

WESTERN AUSTRALIA

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**STRATA TITLES AMENDMENT  
ACT 1996**

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**No. 61 of 1996**

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**AN ACT to amend the *Strata Titles Act 1985* and to consequentially amend the *Stamp Act 1921*, and for related purposes.**

[Assented to 11 November 1996.]

The Parliament of Western Australia enacts as follows:

**Short title**

**1.** This Act may be cited as the *Strata Titles Amendment Act 1996*.

**Commencement**

2. The provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation.

**Principal Act**

3. In this Act the *Strata Titles Act 1985\** is referred to as the principal Act.

[\* *Reprinted as at 22 April 1996.*  
*For subsequent amendments see Act No. 14 of 1996.*]

**Section 3 amended**

4. (1) Section 3 (1) of the principal Act is amended —

(a) in the definition of “lot” in relation to a strata scheme —

(i) by inserting after “being in each case” the following —

“ , but subject to section 3AB, ”; and

(ii) by deleting from “unless that” to the end of the definition and substituting the following —

“  
except where —

(a) the boundaries of the cubic space are fixed under section 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;

”;

(b) by inserting after the definition of “parcel” the following definition —

“

**“permitted boundary deviation”** for the purposes of the definition of “single tier strata scheme” and other provisions, means a part of a lot that is above or below another lot in circumstances allowed by the regulations;

”;

(c) in the definition of “resolution without dissent” by inserting after “and 3C” the following —

“ and also has the meaning given by section 3CA ”;

(d) by inserting after the definition of “scheme” the following definition —

“

**“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

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(b) which comes within paragraph (a) except for any lot that has a permitted boundary deviation; ”;

(e) in the definition of “special resolution” by inserting after “and 3C” the following —

“ and also has the meaning given by section 3CA ”;

and

(f) in the definition of “structural cubic space” by deleting paragraphs (b) and (c) and substituting the following —

“ (b) any pipes, wires, cables or ducts in a building; and

(c) any cubic space enclosed by a structure enclosing any such pipes, wires, cables or ducts,

but, except where section 3AB applies, does not include any pipes, wires, cables or ducts that are for the exclusive use or enjoyment of one lot;

”.

(2) Section 3 (2) of the principal Act is amended by deleting “The boundaries” and substituting the following —

“ Except where section 3AB applies, the boundaries ”.

**Section 3A and other sections amended**

**5.** (1) Section 3A of the principal Act is amended by deleting the section designation “**3A**” and substituting the following —

“ **3AC** ”.

(2) The principal Act is amended by deleting “3A” where it occurs in the provisions referred to in the Table to this section and substituting in each case the following —

“ 3AC ”.

TABLE

section 3 (1) definition of “resolution without dissent”  
section 3C (1)  
section 3C (4)  
section 103F (5)

**Sections 3A and 3AB inserted**

**6.** After section 3 of the principal Act the following sections are inserted —

“

**Single tier strata schemes to which section 3AB applies**

**3A.** (1) Section 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) 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,

unless the plan provides that section 3AB does not apply to it;

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- (b) for a scheme in respect of which —
  - (i) a notice of resolution has been registered under section 21H; or
  - (ii) section 21M has effect (but subject to any order under section 103P),  
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 section 21X;
- (c) for a scheme the strata plan for which is registered on or after 1 January 1998, except where 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) Section 3AB also fixes the boundaries of lots or parts of lots, other than boundaries that are external to a building, created by way of re-subdivision or consolidation in a scheme to which subsection (1) applies.

**Alternative boundaries for lots in single tier strata schemes**

**3AB.** (1) Where this section applies the boundaries of any 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), where 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 subsection (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 one year, or a longer period allowed by a referee under section 103N, 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 section applies to a boundary of a lot or a part of a lot that is external to a building.

(4) Where this section applies it —

(a) displaces the operation of subsection (2) (a) of section 3; but

(b) does not affect the operation of subsection (2) (b) of that section.

”.

