 83.]

178. Full proposal

(1) If approval of a plan of subdivision is obtained as referred to in section 177, the proponent of the proposal can then submit a full proposal for the termination of the strata titles scheme to —

(a) the strata company for the scheme; and

(b) if it is a leasehold scheme, the owner of the leasehold scheme.

(2) However, a full proposal cannot be submitted to a strata company or owner of a leasehold scheme —

(a) if it is more than 12 months since the requirements of section 176 were met for the proposal; or

(b) during any period for which the Tribunal has, on application by the strata company or the owner of the leasehold scheme, prohibited termination proposals being so submitted.

(3) For a leasehold scheme, the proponent must give written notice to the owner of the leasehold scheme of the date on which the proponent submitted the full proposal to the strata company.

(4) A strata company to which a full proposal is submitted in accordance with this section must, within 14 days after being given the proposal —

(a) serve it on each person who is —

(i) the owner, occupier, registered mortgagee or caveator of a lot in the strata titles scheme; or

(ii) a person whose interest in a lot in the strata titles scheme as a lessee, tenant or mortgagee is recorded in the roll kept by the strata company; or

(iii) the occupier of common property in the strata titles scheme;

and

(b) lodge with the Registrar of Titles notice of receipt of the proposal in the approved form.

(5) Any modification of the full proposal proposed by the proponent must be submitted and served in the same manner as for the full proposal.

(6) However, a modification cannot be submitted within 14 days before voting on the termination proposal opens.

[Section 178 inserted: No. 30 of 2018 s. 83.]

178A. Reference of full proposal to independent advocate

(1) In this section —

independent advocate means a person to whom a full proposal is referred under subsection (2).

(2) A strata company to which a full proposal is submitted under section 178 must refer the proposal for review and assessment to a person who —

(a) is independent of the strata company and the proponent of the termination proposal; and

(b) satisfies any requirements of the regulations regarding experience or qualifications.

(3) The independent advocate must, in accordance with the regulations —

(a) review the full proposal; and

(b) provide the strata company with an independent assessment of the full proposal; and

(c) at a time and place arranged with the strata company, make a presentation of its assessment open to the persons mentioned in section 178(4)(a), conducted so as to take account of the needs of any of those persons who have sensory or mobility disabilities.

(4) The independent advocate must —

(a) endeavour to identify any owners of lots for whom arrangements for fuller or more extensive advice or representation are to be made under regulations made under section 190(1)(b); and

(b) advise those owners of their entitlements under regulations made under section 190; and

(c) if requested by those owners, refer them to independent providers of the advice or representation which they are to obtain; and

(d) if requested by those owners, assist them in obtaining benefits under the trust referred to in section 190(2).

(5) In any proceedings before the Tribunal under Part 13 in which there is a dispute about whether an owner of a lot in the strata titles scheme is entitled to fuller or more extensive advice or

representation under regulations made under section 190(1)(b) or is entitled to benefit under a trust referred to in section 190(2), the independent advocate may represent the owner in the proceedings.

(6) The regulations may prescribe how a person's independence is to be determined for the purposes of subsection (2)(a).

(7) The strata company —

(a) must pay the remuneration of, and reimburse the expenses incurred by, the independent advocate; and

(b) may charge fees under section 189 to cover the cost of paying those fees and reimbursing those expenses.

[Section 178A inserted: No. 30 of 2018 s. 83.]

179. Content of full proposal

(1) A full proposal for the termination of a strata titles scheme must —

(a) include the material required to be included in an outline of a termination proposal; and

(b) be accompanied by the approved plan of subdivision for the proposal; and

(c) describe, in detail, what is proposed in terms of contracts to be offered to owners of lots, including —

(i) contracts for the sale and purchase of lots before termination of the strata titles scheme, including —

(I) the name and address of any buyer; and

(II) the purchase price or a description of how the purchase price is to be determined; and

(III) the terms and conditions of the contracts for sale and purchase, including proposed settlement dates, or a

description of how those terms and conditions are to be determined; and

(IV) any deductions proposed to be made out of the purchase price or a description of how those deductions are to be determined;

and

(ii) contracts under which the owner of a lot acquires an interest in land in exchange for the lot, including —

(I) the choices available to owners or the basis for determining those choices; and

(II) the interests in land proposed to be acquired by the owners; and

(III) other terms and conditions of the exchange;

and

(iii) contracts under which the owner of a lot is to have an interest in the land on termination of the strata titles scheme or is to have a right or option for the acquisition of an interest in the land following its subdivision or development;

and

(d) describe, in detail, what is proposed to happen on termination of the strata titles scheme in terms of the discharge, withdrawal, removal or bringing forward of registered mortgages over the lots and other estates and interests in a lot or common property in the scheme that are registered or recorded in the Register; and

(e) describe, in detail, what is proposed to happen on termination of the strata titles scheme in terms of the contractual rights of occupiers of lots or common property in the scheme; and

(f) describe, in detail, what is proposed in terms of subdivision and development of the land following termination, including —

(i) plans for demolition; and

(ii) plans for subdivision; and

(iii) architectural plans for development;

and

(g) describe the planning approvals required for the proposal described under paragraph (f) and the extent to which the proposal does not comply with a relevant planning scheme or interim development order in force under the *Planning and Development Act 2005*; and

(h) indicate, in detail, the stages and timeframes proposed for progress of the proposal if it proceeds, including expectations for when vacant possession of lots and common property will be required; and

(i) describe any proposals for the temporary relocation of owners of lots, including any payments proposed to be made to owners to enable them to arrange temporary relocation; and

(j) include a statement obtained from the strata company of —

(i) its current assets and liabilities; and

(ii) any legal proceedings or pending legal proceedings to which the strata company is or proposes to become a party;

and

(k) specify the steps that will be taken to wind up the strata company, including for the realisation of assets and the discharge or transfer of liabilities for termination of the scheme; and

(l) any other information required by the regulations.

(2) A full proposal must incorporate a report (a ***termination infrastructure report***) comprised of —

(a) a report of a structural engineer on the state and condition of each scheme building and the infrastructure on the common property in the strata titles scheme; and

(b) a report of a person of a class specified in the regulations on the scope of works reasonably required to repair or replace the scheme buildings or infrastructure taking into account the report of the structural engineer; and

(c) a report of a quantity surveyor estimating the cost of the works identified in the report under paragraph (b).

(3) A full proposal must incorporate a report (a ***termination valuation report***) prepared and certified by a licensed valuer setting out a valuation of the market value of each lot in the strata titles scheme.

(4) The regulations must prescribe matters relating to the determination of the market value of a lot for a termination valuation report, including a valuation methodology that takes account of —

(a) relevant recent sales history; and

(b) the highest and best use of the lot; and

(c) the value attributable to the owner's interest in the common property of the strata titles scheme.

(5) The valuation must be current as at a date that is not more than 21 days (or, if some other period is specified in the regulations, that period) before submission of the full proposal to the strata company.

(6) A person must, in preparing or certifying a termination infrastructure report or termination valuation report, comply with the requirements of the regulations.

(7) This section does not limit the matters that can be included in a full proposal.

(8) The terms of a termination proposal set out in the full proposal are in substitution for the terms set out in the outline of the termination proposal.

(9) A full proposal, including the termination infrastructure report and the termination valuation report must be in the approved form.

[Section 179 inserted: No. 30 of 2018 s. 83.]

180. Support of owner of leasehold scheme required

(1) A termination proposal for a leasehold scheme cannot proceed further unless, within 3 months after the full proposal is submitted to the strata company, the owner of the leasehold scheme gives written notice to the strata company that the owner supports the termination proposal.

(2) A strata company must, as soon as reasonably practicable, give written notice to the proponent of the termination proposal of the receipt of a notice under subsection (1).

[Section 180 inserted: No. 30 of 2018 s. 83.]

181. Meetings and submissions

(1) After receipt of a full proposal, 1 or more general meetings of the strata company must be convened to consider the termination proposal (unless it is a proposal that cannot proceed further).

(2) The members of the strata company present at a meeting may, by ordinary resolution (for which notice is not required), require the proponent of the termination proposal to leave the meeting while the proposal is discussed or, if the proponent is not a member of the strata company, to be absent for the whole of the meeting.

(3) The persons on whom a full proposal for the termination of a strata titles scheme must be served by the strata company for the scheme must be given a reasonable opportunity to make

submissions to the proponent of the proposal and the strata company.

(4) The council of the strata company may —

(a) discuss a termination proposal with the proponent; and

(b) inform the owners of lots in the strata titles scheme of those discussions and of any clarifications or additional information provided by the proponent; and

(c) make recommendations to the owners of the lots in the strata titles scheme regarding the proposal.

(5) The regulations may impose additional requirements about the process required for consideration of a termination proposal.

[Section 181 inserted: No. 30 of 2018 s. 83.]

182. Vote

(1) A termination proposal must be put to the vote of the owners of the lots in the strata titles scheme (unless it is a proposal that cannot proceed further) and it can only proceed further if a termination resolution is passed.

Note for this subsection:

The terms of the termination proposal are as set out in the full proposal rather than the outline: see section 179(8).

(2) A termination resolution is only effective if the voting period opens at least 2 months after, and closes not more than 6 months after, the service of the full proposal by the strata company under this Division.

(3) A termination proposal may be modified and a further vote taken on the proposal, but no more than 3 such votes may be taken and each vote must be taken within the period referred to in subsection (2).

(4) A person who is independent of the strata company and the proponent of the termination proposal must be appointed to tally and count the votes on the proposal.

(5) The vote must be taken as follows —

(a) 1 vote may be cast for each lot in the strata titles scheme;

(b) the value of each vote is 1.

(6) A termination resolution is passed if the number of votes cast in favour of the termination proposal equals the number of lots in the strata titles scheme.

(7) A termination resolution is passed subject to the confirmation of the Tribunal if —

(a) the strata titles scheme has 5 or more lots; and

(b) the number of votes cast in favour of the termination proposal is at least 80% of the total number of lots in the scheme.

(8) Section 126(a) does not apply to voting on a termination resolution.

(9) A termination proposal must not be modified in a material particular by the proponent of the proposal after a termination resolution has been passed unless the modification is supported under the same voting arrangements as apply to the termination resolution.

(10) The independent person appointed to tally and count the votes must —

(a) make a record of each vote identifying the lot for which it is cast and the date on which it was cast, and the tally of the votes; and

(b) as soon as reasonably practicable, give written notice to the strata company of the number of votes cast in favour of and against the termination proposal and a statement of whether confirmation of the resolution by the Tribunal is required; and

(c) if confirmation of the resolution by the Tribunal is required, provide the record made under paragraph (a) to

the strata company in the manner required by the regulations, but must not otherwise disclose information about who cast votes for or against the proposal or for which lots the votes were cast.

(11) A strata company must, as soon as practicable after a termination resolution is passed —

(a) lodge with the Registrar of Titles notice of that fact in the approved form; and

(b) give written notice of that fact to —

(i) the proponent of the termination proposal; and

(ii) for a leasehold scheme, the owner of the leasehold scheme.

(12) The notice must include a statement of whether or not confirmation of the termination resolution by the Tribunal is required.

(13) The regulations may impose additional requirements about the process required for voting on a termination proposal.

[Section 182 inserted: No. 30 of 2018 s. 83.]

183. Confirmation of termination resolution by Tribunal

(1) If a termination proposal can proceed further only if the Tribunal confirms the termination resolution, the proponent of the proposal can apply to the Tribunal for that confirmation.

(2) The application must be made within 28 days after the date on which the termination resolution is passed or within an extension of that period given by the Tribunal.

(3) The application must be accompanied by —

(a) the full proposal for the termination of the strata titles scheme; and

(b) all written submissions made to the proponent about the termination proposal; and

(c) any other material specified in the regulations.

(4) For the *State Administrative Tribunal Act 2004* section 45(1)(b), the following persons are entitled to a copy of, or notice of, the application —

(a) the strata company for the strata titles scheme; and

(b) for a leasehold scheme, the owner of the leasehold scheme.

(5) The strata company and, for a leasehold scheme, the owner of the leasehold scheme, will be taken to be parties to the proceedings.

(6) The strata company must, within 14 days after being given notice of the application —

(a) serve notice of the application on each person who is —

(i) the owner, occupier or registered mortgagee of a lot in the strata titles scheme; or

(ii) the occupier of common property in the strata titles scheme; or

(iii) a person whom the Tribunal requires to be served with notice of the application;

and

(b) if all or part of the parcel of the strata titles scheme is or is included in a retirement village within the meaning of the *Retirement Villages Act 1992* — serve notice of the application on the Commissioner within the meaning of that Act; and

(c) provide the following to the Tribunal (which may then be released by the Tribunal to any person entitled to appear and be heard or to make submissions) —

(i) for a leasehold scheme, a copy of the notice of support for the termination resolution given by the owner of the leasehold scheme under section 180;

(ii) a record (as provided by the independent person who counted the votes) of each vote on the termination resolution, identifying the lot for which it was cast and the date on which it was cast, and a tally of the votes;

(iii) minutes of all meetings of the strata company or the council of the strata company at which the termination proposal was considered;

(iv) all written submissions made to the strata company about the termination proposal;

(v) the scheme plan, scheme by-laws and schedule of unit entitlements for the strata titles scheme;

(vi) anything else required by the regulations;

and

(d) lodge with the Registrar of Titles notice of the application in the approved form.

(7) A person who is required to be served with notice of the application is entitled to appear and be heard or make written submissions to the Tribunal (as the Tribunal determines).

(8) In proceedings for confirmation of a termination resolution of a strata company, the Tribunal may —

(a) make an order confirming the termination resolution (which may be subject to the termination proposal being modified in a specified manner as set out in subsection (13)); or

(b) make a decision not to make such an order.

(9) The Tribunal can only confirm a termination resolution if the proponent of the termination proposal satisfies the Tribunal that —

(a) the process required by this Division has been complied with; and

(b) under the termination proposal, the owner of a lot in the strata titles scheme who does not support the termination will receive fair market value for the lot or a like for like exchange for the lot; and

(c) the termination proposal is otherwise just and equitable having regard to —

(i) the interests of the owners of the lots in the strata titles scheme; and

(ii) if it is a leasehold scheme, the interests of the owner of the leasehold scheme; and

(iii) the interests of occupiers of the lots and the occupiers of the common property in the strata titles scheme; and

(iv) the interests of registered mortgagees of the lots in the strata titles scheme; and

(v) the interests of any other person with an estate or interest in, or right over, a lot or common property in the strata titles scheme that is registered or recorded in the Register.

(10) In determining under subsection (9)(b) whether an owner of a lot will receive fair market value for the lot —

(a) the Tribunal must be satisfied that —

(i) the owner will receive an amount that is at least the amount of compensation that would be required to be paid by an acquiring authority under the *Land Administration Act 1997* for taking of the lot without agreement; and

(ii) the owner will not be disadvantaged in terms of the owner's financial position as a result of the termination of the strata titles scheme;

and

(b) in considering the amount of compensation that would be payable under the *Land Administration Act 1997* section 241 —

(i) that section is to be read as if the owner of the lot were the claimant and the proponent of the termination proposal were the acquiring authority; and

(ii) no regard is to be had to any reference to proposed public works nor to the undertaking of improvements after there is a notice of intention; and

(iii) an amount appropriate to compensate for the taking without agreement may be added to the award or offer (but it may not be more than 10% of the amount otherwise awarded or offered unless the Tribunal is satisfied that exceptional circumstances justify a higher amount);

and

(c) without limitation, regard is to be had to the loss or damage, if any, sustained by the owner by reason of any of the following —

(i) removal expenses;

(ii) disruption and reinstatement of a business;

(iii) liability for capital gains tax, goods and services tax or other tax or duty;

(iv) conveyancing and legal costs and other costs associated with the creation or discharge of mortgages and other interests, including for the acquisition of a replacement property.

(11) In determining under subsection (9)(b) whether an owner of a lot will receive a like for like exchange for the lot, the Tribunal must consider —

(a) whether the value of what is offered in exchange is equivalent to the fair market value of the lot (as set out in subsection (10)); and

(b) how the location, facilities and amenity of what is offered in exchange compares to that of the lot.

(12) Without limiting the factors that the Tribunal can take into account under subsection (9)(c), the Tribunal must consider the following —

(a) any evidence of impropriety in the termination process, including, for example —

(i) evidence of proxy votes being exercised invalidly or votes being affected by undue influence in connection with the termination resolution; and

(ii) evidence of false or misleading information (whether by inclusion or omission) having been included in the outline of or the full proposal for the termination of the strata titles scheme;

(b) the proportion of owners of lots in favour of and against the termination proposal in terms of numbers of lots and in terms of unit entitlements of lots;

(c) the termination infrastructure report and options reasonably available to address problems identified in the report (including the extent to which contributions would need to be increased for implementation of an option);

(d) any arrangements for the owner of a lot in the strata titles scheme to buy back into the subdivided land following redevelopment;

(e) the benefits and detriments of the termination proposal proceeding or not proceeding for all those whose interests must be taken into account.

(13) If the Tribunal is not satisfied of the matters set out in subsection (9)(b) or (c) but would be satisfied of those matters if the termination proposal were modified in a specified manner, the Tribunal may confirm the termination resolution subject to the termination proposal being modified in the specified manner.

(14) Without limitation, the modifications may include a requirement for the proponent to make a payment to a party to a lease or tenancy agreement over a lot or common property in the strata titles scheme that will terminate as a consequence of the termination of the scheme.

(15) The modifications must not have the effect of being less advantageous to any owner of a lot in the strata titles scheme, or, if it is a leasehold scheme, the owner of the leasehold scheme, than the termination proposal without modification.

(16) Subsection (15) does not apply to an owner in the capacity of a proponent of the termination proposal.

(17) Without limiting other powers of the Tribunal to make ancillary orders, if the Tribunal makes an order confirming a termination resolution, it may also order that, on specified conditions connected with the termination being met —

(a) the owner of a lot in the strata titles scheme must execute a transfer of ownership of the lot; or

[(b) deleted]

(c) a person with an estate or interest in, or right over, the whole or a part of the strata titles scheme parcel that is registered or recorded in the Register must take steps necessary for the discharge, withdrawal or other

removal, or for the bringing forward, of the estate, interest or right; or

(d) the occupier of a lot or the common property in the strata titles scheme must vacate the lot or common property.

(18) If the Tribunal orders a person under subsection (17)(c) to take steps for the discharge, withdrawal or removal of an estate, interest or right the Tribunal may order the proponent or the owner of a lot in the strata titles scheme to make a payment to that person in respect of the discharge, withdrawal or removal of the estate, interest or right.

(19) If the whole or part of the parcel of a strata titles scheme is subject to a residential tenancy agreement within the meaning given in the *Residential Tenancies Act 1987* section 3, the Tribunal may order that on the termination of the strata titles scheme —

(a) the tenant and the lessor must terminate the residential tenancy agreement under that Act; and

(b) the premises subject to the residential tenancy agreement are taken for the purposes of section 69 of that Act to cease to be lawfully usable as a residence; and

(c) if the tenant is given notice of termination under section 69 of that Act, then despite section 69(2) of that Act the period of notice must be not less than a period specified by the Tribunal; and

(d) the proponent or the owner of a lot in the scheme is to make a payment to the tenant under the residential tenancy agreement in respect of the termination of the residential tenancy agreement.

(20) If the whole or part of the parcel of a strata titles scheme is subject to a retail shop lease within the meaning given in the *Commercial Tenancy (Retail Shops) Agreements Act 1985*

section 3(1), then despite anything in that Act the Tribunal may order that —

(a) the retail shop lease is terminated on the termination of the strata titles scheme; and

(b) the proponent or the owner of a lot in the scheme is to make a payment to the tenant under the retail shop lease in respect of the termination of the retail shop lease.

(21) If the whole or part of the parcel of a strata titles scheme is subject to a lease or licence not referred to in subsection (19) or (20), the Tribunal may, subject to any other written law, order that —

(a) the lease or licence is terminated on the termination of the strata titles scheme; and

(b) the proponent or the owner of a lot in the scheme is to make a payment to the lessee or licensee in respect of the termination of the lease or licence.

(22) The Tribunal's powers under this section are exercisable only by a judicial member (or by the Tribunal constituted of a judicial member and other members).

(23) A strata company must, as soon as practicable after being given notice of the decision of the Tribunal on an application under this section —

(a) lodge with the Registrar of Titles notice of the decision in the approved form; and

(b) give written notice of the decision to each person entitled to receive notice of the application.