**Section 3CA inserted**

7. After section 3C of the principal Act the following section is inserted —

“

**Certain resolutions deemed to be resolutions without dissent or special resolutions**

**3CA.** (1) Where under this Act a thing may be done or a result occurs only if a strata company has passed a resolution without dissent in respect of a matter, the thing may be done or the result occurs if the strata company has passed any of the following resolutions in respect of the matter —

- (a) a unanimous resolution passed before the commencement of the *Strata Titles Amendment Act 1995*;
- (b) a resolution expressed to be a resolution without dissent but passed in such a manner as to satisfy the requirements of this Act for a unanimous resolution; or
- (c) in the case of a two-lot scheme, a unanimous resolution.

(2) Where a resolution comes within subsection (1) (b), section 3C (2) and (3) do not apply.

(3) Where under this Act a thing may be done or a result occurs only if a strata company has passed a special resolution in respect of a matter, the thing may be done or the result occurs if the strata company has passed any of the following resolutions in respect of the matter —

- (a) a unanimous resolution passed before the commencement of the *Strata Titles Amendment Act 1995*;



- (b) a resolution expressed to be a special resolution but passed in such a manner as to satisfy the requirements of this Act for a unanimous resolution; or
- (c) in the case of a two-lot scheme, a unanimous resolution.

(4) Where a resolution comes within subsection (3) (b), section 3B (5), (6) and (7) do not apply.

”.

**Section 4 amended**

**8.** Section 4 (5) of the principal Act is amended by inserting after “by this Act” the following —

“ , other than an easement created by section 5D, ”.

**Section 5 amended**

**9.** Section 5 (1) of the principal Act is amended by inserting after paragraph (a) the following paragraph —

“  
(aa) where section 3 (2) (a) or 3AB applies, contain a statement in the prescribed form describing all of the boundaries of a lot, or part of a lot, on the plan that are fixed by reference to a building or part of a building;  
”.

**Section 5C amended**

**10.** Section 5C (3) and (4) of the principal Act are repealed and the following subsection is substituted —

“  
(3) A management statement shall be signed by —  
(a) the person who is registered as proprietor of the fee simple of the parcel; and

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- (b) each person who has a registered interest in, or is a caveator in respect of, the parcel.

”.

**Sections 5D to 5H inserted**

**11.** After section 5C of the principal Act the following sections are inserted —

“

**Creation of easements by notation on survey-strata plans**

**5D.** (1) A survey-strata plan lodged for registration may, in accordance with this section, provide for easements that will have effect on registration of the plan.

(2) An easement that may be provided for under this section on a survey-strata plan is an easement —

- (a) of a kind prescribed by the regulations made for the purposes of section 5H; and
- (b) having effect in favour of a lot (“**the dominant lot**”), and against another lot (“**the servient lot**”), in the scheme to which the plan relates.

(3) An easement under this section is created on the registration of the plan if there are noted on the plan —

- (a) the location of the easement;
- (b) the dominant and servient lots; and
- (c) a specification of the easement by use of the short form description prescribed by the regulations for that kind of easement.

(4) A notation under subsection (3) (a) or (b) is to be in accordance with the regulations.

(5) This section is in addition to any other method by which an easement may be created in respect of lots in a survey-strata scheme.

**Provision on plan etc. overrides regulations as to easements**

**5E.** (1) To the extent allowed by the regulations provision may be made by —

- (a) notation on a survey-strata plan; or
- (b) memorial or other instrument lodged with such a plan,

for any term, condition or provision of or in relation to an easement under section 5D.

(2) The fact that any such provision is made does not prevent an easement being treated as one that is created under section 5D.

(3) Any term, condition or provision prescribed by the regulations of or in relation to an easement under section 5D has effect subject to any express provision in that behalf —

- (a) made under subsection (1); or
- (b) made by any by-law of the strata company that is classified under section 42 (2a) as a Schedule 1 by-law.

**Variation or discharge of easements under section 5D**

- 5F.** (1) An easement under section 5D —
- (a) is automatically discharged by the termination of the scheme in which it has effect;
  - (b) may with the approval in writing of the Commission —
    - (i) be varied by instrument signed by each person who has a registered interest in, or is a caveator in respect of, the dominant lot and the servient lot; and
    - (ii) be discharged by instrument signed by each person who has a registered interest in, or is a caveator in respect of, the dominant lot.
- (2) An instrument under subsection (1) (b) varying or discharging an easement is not effective until it is registered by the Registrar of Titles.
- (3) On registration of an instrument under subsection (1) (b) the Registrar of Titles is to amend the survey-strata plan to show the effect of the instrument.

**Easement where common ownership**

**5G.** An easement created under section 5D has effect even though the dominant lot and the servient lot have the same proprietor.

**Regulations as to easements**

- 5H.** (1) The regulations may prescribe —
- (a) the terms, conditions and provisions of and relating to easements that may be created under section 5D; and

- (b) a short form description by which each kind of easement may be referred to and which is to be deemed to be a reference to the full terms, conditions and provisions of an easement of that kind.

(2) Regulations made for the purposes of subsection (1) (a) may make provision for and in relation to —

- (a) liability for the costs of the upkeep of an area over which an easement is created;
- (b) a proprietor's right of access to an area over which an easement is created to inspect any thing or carry out work;
- (c) the proprietor of the dominant lot keeping the proprietor of the servient lot indemnified in respect of liability arising from the use of, or the activities undertaken in, an area by the first-mentioned proprietor; and
- (d) the circumstances in which an easement is terminated where a building to which it relates is destroyed.

(3) Regulations made for the purposes of subsection (1) may provide that —

- (a) in specified circumstances a proprietor of a lot is to be taken to have agreed to undertake any positive obligation specified in the regulations in connection with an easement; and
- (b) any such obligation runs with the land and is binding on a succeeding proprietor of the lot.

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(4) If the regulations prescribe any easement for access or use of light or air, section 121 of the *Property Law Act 1969* does not apply to the creation of any such easement under section 5D.

”.

**Section 8A amended and transitional provision**

**12.** (1) Section 8A of the principal Act is amended —

(a) in paragraph (a) (ii) (I) by deleting “resolution without dissent” and substituting the following —

“ unanimous resolution ”;

(b) in paragraph (i) (i) by inserting after “affected” the following —

“ otherwise than as the proprietor of the lot ”; and

(c) by deleting paragraph (j) and substituting the following paragraph —

“ (j) unless paragraph (a) (ii) (II) applies, be accompanied by a certificate given by every person who —

(i) has a registered interest in any lot the unit entitlement of which is proposed to be affected otherwise than as the proprietor of the lot; or

(ii) is a caveator in respect of any such lot,

certifying his consent to the proposed allocation of unit entitlement set out in the application.

”.

(2) If —

- (a) a resolution without dissent has been passed by a strata company for a scheme during the relevant period consenting to a proposed re-subdivision and allocation of unit entitlement as mentioned in subparagraph (ii) of section 8A (a) of the principal Act; but
- (b) the plan of re-subdivision was not registered before the expiry of the relevant period,

the resolution without dissent is to be treated as if it were a unanimous resolution for the purposes of that paragraph.

(3) In subsection (2) —

**“relevant period”** means the period —

- (a) beginning on the day of the commencement of the *Strata Titles Amendment Act 1995*; and
- (b) ending with the day before the commencement of the *Strata Titles Amendment Act 1996*.

### **Section 12A inserted**

**13.** After section 12 of the principal Act the following section is inserted —

“

#### **Access for maintenance where part of building intrudes into another lot**

**12A.** (1) Where under section 3AB (1) the boundary of a lot or part of a lot is the external surface of a part of a building and the part —

- (a) constitutes a permitted boundary deviation; or

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(b) is on the boundary with another lot,

the proprietor of the lot that includes that part, and his employees and agents, may —

(c) inspect, alter, repair and replace the part; and

(d) enter on the other lot, if necessary with vehicles and equipment, for the purpose of doing so.

(2) The rights created by subsection (1) are an easement to which the other lot is subject.

”.

**Section 14 amended**

**14.** Section 14 (2) of the principal Act is amended by deleting “5B and 8” and substituting the following —

“ 5B (1) (b), 8A (h), 21T (1) (d) and 31E (1) (d) ”.