[Section 183 inserted: No. 30 of 2018 s. 83; amended: No. 21 of 2022 s. 65.]

184. Endorsement of subdivision approval on plan

(1) If a termination proposal can proceed further under section 182 (including, if required, because the Tribunal confirms the termination resolution under section 183) —

(a) the proponent of the proposal can then make a request to the Planning Commission to approve a diagram or plan of survey under the *Planning and Development Act 2005* section 145 and to endorse the approval of the plan of subdivision for the proposal obtained under section 177 on the diagram or plan of survey; and

(b) the owner of the land is taken to have consented to the proponent making the request under the *Planning and Development Act 2005*.

(2) The *Planning and Development Act 2005* applies to a request under subsection (1) subject to any appropriate modifications.

[Section 184 inserted: No. 30 of 2018 s. 83.]

185. Application for termination of scheme

(1) The proponent of a termination proposal can make an application for termination of a strata titles scheme if —

(a) the relevant approval has been obtained as set out in section 184; and

(b) the steps required to be taken before termination of the scheme for winding up the strata company under the termination proposal or an order under section 192 have been taken.

(2) The application must be made within 12 months after the termination resolution has been passed or, if the proposal can only proceed if the Tribunal confirms the termination resolution, after the Tribunal has made an order under section 183 confirming the termination resolution.

[Section 185 inserted: No. 30 of 2018 s. 83.]

186. Withdrawal of termination proposal

(1) If the proponent of a termination proposal makes a decision not to proceed with the proposal, the proponent must, as soon as reasonably practicable, withdraw the proposal by written notice to the strata company and, if it is a leasehold scheme, the owner of the leasehold scheme.

(2) A strata company that is given written notice of the withdrawal of a termination proposal from the proponent of the proposal must, within 14 days after being given the notice —

(a) serve the notice on each person who is —

(i) the owner of a lot in the strata titles scheme; or

(ii) if the full proposal for the termination of the strata titles scheme has been served by the strata company — the occupier of a lot or the common property in the strata titles scheme; or

(iii) a registered mortgagee of a lot in the strata titles scheme;

and

(b) lodge with the Registrar of Titles notice of the withdrawal of the proposal in the approved form.

[Section 186 inserted: No. 30 of 2018 s. 83.]

187. Notice that termination proposal cannot proceed further

(1) This section applies if a termination proposal cannot proceed further for any of the following reasons —

(a) at the end of 3 months after the outline of the termination proposal has been submitted to the strata company, the requirements of section 176 have not been met;

(b) at the end of 3 months after the full proposal has been submitted to the strata company, the requirements of section 180 have not been met;

(c) at the end of 6 months after service of the full proposal by the strata company, a termination resolution has not been passed;

(d) at the end of 12 months after a termination resolution that does not require the confirmation of the Tribunal has been passed, no application for termination of the strata titles scheme has been made;

(e) the termination resolution requires confirmation of the Tribunal and —

(i) the Tribunal makes a decision not to confirm the resolution; or

(ii) at the end of 12 months after the making of an order under section 183 confirming the termination resolution, no application for termination of the strata titles scheme has been made.

(2) If this section applies, the strata company must —

(a) lodge with the Registrar of Titles notice, in the approved form, that the termination proposal cannot proceed further; and

(b) give written notice confirming that fact to —

(i) the proponent of the termination proposal; and

(ii) for a leasehold scheme, the owner of the leasehold scheme; and

(iii) each member of the strata company.

[Section 187 inserted: No. 30 of 2018 s. 83.]

188. Notices received by Registrar of Titles

If a notice is lodged with the Registrar of Titles under this Division, the Registrar of Titles must —

(a) record a notification in the Register; and

(b) for a notice of withdrawal of a termination proposal or a notice that a termination proposal cannot proceed further, record the notice as a withdrawal of all earlier notifications recorded in the Register about the termination proposal.

[Section 188 inserted: No. 30 of 2018 s. 83.]

189. Costs of process

(1) A strata company may charge the proponent of a termination proposal reasonable fees to cover costs associated with undertaking an activity under this Division.

(2) The fees must not exceed any limits imposed by the regulations.

(3) A strata company need not undertake the relevant activity until the fees have been paid.

(4) If the strata company undertakes the relevant activity before receiving payment for the activity, the strata company can recover, in a court of competent jurisdiction, the fees for the activity as a debt owed to it by the proponent of the termination proposal.

[Section 189 inserted: No. 30 of 2018 s. 83.]

190. Arrangements for independent advice or representation for owners

(1) The regulations —

(a) must require the proponent of a termination proposal to enter into specified arrangements for the owners of lots in the strata titles scheme proposed to be terminated to obtain independent advice or representation in connection with the proposal; and

(b) must specify arrangements for obtaining fuller or more extensive advice or representation for a class or classes of owner identified in or under the regulations as vulnerable, having regard to —

(i) age, illness, trauma, disability or other factors that may impair the ability of an owner to consider and make an informed decision in relation to a termination proposal; or

(ii) financial disadvantage which would significantly impair the ability of the owner to bear the cost of obtaining appropriate professional advice in relation to a termination proposal.

(2) Without limitation, the arrangements may include a requirement for the proponent of a termination proposal to pay an amount to a trustee to be held in trust for owners to obtain independent legal advice or representation, valuation advice or reports or financial or taxation advice in connection with the proposal.

(3) The regulations may specify terms of a trust referred to in subsection (2).

[Section 190 inserted: No. 30 of 2018 s. 83.]

Division 4 — Termination by single owner

[Heading inserted: No. 30 of 2018 s. 83.]

191. Application for termination by single owner

(1) If all the lots in a strata titles scheme are owned by the same person, that person can make an application for termination of the scheme if, under the *Planning and Development Act 2005* Part 10 —

(a) a plan of subdivision for the termination of the scheme has been approved (that is, for the parcel to cease being subdivided by a strata titles scheme); and

(b) a diagram or plan of survey has been endorsed with that approval.

(2) The *Planning and Development Act 2005* applies to the required approval subject to —

(a) the modification that a reference to subdivision is to be read as including a reference to termination of a strata titles scheme; and

(b) any other appropriate modifications.

(3) For a leasehold scheme, if the applicant for cancellation of registration of the scheme is not the owner of the leasehold scheme, the application can only be made if the owner of the leasehold scheme has given written consent to the application.

[Section 191 inserted: No. 30 of 2018 s. 83.]

Division 5 — Directions for winding up of strata company

[Heading inserted: No. 30 of 2018 s. 83.]

192. Order for directions about winding up of strata company

(1) Before a strata titles scheme is terminated, an application may be made to the Tribunal for an order for directions about winding up the strata company by —

(a) an owner of a lot in the scheme; or

(b) a registered mortgagee of a lot in the scheme; or

(c) the strata company; or

(d) a judgement creditor of the strata company; or

(e) for a leasehold scheme, the owner of the leasehold scheme.

(2) If proceedings are before the Tribunal under section 183, the application may be made in those proceedings.

(3) Without limitation, an order under this section may include directions for —

(a) the sale or disposition of property of the strata company (including to whom and how proceeds must be disbursed); or

(b) the discharge of the liabilities of the strata company; or

(c) the administration and functions of the strata company.

(4) The applicant and any person to whom a copy of the application has been given under the *State Administrative Tribunal Act 2004* section 45, is entitled to appear and be heard on the hearing of the application.

(5) The Tribunal may vary an order made under this section on the application of any person who was entitled to appear and be heard on the hearing of the application for the order.

(6) An order under this section prevails over steps specified in a termination proposal for winding up of the strata company to the extent of any inconsistency.

[Section 192 inserted: No. 30 of 2018 s. 83.]

Division 6 — Notice, application and registration process

[Heading inserted: No. 30 of 2018 s. 83.]

193. Notice of expiry or application for termination of scheme

(1) A notice of the expiry of a leasehold scheme or an application for termination of a strata titles scheme must —

(a) be made to the Registrar of Titles; and

(b) be in the approved form; and

(c) for termination, be accompanied by the diagram or plan of survey endorsed with the approval of the Planning Commission under the *Planning and Development Act 2005*; and

(d) be accompanied by evidence in the approved form that the requirements of this Act for the termination of the scheme have been complied with; and

(e) be accompanied, if applicable, by —

(i) a statement (in the approved form) of how each item registered or recorded for the scheme in the Register is to be dealt with; and

(ii) disposition statements, instruments or documents necessary for that purpose;

and

(f) be accompanied by the fee fixed by the regulations.

(2) An application for termination of a strata titles scheme can be made before the diagram or plan of survey required for termination of the scheme is endorsed with the approval of the Planning Commission but the registration of the scheme cannot be cancelled until the diagram or plan of survey is so endorsed.

[Section 193 inserted: No. 30 of 2018 s. 83.]

194. Registration process for termination of scheme

(1) The Registrar of Titles must, to give effect to the termination of a strata titles scheme on an application for termination made in accordance with section 193 —

(a) cancel the registration of the strata titles scheme; and

(b) cancel the certificates of title for the lots in the strata titles scheme; and

(c) for a leasehold scheme, record on or in connection with the certificate of title for the parcel the fact that the scheme is terminated.

(2) The Registrar of Titles must, to give effect to the termination of a leasehold scheme with effect from the end of the expiry day for the scheme on a notice of expiry given in accordance with section 193 —

(a) cancel the registration of the strata titles scheme; and

(b) cancel the certificates of title for the lots in the strata titles scheme; and

(c) record on or in connection with the certificate of title for the parcel the fact that the scheme is terminated.

(3) The Registrar of Titles must take the action required under this section in the manner that the Registrar of Titles considers appropriate for incorporation in the Register under the *Transfer of Land Act 1893*.

[Section 194 inserted: No. 30 of 2018 s. 83.]

195. Effect of termination of scheme

(1) A strata titles scheme is terminated —

(a) for a leasehold scheme —

(i) at the end of the expiry day for the scheme; or

(ii) if the registration of the scheme is cancelled before that day, when the cancellation of the registration of the scheme is registered or recorded by the Registrar of Titles;

or

(b) for a freehold scheme, when cancellation of the registration of the scheme is registered or recorded by the Registrar of Titles.

(2) On termination of a strata titles scheme, the following occur —

(a) the scheme documents cease to have any effect;

(b) the lots and common property cease to exist;

(c) the land becomes a parcel of land that is not subdivided by a strata titles scheme;

(d) for a leasehold scheme —

(i) the person who was the owner of the leasehold scheme immediately before termination becomes

the owner of the parcel of land and is entitled to vacant possession of the land; and

(ii) if the leasehold by-laws (as in force immediately before termination of the scheme) provided for the payment of compensation on the expiry of the scheme — the owner of the parcel of land (from time to time) is liable to pay compensation to the persons who were owners of lots in the scheme immediately before its termination as required under those by-laws;

(e) for a freehold scheme — the persons who were owners of the lots immediately before termination of the strata titles scheme become the owners of the parcel of land as tenants in common in shares proportional to the unit entitlements of their respective lots immediately before termination of the scheme (or, if there was only 1 such owner, the person becomes the owner of the parcel of land);

(f) the strata company ceases to exist;

(g) all rights vested in the strata company immediately before it ceased to exist are vested in the persons who become the owners of the parcel of land on termination of the scheme;

(h) the persons who become the owners of the parcel of land on termination of the scheme become jointly and severally liable for all of the liabilities of the strata company subsisting immediately before it ceased to exist (and those persons are liable to contribute amongst themselves in shares proportional to the unit entitlements of their respective lots immediately before termination of the scheme);

(i) legal proceedings begun by or against the strata company may be completed by or against the persons who were owners of lots in the scheme immediately before its termination.

(3) If 2 or more persons own a lot in a strata titles scheme, or are the owners of a leasehold scheme, that is terminated, the owners hold their share in the new parcel of land as tenants in common or as joint tenants in the same manner as they owned the lot or scheme and, if they owned it as tenants in common, in the same proportions as they owned the lot or scheme.

[Section 195 inserted: No. 30 of 2018 s. 83.]

Division 7 — Termination on compulsory acquisition

[Heading inserted: No. 30 of 2018 s. 83.]

196. Termination on compulsory acquisition

(1) The Minister for Lands may in a taking order in respect of the whole of a parcel declare that a strata titles scheme for that parcel is terminated on the registration of that order.

(2) If subsection (1) applies the Registrar of Titles must register the land in the parcel in the name of the Crown or other authority in which it has vested under the taking order.

(3) In this section —

Minister for Lands means the Minister to whom the administration of the *Land Administration Act 1997* is for the time being committed by the Governor;

taking order means a taking order made under section 177 of the *Land Administration Act 1997*.

[Section 196, formerly section 29C, inserted: No. 58 of 1995 s. 32; amended: No. 74 of 2003 s. 112(9)-(11); amended, re renumbered as section 196 and relocated: No. 30 of 2018 s. 35 and 84.]

Part 13 — Tribunal proceedings

[Heading inserted: No. 30 of 2018 s. 83.]

197. Scheme disputes

(1) This Part provides for resolution by the Tribunal of the following disputes (***scheme disputes***) —

(a) a dispute between scheme participants about —

(i) the scheme documents, including the validity of scheme by-laws; or

(ii) the performance of, or the failure to perform, a function conferred or imposed on a person by this Act or the scheme by-laws; or

(iii) an alleged contravention of this Act (other than an offence); or

(iv) a resolution or decision of a strata company or the council of a strata company, including its validity; or

(v) the appointment or election of a member of the council or an officer of a strata company, including its validity; or

(vi) any other matter arising under this Act or the scheme by-laws;

(b) a dispute between an applicant for the registration of a strata titles scheme or amendment of a strata titles scheme and a person whose consent to the application is required, or who may object to the application, relating to the consent or objection;

(c) if the scheme by-laws (other than leasehold by-laws, staged subdivision by-laws and exclusive use by-laws) require the approval or consent of a person, other than the Planning Commission or a local government, to the amendment or repeal of certain scheme by-laws, a

dispute between that person and the strata company about a refusal to give an approval or consent;

(d) a dispute between an infrastructure owner and a strata company about a matter connected with a common property (utility and sustainability infrastructure) easement;

(e) a dispute between the scheme developer of a subdivision of land by a strata titles scheme and a strata company about a matter arising under Part 6;

(f) a dispute between an applicant under section 107 and the strata company about a matter arising under Part 8 Division 1 Subdivision 6;

(g) a dispute between a strata manager, or former strata manager, of a strata company and the strata company about —

(i) a matter arising under Part 9; or

(ii) the strata management contract; or

(iii) the performance of, or the failure to perform, a function conferred or imposed on the strata manager;

(h) a dispute between a buyer or prospective buyer of a lot in a strata titles scheme and the seller of the lot about a matter arising under Part 10;

(i) a dispute of a class specified in the regulations.

(2) The following are ***scheme participants*** —

(a) the strata company for the strata titles scheme;

(b) for a leasehold scheme, the owner of the leasehold scheme;

(c) a person who is appointed as an administrator of a strata company for the strata titles scheme;

(d) a member of the strata company for the strata titles scheme;

(e) the occupier of a lot in the strata titles scheme;

(f) the registered mortgagee of a lot in the strata titles scheme;

(g) a member of the council of a strata company, or an officer of the strata company, for the strata titles scheme, who is not a member of the strata company.

(3) The following are not ***scheme disputes*** —

(a) a dispute with the Planning Commission or some other planning authority or a dispute that can be the subject of a review under the *Planning and Development Act 2005* Part 14;

(b) a dispute with the Registrar of Titles;

(c) a dispute with the Valuer-General or a rating or taxing authority;

(d) a dispute about a contract of mortgage insurance under section 84;

(e) a contractual dispute, or a dispute about an estate or interest in land, between —

(i) a scheme participant and a person who is not a scheme participant (other than a dispute arising out of termination of a contract under section 115); or

(ii) the owner of a lot and a buyer, mortgagee or prospective buyer or mortgagee of the lot (other than a dispute of a kind referred to in subsection (1)(f) or (h));

(f) a dispute about an amount owed as a debt (other than a debt owed under section 99(2) or clause 53E);

(g) a dispute of a kind declared by the regulations not to be a scheme dispute.

(4) An application for resolution of a scheme dispute can be made to the Tribunal by a party to the dispute.

(5) However, the occupier of a lot in a strata titles scheme can only apply for resolution of a scheme dispute under subsection (1)(a) if the dispute is about —

(a) the scheme by-laws; or

(b) a resolution or decision of the strata company that directly affects the occupier; or

(c) an obligation or right of the occupier under this Act or the scheme by-laws.

[Section 197 inserted: No. 30 of 2018 s. 83.]

198. Procedure

(1) The Tribunal may, on application by a member of a strata company, if it is satisfied that a strata company has unreasonably refused to make an application to the Tribunal under this Act —

(a) authorise the member to make the application on behalf of the strata company; and

(b) authorise expenditure up to a specified amount from a fund of the strata company for legal advice and legal action for the proceeding.

(2) For the *State Administrative Tribunal Act 2004* section 45(1)(b), the following persons are entitled to a copy of, or notice of, an application to the Tribunal under this Act to which a strata company is a party —

(a) each member of the strata company;

(b) each mortgagee of a lot who has given written notice of the mortgagee's interest to the strata company;

(c) the occupier of each lot in the strata titles scheme that would be affected if the order sought were made.

(3) For the *State Administrative Tribunal Act 2004* section 45(1)(b), each mortgagee of a lot is entitled to a copy of, or notice of, an

application to the Tribunal under this Act to which the owner of a leasehold scheme is a party.

(4) Despite the *State Administrative Tribunal Act 2004* section 45 —

(a) the entitlement is to a copy of the application unless there is an approved form for the purpose, in which case, the entitlement is to notice in the approved form; and

(b) if the applicant is not the strata company —

(i) the obligation to give a copy of, or notice of, the application to the persons entitled under subsection (2) falls on the strata company rather than on the applicant; and

(ii) section 45(3) of that Act applies as if the strata company were the applicant.

(5) In addition to the circumstances in which the *State Administrative Tribunal Act 2004* section 47 applies, that section applies to a scheme dispute if the Tribunal —

(a) is not satisfied that the nature of the dispute is more than trivial; or

(b) is not satisfied that the applicant has an interest in the matter that is more than trivial and warrants recourse by the applicant to the Tribunal; or

(c) is satisfied that the purpose of the application is to harass or annoy, or to cause delay or detriment, or is otherwise wrongful; or

(d) is satisfied that the nature and gravity of the dispute is such that it is reasonable to expect the parties to resolve the dispute without recourse to the Tribunal.

(6) The Tribunal may make a final decision in proceedings under this Act at a directions hearing if the Tribunal considers that appropriate.

Note for this section:

Under the *State Administrative Tribunal Act 2004* Part 4 Division 2 the Tribunal may, amongst other things —

- strike out all, or any part, of a proceeding if it considers that the matter, or any aspect of it, would be more appropriately dealt with by another tribunal, a court or any other person; or
- dismiss or strike out a proceeding if it believes that it is frivolous, vexatious, misconceived or lacking in substance, is being used for an improper purpose or is otherwise an abuse of process; or
- direct that proceedings be consolidated or split.

Under section 38 of that Act, the Tribunal may order that a person be joined as a party to a proceeding.

[Section 198 inserted: No. 30 of 2018 s. 83.]

199. Declarations

(1) In a proceeding under this Act, the Tribunal may make a declaration concerning a matter in the proceeding instead of any order the Tribunal could make, or in addition to any order the Tribunal makes, in the proceeding.

(2) The Tribunal's power to make a declaration is exercisable only by a legally qualified member (or by the Tribunal constituted of a legally qualified member and other members).

(3) Without limitation, a declaration may be made that —

(a) a specified person has or has not contravened a specified provision of this Act, the scheme by-laws or a strata lease; or

(b) a specified clause of a strata lease is or is not invalid; or

(c) a specified scheme by-law is or is not invalid; or

(d) a specified decision or resolution of a strata company is or is not invalid; or

(e) a specified appointment or election of a member of a council of a strata company or an officer of a strata company is or is not invalid; or

(f) a settlement date for a contract for the sale and purchase of a lot was or was not validly postponed under this Act; or

(g) a contract for the sale and purchase of a lot was or was not validly avoided under this Act.

[Section 199 inserted: No. 30 of 2018 s. 83.]

200. Orders

(1) In a proceeding under this Act, the Tribunal may make any order it considers appropriate to resolve the dispute or proceeding.