**Section 19 amended**

**15.** (1) Section 19 (10) of the principal Act is amended —

(a) by deleting “subsection (11), except with the prior approval in writing of the Commission and of the local government” and substituting the following —

“ subsections (11), (12) and (13) ”; and

(b) by deleting “shall not be valid and effective” and substituting the following —

“ is not effective unless it has been approved in writing by the Commission and the local government

”.



(2) After section 19 (11) of the principal Act the following subsections are inserted —

“

(12) Subsection (10) does not apply to a by-law referred to in section 42 (8), whether made before or after the commencement of section 15 of the *Strata Titles Amendment Act 1996*, and no such by-law shall be called in question for non-compliance with that subsection.

(13) Subsection (10) does not apply to anything done under Division 2A of Part II or Division 3 of Part III.

”.

### **Division 2A inserted in Part II**

**16.** After Division 2 of Part II of the principal Act the following Division is inserted —

“

#### ***Division 2A — Merger of common property into lots in certain strata schemes***

##### *Subdivision 1 — Preliminary*

### **Interpretation**

**21A.** In this Division —

“**existing small strata scheme**” means a strata scheme —

- (a) in which there are not more than 5 lots; and
- (b) 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 section 3AB does not apply to the scheme.

**Division only applies to single tier strata schemes**

**21B.** This Division applies only to a single tier strata scheme.

**Procedures cannot be invoked more than once**

**21C.** (1) After a notice of resolution has been registered under section 21H in respect of a strata scheme, no further notice of resolution may be registered under that section in respect of that scheme.

(2) After a resolution has been registered under section 21X in respect of a strata scheme, no further resolution may be registered under that section in respect of that scheme.

**Saving**

**21D.** Nothing in this Division prevents or limits the re-subdivision of lots by the registration of a plan of re-subdivision under section 8.

*Subdivision 2 — Merger by resolution of buildings that are common property*

**Application**

**21E.** This Subdivision does not apply to a strata scheme the strata plan for which is registered on or after 1 January 1998.

**Resolution by strata company**

**21F.** (1) A strata company for a strata scheme may, in the prescribed 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 section 3AB.

(2) A resolution is effective for the purposes of subsection (1) only if it is —

- (a) a resolution without dissent or, in the case of a two-lot scheme, a unanimous resolution;
- (b) in the case of a two-lot scheme, a resolution declared by an order under section 103C to be deemed to have been duly passed as a unanimous resolution; or
- (c) a resolution passed by the strata company and ordered by a referee under section 103M to be treated as a resolution without dissent.

**Lodgement of notice of resolution for registration**

**21G.** (1) Where a strata company has passed a resolution under section 21F it may, in accordance with the regulations, lodge with the Registrar of Titles —

- (a) a notice of resolution in the prescribed form; and
- (b) if applicable, a copy of any relevant order under section 103C or 103M certified by a referee as being a true copy.

(2) The notice may be lodged in any case by the strata company or alternatively —

- (a) in the case of an existing small strata scheme, by all of the proprietors of lots in the scheme; or
- (b) where the resolution is of the kind mentioned in section 21F (2) (b) or (c), by one proprietor.

- (3) The notice of resolution —
- (a) if it is lodged by the strata company, is to be signed under its seal; or
  - (b) if subsection (2) (a) or (b) applies, is to be signed by the proprietors or the proprietor lodging it.

### **Registration of notice of resolution**

**21H.** The Registrar of Titles is to register a notice of resolution if the relevant requirements of this Division are satisfied.

### **Effect of registration**

**21I.** (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 section 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 subsection (1) is to be taken to be amended to give effect to that subsection.