(2) Without limitation, the orders that may be made by the Tribunal on an application under this Act include the following —

(a) an order requiring a scheme document to be amended in a specified manner (including in a manner that effects a subdivision);

(b) an order requiring a structural element by reference to which a lot in a strata scheme is defined to be reinstated following its damage, destruction or removal;

(c) an order determining the form and location of utility conduits to provide specified utility services subject to a utility service easement;

(d) an order requiring the scheme developer of a subdivision of land by a strata titles scheme to pay a specified amount to a strata company, being the whole or a part of the remuneration or the value of a benefit that the scheme developer failed to disclose as required under section 79;

(e) an order determining action that must be taken or refrained from being taken by a member of a strata company under section 98;

(f) an order authorising a specified person to convene and preside at a general meeting of a strata company —

(i) as the first annual general meeting; or

(ii) to appoint or elect members of the council or officers of the strata company; or

(iii) for some other specified purpose;

(g) an order authorising a specified person to convene and preside at a meeting of the council of a strata company —

(i) to appoint or elect officers of the strata company; or

(ii) for some other specified purpose;

Note for paragraphs (f) and (g):

The order may require the meeting to be held within a specified period or require notice of the meeting to be given in a specified manner.

(h) an order removing a specified person from office as a member of the council of a strata company or as an officer of a strata company;

(i) an order appointing a specified person as a member of the council of a strata company or as an officer of a strata company to replace a person removed from office;

(j) an order varying or terminating a strata management contract;

(k) an order requiring a strata manager to pay a specified amount to a strata company, being the whole or a part of the remuneration or the value of a benefit that the strata manager failed to disclose as required under section 145(2)(b) or section 147;

(l) an order requiring a strata company to take specified action or to refrain from taking specified action in the

performance or exercise of its functions, including the following —

(i) an order to sell or acquire real or personal property;

(ii) an order to enter into, vary or terminate a contract, including a contract for services or amenities to the strata company or the members of the strata company;

(iii) an order that a particular insurance claim be pursued;

(iv) an order that the amount of insurance cover be varied;

(v) an order to allow the keeping of an animal on specified conditions or prohibit the keeping of an animal on a lot or common property;

(m) an order requiring a person to take specified action or to refrain from taking specified action to remedy a contravention or prevent further contraventions of this Act, scheme by-laws or a strata management contract;

(n) an order that the strata company is to be taken to have passed or not to have passed a specified resolution required under this Act or the scheme by-laws as an ordinary resolution, special resolution, resolution without dissent or unanimous resolution;

(o) an order requiring a party to the proceeding before it to pay money to —

(i) a person specified in the order by way of compensation for any pecuniary loss or damage suffered; or

(ii) another party to a contract for the purpose of adjusting the position or rights of the parties consequentially on the termination or variation of the contract under the order;

(p) if a declaration is made that a contract for the sale and purchase of a lot was validly avoided under this Act, an order requiring a person who is holding a deposit or other moneys in trust to pay the deposit or other moneys to the former buyer;

(q) an order appointing an administrator of a strata company (being a person who has given written consent to the appointment) to perform some or all scheme functions.

(3) If the Tribunal makes an order requiring the payment of money by a strata manager or scheme developer of a subdivision of land by a strata titles scheme, it may, on the application of a party to the proceeding or on its own initiative, by order, prohibit the strata manager or scheme developer from seeking or enforcing an indemnity from the strata company or any other party for the required payment.

(4) An order may specify that it is to be taken to have come into effect on a date earlier than the date of the order.

(5) An order may be made to take effect on default being made in complying with some other order made by it.

(6) An order requiring amendment of a scheme document —

(a) must specify the extent to which the amendment is subject to the obtaining of the approvals and consents that would otherwise be required under this Act; and

(b) does not take effect until the Registrar of Titles registers the amendment of the scheme document.

(7) An order may be expressed to remain in force for a specified period, until a specified event or until further order.

[Section 200 inserted: No. 30 of 2018 s. 83.]

201. Interim orders

(1) In a proceeding under this Act, the Tribunal may make an order on an interim basis (an ***interim order***) if satisfied that by reason of the urgent circumstances of the case it should do so.

(2) An interim order remains in force for the period (not exceeding 3 months) specified in the order and may be renewed by further order of the Tribunal for subsequent periods (not exceeding, in any case, 3 months).

(3) An interim order may be made or renewed even if the period for parties to make written submissions has not expired.

(4) An interim order is subject to variation or revocation by further order of the Tribunal.

[Section 201 inserted: No. 30 of 2018 s. 83.]

202. Decision not to make order or declaration

In a proceeding under this Act, the Tribunal may make a decision not to make an order or declaration.

[Section 202 inserted: No. 30 of 2018 s. 83.]

203. Certain powers only exercisable by judicial member or legally qualified member

(1) The Tribunal's power to make an order under this Act is exercisable only by a judicial member (or by the Tribunal constituted of a judicial member and other members) if —

(a) the order affects a title to land (including through re-entry of a strata lease); or

(b) the order is an order confirming a termination resolution (as set out in section 183(18)); or

(c) the order is of a class required by the regulations to be made by a judicial member.

(2) The Tribunal's power to make an order under this Act is exercisable only by a legally qualified member (or by the Tribunal constituted of a legally qualified member and other members) if the order is of a class required by the regulations to be made by a legally qualified member.

[Section 203 inserted: No. 30 of 2018 s. 83.]

204. Limitations on orders

In a proceeding under this Act, the Tribunal cannot —

(a) make an order requiring a schedule of unit entitlements for a strata titles scheme to be amended unless it is satisfied that, if unit entitlements were to be allocated at the time of the order, the schedule of unit entitlements would require amendment; or

(b) make an order that the strata company is to be taken to have passed —

(i) a termination resolution; or

(ii) a resolution required for postponement of the expiry day for a leasehold scheme; or

(iii) a resolution fixing or varying contributions unless the Tribunal is satisfied that the contributions fixed by the strata company are inadequate or excessive; or

(iv) a resolution fixing or varying the interest rate applicable to contributions unless the Tribunal is satisfied that the interest rate fixed by the strata company is unreasonable; or

(v) a resolution determining arrangements for payment of contributions in instalments unless the Tribunal is satisfied that the arrangements allowed by the strata company are unreasonable;

or

(c) make an order that the amount of insurance cover be varied unless satisfied that the amount for which the strata company has insurance as required by this Act is inadequate or excessive; or

(d) make an order to allow the keeping of an animal on specified conditions or prohibit the keeping of an animal on a lot or common property unless satisfied that the strata company has acted unreasonably; or

(e) make an order by way of compensation for personal injury or death; or

(f) make an order for the payment of money to resolve a dispute between a buyer or prospective buyer of a lot in a strata titles scheme and the seller of the lot about a matter arising under Part 10 (other than to order repayment of a deposit or other money); or

(g) make an order in circumstances prohibited under the regulations.

[Section 204 inserted: No. 30 of 2018 s. 83.]

205. Administrator of strata company

(1) An order of the Tribunal appointing an administrator of a strata company may specify conditions of appointment of the administrator.

(2) If the Tribunal makes an order appointing an administrator of a strata company —

(a) no person other than the administrator may, while the order remains in force, perform a function that the administrator is authorised to perform under the order; and

(b) any act or thing done or suffered by the administrator in the performance of a function under the order has the same effect as it would have had if the order had not been made and it had been done or suffered by the

person or body who, but for the order, would have been entitled or required to perform the function; and

(c) the Tribunal may, by further order, vary or revoke the appointment.

(3) An administrator of a strata company appointed by the Tribunal must, after performing a function under the order —

(a) make a written record specifying the function and the manner of its performance; and

(b) serve the record on the strata company.

[Section 205 inserted: No. 30 of 2018 s. 83.]

206. Contributions for money payable by strata company

If the Tribunal makes an order that requires the payment of money by a strata company, the Tribunal may, on the application of a party to the proceeding or on its own initiative, by order —

(a) direct that the money (and any expenses and costs of making the payment) must be paid out of contributions levied in relation to the lots in the strata titles scheme, and in the proportions, specified in the order; and

(b) direct the strata company to levy contributions in accordance with the order; and

(c) prohibit the strata company from levying a contribution that would be payable by another party to the dispute.

[Section 206 inserted: No. 30 of 2018 s. 83.]

207. Enforcement of order to act

(1) An application for an order under this section can be made by a person who was the applicant in a proceeding under this Act in which an order to act was made.

(2) If the Tribunal is satisfied that an order to act has not been complied with, or has been complied with in part only, by the person to whom it was given, the Tribunal may —

(a) vary, revoke or substitute the order to act; and

(b) make an order that the person to whom the order to act was given pay to the applicant a specified amount by way of compensation for the failure to act or to refrain from acting.

(3) Subsection (2) applies whether or not the person to whom the order to act was given has been convicted of an offence under the *State Administrative Tribunal Act 2004* section 95 before the revocation of the order.

(4) The variation, revocation or substitution of an order does not affect —

(a) anything done under the order before the revocation; or

(b) a penalty that has been or may be imposed under the *State Administrative Tribunal Act 2004* section 95 for the failure to comply with the order.

[Section 207 inserted: No. 30 of 2018 s. 83.]

208. Order overrides existing scheme by-laws

If an order of the Tribunal under this Act is inconsistent with scheme by-laws as in force when the order is made, the order prevails over the by-laws to the extent of the inconsistency.

Note for this section:

If scheme by-laws are inconsistent, the Tribunal may make an order requiring by-laws to be amended in a specified manner.

[Section 208 inserted: No. 30 of 2018 s. 83.]

209. Original jurisdiction

Unless otherwise provided in this Act, a proceeding before the Tribunal under this Act comes within the Tribunal's original jurisdiction.

[Section 209 inserted: No. 30 of 2018 s. 83.]

210. Internal review of order or declaration

(1) If, in a proceeding before the Tribunal under this Act, the Tribunal is constituted without a judicial member and the Tribunal makes an order, or declaration, of a kind specified in the regulations, a party to the proceeding may apply for internal review of the order or declaration.

(2) However, an application for internal review of an order or declaration can be made only if —

(a) leave is given by the Tribunal (constituted as required for an internal review under this section); and

(b) the application is made within 28 days after the order or declaration is made or within an extension of that period given by the President.

(3) For an internal review of an order or declaration, the Tribunal must be constituted of —

(a) a judicial member or a senior member who is a legally qualified member; and

(b) such other members, if any, as the President considers appropriate.

(4) On an internal review of an order or declaration, the Tribunal may —

(a) affirm the order or declaration; or

(b) vary the order or declaration; or

(c) set aside the order or declaration and substitute another order or declaration.

(5) Unless otherwise provided by the regulations, the *State Administrative Tribunal Act 2004* Part 3 Division 3 Subdivision 3 applies in relation to an internal review of an order or declaration.

(6) The regulations may modify the operation of the *State Administrative Tribunal Act 2004* for an internal review of an order or declaration.

[Section 210 inserted: No. 30 of 2018 s. 83.]

Part 14 — Miscellaneous

[Heading inserted: No. 30 of 2018 s. 83.]

211. Other rights and remedies not affected by this Act

(1) Nothing in this Act derogates from rights or remedies that a strata company, an owner or mortgagee of a lot, an administrator, a person having an estate or interest in a lot or, an owner of a leasehold scheme or an occupier may have in relation to a lot or the common property apart from this Act.

(2) If a court in which proceedings to enforce rights or remedies referred to in subsection (1) are instituted is of the opinion that, having regard to the subject-matter of the proceedings, the taking of the proceedings was not, in the circumstances of the case, warranted by reason that proceedings under this Act make adequate provision for the enforcement of those rights or remedies, the court must order the plaintiff to pay the defendant's costs in such amount as may be determined by the court.

[Section 211, formerly section 122, amended, renumbered as section 211 and relocated: No. 30 of 2018 s. 71 and 84.]

212. Caravan and camping areas not to be subdivided

(1) Land in respect of which —

(a) a licence is held under the *Caravan Parks and Camping Grounds Act 1995*; or

(b) it is proposed to establish a caravan park or a camping ground,

is not to be subdivided by a strata titles scheme if that subdivision would result in there being a caravan park on more than 1 lot, a camping ground on more than 1 lot or a caravan park and camping ground on more than 1 lot.

(2) Despite subsection (1), land referred to in subsection (1)(a) may be subdivided by registration of a strata titles scheme if that subdivision would not result in the land being subdivided into more lots used or proposed to be used as, or as part of, a caravan park or camping ground.

(3) In this section ***caravan park*** and ***camping ground*** have the same meanings as they have in the *Caravan Parks and Camping Grounds Act 1995* section 5.

[Section 212 inserted as section 123A: No. 34 of 1995 s. 33 and redesignated as 122A: No. 10 of 1998 s. 66; amended, renumbered as section 212 and relocated: No. 30 of 2018 s. 72 and 84.]

213. Dividing fences

(1) The ownership of land in a strata titles scheme is to be determined in accordance with this section for the purposes of the *Dividing Fences Act 1961*.

(2) Subject to subsection (3), the strata company for a strata titles scheme is taken to be the owner of the parcel that is the subject of that scheme.

(3) In a survey-strata scheme, the owner of land in the scheme that adjoins land outside the scheme is taken to be —

(a) in the case of a lot, the owner of the lot; and

(b) in the case of common property, the strata company.

(4) However, if a notice given under repealed section 123A (as in force immediately before its repeal) is recorded on the scheme plan, subsection (2) continues to apply to the scheme and subsection (3) does not apply to the scheme.

(5) If scheme by-laws for a survey-strata scheme, determine who is to be regarded as the owner of land in the scheme for the

purposes of the *Dividing Fences Act 1961*, those by-laws have effect despite that Act or this section.

[Section 213, formerly section 123, inserted: No. 61 of 1996 s. 37; amended, renumbered as section 213 and relocated: No. 30 of 2018 s. 73 and 84.]

214. Internal fencing

(1) The *Dividing Fences Act 1961* applies to fencing between lots in a survey-strata scheme as if —

(a) adjoining lots were adjoining lands to which that Act applies; and

(b) an owner of a lot held the lot for an estate of freehold in possession; and

(c) common property were held by the strata company for an estate of freehold in possession.

(2) However, if a notice given under repealed section 123C (as in force immediately before its repeal) is recorded on the scheme plan, liability for fencing between lots in the scheme is to be determined as if this section had not been enacted.

(3) This section has effect subject to the scheme by-laws.

[Section 214, formerly section 123B, inserted: No. 61 of 1996 s. 37; amended, renumbered as section 214 and relocated: No. 30 of 2018 s. 74 and 84.]

215. Address for service

(1) An address for service provided under this Act must be an address of a place within Australia.

(2) An electronic address may be provided as an additional address for service under this Act.

[Section 215 inserted: No. 30 of 2018 s. 83.]

216. Service of documents on strata company, owners and others

(1) A document required or authorised by this Act, another written law or scheme by-laws to be served on a strata company or on all owners of lots in a strata titles scheme may be served —

(a) by serving it on a member of the council of the strata company; or

(b) by sending it to the strata company's address for service (by post if it is a postal address or by electronic transmission if it is an electronic address); or

(c) by leaving it in the letterbox provided by the strata company under section 104(3)(a).

(2) Subsection (1) applies even if the document is required to be served personally on a strata company.

(3) A document required or authorised by this Act or scheme by-laws to be served on the owner of a leasehold scheme may be served —

(a) by serving it on the owner personally; or

(b) by sending it to the owner's address for service as appearing on the roll maintained under section 105 (by post if it is a postal address or by electronic transmission if it is an electronic address).

(4) A document required or authorised by this Act or scheme by-laws to be served on the owner of a lot in a strata titles scheme may be served —

(a) by serving it on the owner personally; or

(b) by sending it to the owner's address for service as appearing on the roll maintained under section 105 or as last notified in writing under section 106 (by post if it is a postal address or by electronic transmission if it is an electronic address); or

(c) if there is no such address for service, by sending it by post to the owner to the address of the lot; or

(d) by serving it in a manner authorised for service on the owner of a lot by the scheme by-laws.

(5) If there are 2 or more persons who are co-owners of a lot, a document will be taken to be served on the owner of the lot when it has been served on each of those persons.

(6) A document required or authorised by this Act or scheme by-laws to be served on the occupier of a lot may be served —

(a) by serving it on the occupier personally; or

(b) by leaving it with some person apparently of or over the age of 16 years at the address of the lot; or

(c) by sending it by post to the occupier at the address of the lot; or

(d) by serving it in a manner authorised for service on an occupier of a lot by the by-laws of the strata company.

(7) A document required or authorised by this Act or scheme by-laws to be served on a person other than a person who may be served as set out under a preceding subsection may be served —

(a) by serving it on the person personally or by post; or

(b) by leaving it with a person apparently of or over the age of 16 years at the place of residence or place of business of the first-mentioned person; or

(c) if the person has an address for service on the roll maintained by the strata company under section 105, by sending it to that address (by post if it is a postal address or by electronic transmission if it is an electronic address); or

(d) if the person has an interest in the parcel that is registered or recorded in the Register, by sending it by post to the person's address as it appears in the Register; or

(e) by sending it to an electronic address notified to the sender by the first-mentioned person as an address at which service of such notices will be accepted.

(8) For the purposes of this section, service by post must be by pre-paid post.

(9) This section is in addition to the *Interpretation Act 1984* sections 75 and 76.

[Section 216 inserted: No. 30 of 2018 s. 83.]

217. Powers of entry under written laws

A person who is authorised under a written law to enter on part of a parcel for the purpose of exercising a power conferred on the person may enter on any other part of that parcel if it is necessary to do so in order to exercise that power.

[Section 217, formerly section 126, amended: No. 14 of 1996 s. 4; amended, renumbered as section 217 and relocated: No. 30 of 2018 s. 76 and 84.]

218. Correction of errors by Registrar of Titles

(1) The Commissioner of Titles may direct the Registrar of Titles to correct errors in the Register.

(2) The Registrar of Titles may correct errors in a scheme document or other document lodged for registration or approval.

(3) A correction of an error under this section may require the deletion of material or the insertion of material.

(4) When correcting an error under this section, the Registrar of Titles must —

(a) for a paper medium, not erase or render illegible the original writing and include the date on which the correction was made together with the Registrar's initials; and

(b) for a digital medium, keep a permanent record of any words or lines deleted and the date on which the correction was made.

(5) A scheme document or other document corrected under this section has the same validity and effect as if the error had not been made except as regards any entry made in the Register before the time of correcting the error.

[Section 218 inserted: No. 30 of 2018 s. 83.]

219. Delegation by Commissioner of Titles

(1) The Commissioner of Titles may delegate the Commissioner's functions under section 218 to a member of the Authority's staff who is a lawyer.

(2) The delegation must be in writing signed by the Commissioner of Titles.

(3) A person to whom a function is delegated under this section cannot delegate that function.

(4) A person performing a function that has been delegated to the person under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.

(5) Nothing in this section limits the ability of the Commissioner of Titles to perform a function through an officer or agent.

[(6) deleted]

[Section 219, formerly section 129B, inserted: No. 60 of 2006 s. 160(9); amended: No. 21 of 2008 s. 707; amended, renumbered as section 219 and relocated: No. 30 of 2018 s. 77 and 84; amended: No. 9 of 2022 s. 408.]

220. Delegation by Registrar of Titles

(1) The Registrar of Titles may delegate a function of the Registrar under this Act to a member of the Authority's staff.

(2) The delegation must be in writing signed by the Registrar of Titles.

(3) A person to whom a function is delegated under this section cannot delegate that function.

(4) A person performing a function that has been delegated to the person under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.

(5) Nothing in this section limits the ability of the Registrar of Titles to perform a function through an officer or agent.

[(6) deleted]

[Section 220, formerly section 129C, inserted: No. 60 of 2006 s. 160(9); amended, renumbered as section 220 and relocated: No. 30 of 2018 s. 78 and 84.]

221. Money received by Registrar of Titles

The Registrar of Titles is to pay to the Authority any money paid to the Registrar under this Act.

[Section 221, formerly section 129D, inserted: No. 60 of 2006 s. 160(9); renumbered as section 221 and relocated: No. 30 of 2018 s. 84.]

222. Disposition statement

The regulations may provide for the registration of an instrument (a ***disposition statement***) in conjunction with the registration of a strata titles scheme, an amendment of a strata titles scheme, or the cancellation of the registration of a strata titles scheme, by which —

(a) items registered or recorded for the scheme in the Register are discharged, withdrawn or otherwise removed, or brought forward, under the *Transfer of Land Act 1893*; or

(b) evidence required under this Act is provided.

[Section 222 inserted: No. 30 of 2018 s. 83.]