**Registrar of Titles to amend strata plan**

**21J.** The Registrar of Titles is to amend the strata plan in the prescribed manner to give effect to section 21I.

*Subdivision 3 — Automatic merger of buildings that are common property*

**Interpretation**

**21K.** In this Subdivision —

**“change-over day”** means the day after the expiry of 6 months —

- (a) beginning on the commencement day, in the case of a strata scheme registered before that day; or
- (b) beginning on the day on which the scheme is registered, in the case of a strata scheme that is registered on or after the commencement day and before 1 January 1998;

**“commencement day”** means the day on which section 16 of the *Strata Titles Amendment Act 1996* comes into operation.

**Application**

**21L.** This Subdivision applies only to an existing small strata scheme.

**Automatic application of lot boundaries under section 3AB**

**21M.** If on the change-over day —

- (a) a notice of resolution has not been registered under section 21H; and
- (b) an objection has not been lodged under section 21O,

in respect of an existing small strata scheme, section 21I applies to the scheme, on and after the change-over day —

- (c) as if a notice of resolution had been registered under section 21H; and
- (d) without the need for any documentation.

**Plan to be noted**

**21N.** Where section 21M applies to a strata scheme the Registrar of Titles is to —

- (a) record on the strata plan for the scheme the fact that that section applies to that scheme; and
- (b) amend the strata plan in the prescribed manner to give effect to that section.

**Objection by proprietor**

**21O.** (1) A proprietor of a lot in an existing small strata scheme may lodge with the Registrar of Titles an objection to the application of section 21M to the scheme.

(2) An objection —

- (a) is to be in the prescribed form; and
- (b) is to be lodged before the change-over day.

(3) Where an objection is lodged by a proprietor of a lot in a scheme the Registrar of Titles is to send a copy of the objection to every other proprietor of a lot in the scheme by posting it to him at the address of his lot.

*Subdivision 4 — Merger by resolution of land that is common property*

**Application**

**21P.** This Subdivision does not apply to a strata scheme the strata plan for which is registered on or after 1 January 1998.

**Resolution by strata company**

**21Q.** (1) A strata company for a strata scheme may, in the prescribed form, resolve that the strata plan be amended in one 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 subsection (1) only if it is —

- (a) a resolution without dissent or, in the case of a two-lot scheme, a unanimous resolution;

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- (b) in the case of a two-lot scheme, a resolution declared by an order under section 103C to be deemed to have been duly passed as a unanimous resolution; or
  - (c) a resolution passed by the strata company and ordered by a referee under section 103M to be treated as a resolution without dissent.
- (3) A resolution cannot be passed under subsection (1) that would, on registration under section 21X of a notice of resolution, increase the number of lots in the scheme.
- (4) A resolution cannot be passed under subsection (1) (c) unless it specifies the horizontal boundaries of the land that is to be merged into a lot.

**Further provisions as to contents of resolution**

**21R.** (1) A resolution cannot be passed under section 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 licence under section 374 of the *Local Government (Miscellaneous Provisions) Act 1960*; and
  - (b) has been approved by the strata company or all of the proprietors of lots in the scheme.
- (2) If the strata plan is to be amended as mentioned in section 21Q (1) (c) the resolution is to specify any easement that is to be created in terms of section 21W.



**Notice of resolution may be lodged for registration**

**21S.** (1) Where a strata company has passed a resolution under section 21Q it may, in accordance with the regulations, lodge with the Registrar of Titles a notice of resolution in the prescribed form.

(2) The notice may be lodged in any case by the strata company or alternatively —

- (a) in the case of an existing small strata scheme, by all of the proprietors of lots in the scheme; or
  - (b) where the resolution is of the kind mentioned in section 21Q (2) (b) or (c), by one proprietor.
- (3) The notice of resolution —
- (a) if it is lodged by the strata company, is to be signed under its seal; or
  - (b) if subsection (2) (a) or (b) applies, is to be signed by the proprietors or the proprietor lodging it.

**Documents to accompany notice**

**21T.** (1) The notice of resolution is to be accompanied by —

- (a) a copy of any relevant order under section 103C or 103M certified by a referee as being a true copy;
- (b) unless subsection (2) applies, a sketch plan (“**the sketch plan**”) showing in the prescribed manner how the strata plan is to be amended —
  - (i) to show any extension or alteration of a building;

- (ii) to include a building not shown on the strata plan;
- (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 section 21W;
- (c) unless subsection (2) applies, a certificate given by a licensed surveyor in accordance with section 21U;
- (d) a certificate, in the prescribed form, given by a licensed valuer in accordance with section 14 (2) and, if any unit entitlement is to be changed, an amended schedule of unit entitlement;
- (e) if the *pro rata* 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 his consent to the decrease.

(2) The Registrar of Titles may dispense with the sketch plan to the extent that he considers that the detail shown on the strata plan or contained in the notice of resolution is sufficient.

#### **Certificate of licensed surveyor**

**21U.** (1) The certificate of a licensed surveyor referred to in section 21T (1) (c) is to comply with —

- (a) this section; and
- (b) any requirement made by the regulations for the purposes of this section.

(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 licence under section 374 of the *Local Government (Miscellaneous Provisions) Act 1960*;
- (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 proprietors of lots in the scheme;
- (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 section 22 (1) (c) 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 subsection (5), that the rights and amenities required to be provided for by the relevant town planning scheme in force under the *Town Planning and Development Act 1928* —

- (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 section 21V are registered.
- (4) The regulations may prescribe matters —
  - (a) as to which the surveyor is to certify under subsection (3); or
  - (b) which are to be specifically dealt with in the certificate.
- (5) A certification under subsection (3) is to relate to matters prescribed for the purposes of subsection (4) (a) and not to other matters arising under the relevant town planning 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.

**Transfers etc. to give effect to notice of resolution**

**21V.** (1) Subject to subsection (2), 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;

- (b) by which encumbrances are attached to or discharged from any interest; and
- (c) in which any certificate required by section 21T (1) (e) is set out,

and subsection (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) any other thing referred to in item 2 (18) or 7 (13) in the Third Schedule to the *Stamp Act 1921*.

**Creation of easements for parking etc.**

**21W.** (1) The sketch plan referred to in section 21T (1) (b) may provide for easements relating to motor vehicle access, parking or turning to be created under section 5D as if the sketch plan were a survey-strata plan.

(2) Section 5F also applies to the discharge or variation of an easement that is created under subsection (1).

(3) If the sketch plan makes provision as mentioned in subsection (1), sections 5D and 5F apply 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 variation or discharge of an easement under section 5F is required to be approved by the local government instead of the Commission.

**Registration of notice of resolution**

**21X.** The Registrar of Titles is to register the notice of resolution if the requirements of this Division are satisfied.

**Effect of registration**

**21Y.** (1) In addition to —

- (a) the operation of any transfer, document or disposition statement referred to in section 21V; and
- (b) the creation of any easement under section 5D as read with section 21W,

the registration of a notice of resolution has the effects described in subsections (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*; or
- (b) a by-law referred to in section 42 (8),

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 proprietors to be held by them as tenants in common in shares proportional to the unit entitlements of their respective lots.

(5) The share of a proprietor so vested is subject to any encumbrance registered or caveat lodged with the Registrar of Titles against his lot.

(6) Any encumbrance or caveat referred to in subsection (3) or (5) is to be taken to be amended to give effect to that subsection.

**Registrar of Titles to make necessary amendments**

**21Z.** (1) The Registrar of Titles is to amend —

- (a) the strata plan in the prescribed manner to give effect to sections 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) The Registrar of Titles may amend the duplicate certificates as mentioned in subsection (1) (b) when they are lodged in the Office of Titles for the purpose of a dealing.

”.

## s. 17

**Section 25B amended**

17. After section 25B (2) of the principal Act the following subsections are inserted —

“

(3) Where the Minister or the Town Planning Appeal Tribunal upholds an appeal under section 26 of the *Town Planning and Development Act 1928* against the refusal or failure of the Commission to give an approval referred to in subsection (2) —

- (a) the Minister or the Tribunal, as the case requires, shall issue to the applicant a certificate certifying that the appeal has been upheld; and
- (b) the certificate of the Minister or the Tribunal shall be deemed to be the approval of the Commission.

(4) The Registrar of Titles may accept for registration a plan referred to in subsection (1) notwithstanding that it does not comply with subsection (2) if the plan —

- (a) is accompanied by a certificate under subsection (3); and
- (b) otherwise complies with this Act.

”.