223. Requirements under Transfer of Land Act

Requirements determined under the *Transfer of Land Act 1893* section 182A may relate to matters arising under this Act.

[Section 223 inserted: No. 30 of 2018 s. 83.]

223A. Application in Swan Valley

On and after the day on which the first Swan Valley Planning Scheme comes into operation under the *Swan Valley Planning Act 2020*, this Act applies in relation to land in the Swan Valley (as defined in section 3 of that Act) as if —

(a) a reference to a local planning scheme were a reference to the Swan Valley Planning Scheme; and

(b) a reference in sections 22 to 28 to a local government were a reference to the Planning Commission; and

(c) Schedule 2A clause 21W(3)(b) permitted a discharge of an easement referred to in that clause to be approved either by the Planning Commission or by the local government.

[Section 223A inserted: No. 45 of 2020 s. 130.]

224. Regulations

(1) The Governor may make regulations prescribing matters —

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for giving effect to this Act.

(2) Without limiting subsection (1), the regulations may provide for —

(a) the manner and form of registering plans and documents; and

(b) the fees to be paid for any procedure or function required or permitted to be done under this Act except fees for applications to the Tribunal; and

(c) circumstances in which forms or other documents required under this Act to be lodged with the Registrar of Titles must be verified by statutory declaration made by such persons as may be prescribed; and

(d) the preparation of plans and documents for the purposes of this Act; and

(e) the plans and documents that under this Act may be lodged with the Registrar of Titles; and

(f) a simplified procedure enabling the conversion of tenancies in common to strata titles, or of strata schemes to survey-strata schemes, whether by means of endorsements of transfers, consents and instructions as to the issue of certificates of title on the application for registration of the strata plan or by other means and providing for the consequential vesting of lots and encumbrances and registered interests in lots; and

(g) the review by the Tribunal of a decision made under the regulations; and

(h) additional requirements relating to the first annual general meeting of the strata company.

[(i) deleted]

(3) The fees fixed by the regulations for an application lodged with the Registrar of Titles may, without limitation, include a separate fee for lodgement of a scheme document or an amendment of a scheme document and, in such a case, the separate fee is payable when the document or amendment of the

document is lodged (including in anticipation of the application).

(4) The regulations may provide that contravention of a regulation is an offence and may provide for the offence to be punishable on conviction by a penalty not exceeding a fine of $3 000.

(5) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of an Act (an amending Act) amending this Act.

(6) Any such provision may, if the regulations so provide, take effect from the date of assent to the amending Act or a later date.

(7) To the extent to which any such provision takes effect from a date that is earlier than the date on which it is made, the provision does not operate so as —

(a) to affect, in a manner prejudicial to any person (other than the State), the rights of that person existing before the date of its publication; or

(b) to impose liabilities on any person (other than the State) in respect of anything done or omitted to be done before the date of its publication.

[Section 224, formerly section 130, amended: No. 58 of 1995 s. 86 and 94; No. 55 of 2004 s. 1153; amended, renumbered as section 224 and relocated: No. 30 of 2018 s. 79 and 84.]

225. Certain prescribed fees may exceed cost recovery

(1) Regulations made under section 224 prescribing a fee payable to the Registrar of Titles may prescribe a fee that is more than the amount, or an estimate of the amount, needed to allow recovery of expenditure —

(a) incurred in connection with the matter in relation to which the fee is charged; or

(b) that is relevant to —

(i) the scheme or system under which the action to which the fee relates is taken; or

(ii) the performance of any function to which the fee relates.

(2A) To the extent that regulations to which subsection (1) applies prescribe a fee that includes an amount that is a tax, the regulations may impose the tax.

[(2) deleted]

(3) This section does not limit the *Interpretation Act 1984* section 45A.

[Section 225, formerly section 131A, inserted: No. 11 of 2015 s. 8; amended: No. 12 of 2015 s. 6; amended, renumbered as section 225 and relocated: No. 30 of 2018 s. 80 and 84.]

226. Expiry of section 225

(1) Section 225 expires at the end of 31 December 2019 [18, 19].

(2) However, the Governor, on the recommendation of the Minister, may, by proclamation made before section 225 expires, postpone the expiry of section 225 until the end of a date specified in the proclamation, and in that case that section expires at the end of that date.

(3) The Minister cannot make a recommendation under subsection (2) unless the Minister is satisfied, on the basis of the most recent report laid before each House of Parliament under the *Land Information Authority Act 2006* section 93(2), that the expiry of section 225 should be postponed.

(4) There is no limit on the number of times the expiry of section 225 may be postponed, but each postponement cannot be for longer than 5 years beginning on the day after the most recent date on which section 225 would expire if that expiry were not postponed.

(5) The *Interpretation Act 1984* section 42 applies to and in relation to a proclamation made under subsection (2) as if the proclamation were a regulation.

(6) The expiry of section 225 does not affect the validity of any regulations made under section 224 and in effect immediately before that expiry.

[Section 226, formerly section 131B, inserted: No. 11 of 2015 s. 8; amended, renumbered as section 225 and relocated: No. 30 of 2018 s. 81 and 84.]

*[**Note:***
The expiry of section 225, formerly section 131A, is postponed until the end of 31 December 2024 by the Land Legislation (Postponement of Expiry) Proclamation 2018 (see Gazette 21 Dec 2018 p. 4845-6).

The expiry of section 225 is postponed until the end of 31 December 2029 by the Land Legislation (Postponement of Expiry) Proclamation 2024 cl. 4 (SL 2024/43).]

227. Review of this Act

(1) The Minister must review the operation and effectiveness of this Act as soon as practicable after the expiry of 5 years from the day on which the *Strata Titles Amendment Act 2018* section 4 comes into operation.

(2) The Minister must, as soon as practicable —

(a) prepare a report about the outcome of the review; and

(b) cause a copy of the report to be laid before each House of Parliament.

[Section 227 inserted: No. 30 of 2018 s. 83.]

228. Transitionals and savings: Schedules 3, 4 and 5

(1) Schedules 3, 4 and 5, and any transitional regulations made under section 224 or Schedule 3 clause 26, are additional to and

do not prejudice or affect the application of any relevant provisions of the *Interpretation Act 1984*, except where the contrary intention appears.

(2) The purpose of —

(a) Schedule 3 is to effect the transition from the *Strata Titles Act 1966* to this Act as enacted in 1985; and

(b) Schedule 4 is to effect the transition to the *Strata Titles Amendment Act 1995*.

(3) Except where the contrary intention appears, Schedules 3 and 4 are to be construed in accordance with the purpose set out in subsection (2) and in particular —

(a) a reference in Schedule 3 to a section of this Act is to be construed as a reference to the section as in force immediately after the commencement of the *Strata Titles Act 1985* section 132; and

(b) a reference in Schedule 4 to a section of this Act is to be construed as a reference to the section as in force immediately after the commencement of the *Strata Titles Amendment Act 1995* section 91.

[Section 228 inserted: No. 30 of 2018 s. 83.]

Schedule 1 — Governance by-laws

[Heading inserted: No. 30 of 2018 s. 86.]

[Part I heading deleted: No. 58 of 1995 s. 87(1).]

1. Duties of owner

(1) The owner of a lot must —

(a) immediately carry out all work that may be ordered under a written law in respect of the 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 the lot;

(b) maintain and repair the lot, and keep it in a state of good condition, reasonable wear and tear, and damage by fire, storm, tempest or act of God excepted.

(1A) The owner of a lot must —

(a) notify in writing the strata company immediately on becoming the owner of the lot, including in the notice the owner's address for service for the purposes of 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 the lot, including in the case of a lease of a lot, the name of the lessee and the term of the lease.

[(2) deleted]

[By-law 1 amended: No. 58 of 1995 s. 87(2); No. 14 of 1996 s. 4; No. 74 of 2003 s. 112(15); No. 30 of 2018 s. 87.]

*[**2.** Deleted: No. 30 of 2018 s. 88.]*

3. Power of strata company regarding submeters

(1) If the supply of gas or electricity to a lot is regulated by means of a submeter, the strata company may require the owner or 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 (3), 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 must lodge every sum received under this by-law to the credit of an interest-bearing ADI account and all interest accruing in respect of amounts so received must, subject to this by-law, be held on trust for the owner or occupier who made the payment.

(3) If the owner or 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 owner or occupier under this by-law, including any interest that may have accrued in respect of that amount.

(4) If a person who has paid an amount under this by-law to a strata company satisfies the strata company that the person is no longer the owner 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 an owner or occupier of the lot, the strata company must refund to that person the amount then held on the person's behalf under this by-law.

[By-law 3 amended: No. 26 of 1999 s. 104; No. 74 of 2003 s. 112(16); No. 30 of 2018 s. 89.]

4. Constitution of council

(1) The powers and duties of the strata company must, 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 is 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 owners of all the lots constitute the council.

(3) If there are not more than 3 lots in the scheme, the council consists of all of the owners of the lots and, if there are more than 3 lots in the

scheme, the council consists of not less than 3 nor more than 7 of the owners of the lots, as is determined by the strata company.

(4) If there are more than 3 lots in the scheme, the members of the council must be elected at each annual general meeting of the strata company or, if the number of lots in the scheme increases to more than 3, at an extraordinary general meeting convened for the purpose.

[(5) deleted]

(6) If there are co-owners of a lot, 1 only of the co-owners is eligible to be, or to be elected to be, a member of the council and the co-owner who is so eligible must be nominated by the co-owners, but, if the co-owners fail to agree on a nominee, the co-owner who owns the largest share of the lot is the nominee or, if there is no co-owner who owns the largest share of the lot, the co-owner whose name appears first in the certificate of title for the lot is the nominee.

[(7) deleted]

(8) Except if the council consists of all the owners of lots in the scheme, the strata company may by special resolution remove any member of the council before the expiration of the member's term of office.

(9) A member of the council vacates office as a member of the council —

(a) if the member dies or ceases to be an owner or co-owner of a lot; or

(b) on receipt by the strata company of a written notice of the member's resignation from the office of member; or

(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 the member is not elected or re-elected; or

(d) in a case where the member is a member of the council by reason of there being not more than 3 owners of lots in the scheme, on an election of members of the council (as a result of there being an increase in the number of owners to more than 3) at which the member is not elected; or

(e) if the member is removed from office under sub-bylaw (8); or

(f) if the Tribunal orders that the member's appointment is revoked and the member is removed from office.

(10) The remaining members of the council may appoint a person eligible for election to the council to fill a vacancy in the office of a member of the council, other than a vacancy arising under sub-bylaw (9)(c) or (d), and any person so appointed holds office, subject to this by-law, for the balance of the predecessor's term of office.

Note for this sub-bylaw:

By-law 6(3A) provides for the filling of vacancies in the offices of chairperson, secretary and treasurer.

(11) Except if 1 person is the owner of all of the lots in the scheme, a quorum of the council is 2 if the council consists of 3 or 4 members; 3, if it consists of 5 or 6 members; and 4, if it consists of 7 members.

(12) The continuing members of the council may act even if there is a 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, even if it is afterwards discovered that there was some defect in the appointment or continuance in office of any member of the council, are as valid as if that member had been duly appointed or had duly continued in office.

[By-law 4 amended: No. 30 of 2018 s. 90.]

5. Election of council at general meeting

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

(1) The meeting must determine, in accordance with the requirements of by-law 4(3) the number of persons of whom the council is to consist.

(2) The chairperson must call on those persons who are present at the meeting in person or by proxy 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 the nomination, given —

(a) in writing, and furnished to the chairperson at the meeting; or

(b) orally by a nominee who is present at the meeting in person or by proxy.

(4) When no further nominations are forthcoming, the chairperson —

(a) if the number of candidates equals the number of members of the council determined in accordance with the requirements of by-law 4(3), must declare those candidates to be elected as members of the council;

(b) if the number of candidates exceeds the number of members of the council as so determined, must direct that a ballot be held.

(5) If a ballot is to be held, the chairperson must —

(a) announce the names of the candidates; and

(b) cause to be furnished to each person entitled to vote and present in person or by proxy, a blank form in respect of each lot in respect of which the person is entitled to vote for use as a ballot form.

(6) A person who is entitled to vote must complete a valid ballot form by —

(a) writing on the form the names of candidates, equal in number to the number of members of the council so that no name is repeated; and

(b) indicating on the form the number of each lot in respect of which the person's vote is cast and whether the person so votes as owner or first mortgagee of each such lot or as proxy of the owner or first mortgagee; and

(c) signing the ballot form; and

(d) returning it to the chairperson.

(7) The chairperson, or a person appointed by the chairperson, must count the votes recorded on valid ballot forms in favour of each candidate.

(8) Subject to sub-bylaw (9), candidates, being equal in number to the number of members of the council determined in accordance with by-law 4(3), who receive the highest numbers (in terms of lots or unit entitlements as required under the *Strata Titles Act 1985* section 122) of votes are to be declared elected to the council.

(9) If the number (in terms of lots or unit entitlements as required under the *Strata Titles Act 1985* section 122) of votes recorded in favour of any candidate is the lowest of the numbers of votes referred to in sub-bylaw (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 must be decided by a show of hands of those entitled to vote and present in person or by proxy.

[By-law 5 amended: No. 74 of 2003 s. 112(17)-(19); No. 30 of 2018 s. 91.]

6. Chairperson, secretary and treasurer of council

(1) The members of a council must, at the first meeting of the council after they assume office as such members, appoint a chairperson, a secretary and a treasurer of the council.

(2) A person —

(a) must not be appointed to an office referred to in sub-bylaw (1) unless the person is a member of the council; and

(b) may be appointed to 1 or more of those offices.

(3) A person appointed to an office referred to in sub-bylaw (1) holds office until the first of the following events happens —

(a) the person ceases to be a member of the council under by-law 4(9);

(b) receipt by the strata company of a written notice of the person's resignation from that office;

(c) another person is appointed by the council to hold that office.

(3A) The remaining members of the council must appoint a member of the council to fill a vacancy in an office referred to in sub-bylaw (1), other than a vacancy arising under by-law 4(9)(c) or (d), and any person so appointed holds office, subject to this by-law, for the balance of the predecessor's term of office.

(4) The chairperson is to preside at all meetings of the council but, if the chairperson is absent from, or is unwilling or unable to preside at, a meeting, the members of the council present at that meeting can appoint 1 of their number to preside at that meeting during the absence of the chairperson.

[By-law 6 amended: No. 30 of 2018 s. 92.]

7. Chairperson, secretary and treasurer of strata company

(1) Subject to sub-bylaw (2), the chairperson, secretary and treasurer of the council are also respectively the chairperson, secretary and treasurer of the strata company.

(2) A strata company may at a general meeting authorise a person who is not an owner of a lot to act as the chairperson 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 the person was appointed to act.

[By-law 7 inserted: No. 58 of 1995 s. 87(3); amended: No. 74 of 2003 s. 112(20); No. 30 of 2018 s. 93.]

8. Meetings of council

(1) At meetings of the council, all matters must 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 must meet when any member of the council gives to the other members not less than 7 days' notice of a meeting proposed by the member specifying in the notice the reason for calling the meeting; or

(b) employ or engage, on behalf of the strata company, any person as it thinks is necessary to provide any goods, amenity or service to the strata company; or

(c) subject to any restriction imposed or direction given at a general meeting of the strata company, delegate to 1 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 an owner of a lot, or an individual authorised under the *Strata Titles Act 1985* section 136 by a corporation which is an owner of a lot, to act in the member's place as a member of the council at any meeting of the council.

(4) An owner of a lot or individual may be appointed under sub-bylaw (3) whether or not that person is a member of the council.

(5) If a person appointed under sub-bylaw (3) is a member of the council the person may, at any meeting of the council, separately vote in the person's capacity as a member and on behalf of the member in whose place the person has been appointed to act.

[(6) deleted]

[By-law 8 amended: No. 30 of 2018 s. 94.]

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; and

(b) the giving on behalf of the strata company and of the council of the notices required to be given under the Act; and

(c) the supply of information on behalf of the strata company in accordance with the *Strata Titles Act 1985* sections 108 and 109; and

(d) the answering of communications addressed to the strata company; and

(e) the calling of nominations of candidates for election as members of the council; and

(f) subject to the *Strata Titles Act 1985* sections 127, 128, 129, 200(2)(f) and (g) the convening of meetings of the strata company and of the council.

[By-law 9 amended: No. 30 of 2018 s. 95.]

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 owners of lots of any contributions levied under the *Strata Titles Act 1985*; and

(b) the receipt, acknowledgment and banking of and the accounting for any money paid to the strata company; and

(c) the preparation of any certificate applied for under the *Strata Titles Act 1985* section 110; and

(d) the keeping of the records of account referred to in the *Strata Titles Act 1985* section 101 and the preparation of the statement of accounts referred to in the *Strata Titles Act 1985* section 101.

[By-law 10 amended: No. 30 of 2018 s. 96.]

*[**11-15.** Deleted: No. 30 of 2018 s. 97.]*

*[**16.** Deleted: No. 58 of 1995 s. 87(6).]*

[Part II deleted: No. 58 of 1995 s. 87(7).]

Schedule 2 — Conduct by-laws

[Heading inserted: No. 30 of 2018 s. 98.]

1. Vehicles and parking

(1) An owner or occupier of a lot must take all reasonable steps to ensure that the owner's or occupier's visitors comply with the scheme by-laws relating to the parking of motor vehicles.

(2) An owner or occupier of a lot must not park or stand any motor or other vehicle on common property except with the written approval of the strata company.

[By-law 1 inserted: No. 30 of 2018 s. 99.]

2. Use of common property

An owner or occupier of a lot must —

(a) use and enjoy the common property in such a manner as not unreasonably to interfere with the use and enjoyment of the common property by other owners or occupiers of lots 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 an occupier of another lot (whether an owner or not) or the family of such an occupier; and

(c) take all reasonable steps to ensure that the owner's or occupier's visitors do not behave in a manner likely to interfere with the peaceful enjoyment of an owner or occupier of another lot or of a person lawfully using common property; and

(d) not obstruct lawful use of common property by any person.

[By-law 2 inserted: No. 30 of 2018 s. 100.]

3. Damage to lawns etc. on common property

Except with the approval of the strata company, an owner or occupier of a lot must not —

(a) damage any lawn, garden, tree, shrub, plant or flower on common property; or

(b) use any portion of the common property for the owner's or occupier's own purposes as a garden.

[By-law 3 amended: No. 30 of 2018 s. 101.]

4. Behaviour of owners and occupiers

An owner or occupier of a lot must be adequately clothed when on common property and must not use language or behave in a manner likely to cause offence or embarrassment to an owner or occupier of another lot or to any person lawfully using common property.

[By-law 4 amended: No. 30 of 2018 s. 102.]

*[**5.** Deleted: No. 30 of 2018 s. 103.]*

6. Depositing rubbish etc. on common property

An owner or occupier of a lot must not deposit or throw on 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 an owner or occupier of another lot or of any person lawfully using the common property.

[By-law 6 amended: No. 58 of 1995 s. 88(2); No. 30 of 2018 s. 104.]

7. Drying of laundry items and signage

An owner or occupier of a lot must 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 their lot in such a way as to be visible from outside the building.

[By-law 7 amended: No. 30 of 2018 s. 105.]

[Former by-law 8 repealed: No. 58 of 1995 s. 88(3).]

8. Storage of inflammable liquids etc.

An owner or occupier of a lot must not, except with the written approval of the strata company, use or store on the lot or on 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.

[By-law 8, formerly by-law 9, renumbered as by-law 8: No. 58 of 1995 s. 88(4); amended: No. 30 of 2018 s. 106.]

9. Moving furniture etc. on or through common property

An owner or occupier of a lot must not transport any furniture or large object through or on common property within the building unless that person has first given to the council sufficient notice of their intention to do so to enable the council to arrange for its nominee to be present at the time when that person does so.

[By-law 9, formerly by-law 10, renumbered as by-law 9: No. 58 of 1995 s. 88(4); amended: No. 30 of 2018 s. 107.]

10. Floor coverings

An owner of a lot must 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 an owner or occupier of another lot.

[By-law 10, formerly by-law 11, renumbered as by-law 10: No. 58 of 1995 s. 88(4); amended: No. 30 of 2018 s. 108.]

11. Garbage disposal

An owner or occupier of a lot must —

(a) maintain within their lot, or on such part of the common property as may be authorised 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 an owner or occupier of any other lot is not adversely affected by their disposal of garbage.