**Part III heading amended**

18. The heading to Part III of the principal Act is amended by deleting “**OR TERMINATION OF STRATA SCHEMES**” and substituting the following —

“ , **TERMINATION AND CONVERSION OF SCHEMES** ”.



**Part III Division 1 heading inserted**

**19.** After the heading to Part III of the principal Act the following heading is inserted —

“ *Division 1 — Variation of schemes* ”.

**Part III Division 2 heading inserted**

**20.** After section 29B of the principal Act the following heading is inserted —

“ *Division 2 — Termination of schemes* ”.

**Division 3 inserted in Part III**

**21.** After section 31 of the principal Act the following Division is inserted —

“

*Division 3 — Conversion of strata schemes to survey-strata schemes*

**Division only applies to single tier strata schemes registered before 1 January 1998**

**31A.** 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.

**Saving**

**31B.** Nothing in this Division prevents or limits the termination of a strata scheme in respect of any land under Division 2 and the subsequent registration of a survey-strata plan relating to the land under Part II.

**Resolution by strata company**

**31C.** (1) A strata company for a strata scheme may by unanimous resolution in the prescribed 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 section 31G.

(3) A resolution cannot be passed under subsection (1) that would, on registration under section 31I of a notice of resolution, increase the number of lots in the scheme.

(4) Subsection (3) does not apply if the number of lots is increased solely for the purpose of creating any lot that is to be designated as common property.

**Notice of resolution may be lodged for registration**

**31D.** (1) Where a strata company has passed a resolution under section 31C it may, in accordance with the regulations, lodge with the Registrar of Titles a notice of resolution in the prescribed 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 proprietors of lots in the scheme.

- (3) The notice of resolution —
  - (a) if it is lodged by the strata company, is to be signed under its seal; or
  - (b) if it is lodged by the proprietors, is to be signed by each proprietor.

**Documents to accompany notice**

**31E.** (1) The notice of resolution is to be accompanied by —

- (a) a survey-strata plan in respect of the parcel —
    - (i) showing in the prescribed manner —
      - (I) the boundaries of the lots and common property; and
      - (II) the location of any easement that is to be created under section 5D as read with section 31G,  
  
by dimensions and survey information obtained from a survey of the parcel;
    - (ii) bearing a statement containing such particulars as may be necessary to identify the title to the parcel;
    - (iii) showing the area of each lot and of any common property;
    - (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 for the purposes of section 5A (g);
- (b) a certificate given by a licensed surveyor in accordance with section 31F;
- (c) a schedule specifying, in a whole number —
  - (i) the proposed unit entitlement in respect of each lot; and
  - (ii) the aggregate unit entitlement;
- (d) a certificate, in the prescribed form, given by a licensed valuer in accordance with section 14 (2); and
- (e) a certificate given by every person, other than a proprietor, who —
  - (i) has a registered interest in; or
  - (ii) is a caveator in respect of,a lot certifying his consent to the proposed schedule of unit entitlement.

(2) If the duplicate certificate of title issued for a lot is produced by a registered mortgagee of the lot for the registration of a notice of resolution under section 31I, a certificate of that mortgagee is not required for the purposes of subsection (1) (e).

**Certificate of licensed surveyor**

**31F.** (1) The certificate of a licensed surveyor referred to in section 31E (1) (b) is to comply with —

- (a) this section; and

- (b) any requirement made by the regulations for the purposes of this section.
- (2) The surveyor is to certify —
- (a) as to each of the matters required to be certified in a certificate under section 22 (2);
  - (b) that there are not more lots on the survey-strata plan, disregarding any lot designated as a common property lot, than there are on the existing strata plan;
  - (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;
  - (d) that where 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 subsection (4), that the rights and amenities required to be provided for by the relevant town planning scheme in force under the *Town Planning and Development Act 1928* —
    - (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 section 31H are registered.
- (3) The regulations may prescribe matters —
- (a) as to which the surveyor is to certify under subsection (2) (e); or
  - (b) which are to be specifically dealt with in the certificate.

(4) A certification under subsection (2) (e) is to relate to matters prescribed for the purposes of subsection (3) (a) and not to other matters arising under the relevant town planning scheme.