[By-law 11, formerly by-law 12, renumbered as by-law 11: No. 58 of 1995 s. 88(4); amended: No. 57 of 1997 s. 115(5); No. 30 of 2018 s. 109.]

12. Additional duties of owners and occupiers

An owner or occupier of a lot must not —

(a) use the lot for a purpose that may be illegal or injurious to the reputation of the building; or

(b) make undue noise in or about the lot or common property; or

(c) keep animals on the lot or the common property after notice in that behalf given to that person by the council.

[By-law 12 inserted: No. 58 of 1995 s. 88(5); amended: No. 74 of 2003 s. 112(22); No. 30 of 2018 s. 110.]

13. Notice of alteration to lot

An owner of a lot must not alter or permit the alteration of the structure of the lot except as may be permitted and provided for under the Act and the by-laws and in any event must 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.

[By-law 13 inserted: No. 58 of 1995 s. 88(5); amended: No. 30 of 2018 s. 111.]

14. Appearance of lot

An owner or occupier of a lot must 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.

[By-law 14 inserted: No. 58 of 1995 s. 88(5); amended: No. 30 of 2018 s. 112.]

15. Decoration of, and affixing items to, inner surface of lot

An owner or occupier of a lot must not, without the written consent of the strata company, paint, wallpaper or otherwise decorate a structure which forms the inner surface of the boundary of the lot or affix locking devices, flyscreens, furnishings, furniture, carpets and other similar things to that surface, if that action will unreasonably damage the common property.

[By-law 15 inserted: No. 30 of 2018 s. 113.]

Schedule 2A — Special provisions for single tier strata schemes

[Heading inserted: No. 30 of 2018 s. 114.]

Part 1 — Introduction

[Heading inserted: No. 30 of 2018 s. 114.]

1. Application of Schedule

(1) This Schedule contains special provisions that apply to a single tier strata scheme.

(2) To the extent of any inconsistency between this Schedule and other provisions of this Act, this Schedule prevails.

[Clause 1 inserted: No. 30 of 2018 s. 114.]

2. Meaning of lot and structural cubic space

A reference in this Act to a lot in a strata scheme that is a single tier strata scheme is to be read as if the definitions of ***lot*** and ***structural cubic space*** in section 3(1) read as follows —

lot, in a strata scheme, means 1 or more cubic spaces forming part of the parcel subdivided by the strata scheme, the base of each such cubic space being designated as 1 lot or part of 1 lot on the floor plan forming part of the scheme plan, being in each case, but subject to clause 3AB, cubic space the base of whose vertical boundaries is as delineated on a sheet of that floor plan and which has horizontal boundaries as ascertained under subsection (2), but does not include any structural cubic space except if —

(a) the boundaries of the cubic space are fixed under clause 3AB; or

(b) the boundaries are not so fixed and that structural cubic space —

(i) has boundaries described in accordance with the regulations; and

(ii) is shown in that floor plan as part of a lot;

structural cubic space means —

(a) cubic space occupied by a vertical structural member, not being a wall, of a building; and

(b) utility conduits in a building; and

(c) cubic space enclosed by a structure enclosing utility conduits,

but, except if clause 3AB applies, does not include utility conduits that are for the exclusive use or enjoyment of 1 lot.

[Clause 2 inserted: No. 30 of 2018 s. 114.]

2A. Dividing fences

Sections 213 and 214 apply to a single tier strata scheme as if it were a survey-strata scheme.

[Clause 2A inserted: No. 30 of 2018 s. 114.]

3. Terms used

In this Schedule —

permitted boundary deviation means a part of a lot that is above or below another lot in a single tier strata scheme in circumstances allowed by the regulations;

single tier strata scheme means a strata scheme —

(a) in which no lot or part of a lot is above or below another lot; or

(b) that would come within paragraph (a) except for any lot that has a permitted boundary deviation.

[Clause 3 inserted: No. 30 of 2018 s. 114.]

Part 2 — Lot boundaries

[Heading inserted: No. 30 of 2018 s. 114.]

3A. Single tier strata schemes to which clause 3AB applies

(1) Clause 3AB fixes the boundaries of lots and parts of lots, other than boundaries that are external to a building, for single tier strata schemes in the following cases —

(a) unless the strata plan for a scheme provides that clause 3AB does not apply to it, for a scheme the strata plan for which is registered —

(i) on or after the commencement of section 6 of the *Strata Titles Amendment Act 1996*; and

(ii) before 1 January 1998;

(b) for a scheme in respect of which a notice of resolution has been registered under clause 21H, including any lot or part of a lot in such a scheme the boundaries of which are amended by registration of a notice of resolution under clause 21X;

(c) for a scheme the strata plan for which is registered on or after 1 January 1998, except if the boundaries are —

(i) stated on the plan to be those provided for by section 3(2)(a); or

(ii) are fixed by a description shown on the plan under section 3(2)(b).

(2) Clause 3AB also fixes the boundaries of lots or parts of lots, other than boundaries that are external to a building, created by way of subdivision of a strata scheme to which subclause (1) applies.

[Clause 3A, formerly section 3A, inserted: No. 61 of 1996 s. 6; amended, redesignated as clause 3A and relocated: No. 30 of 2018 s. 8 and 117.]

3AB. Alternative boundaries for lots in single tier strata schemes

(1) If this clause applies, the boundaries of a cubic space referred to in paragraph (a) of the definition of ***floor plan*** in section 3(1) are, regardless of the exact location of the lines referred to in that paragraph —

(a) the external surfaces of the building occupying the area represented on that floor plan —

(i) including any thing that —

(I) is attached to and projects from the building; and

(II) is prescribed by the regulations to be included as part of a lot;

but

(ii) excluding any thing that is prescribed by the regulations not to be included as part of a lot;

or

(b) despite paragraph (a), if 2 lots —

(i) have a common or party wall, the centre plane of that wall; or

(ii) have buildings on them that are joined, the plane or planes at which they are joined.

(2) If under subclause (1) —

(a) the boundary of a lot is a part of a building that constitutes a permitted boundary deviation; and

(b) the part is destroyed and is not reinstated within 1 year, or a longer period allowed under clause 4, after the destruction,

the boundary referred to in paragraph (a) ceases to apply on the expiry of that period and the boundary in question becomes a vertical plane from the base line shown on the strata plan.

(3) Nothing in this clause applies to a boundary of a lot or a part of a lot that is external to a building.

(4) If this clause applies it —

(a) displaces the operation of section 3(2)(a); but

(b) does not affect the operation of section 3(2)(b).

[Clause 3AB, formerly section 3AB, inserted: No. 61 of 1996 s. 6; amended: No. 55 of 2004 s. 1157; amended, redesignated as clause 3AB and relocated: No. 30 of 2018 s. 9 and 117.]

4. Order for extension of period for reinstatement of building without affecting boundary

(1) This clause applies if a part of a building on a lot that constitutes a permitted boundary deviation has been destroyed as mentioned in clause 3AB(2).

(2) An application to the Tribunal for an order under this clause can be made by —

(a) the owner of the lot; or

(b) a registered mortgagee of the lot.

(3) The application must be made within 1 year from the time when the destruction occurred.

(4) An order under this clause is an order extending the period within which the destroyed part of the building may be reinstated.

(5) The period is not to be extended so that the period is more than 5 years from the time the destruction occurred.

(6) An order can only be made under this clause if the Tribunal is satisfied that there are reasonable grounds for the delay in completing the reinstatement.

[Clause 4 inserted: No. 30 of 2018 s. 114.]

Part 3 — Statutory easement

[Heading inserted: No. 30 of 2018 s. 114.]

12A. Easement for access for certain work

(1) If, under clause 3AB(1), the boundary of a lot or part of a lot is the external surface of a part of a building that constitutes a permitted boundary deviation or is on the boundary of another lot, the owner of the lot that includes that part of the building, and any of the owner's agents, employees and contractors, may —

(a) inspect, maintain, repair, renew or replace the part; and

(b) enter on the other lot, if necessary with vehicles, equipment, materials and other items, for the purpose of doing so.

(2) The rights created by subclause (1) are an easement burdening the other lot.

[Clause 12A, formerly section 12A, inserted: No. 61 of 1996 s. 13; amended, redesignated as clause 12A and relocated: No. 30 of 2018 s. 12 and 117.]

Part 4 — Subdivision

[Heading inserted: No. 30 of 2018 s. 114.]

Division 1 — Merger of common property into lots in certain strata schemes

[Heading inserted: No. 30 of 2018 s. 114.]

Subdivision 1 — Preliminary

[Heading inserted: No. 30 of 2018 s. 114.]

21A. Term used: existing small strata scheme

In this Division —

existing small strata scheme means a 2, 3, 4 or 5-lot strata scheme, the strata plan for which was registered before 1 January 1998, but does not include a strata scheme the strata plan for which provides that clause 3AB does not apply to the scheme.

[Clause 21A, formerly section 21A, inserted: No. 61 of 1996 s. 16; amended, redesignated as clause 21A and relocated: No. 30 of 2018 s. 13 and 117.]

21B. Division only applies to single tier strata schemes

This Division applies only to a single tier strata scheme.

[Clause 21B, formerly section 21B, inserted: No. 61 of 1996 s. 16; redesignated as clause 21B and relocated: No. 30 of 2018 s. 117.]

21C. Procedures cannot be invoked more than once

(1) After a notice of resolution has been registered under clause 21H in respect of a strata scheme, no further notice of resolution may be registered under that clause in respect of that scheme.

(2) After a resolution has been registered under clause 21X in respect of a strata scheme, no further resolution may be registered under that clause in respect of that scheme.

[Clause 21C, formerly section 21C, inserted: No. 61 of 1996 s. 16; amended, redesignated as clause 21C and relocated: No. 30 of 2018 s. 14 and 117.]

21D. Saving

Nothing in this Division prevents or limits the subdivision of lots by the registration of an amendment of the strata scheme.

[Clause 21D, formerly section 21D, inserted: No. 61 of 1996 s. 16; amended, redesignated as clause 21D and relocated: No. 30 of 2018 s. 15 and 117.]

Subdivision 2 — Merger by resolution of buildings that are common property

[Heading inserted: No. 30 of 2018 s. 114.]

21E. Application of this Subdivision

This Subdivision does not apply to a strata scheme the strata plan for which is registered on or after 1 January 1998.

[Clause 21E, formerly section 21E, inserted: No. 61 of 1996 s. 16; redesignated as clause 21E and relocated: No. 30 of 2018 s 117.]

21F. Resolution by strata company

(1) A strata company for a strata scheme may, by resolution in the approved form, resolve that the boundaries of lots or parts of lots in the scheme are to be fixed by reference to the boundaries provided for by clause 3AB.

(2) A resolution is effective for the purposes of subclause (1) only if it is a resolution without dissent.

[Clause 21F, formerly section 21F, inserted: No. 61 of 1996 s. 16; amended: No. 55 of 2004 s. 1157; amended, redesignated as clause 21F and relocated: No. 30 of 2018 s. 16 and 117.]

21G. Notice of resolution may be lodged for registration

(1) If a strata company has passed a resolution under clause 21F it may lodge with the Registrar of Titles a notice of resolution in the approved form.

(1A) The notice of resolution cannot be lodged before the end of the period of 60 days after the day on which the resolution was passed.

(2) The notice may be lodged in any case by the strata company or, in the case of an existing small strata scheme, by all of the owners of lots in the scheme.

[(3) deleted]

[Clause 21G, formerly section 21G, inserted: No. 61 of 1996 s. 16; amended: No. 55 of 2004 s. 1110; amended, redesignated as clause 21G and relocated: No. 30 of 2018 s. 17 and 117.]

21H. Registration of notice of resolution

The Registrar of Titles is to register a notice of resolution if the relevant requirements of this Division are satisfied.

[Clause 21H, formerly section 21H, inserted: No. 61 of 1996 s. 16; redesignated as clause 21H and relocated: No. 30 of 2018 s. 117.]

21I. Effect of registration

(1) The effect of the registration of a notice of resolution is that without the need for any other documentation —

(a) the boundaries of lots or parts of lots on the strata plan are fixed by reference to clause 3AB regardless of where they were located before that registration; and

(b) each lot as so defined is subject to —

(i) any encumbrance that was registered; or

(ii) caveat that was lodged,

with the Registrar of Titles against the lot before the registration.

(2) Any encumbrance or caveat referred to in subclause (1) is taken to be amended to give effect to that subclause.

[Clause 21I, formerly section 21I, inserted: No. 61 of 1996 s. 16; amended, redesignated as clause 21I and relocated: No. 30 of 2018 s. 18 and 117.]

21J. Registrar of Titles to amend strata plan

The Registrar of Titles is to amend the strata plan in the manner specified in the regulations to give effect to clause 21I.

[Clause 21J, formerly section 21J, inserted: No. 61 of 1996 s. 16; amended, redesignated as clause 21J and relocated: No. 30 of 2018 s. 19 and 117.]

Subdivision 3 — Merger by resolution of land that is common property

[Heading inserted: No. 30 of 2018 s. 114.]

21P. Application of this Subdivision

This Subdivision does not apply to a strata scheme the strata plan for which is registered on or after 1 January 1998.

[Clause 21P, formerly section 21P, inserted: No. 61 of 1996 s. 16; relocated: No. 30 of 2018 s. 117.]

21Q. Resolution by strata company

(1) A strata company for a strata scheme may, in the approved form, resolve that the strata plan be amended in 1 or more of the following ways —

(a) to reflect any extension or alteration of a building shown on the plan;

(b) to include a building not shown on the plan;

(c) to merge land that is common property into a lot.

(2) A resolution is effective for the purposes of subclause (1) only if it is a resolution without dissent.

(3) A resolution cannot be passed under subclause (1) that would, on registration under clause 21X of a notice of resolution, increase the number of lots in the scheme.

(4) A resolution cannot be passed under subclause (1)(c) unless it specifies the horizontal boundaries of the land that is to be merged into a lot.

[Clause 21Q, formerly section 21Q, inserted: No. 61 of 1996 s. 16; amended: No. 55 of 2004 s. 1157; amended, redesignated as clause 21Q and relocated: No. 30 of 2018 s. 20 and 117.]

21R. Further provisions as to contents of resolution

(1) A resolution cannot be passed under clause 21Q(1)(a) or (b) unless at the time when the resolution is passed the building or any extension or alteration to which it relates —

(a) has been the subject of a building permit under the *Building Act 2011* or a building licence under section 374[3] of the *Local Government (Miscellaneous Provisions) Act 1960*; and

(b) has been approved by the strata company or all of the owners of lots in the strata scheme.

(2) If the strata plan is to be amended as mentioned in clause 21Q(1)(c) the resolution is to specify any easement that is to be created in terms of clause 21W.

[Clause 21R, formerly section 21R, inserted: No. 61 of 1996 s. 16; amended: No. 24 of 2011 s. 174(4); amended, redesignated as clause 21R and relocated: No. 30 of 2018 s. 21 and 117.]

21S. Notice of resolution may be lodged for registration

(1) If a strata company has passed a resolution under clause 21Q it may lodge with the Registrar of Titles a notice of resolution in the approved form.

(1A) The notice of resolution cannot be lodged before the end of the period of 60 days after the day on which the resolution was passed.

(2) The notice may be lodged in any case by the strata company or, in the case of an existing small strata scheme, by all of the owners of lots in the scheme.

[(3) deleted]

[Clause 21S, formerly section 21S, inserted: No. 61 of 1996 s. 16; amended, redesignated as clause 21S and relocated: No. 30 of 2018 s. 22 and 117.]

21T. Documents to accompany notice

(1) The notice of resolution is to be accompanied by —

[(a) deleted]

(b) unless subclause (2) applies, a plan (the ***sketch plan***) showing in the manner specified in the regulations how the strata plan is to be amended —

(i) to show any extension or alteration of a building; or

(ii) to include a building not shown on the strata plan; or

(iii) to merge land that is common property into a lot; or

(iv) to define any area that is to be subject to an easement under clause 21W;

and

(c) unless subclause (2) applies, a certificate given by a licensed surveyor in accordance with clause 21U; and

(d) if any unit entitlement is to be changed, an amended schedule of unit entitlements; and

(e) if the unit entitlement of any lot is to be decreased, a certificate given by every person who —

(i) has a registered interest in; or

(ii) is a caveator in respect of,

the lot certifying the person's consent to the decrease.

(2) The Registrar of Titles may dispense with the sketch plan to the extent that the Registrar considers that the detail shown on the strata plan or contained in the notice of resolution is sufficient.

[Clause 21T, formerly section 21T, inserted: No. 61 of 1996 s. 16; amended: No. 55 of 2004 s. 1111; amended, redesignated as clause 21T and relocated: No. 30 of 2018 s. 23 and 117.]

21U. Certificate of licensed surveyor

(1) The certificate of a licensed surveyor referred to in clause 21T(1)(c) is to comply with —

(a) this clause; and

(b) the regulations and Transfer of Land Act requirements for certification of amendments of scheme plans.

(2) If the strata plan is to be amended to reflect any extension or alteration of a building shown on the plan, or to include a building not shown on the plan, the surveyor is to certify that —

(a) the extension or alteration, or the building has been the subject of a building permit under the *Building Act 2011* or a building licence under section 374 [3] of the *Local Government (Miscellaneous Provisions) Act 1960*; and

(b) any extension or alteration, or any building not shown on the plan, has been approved by —

(i) the strata company; or

(ii) all of the owners of lots in the strata scheme;

and

(c) any building or part of a building shown on the sketch plan as being within a lot is wholly within the ground surface boundaries of that lot, except for any permitted boundary deviation; and

(d) in respect of any land or building or part of a building shown on the sketch plan as common property to be merged into a lot —

(i) the land or building or part of a building is wholly within the external surface boundaries of the parcel; or

(ii) the requirements of the regulations and Transfer of Land Act requirements for preparation and certification of amendments of scheme plans by a licensed surveyor are satisfied.

(3) If the strata plan is to be amended to merge land that is common property into a lot, the surveyor is to certify, in accordance with subclause (5), that the rights and amenities required to be provided for by the relevant local planning scheme or improvement scheme in force under the *Planning and Development Act 2005* —

(a) are provided for in accordance with that scheme at the time when the certificate is given; or

(b) will be provided for when the notice of resolution and the documents referred to in clause 21V are registered.

(4) The regulations may prescribe matters —

(a) as to which the surveyor is to certify under subclause (3); or

(b) which are to be specifically dealt with in the certificate.

(5) A certification under subclause (3) is to relate to matters prescribed under subclause (4)(a) and not to other matters arising under the relevant local planning scheme or improvement scheme.

(6) The surveyor is to certify in every case that —

(a) a reference on the sketch plan to a lot by a designated number is a reference to the lot designated by that number on the strata plan; and

(b) there are not more lots on the sketch plan than there are on the strata plan.

[Clause 21U, formerly section 21U, inserted: No. 61 of 1996 s. 16; amended: No. 38 of 2005 s. 15; No. 28 of 2010 s. 37(2) and (3); No. 24 of 2011 s. 174(5); amended, redesignated as clause 21U and relocated: No. 30 of 2018 s. 24 and 117.]

21V. Transfers etc. to give effect to notice of resolution

(1) Subject to subclause (2A), every transfer or other document that is necessary to give effect to a notice of resolution is to be lodged for registration together with the notice.

(2) The regulations may provide for the registration of an instrument (a ***disposition statement***) —

(a) by which various interests in land affected by a notice of resolution are disposed of or vested; and

(b) by which encumbrances are attached to or discharged from any interest; and

(c) in which any certificate required by clause 21T(1)(e) is set out.

(2A) Subclause (1) does not apply if a disposition statement is lodged for registration with the notice of resolution.

(3) The regulations may provide for a disposition statement to include a certificate that there is no consideration, other than an interest in common property, for —

(a) the passing of property under the statement; or

(b) a transaction referred to in the *Duties Act 2008* section 112(6).

[Clause 21V, formerly section 21V, inserted: No. 61 of 1996 s. 16; amended: No. 12 of 2008 Sch. 1 cl. 36(1); amended, redesignated as clause 21V and relocated: No. 30 of 2018 s. 25 and 117.]

21W. Creation of easements for parking etc.

(1) The sketch plan referred to in clause 21T(1)(b) may provide for easements relating to motor vehicle access, parking or turning to be created as a short form easement or restrictive covenant as if the sketch plan were a survey-strata plan.

(2) Section 33 also applies to the discharge of an easement that is created under subclause (1).

(3) If the sketch plan makes provision as mentioned in subclause (1), section 33 applies for the purposes of this Subdivision with the following modifications —

(a) any easement provided for is created on the registration of the notice of resolution; and

(b) any discharge of an easement under section 33 is required to be approved by the local government instead of the Planning Commission (subject to review under the *Planning and Development Act 2005* Part 14).

[Clause 21W, formerly section 21W, inserted: No. 61 of 1996 s. 16; amended, redesignated as clause 21W and relocated: No. 30 of 2018 s. 26 and 117.]

21X. Registration of notice of resolution

The Registrar of Titles is to register the notice of resolution if the requirements of this Division are satisfied.

[Clause 21X, formerly section 21X, inserted: No. 61 of 1996 s. 16; redesignated as clause 21X and relocated: No. 30 of 2018 s. 117.]

21Y. Effect of registration

(1) In addition to —

(a) the operation of a transfer, document or disposition statement referred to in clause 21V; and

(b) the creation of a short form easement or restrictive covenant under section 33 as read with clause 21W,

the registration of a notice of resolution has the effects described in subclauses (2), (3), (4), (5) and (6).

(2) If any land that merges into a lot was before registration of a notice of resolution subject to —

(a) any right or privilege granted under by-law 3(f) contained in Part I of the Schedule to the *Strata Titles Act 1966* [4]; or

(b) exclusive use by-laws,

on registration of the notice of resolution the right or privilege or the by-law ceases to be applicable to the land that so merges.

(3) Each lot as enlarged or diminished on registration of the notice of resolution is subject to —

(a) any encumbrance that was registered; or

(b) caveat that was lodged,

with the Registrar of Titles against the lot before the registration of the notice of resolution.

(4) Each lot or part of a lot that becomes common property on registration of the notice of resolution vests in the owners of the lots to be held by them as tenants in common in shares proportional to the unit entitlements of their respective lots.

(5) The share of the owner of a lot so vested is subject to any encumbrance registered or caveat lodged with the Registrar of Titles against the lot.

(6) Any encumbrance or caveat referred to in subclause (3) or (5) is taken to be amended to give effect to that subclause.

[Clause 21Y, formerly section 21Y, inserted: No. 61 of 1996 s. 16; amended, redesignated as clause 21Y and relocated: No. 30 of 2018 s. 27 and 117.]

21Z. Registrar of Titles to make necessary amendments

(1) The Registrar of Titles is to amend —

(a) the strata plan in the manner specified in the regulations to give effect to clauses 21V, 21W and 21Y; and

(b) the original certificates of title in respect of the lots, if required, to show any amended unit entitlement.

[(2) deleted]

[Clause 21Z, formerly section 21Z, inserted: No. 61 of 1996 s. 16; amended: No. 60 of 2006 s. 160(4); amended, redesignated as clause 21Z and relocated: No. 30 of 2018 s. 28 and 117; amended: No. 21 of 2022 s. 66.]

Division 2 — Conversion of strata schemes to survey-strata schemes

[Heading inserted: No. 30 of 2018 s. 114.]

31A. Division only applies to single tier strata schemes registered before 1 January 1998

This Division —

(a) applies only to a single tier strata scheme; and

(b) does not apply to such a scheme the strata plan for which is registered on or after 1 January 1998.

[Clause 31A, formerly section 31A, inserted: No. 61 of 1996 s. 21; redesignated as cl. 31A and relocated: No. 30 of 2018 s. 117.]

31B. Saving

Nothing in this Division prevents or limits the termination of a strata scheme and the subsequent subdivision of the land by a strata titles scheme.

[Clause 31B, formerly section 31B, inserted: No. 61 of 1996 s. 21; amended, redesignated as cl. 31B and relocated: No. 30 of 2018 s. 36 and 117.]

31C. Resolution by strata company

(1) A strata company for a strata scheme may by unanimous resolution in the approved form resolve that the scheme be converted to a survey-strata scheme.

(2) The resolution is to specify any easement that is to be created in terms of clause 31G.

(3) A resolution cannot be passed under subclause (1) that would, on registration under clause 31I of a notice of resolution, increase the number of lots in the scheme.

[(4) deleted]

[Clause 31C, formerly section 31C, inserted: No. 61 of 1996 s. 21; amended, redesignated as cl. 31C and relocated: No. 30 of 2018 s. 37 and 117.]

31D. Notice of resolution may be lodged for registration

(1) If a strata company has passed a resolution under clause 31C it may, in accordance with the regulations, lodge with the Registrar of Titles a notice of resolution in the approved form.

(2) The notice may be lodged in any case by the strata company or alternatively, in the case of a strata scheme in which there are not more than 5 lots, by all of the owners of lots in the scheme.

(3) The notice of resolution —

(a) if it is lodged by the strata company, is to be executed by the strata company; or

(b) if it is lodged by the owners of lots, is to be signed by each owner.

[Clause 31D, formerly section 31D, inserted: No. 61 of 1996 s. 21; amended, redesignated as cl. 31D and relocated: No. 30 of 2018 s. 38 and 117.]

31E. Documents to accompany notice

(1) The notice of resolution is to be accompanied by —

(a) a survey-strata plan in respect of the parcel —

(i) showing in the manner specified in the regulations —

(I) the boundaries of the lots and common property; and

(II) the location of a short form easement or restrictive covenant that is to be created under section 33 as read with clause 31G,

by dimensions and survey information obtained from a survey of the parcel; and

(ii) bearing a statement containing such particulars as may be necessary to identify the title to the parcel; and

(iii) showing the area of each lot and of any common property; and

(iv) having endorsed on it —

(I) the name of the scheme; and

(II) the address of the parcel;

and

(v) containing such other features as may be prescribed by the regulations relating to the preparation of scheme plans by a licensed surveyor;

and

(b) a certificate given by a licensed surveyor in accordance with clause 31F; and

(c) a schedule specifying, in a whole number —

(i) the proposed unit entitlement in respect of each lot; and

(ii) the sum of the unit entitlements of all the lots in the strata titles scheme;

and

(d) a certificate of a licensed valuer as required for a schedule of unit entitlements; and

(e) a certificate given by every person, other than the owner of a lot, who —

(i) has a registered interest in; or

(ii) is a caveator in respect of,

a lot certifying the person's consent to the proposed schedule of unit entitlements.

[(2) deleted]

[Clause 31E, formerly section 31E, inserted: No. 61 of 1996 s. 21; amended, redesignated as cl. 31E and relocated: No. 30 of 2018 s. 39 and 117; amended: No. 21 of 2022 s. 67.]

31F. Certificate of licensed surveyor

(1) The certificate of a licensed surveyor referred to in clause 31E(1)(b) is to comply with —

(a) this clause; and

(b) any requirement made by the regulations for the purposes of this clause.

(2) The surveyor is to certify —

(a) that the requirements of the regulations and Transfer of Land Act requirements for preparation and certification of amendments of scheme plans by a licensed surveyor are satisfied; and

(b) that there are not more lots on the survey-strata plan than there are on the existing strata plan; and

(c) that a reference on the survey-strata plan to a lot by a designated number is a reference to the lot designated by that number on the existing strata plan; and

(d) that if 2 lots have a common or party wall, the centre plane of that wall is on the boundary of the lots; and

(e) in accordance with subclause (4), that the rights and amenities required to be provided for by the relevant local planning scheme or improvement scheme in force under the *Planning and Development Act 2005* —

(i) are provided for in accordance with that scheme at the time when the certificate is given; or

(ii) will be provided for when the notice of resolution and the documents referred to in clause 31H are registered.

(3) The regulations may prescribe matters —

(a) as to which the surveyor is to certify under subclause (2)(e); or

(b) which are to be specifically dealt with in the certificate.

(4) A certification under subclause (2)(e) is to relate to matters prescribed for the purposes of subclause (3)(a) and not to other matters arising under the relevant local planning scheme or improvement scheme.

[Clause 31F, formerly section 31F, inserted: No. 61 of 1996 s. 21; amended: No. 38 of 2005 s. 15; No. 28 of 2010 s. 37(5) and (6); amended, redesignated as cl. 31F and relocated: No. 30 of 2018 s. 40 and 117.]

31G. Creation of easements

(1) The plan referred to in clause 31E(1)(a) may provide for a short form easement or restrictive covenant to be created under section 33, and any easement so provided for is created on the registration of the notice of resolution.

(2) Section 33 also applies to the discharge of an easement that is created under subclause (1).

[Clause 31G, formerly section 31G, inserted: No. 61 of 1996 s. 21; amended, redesignated as cl. 31G and relocated: No. 30 of 2018 s. 41 and 117.]

31H. Transfers etc. to give effect to resolution

(1) Subject to subclause (2A), every transfer or other document that is necessary to give effect to a notice of resolution is to be lodged for registration together with the notice.

(2) The regulations may provide for the registration of an instrument (a ***disposition statement***) —

(a) by which various interests in land affected by the notice of resolution are disposed of or vested; and

(b) by which encumbrances are attached to or discharged from any interest; and

(c) in which any certificate required by clause 31E(1)(e) is set out.

(2A) Subclause (1) does not apply if a disposition statement is lodged for registration with the notice of resolution.

(3) The regulations may provide for a disposition statement to include a certificate that there is no consideration, other than an interest in common property, for —

(a) the passing of property under the statement; or

(b) a transaction referred to in the *Duties Act 2008* section 112(6).

[Clause 31H, formerly section 31H, inserted: No. 61 of 1996 s. 21; amended: No. 12 of 2008 Sch. 1 cl. 36(2); amended, redesignated as cl. 31H and relocated: No. 30 of 2018 s. 42 and 117.]

31I. Registration of notice of resolution

The Registrar of Titles is to register a notice of resolution if the requirements of this Division are satisfied.

[Clause 31I, formerly section 31I, inserted: No. 61 of 1996 s. 21; redesignated as cl. 31I and relocated: No. 30 of 2018 s. 117.]

31J. Effect of registration

(1) On registration of a notice of resolution the scheme to which it relates ceases to be a strata scheme and becomes registered as a survey-strata scheme under this Act.

(2) In addition to —

(a) the operation of any transfer, document or disposition statement referred to in clause 31H; and

(b) the creation of a short form easement or restrictive covenant under section 33 as read with clause 31G,

the registration of a notice of resolution also has the effects described in subclauses (3), (4), (5), (6) and (7).

(3) If any area of land —

(a) on registration of a notice of resolution becomes part of a lot; and

(b) was before that registration subject to —

(i) any right or privilege granted under by-law 3(f) contained in Part I of the Schedule to the *Strata Titles Act 1966* [4]; or

(ii) exclusive use by-laws,

on registration of the notice of resolution the right or privilege or the by-law ceases to be applicable to the area.

(4) On registration of the notice of resolution each lot is subject to —

(a) any encumbrance that was registered; or

(b) caveat that was lodged,

with the Registrar of Titles against the lot before the registration of the notice of resolution.

(5) Each lot or part of a lot that becomes common property on registration of the notice of resolution vests in the owners of the lots to be held by them as tenants in common in shares proportional to the unit entitlements of their respective lots.

(6) The share of the owner of a lot so vested is subject to any encumbrance registered or caveat lodged with the Registrar of Titles against the lot.

(7) Any encumbrance or caveat referred to in this clause is taken to be amended to give effect to that clause.

[Clause 31J, formerly section 31J, inserted: No. 61 of 1996 s. 21; amended, redesignated as cl. 31J and relocated: No. 30 of 2018 s. 43 and 117.]

31K. Registrar of Titles to make necessary amendments

(1) The Registrar of Titles is to amend —

(a) the strata plan in the manner specified in the regulations to give effect to clauses 31G, 31H and 31J; and

(b) the original certificates of title in respect of the lots.

[(2) deleted]

[Clause 31K, formerly section 31K, inserted: No. 61 of 1996 s. 21; amended: No. 60 of 2006 s. 160(5); amended, redesignated as cl. 31K and relocated: No. 30 of 2018 s. 44 and 117; amended: No. 21 of 2022 s. 68.]

Part 5 — Insurance

[Heading inserted: No. 30 of 2018 s. 114.]

53A. References in this Part

References in this Part —

(a) to ***scheme*** are to a single tier strata scheme; and

(b) to ***strata company*** are to a strata company for such a scheme; and

(c) to an ***owner of a lot*** are to an owner of a lot in such a scheme.

[Clause 53A, formerly section 53A, inserted: No. 61 of 1996 s. 25; amended, redesignated as cl. 53A and relocated: No. 30 of 2018 s. 55 and 117.]

53B. Insurance for lots in single tier strata schemes

(1) For the purposes of this Act —

(a) whether there is insurance in respect of —

(i) insurable assets within a lot in a scheme; or

(ii) damage to property, death, bodily injury or illness for which the owner of a lot in a scheme could become liable in damages;

and

(b) the occurrences to be insured against by the owner of the lot in relation to those matters; and

(c) the terms on which insurance is obtained,

are, subject to this clause, at the discretion of the owner of the lot.

(2) A strata company for a scheme may determine, by ordinary resolution, that it is a function of the strata company to insure in respect of the matters referred to in subclause (1), and may at any time, by ordinary resolution, revoke that determination.

(3) While such a resolution is in force, the strata company must comply with clause 53D.

(4) If insurable assets are wholly within common property, whether there is insurance in respect of the assets is not at the discretion of the owner of a lot.

[Clause 53B, formerly section 53B, inserted: No. 61 of 1996 s. 25; amended, redesignated as cl. 53B and relocated: No. 50 of 2018 s. 56 and 117.]

53C. Insurance for common property in single tier strata schemes

(1) The strata company for a scheme must —

(a) insure and keep insured insurable assets that are within the common property; and

(b) effect and maintain insurance in respect of damage to property, death, bodily injury or illness for which the owners of lots in the scheme could become liable in damages as holders of the common property.

(2) The strata company does not have the obligations described in subclause (1) if —

(a) there is no common property in the scheme except —

(i) cubic space in which there are no insurable assets above or below the horizontal boundary of any lot; or

(ii) fencing on the boundary of the parcel or any lot or on the boundary of temporary common property;

or

(b) the strata company has by resolution without dissent determined that subclause (1) is not to apply to the scheme.

(3) A resolution under subclause (2)(b) remains in force until —

(a) it is revoked; or

(b) it ceases to have effect under subclause (5).

(4) The owner of a lot may, at any time after the passing of the resolution, serve written notice on the strata company or, in the case of a 2-lot scheme, on the owner of the other lot, that the owner requires that subclause (1) apply to the scheme.

(5) If the owner of a lot serves a notice under subclause (4), the resolution under subclause (2)(b) ceases to have effect at the end of the period of 1 month beginning on the day on which the notice was served.

(6) While a resolution under subclause (2)(b) is in force, the following are at the discretion of the owner of the lot —

(a) whether there is insurance in respect of —

(i) the share of the owner of a lot in insurable assets in the scheme that are within the common property; or

(ii) damage to property, death, bodily injury or illness for which an owner of a lot in the scheme could become liable in damages as the holder of a share in the common property;

(b) the occurrences to be insured against by the owner of a lot in relation to those matters;

(c) the terms on which insurance is obtained.

[Clause 53C, formerly section 53C, inserted: No. 61 of 1996 s. 25; amended, redesignated as cl. 53C and relocated: No. 30 of 2018 s. 57 and 117.]

53D. Strata company's obligations if it has insurance function in single tier strata scheme

(1) This clause applies if —

(a) a resolution is in force under clause 53B(2); or

(b) in accordance with clause 53C, a strata company has the obligations described in subclause (1) of that clause.

(2) This clause also applies if a strata company passes an ordinary resolution to insure common property that it is not obliged to insure by reason of clause 53C(2)(a).

(3) In those cases the strata company must —

(a) insure and keep insured insurable assets to which its obligation extends against fire, storm and tempest (excluding damage by sea, flood or erosion), lightning, explosion and earthquake —

(i) to replacement value; or

(ii) to replacement value, up to, for an event of a specified kind, a maximum amount specified in the contract of insurance that is a reasonable limitation in the circumstances;

and

(b) effect and maintain insurance in respect of damage to property, death, bodily injury or illness for not less than $10 000 000 or such other amount as may be specified in the regulations in place of that amount.

Penalty for this subclause: a fine of $3 000.

(4) It is a defence to a charge of an offence against subclause (3) for a strata company to prove that, despite having taken all reasonably practicable steps available to it to comply with that subclause, no insurer is willing to enter into a contract of insurance, on reasonable terms, that meets the obligation imposed by that subclause.

[Clause 53D, formerly section 53D, inserted: No. 61 of 1996 s. 25; amended, redesignated as cl. 53D and relocated: No. 30 of 2018 s. 58 and 117.]

53E. Recovery of premium by strata company or owner if no administrative fund in single tier strata schemes

(1) If —

(a) in accordance with section 140, an administrative fund is not maintained by a strata company under section 100(1)(a); and

(b) the strata company or the owner of a lot receives notice of the amount of any premium or other charge for insurance under clause 53D,

the strata company, or the owner, may give notice in writing of that amount to the owner of each lot in the scheme, or each other owner, and require the owner to pay a share of the premium or other charge before a specified time.

(2) The share payable by the owner of a lot is —

(a) a sum equal to the same proportion of the amount as the unit entitlement of the lot bears to the sum of the unit entitlements of all the lots in the scheme; or

(b) if applicable, a sum fixed under the scheme by-laws.

(3) If —

(a) notice has been given to the owner of a lot under subclause (1); and

(b) the amount of the owner's share has not been paid to the strata company or the insurer before the specified time,

that amount becomes a debt due by the owner to the strata company and may be recovered by it in a court of competent jurisdiction.

(4) If the amount of an owner's share has become due to the strata company but has not been paid, the owner of another lot may —

(a) pay the amount; and

(b) recover the amount as a debt on application to the Tribunal.

[Clause 53E, formerly section 53E, inserted: No. 61 of 1996 s. 25; amended, redesignated as cl. 53E and relocated: No. 30 of 2018 s. 59 and 117.]

Schedule 3 — Transitional and savings provisions for transition from *Strata Titles Act 1966* to this Act

[Heading amended: No. 19 of 2010 s. 4; No. 30 of 2018 s. 115.]

1. Terms used

(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* [4];

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.

[Clause 2 amended: No. 42 of 1986 s. 12(a) and (b).]

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; and

(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.

[Clause 5 amended: No. 42 of 1986 s. 12(c).]

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; and

(b) a former parcel as if it were a parcel; and

(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 s. 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 for registration, 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).

[Clause 7 amended: No. 60 of 2006 s. 160(10).]

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".

[Clause 9 amended: No. 42 of 1986 s. 12(d).]

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 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.

[Clause 11 amended: No. 14 of 1996 s. 4.]

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 the State Administrative Tribunal 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 the State Administrative Tribunal —

(i) declaring a by-law purportedly continued under this clause to be invalid; or

(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 accepted unless the proprietor satisfies the State Administrative Tribunal that the justice of the case requires that the application be accepted.

(12) Nothing in this clause is to be read as preventing a strata company from doing anything that it is authorised to do under section 42(2).

[Clause 12 amended: No. 58 of 1995 s. 90(1) and (2); No. 55 of 2004 s. 1154(1) and 1156(1).]

13. Maintenance of exclusive use of, 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).

[Clause 13 amended: No. 61 of 1996 s. 39.]

13A. Exclusive use and privileges to lapse unless provided for by by-law or SAT'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 the State Administrative Tribunal for an order under subclause (8).

(6) The provisions of Part VI apply to an application made to the State Administrative Tribunal under this clause and to an order made by the State Administrative Tribunal 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 accepted unless the proprietor satisfies the State Administrative Tribunal that the justice of the case requires that the application be accepted.

(8) Where on an application under subclause (5) the State Administrative Tribunal 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,

it 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).

[Clause 13A inserted: No. 58 of 1995 s. 90(3); amended: No. 55 of 2004 s. 1154(2) and (3) and 1156(1) and (3).]

13B. Strata companies to notify proprietors of operation of cl. 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); and

(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).

[Clause 13B inserted: No. 58 of 1995 s. 90(3).]

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 s. 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 s. 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".

[Clause 19 amended: No. 42 of 1986 s. 12(e).]

20. Operation of by-law 1, Part I of Sch. 1

By-law 1(1)(c) in Part I of Schedule 1 extends to authorising 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 Div. 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 s. 61 of particulars furnished under s. 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 4 — Transitional provisions for the *Strata Titles Amendment Act 1995* for by-laws of strata companies other than companies to which Schedule 3 applies

[Heading inserted: No. 58 of 1995 s. 91; amended: No. 19 of 2010 s. 4; No. 30 of 2018 s. 116.]

1. Terms used

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*.

[Clause 1 inserted: No. 58 of 1995 s. 91.]

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 the State Administrative Tribunal 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 the State Administrative Tribunal 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 accepted unless the proprietor satisfies the State Administrative Tribunal that the justice of the case requires that the application be accepted.

(9) Nothing in this Schedule is to be read as preventing a strata company from doing anything that it is authorised to do under section 42(2).

[Clause 2 inserted: No. 58 of 1995 s. 91; amended: No. 55 of 2004 s. 1155 and 1156(1).]

Schedule 5 — Transitional provisions for *Strata Titles Amendment Act 2018*

[Heading inserted: No. 30 of 2018 s. 119.]

1. Terms used

In this Schedule —

amending Act means the *Strata Titles Amendment Act 2018*;

commencement day means the day on which section 4 of the amending Act comes into operation.

[Clause 1 inserted: No. 30 of 2018 s. 119.]

2. Continuance of strata titles schemes

(1) The coming into operation of the amending Act does not affect the continued existence of the following —

(a) a strata scheme or survey-strata scheme;

(b) a lot or common property in a strata scheme or survey-strata scheme;

(c) an estate or interest in a lot or common property in a strata scheme or survey-strata scheme;

(d) a strata company, its council or its officers.

(2) Each strata scheme for which a strata plan, and each survey-strata scheme for which a survey-strata plan, is registered immediately before commencement day is taken to be registered as a strata titles scheme.

(3) The strata plan or survey-strata plan, the by-laws of the strata company, and the schedule of unit entitlement for a strata scheme or survey-strata scheme, as registered immediately before commencement day, continue to be registered as scheme documents and can be amended as scheme documents.

[Clause 2 inserted: No. 30 of 2018 s. 119.]

3. Scheme notice

The name of a strata titles scheme and the address for service of a strata company remains as it is immediately before commencement day and may be amended as if specified in a scheme notice.

[Clause 3 inserted: No. 30 of 2018 s. 119.]

4. Scheme by-laws

(1) The by-laws (including any management statement) of a strata company as in force immediately before commencement day continue in force, subject to this Act, as scheme by-laws and as if they had been made as governance by-laws or as conduct by-laws according to the classification into which they would fall if they had been made on commencement day.

(2) However, all by-laws that are in force immediately before commencement day in the terms set out in Schedule 1 clauses 11 to 15, or Schedule 2 clause 5, as then in force are taken to be repealed on commencement day.

(3) A by-law under section 42(8) as in force immediately before commencement day is taken to be an exclusive use by-law subject to this Act.

(4) A by-law in force immediately before commencement day that could have been made as a staged subdivision by-law if made on the commencement day is taken to be a staged subdivision by-law.

(5) By-laws made by a strata company before commencement day in accordance with the Act as in force when the by-laws were made —

(a) may be registered on or after commencement day even if they could not have been made on or after that day, provided an application for registration is made within 3 months after the making of the by-laws; and

(b) if registered, are taken to have been made as governance by-laws or as conduct by-laws according to the classification into which they would fall if they had been made on commencement day.

(6) By-laws in force immediately before commencement day that can only be amended or repealed with the consent or approval of the Planning Commission or local government are taken to have been made subject to a planning (scheme by-laws) condition.

(7) Sections 46 and 47 apply to scheme by-laws whether made or registered before, on or after commencement day and a penalty may be imposed by the Tribunal under section 47 whether or not the particular scheme by-law provides for a penalty as set out in section 42A as in force immediately before commencement day.

[Clause 4 inserted: No. 30 of 2018 s. 119.]

5. Schedule of unit entitlements

The schedule of unit entitlement registered for a strata scheme or survey-strata scheme immediately before commencement day continues to be registered as the schedule of unit entitlements for the scheme.

[Clause 5 inserted: No. 30 of 2018 s. 119.]

6. Council members and officers

(1) A member of the council or officer of a strata company who continues in that capacity on commencement day —

(a) must inform the council in writing, as soon as practicable after that day, of any direct or indirect pecuniary or other interest that the person has that conflicts or may conflict with the performance of a function as a member of the council or, if applicable, an officer of the strata company; and

(b) in the case of a member of the council, must not vote on a matter in which the member has an interest required to be disclosed under paragraph (a).

(2) Subclause (1) does not apply to an interest arising solely from the fact that the member or officer is the owner of a lot in the strata titles scheme.

(3) Subclause (1)(a) does not apply to matters of which the member or officer has already informed the council in writing but subclause (1)(b) does apply to such matters.

[Clause 6 inserted: No. 30 of 2018 s. 119.]

7. Applications lodged with Registrar of Titles before commencement day

(1) An application lodged with the Registrar of Titles but not finally dealt with before commencement day of a kind listed below is taken to have been lodged under section 56 as an application for registration of amendment of a scheme plan —

(a) application for registration of plan of re-subdivision under section 8A as in force immediately before commencement day;

(b) application for registration of strata/survey-strata plan of consolidation under section 9 as in force immediately before commencement day;

(c) application for registration of conversion of 1 or more lots into common property under section 10 as in force immediately before commencement day;

(d) application for registration of a transfer of land under section 18 as in force immediately before commencement day;

(e) an application for registration of a lease, transfer of a lease or sub-lease, or the surrender of a lease, under section 18 as in force immediately before commencement day (being an amendment relating to temporary common property);

(f) an application for registration of a transfer of common property under section 19 as in force immediately before commencement day;

(g) an application for registration of the creation or surrendering of an easement or restrictive covenant under section 20 as in force immediately before commencement day.

(2) An application lodged with the Registrar of Titles but not finally dealt with before commencement day for registration of an amended schedule of unit entitlement under section 15 as in force immediately before commencement day is taken to have been lodged under section 56 as an application for registration of an amendment of the schedule of unit entitlements.

[Clause 7 inserted: No. 30 of 2018 s. 119.]

8. Approvals and certificates

(1) For the purposes of an application to the Registrar of Titles involving registration of scheme documents or amendments of scheme documents prepared before commencement day —

(a) a certificate of a licensed surveyor or licensed valuer given in relation to a strata plan, survey-strata plan or schedule of unit entitlement before commencement day in accordance with the Act as then in force is taken to comply with the requirements of the Act as amended by the amending Act; and

(b) an approval of the Planning Commission or local government given under a provision of the Act as in force immediately before commencement day is taken to be an approval under the corresponding provision of the Act as amended by the amending Act.

(2) The regulations may impose time limits within which an application to the Registrar of Titles must be made if it involves registration of scheme documents or amendments of scheme documents prepared before commencement day.

[Clause 8 inserted: No. 30 of 2018 s. 119.]

9. Utility service easement

A utility service easement applies to utility conduits whether installed before, on or after commencement day.

[Clause 9 inserted: No. 30 of 2018 s. 119.]

10. Scheme developers

(1) Section 79 applies to contracts, leases and licences whether entered into or granted before, on or after commencement day in connection with a subdivision given effect by registration of a strata titles scheme or an amendment of a strata titles scheme on or after commencement day.

(2) A person who is a scheme developer of a subdivision immediately before commencement day must inform the strata company in writing, as soon as practicable on or after commencement day, of the

following for each contract, lease or licence to which section 79 applies —

(a) details of any remuneration or other benefit (including savings connected with installation or commissioning of infrastructure for the provision of services under the contract) that the scheme developer or an associate of the scheme developer has received arising out of the contract, lease or licence;

(b) details of any other direct or indirect pecuniary interest that the scheme developer or an associate of the scheme developer has in the contract, lease or licence, other than as a member of the strata company.

(3) Subclause (2) does not apply to —

(a) matters of which the scheme developer has already informed the strata company in writing; or

(b) a contract, lease or licence relating to a subdivision given effect by registration of a strata titles scheme or an amendment of a strata titles scheme before commencement day.

[Clause 10 inserted: No. 30 of 2018 s. 119.]

11. Structural alteration of lot

An application to the Tribunal under section 90 may relate to a structural alteration made before commencement day.

[Clause 11 inserted: No. 30 of 2018 s. 119.]

12. Records and correspondence

Section 104(1) extends to records and correspondence made or kept under the Act as in force immediately before commencement day and to records and correspondence in the possession or control of a strata company immediately before commencement day.

[Clause 12 inserted: No. 30 of 2018 s. 119.]

13. Strata managers

(1) A person (a ***strata manager***) may continue to perform scheme functions under a contract or volunteer agreement with a strata company that is in force immediately before commencement day for 6 months after that day and this Act applies, for that period, as if those functions were authorised to be performed by the strata manager under section 143 and as if the contract or volunteer agreement were a strata management contract.

(2) Subclause (1) —

(a) applies even if the functions could not be authorised under a strata management contract and even if the strata manager does not meet the requirements set out in section 144; and

(b) is subject to the variation or termination of the contract or volunteer agreement.

(3) A contract or volunteer agreement referred to in subclause (1) ceases to have effect 6 months after commencement day unless the strata manager then meets the requirements set out in section 144 and the contract or volunteer agreement then meets the requirements set out in section 145.

(4) Subject to any direction or resolution of the strata company to the contrary, a volunteer strata manager may continue to perform scheme functions performed by the strata manager immediately before commencement day for 6 months after commencement day even if the functions could not be authorised under a strata management contract and even if the strata manager does not meet the requirements set out in section 144.

(5) A strata manager to whom this clause applies must inform the strata company in writing, as soon as practicable on or after commencement day, of —

(a) any direct or indirect pecuniary or other interest that the strata manager has that conflicts or may conflict with the performance of the strata manager's functions; and

(b) the amount or value of any remuneration or other benefit that the strata manager receives, or has a reasonable expectation of receiving (other than from the strata company) in

connection with the performance of the strata manager's functions.

(6) Subclause (5) does not apply to —

(a) remuneration or any other benefit that is less than an amount or value specified in or calculated in accordance with the regulations; or

(b) matters of which the strata manager has already informed the strata company in writing.

[Clause 13 inserted: No. 30 of 2018 s. 119.]

14. Scheme disputes

(1) A scheme dispute may involve an event that occurred, or a matter that arose, before commencement day.

(2) In determining a scheme dispute, the Tribunal may apply the objectives set out in section 119 as if that section had been in force when the event occurred or the matter arose.

[Clause 14 inserted: No. 30 of 2018 s. 119.]

15. Administrators

A person who holds office as an administrator of a strata company under this Act immediately before commencement day continues to hold that office on the same terms and conditions and section 205 applies as if the administrator had been appointed under the Act as amended by the amending Act.

[Clause 15 inserted: No. 30 of 2018 s. 119.]

16. Schedule 2A

The clauses in Schedule 2A (except those in Part 1) are numbered as they were as sections in the body of the Act immediately before commencement day and anything done under any of those sections that may have effect after that day is taken to have been done under the corresponding clause.

[Clause 16 inserted: No. 30 of 2018 s. 119.]

17. Short form easements and restrictive covenants

(1) If the regulations declare that an easement of a specified class created under section 5D as in force immediately before commencement day corresponds to a specified short form easement or restrictive covenant —

(a) an easement of that class that is in force immediately before commencement day is taken to be a short form easement or restrictive covenant of the specified kind; and

(b) the rights and obligations under the easement are those applicable to the specified short form easement or restrictive covenant.

(2) An easement created under section 5D to which subclause (1) does not apply and in force immediately before commencement day —

(a) continues in force on the same terms and conditions as if the amending Act had not been enacted; but

(b) may be discharged by amendment to the scheme plan as if it were a short form easement or restrictive covenant.

[Clause 17 inserted: No. 30 of 2018 s. 119.]

18. Restricted use conditions

(1) A restriction on the use to which a parcel or part of a parcel may be put under section 6 as in force immediately before commencement day is taken to be a restricted use condition.

(2) A reference to a retired person in such a restricted use condition is a reference to that term within the meaning of section 6A as in force immediately before commencement day.

[Clause 18 inserted: No. 30 of 2018 s. 119.]

19. Approvals for structural alterations

An approval under section 7 or 7A as in force immediately before commencement day is taken to be an approval under section 87 or 88 respectively.

[Clause 19 inserted: No. 30 of 2018 s. 119.]

20. Temporary common property

(1) Land leased under section 18 as in force immediately before commencement day is taken to be leased under section 92.

(2) Land noted on a strata plan or survey-strata plan under section 18(4) as in force immediately before commencement day that is leased by the strata company is taken to be temporary common property for the strata titles scheme as if the lease had been accepted under section 92.

[Clause 20 inserted: No. 30 of 2018 s. 119.]

21. Termination of strata scheme by unanimous resolution

If the documents required for termination of a strata titles scheme under section 30 or 30A as in force immediately before commencement day are lodged with the Registrar of Titles before commencement day, the Registrar of Titles must take the steps required under that section to terminate the scheme as if the amending Act had not been enacted.

[Clause 21 inserted: No. 30 of 2018 s. 119.]

22. Roll

A roll kept by a strata company under section 35A as in force immediately before commencement day is taken to be a roll kept under section 105.

[Clause 22 inserted: No. 30 of 2018 s. 119.]

23. Financial management

(1) An administrative fund of a strata company established under section 36 as in force immediately before commencement day is taken to be an administrative fund established under section 100.

(2) A reserve fund of a strata company established under section 36 as in force immediately before commencement day is taken to be a reserve fund established under section 100.

(3) Contributions or other arrangements determined under section 36 as in force immediately before commencement day for any period that continues on or after commencement day are taken to be contributions or arrangements determined under section 100.

(4) Expenditure of a strata company already authorised for the current financial year under section 47 as in force immediately before commencement day but not expended before that day is taken to be authorised under section 102.

[Clause 23 inserted: No. 30 of 2018 s. 119.]

24. Extension of contract termination period

Any extension of a period applying to a contract under section 39A as in force immediately before commencement day is taken to have been made under section 115.

[Clause 24 inserted: No. 30 of 2018 s. 119.]

25. Provision of information

If an application has been made to a strata company under section 43 as in force immediately before commencement day but not complied with before that day, the strata company must deal with the application as if it had been made under section 107.

[Clause 25 inserted: No. 30 of 2018 s. 119.]

26. Authorisation of body corporate

An authorisation of an individual under section 45 as in force immediately before commencement day is taken to have been given under section 136.

[Clause 26 inserted: No. 30 of 2018 s. 119.]

27. Restrictions on powers of expenditure

A special resolution under section 47(1)(a) as in force immediately before commencement day is taken to be a special resolution under section 102(6)(a)(i).

[Clause 27 inserted: No. 30 of 2018 s. 119.]

28. Insurance in transitional period

For 12 months after commencement day, a strata company is not required to comply with Part 8 Division 1 Subdivision 2 or Schedule 2A Part 5 (as applicable to the strata company) if it complies

with Part IV Division 4 of the Act as in force immediately before commencement day.

[Clause 28 inserted: No. 30 of 2018 s. 119.]

29. Protection of buyers

Part 5 of the Act as in force immediately before commencement day continues to apply, as if the amending Act had not been enacted, to —

(a) a contract for the sale and purchase of a lot in a strata titles scheme entered into before commencement day; and

(b) the buyer and seller for the contract; and

(c) any person who has been paid money in relation to that contract.

[Clause 29 inserted: No. 30 of 2018 s. 119.]

30. Proceedings

(1) A proceeding in the District Court or Tribunal under this Act commenced before commencement day must be dealt with as if the amending Act had not been enacted.

(2) A proceeding under this Act that could have been, before commencement day, commenced in the District Court must instead be commenced in the Tribunal and the Tribunal has jurisdiction to hear and determine the matter.

[Clause 30 inserted: No. 30 of 2018 s. 119.]

Notes

This is a compilation of the *Strata Titles Act 1985* and includes amendments made by other written laws [9]. For provisions that have come into operation, and for information about any reprints, see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Short title	Number and year	Assent	Commencement
Strata Titles Act 1985	33 of 1985	6 May 1985	s. 1 and 2: 6 May 1985; Act other than s. 1 and 2: 30 Jun 1985 (see s. 2 and *Gazette* 21 Jun 1985 p. 2188)
Strata Titles Amendment Act 1986	42 of 1986	1 Aug 1986	1 Aug 1986 (see s. 2)
Acts Amendment (Water Authority Rates and Charges) Act 1987 Pt. IX	24 of 1987	25 Jun 1987	14 Jul 1987 (see s. 2 and *Gazette* 14 Jul 1987 p. 2647)
Acts Amendment (Heritage Council) Act 1990 Pt. 2 Div. 6	97 of 1990	22 Dec 1990	25 Feb 1991 (see s. 2 and *Gazette* 22 Feb 1991 p. 868)
Retirement Villages Act 1992 s. 86	34 of 1992	19 Jun 1992	10 Jul 1992 (see s. 2 and *Gazette* 10 Jul 1992 p. 3185)
Financial Administration Legislation Amendment Act 1993 s. 11	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
Acts Amendment (Public Sector Management) Act 1994 s. 19	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and *Gazette* 30 Sep 1994 p. 4948)
Planning Legislation Amendment Act (No. 2) 1994 s. 46(12)	84 of 1994	13 Jan 1995	1 Mar 1995 (see s. 2 and *Gazette* 21 Feb 1995 p. 567)
Caravan Parks and Camping Grounds Act 1995 s. 33	34 of 1995	29 Sep 1995	1 Jul 1997 (see s. 2 and *Gazette* 20 Jun 1997 p. 2805)
Strata Titles Amendment Act 1995 [2, 5-8, 10]	58 of 1995	20 Dec 1995	s. 1 and 2: 20 Dec 1995; Act other than s. 1 and 2: 14 Apr 1996 (see s. 2 and *Gazette* 15 Mar 1996 p. 981)

Short title	Number and year	Assent	Commencement
Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995 s. 188	73 of 1995	27 Dec 1995	1 Jan 1996 (see s. 2(2) and *Gazette* 29 Dec 1995 p. 6291)
Reprint of the *Strata Titles Act 1985* as at 22 Apr 1996 (includes amendments listed above except those in the *Caravan Parks and Camping Grounds Act 1995*)			
Local Government (Consequential Amendments) Act 1996 s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
Strata Titles Amendment Act 1996 [11, 12]	61 of 1996	11 Nov 1996	s. 1 and 2: 11 Nov 1996; Act other than s. 1 and 2: 20 Jan 1997 (see s. 2 and *Gazette* 17 Jan 1997 p. 405)
Licensed Surveyors Amendment Act 1996 s. 28	79 of 1996	14 Nov 1996	5 Apr 1997 (see s. 2 and *Gazette* 4 Apr 1997 p. 1750)
Transfer of Land Amendment Act 1996 s. 153(1)	81 of 1996	14 Nov 1996	14 Nov 1996 (see s. 2(1))
Reprint of the *Strata Titles Act 1985* as at 20 Jan 1997 (includes amendments listed above except those in the *Caravan Parks and Camping Grounds Act 1995* and the *Licensed Surveyors Amendment Act 1996*)			
Equal Opportunity Amendment Act (No. 3) 1997 s. 8	42 of 1997	9 Dec 1997	6 Jan 1998 (see s. 2(1))
Statutes (Repeals and Minor Amendments) Act 1997 s. 115	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
Statutes (Repeals and Minor Amendments) Act (No. 2) 1998 s. 66	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
Acts Amendment and Repeal (Financial Sector Reform) Act 1999 s. 104	26 of 1999	29 Jun 1999	1 Jul 1999 (see s. 2 and *Gazette* 30 Jun 1999 p. 2905)
Reprint of the *Strata Titles Act 1985* as at 1 Jul 1999 (includes amendments listed above)			
Statutes (Repeals and Minor Amendments) Act 2000 s. 40	24 of 2000	4 Jul 2000	4 Jul 2000 (see s. 2)

Short title	Number and year	Assent	Commencement
Corporations (Consequential Amendments) Act 2001 Pt. 49	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and *Gazette* 29 Jun 2001 p. 3257 and Cwlth *Gazette* 13 Jul 2001 No. S285)
Planning Appeals Amendment Act 2002 s. 28	24 of 2002	24 Sep 2002	18 Apr 2003 (see s. 2 and *Gazette* 17 Apr 2003 p. 1243)
Taxation Administration (Consequential Provisions) Act 2002 s. 23	45 of 2002	20 Mar 2003	1 Jul 2003 (see s. 2(1) and *Gazette* 27 Jun 2003 p. 2383)
Acts Amendment (Equality of Status) Act 2003 Pt. 56	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and *Gazette* 30 Jun 2003 p. 2579)
Reprint 4: The *Strata Titles Act 1985* as at 22 Aug 2003 (includes amendments listed above)			
Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 s. 67	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and *Gazette* 30 Dec 2003 p. 5722)
Statutes (Repeals and Minor Amendments) Act 2003 s. 112 [13]	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
Workers' Compensation Reform Act 2004 s. 174	42 of 2004	9 Nov 2004	4 Jan 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7131)
Courts Legislation Amendment and Repeal Act 2004 Sch. 1 cl. 150 (other than the amendment to s. 116A(4)) [14]	59 of 2004 (as amended by No. 2 of 2008 s. 77(12) and (13))	23 Nov 2004	1 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7128)
State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 2 Div. 121 [15, 16]	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7130)
Reprint 5: The *Strata Titles Act 1985* as at 20 May 2005 (includes amendments listed above)			
Planning and Development (Consequential and Transitional Provisions) Act 2005 s. 15 [17]	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2 and *Gazette* 21 Mar 2006 p. 1078)

Short title	Number and year	Assent	Commencement
Land Information Authority Act 2006 s. 160	60 of 2006	16 Nov 2006	1 Jan 2007 (see s. 2(1) and *Gazette* 8 Dec 2006 p. 5369)
Duties Legislation Amendment Act 2008 Sch. 1 cl. 36	12 of 2008	14 Apr 2008	1 Jul 2008 (see s. 2(d))
Legal Profession Act 2008 s. 707	21 of 2008	27 May 2008	1 Mar 2009 (see s. 2(b) and *Gazette* 27 Feb 2009 p. 511)
Reprint 6: The *Strata Titles Act 1985* as at 25 Jul 2008 (includes amendments listed above except those in the *Legal Profession Act 2008*)			
Standardisation of Formatting Act 2010 s. 4	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and *Gazette* 10 Sep 2010 p. 4341)
Approvals and Related Reforms (No. 4) (Planning) Act 2010 s. 37	28 of 2010	19 Aug 2010	22 Nov 2010 (see s. 2(b) and *Gazette* 19 Nov 2010 p. 5709)
Building Act 2011 s. 174	24 of 2011	11 Jul 2011	2 Apr 2012 (see s. 2(b) and *Gazette* 13 Mar 2012 p. 1033)
Water Services Legislation Amendment and Repeal Act 2012 s. 232	25 of 2012	3 Sep 2012	18 Nov 2013 (see s. 2(b) and *Gazette* 14 Nov 2013 p. 5028)
Reprint 7: The *Strata Titles Act 1985* as at 24 May 2013 (includes amendments listed above except those in the *Water Services Legislation Amendment and Repeal Act 2012*)			
Land Legislation Amendment Act 2015 Pt. 4	11 of 2015	29 Apr 2015	30 Jun 2015 (see s. 2(b) and *Gazette* 2 Jun 2015 p. 1937)
Land Legislation Amendment (Taxing) Act 2015 Pt. 3	12 of 2015	29 Apr 2015	30 Jun 2015 (see s. 2(b) and *Gazette* 2 Jun 2015 p. 1937)
Heritage Act 2018 s. 187	22 of 2018	18 Sep 2018	1 Jul 2019 (see s. 2(b) and *Gazette* 27 Jun 2019 p. 2375)
Strata Titles Amendment Act 2018 Pt. 2 [20]	30 of 2018	19 Nov 2018	1 May 2020 (see s. 2(b) and SL 2020/39 cl. 2)
Swan Valley Planning Act 2020 Pt. 10 Div. 14	45 of 2020	9 Dec 2020	1 Aug 2021 (see s. 2(1)(e) and SL 2021/124 cl. 2)
Legal Profession Uniform Law Application Act 2022 Pt. 17 Div. 21	9 of 2022	14 Apr 2022	1 Jul 2022 (see s. 2(c) and SL 2022/113 cl. 2)

Short title	Number and year	Assent	Commencement
Transfer of Land Amendment Act 2022 Pt. 3 Div. 7	21 of 2022	24 Jun 2022	7 Aug 2023 (see s. 2(b) and SL 2023/111 cl. 2)

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA Legislation website.

Short title	Number and year	Assent	Commencement
State Superannuation (Transitional and Consequential Provisions) Act 2000 s. 67	43 of 2000	2 Nov 2000	To be proclaimed (see s. 2(2))

Other notes

[1] Footnote no longer applicable.

[2] The *Strata Titles Amendment Act 1995* s. 5(5) reads as follows:

> (5) A plan registered under the principal Act before the provision inserted by subsection (3) came into operation is declared to be, and to have always been, valid if it would have been valid at the time of registration had that provision been then in operation.

[3] Deleted by the *Building Act 2011* s. 153(2).

[4] The *Strata Titles Act 1966* was repealed by this Act, s. 131.

[5] The *Strata Titles Amendment Act 1995* s. 46(2) reads as follows:

> (2) Expenditure made by the council of a strata company at any time before the commencement of subsection (1) that would have been within paragraph (e) of section 47(2) of the principal Act if that section had then been in operation is declared to be, and to have always been, as valid as it would have been if that section had been then in operation.

6 The *Strata Titles Amendment Act 1995* s. 54(3) reads as follows:

> (3) Any insurance effected and maintained by a strata company at any time before the commencement of subsection (1)(b) that would have been within section 55(1)(b) of the principal Act if that section and subsection (1)(b) had then come into operation is declared to be, and to have always been, as valid as it would have been if that section and subsection (1)(b) had then come into operation.

7 The *Strata Titles Amendment Act 1995* s. 57(2) and (3) read as follows:

> (2) Section 60, as inserted by subsection (1), applies to a plan registered after the commencement of this section.
>
> (3) Section 60, as it existed before the commencement of this section, continues to apply, despite its repeal, to a plan registered before that commencement.

8 The *Strata Titles Amendment Act 1995* s. 66 reads as follows:

> **66. Transitional provision**
>
> Despite their repeal by section 63, sections 68 and 69 of the principal Act continue to apply to any contract, agreement or document entered into before the commencement of section 63 and the provisions inserted into the principal Act by that section do not apply to any such contract, agreement or document.

9 The *Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004* Sch. 1 cl. 31 was repealed by the *Criminal Law and Evidence Amendment Act 2008* s. 78(6).

10 The *Strata Titles Amendment Act 1995* s. 38(2), 43(5) and (6), 45(3) and 93(2) are transitional provisions that are of no further effect.

11 The *Strata Titles Amendment Act 1996* s. 12(2) and (3) and 34(4) are transitional provisions that are of no further effect.

12 The *Strata Titles Amendment Act 1996* s. 30 reads as follows:

> **30. Transitional provisions as to insurance**
>
> (1) If immediately before the day on which section 25 of the *Strata Titles Amendment Act 1996* commences (the ***commencement day***)

a strata company for a single tier strata scheme is maintaining insurance in respect of —

(a) buildings in the scheme; and

(b) damage to property, death or bodily injury,

that after the commencement day satisfies the requirements of new section 53D(3), the strata company is to be taken to have made a determination for the purposes of new section 53B(2).

(2) Subsection (1) does not prevent the strata company exercising the power under new section 53B(2) to revoke a determination under that section.

(3) If immediately before the commencement day a strata company for a single tier strata company is exempt from the requirements of section 54 or 55(1)(c) of the principal Act by order of a referee under section 103J of that Act, the order continues in force after the commencement day as if the order exempted the strata company from the obligation to insure imposed on it by new section 53D.

(4) An order to which subsection (3) applies ceases to have effect if —

(a) at any time after the commencement day a proprietor serves notice in writing —

(i) on the strata company*;* or

(ii) in the case of a two-lot scheme, on the other proprietor,

that he requires the termination of the order; and

(b) the notice is recorded on the strata/survey-strata plan by the Registrar of Titles.

(5) It is for the person who has served a notice under subsection (4) to lodge a copy of the notice, accompanied by the prescribed form, with the Registrar of Titles for the purpose of subsection (4)(b).

(6) In this section —

new section refers to a section inserted in the principal Act by section 25 of this Act.

[13] The amendment in the *Statutes (Repeals and Minor Amendments) Act 2003* s. 112(13) could not be done as the amendment was done in the 22 August 2003 reprint.

[14] The *Courts Legislation Amendment and Repeal Act 2004* Sch. 1 cl. 150 (to amend s. 116A(4)) and Sch. 2 cl. 48 were repealed by the *Criminal Law and Evidence Amendment Act 2008* s. 77(12) and (13).

[15] The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

[16] The *State Administrative Tribunal Regulations 2004* r. 39 and 63 read as follows:

39. *Strata Titles Act 1985*

(1) In this regulation —

commencement day means the day on which the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Part 2 Division 121 comes into operation.

(2) Subregulations (3) and (4) apply if —

(a) before the commencement day a person was given a notice under the *Strata Titles Act 1985* section 79(1)(a)*;* and

(b) the person had not before the commencement day made a written submission under section 79(1)(b) of that Act.

(3) If this subregulation applies, on or after the commencement day, the person given the notice may, within the time specified in the notice, or any longer time allowed under the *Strata Titles Act 1985* section 79(1)(c), make a written submission to the Tribunal and the Tribunal is to take account of the submission as if the submission were a document provided in proceedings to be conducted in whole or part on the basis of documents under the Act section 60(2).

(4) If this subregulation applies, the Tribunal is not to make an order under the *Strata Titles Act 1985* Part VI Division 3, other than under section 82, until after the expiration of the time specified for the making of written submissions in the notice given under section 79(1)(a) of that Act, or where a further notice has been given under section 79(1)(c) of that Act, the expiration of the longer time specified in that notice.

(5) If —

(a) before the commencement day a matter was being dealt with by the Strata Titles Referee under the *Strata Titles Act 1985* and the Referee had made a requirement under section 80C(a) or (b) of that Act but that requirement had not been complied with before that day; and

(b) the matter is transferred to the Tribunal under the Act section 167(4)(a) or (b),

the Tribunal has, in relation to that matter, the power that the Strata Titles Referee had under the *Strata Titles Act 1985* section 80C(c) immediately before the commencement day.

63. ***Strata Titles Act 1985***

(1) In this regulation —

commencement day means the day on which the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Part 2 Division 121 comes into operation;

referee means a Strata Titles Referee appointed and holding office before the commencement day under the ST Act section 71;

the ST Act means the *Strata Titles Act 1985*.

(2) If —

(a) a special resolution authorising an application to a Land Valuation Tribunal under the ST Act section 16(1) for an order that the Schedule of unit entitlement be amended was passed before the commencement day; or

(b) a certificate under seal of a strata company certifying that the strata company has by special resolution authorised such an application,

and an application has not been made to a Land Valuation Tribunal before the commencement day or an application to the Land Valuation Tribunal is transferred to the State Administrative Tribunal under the Act section 167, on and after the commencement day, the reference to a Land Valuation Tribunal in the special resolution and the certificate is to be read and construed as a reference to the State Administrative Tribunal.

(3) On and after the commencement day, a copy of an order certified under the ST Act by a referee as being a true copy is to be taken to have been certified by the executive officer of the State Administrative Tribunal.

(4) A certificate of a local government made before the commencement day which complies with the ST Act section 23(1)(a) or (3), as in force at the time the certificate was made, is to be taken, on and after the commencement day, to comply with the ST Act section 23(1)(a) or (3).

(5) A certificate issued before the commencement day by the Town Planning Appeal Tribunal under the ST Act section 27(9) or 25B(3)(a) certifying that an appeal has been upheld, is to be taken, on and after the commencement day, to be a certificate of the executive officer of the State Administrative Tribunal to the effect that a successful application has been made to the State

Administrative Tribunal for a review of the Commission's refusal or failure to give an approval referred to in the ST Act section 25B(2).

(6) If a notice of refusal has been given under the ST Act section 26 before the commencement day, on or after the commencement day the notice is to be taken to inform the applicant of the right conferred by that section to apply for a review of the refusal.

(7) If, before the commencement day, the Minister or the Town Planning Appeal Tribunal has upheld an appeal under the ST Act section 26 but has not under section 26(11) of the ST Act issued to the applicant a certificate certifying that the appeal has been upheld, on or after the commencement day, the President of the State Administrative Tribunal may issue to the applicant a certificate certifying that the appeal has been upheld and that certificate has the same effect as a certificate issued under section 26(11) would have had if the certificate had been issued by the Minister or the Town Planning Appeal Tribunal before the commencement day.

(8) If a referee has determined under the ST Act section 39A(4)(c)(ii) (as in force at the time of the determination) that an agreement is unfair to the proprietors of 25% or more of the aggregate unit entitlement of the lots, on or after the commencement day that determination is to be taken to be a determination of the State Administrative Tribunal under the ST Act section 39A(4)(c)(ii).

(9) If before the commencement day —

(a) an application for an order was made to a referee in relation to a matter of a type referred to in the ST Act section 77A(1) (as in force at the time of the application); and

(b) the referee did not refer the application to the Retirement Villages Disputes Tribunal,

on the commencement day the application is to be taken to be an application by an applicant for review to the State Administrative Tribunal under the *State Administrative Tribunal Act 2004* and the applicant for the order of the referee is to be taken to be an applicant under that Act.

(10) If an appeal is commenced before the commencement day under the ST Act section 105 and a strata company is the respondent to a successful appeal under that section, section 111(1) is to be taken to apply to that strata company as if that subsection had not been amended by the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004*.

(11) If an order is made by the District Court under the ST Act section 113(1) (as in force immediately before the commencement day), on or after the commencement day the District Court must not cause the order and the records of the District Court relating to the appeal, including records forwarded to it by the referee when referring that appeal to the District Court, to be sent to the referee but must cause the order and those records to be sent to the executive officer of the State Administrative Tribunal.

(12) If an order is sent to the executive officer under subregulation (11), the executive officer must serve a copy of the order, certified by him or her to be a true copy, on —

(a) the strata company for the Scheme to which the order relates;

(b) the appellant;

(c) any person who was given notice under the ST Act section 105(6) (as in force immediately before the commencement day) of the time and place for the determination of the appeal; and

(d) any person who, by the order, is required to do or to refrain from doing a specified act.

[17] The amendment in the *Planning and Development (Consequential and Transitional Provisions) Act 2005* s. 15, which gives effect to Sch. 2 cl. 63(9), to amend s. 25B(3) is not included because the subsection it sought to amend had been repealed by the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* s. 1116.

[18] The *Land Legislation (Postponement of Expiry) Proclamation 2018* published by *Gazette* 21 Dec 2018 p. 4845-6 provides that the expiry of former section 131A (renumbered as section 225) is postponed until the end of 31 December 2024.

[19] The *Land Legislation (Postponement of Expiry) Proclamation 2024* cl. 4 (SL 2024/43) provides that the expiry of section 225 is postponed until the end of 31 December 2029.

[20] Below is a list of the provisions of the *Strata Titles Act 1985* that were renumbered and relocated by the *Strata Titles Amendment Act 2018*. This table is intended as a general guide only.

Finding chart for relocated provisions

Former section or clause number	New section or clause number	Location of new section or clause
s. 3A	cl. 3A	Schedule 2A Part 2
s. 3AB	cl. 3AB	Schedule 2A Part 2

Former section or clause number	New section or clause number	Location of new section or clause
s. 7	s. 87	Part 7 Division 2
s. 7B	s. 89	Part 7 Division 2
s. 12A	cl. 12A	Schedule 2A Part 3
s. 21A	cl. 21A	Schedule 2A Part 4 Division 1 Subdivision 1
s. 21B	cl. 21B	Schedule 2A Part 4 Division 1 Subdivision 1
s. 21C	cl. 21C	Schedule 2A Part 4 Division 1 Subdivision 1
s. 21D	cl. 21D	Schedule 2A Part 4 Division 1 Subdivision 1
s. 21E	cl. 21E	Schedule 2A Part 4 Division 1 Subdivision 2
s. 21F	cl. 21F	Schedule 2A Part 4 Division 1 Subdivision 2
s. 21G	cl. 21G	Schedule 2A Part 4 Division 1 Subdivision 2
s. 21H	cl. 21H	Schedule 2A Part 4 Division 1 Subdivision 2
s. 21I	cl. 21I	Schedule 2A Part 4 Division 1 Subdivision 2
s. 21J	cl. 21J	Schedule 2A Part 4 Division 1 Subdivision 2
s. 21P	cl. 21P	Schedule 2A Part 4 Division 1 Subdivision 3
s. 21Q	cl. 21Q	Schedule 2A Part 4 Division 1 Subdivision 3
s. 21R	cl. 21R	Schedule 2A Part 4 Division 1 Subdivision 3
s. 21S	cl. 21S	Schedule 2A Part 4 Division 1 Subdivision 3
s. 21T	cl. 21T	Schedule 2A Part 4 Division 1 Subdivision 3
s. 21U	cl. 21U	Schedule 2A Part 4 Division 1 Subdivision 3
s. 21V	cl. 21V	Schedule 2A Part 4 Division 1 Subdivision 3
s. 21W	cl. 21W	Schedule 2A Part 4 Division 1 Subdivision 3
s. 21X	cl. 21X	Schedule 2A Part 4 Division 1 Subdivision 3
s. 21Y	cl. 21Y	Schedule 2A Part 4 Division 1 Subdivision 3
s. 21Z	cl. 21Z	Schedule 2A Part 4 Division 1 Subdivision 3
s. 24		Part 3 Division 2
s. 26	s. 28	Part 3 Division 4
s. 28	s. 166	Part 11 Division 1
s. 29	s. 167	Part 11 Division 2
s. 29A	s. 168	Part 11 Division 2
s. 29B	s. 169	Part 11 Division 2
s. 29C	s. 196	Part 12 Division 7

Former section or clause number	New section or clause number	Location of new section or clause
s. 31A	cl. 31A	Schedule 2A Part 4 Division 2
s. 31B	cl. 31B	Schedule 2A Part 4 Division 2
s. 31C	cl. 31C	Schedule 2A Part 4 Division 2
s. 31D	cl. 31D	Schedule 2A Part 4 Division 2
s. 31E	cl. 31E	Schedule 2A Part 4 Division 2
s. 31F	cl. 31F	Schedule 2A Part 4 Division 2
s. 31G	cl. 31G	Schedule 2A Part 4 Division 2
s. 31H	cl. 31H	Schedule 2A Part 4 Division 2
s. 31I	cl. 31I	Schedule 2A Part 4 Division 2
s. 31J	cl. 31J	Schedule 2A Part 4 Division 2
s. 31K	cl. 31K	Schedule 2A Part 4 Division 2
s. 33	s. 103	Part 8 Division 1 Subdivision 4
s. 34	s. 139	Part 8 Division 5
s. 35	s. 91	Part 8 Division 1 Subdivision 1
s. 35A	s. 105	Part 8 Division 1 Subdivision 5
s. 36	s. 100	Part 8 Division 1 Subdivision 3
s. 37	s. 116	Part 8 Division 1 Subdivision 7
s. 38	s. 94	Part 8 Division 1 Subdivision 1
s. 39A	s. 115	Part 8 Division 1 Subdivision 7
s. 44	s. 135	Part 8 Division 4
s. 45	s. 136	Part 8 Division 4
s. 53A	cl. 53A	Schedule 2A Part 5
s. 53B	cl. 53B	Schedule 2A Part 5
s. 53C	cl. 53C	Schedule 2A Part 5
s. 53D	cl. 53D	Schedule 2A Part 5
s. 53E	cl. 53E	Schedule 2A Part 5
s. 57	s. 84	Part 7 Division 1
s. 60	s. 67	Part 5 Division 4
s. 61	s. 68	Part 5 Division 4
s. 62	s. 69	Part 5 Division 4
s. 62A	s. 70	Part 5 Division 4

Former section or clause number	New section or clause number	Location of new section or clause
s. 63	s. 71	Part 5 Division 4
s. 64	s. 72	Part 5 Division 4
s. 65	s. 73	Part 5 Division 4
s. 65A	s. 74	Part 5 Division 4
s. 66	s. 75	Part 5 Division 4
s. 67	s. 76	Part 5 Division 4
s. 122	s. 211	Part 14
s. 122A	s. 212	Part 14
s. 123	s. 213	Part 14
s. 123B	s. 214	Part 14
s. 124	s. 170	Part 11 Division 3
s. 126	s. 217	Part 14
s. 129B	s. 219	Part 14
s. 129C	s. 220	Part 14
s. 129D	s. 221	Part 14
s. 130	s. 224	Part 14
s. 131A	s. 225	Part 14
s. 131B	s. 226	Part 14

Defined terms

[This is a list of terms defined and the provisions where they are defined. The list is not part of the law.]

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