#### **Creation of easements**

**31G.** (1) The plan referred to in section 31E (1) (a) may provide for easements to be created under section 5D, and any easement so provided for is created on the registration of the notice of resolution.

(2) Section 5F also applies to the discharge or variation of an easement that is created under subsection (1).

#### **Transfers etc. to give effect to resolution**

**31H.** (1) Subject to subsection (2), 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;
- (b) by which encumbrances are attached to or discharged from any interest; and
- (c) in which any certificate required by section 31E (1) (e) is set out,

and subsection (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) any other thing referred to in item 2 (18) or 7 (13) in the Third Schedule to the *Stamp Act 1921*.

### **Registration of notice of resolution**

**31I.** The Registrar of Titles is to register a notice of resolution if the requirements of this Division are satisfied.

### **Effect of registration**

**31J.** (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 section 31H; and
  - (b) the creation of any easement under section 5D as read with section 31G,

the registration of a notice of resolution also has the effects described in subsections (3), (4), (5), (6) and (7).

- (3) Where 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*; or
  - (ii) a by-law referred to in section 42 (8),

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 proprietors to be held by them as tenants in common in shares proportional to the unit entitlements of their respective lots.

(6) The share of a proprietor so vested is subject to any encumbrance registered or caveat lodged with the Registrar of Titles against his lot.

(7) Any encumbrance or caveat referred to in this section is to be taken to be amended to give effect to that section.

### **Registrar of Titles to make necessary amendments**

- 31K.** (1) The Registrar of Titles is to amend —
- (a) the strata plan in the prescribed manner to give effect to sections 31G, 31H and 31J; and
  - (b) the original certificates of title in respect of the lots.



(2) The Registrar of Titles may amend the duplicate certificates of title when they are lodged in the Office of Titles for the purpose of a dealing.

”.

**Section 51A amended**

**22.** After section 51A (1) of the principal Act the following subsection is inserted —

“

(1a) This section does not apply to a unanimous resolution that is required for the passing of a resolution under section 21F or 21Q.

”.

**Part IV, Division 4, Subdivision heading inserted**

**23.** After the heading to Division 4 of Part IV of the principal Act the following heading is inserted —

“ *Subdivision 1 — Preliminary* ”.

**Section 53 amended**

**24.** Section 53 of the principal Act is amended in the definition of “building” —

(a) by inserting immediately before “includes — ” the following —

“

includes any building on the parcel for a scheme whether shown on the strata/survey-strata plan or not and also

”;

and

(b) by deleting paragraph (b).

**Subdivision 2 inserted in Part IV Division 4**

**25.** After section 53 of the principal Act the following Subdivision is inserted —

“ *Subdivision 2 — Insurance in single tier strata schemes*

**Application of this Subdivision**

**53A.** References in this Subdivision —

- (a) to “**scheme**” are to a single tier strata scheme;
- (b) to “**strata company**” are to a strata company for such a scheme; and
- (c) to “**proprietor**” are to a proprietor of a lot in such a scheme.

**Insurance for lots**

**53B.** (1) For the purposes of this Act —

- (a) whether there is insurance in respect of —
  - (i) any building on a lot in a scheme; or
  - (ii) damage to property, death or bodily injury for which the proprietor of a lot in a scheme could become liable in damages;
- (b) the occurrences to be insured against by the proprietor in relation to those matters; and
- (c) the terms on which any insurance is obtained,

are, subject to this section, at the discretion of the proprietor of the lot.

(2) A strata company for a scheme may determine that it is a function of the company to insure in respect of the matters referred to in subsection (1), and may at any time revoke the determination.

(3) While such a determination is in force the strata company shall comply with section 53D.

**Insurance for common property**

**53C.** (1) The strata company for a scheme shall —

- (a) insure and keep insured any building, or part of a building, or improvement on the parcel that is common property; and
- (b) effect and maintain insurance in respect of damage to property, death or bodily injury for which the proprietors 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 subsection (1) if —

- (a) there is no common property in the scheme except —
  - (i) cubic space in which there is no building or improvement above or below the horizontal boundary of any lot; or
  - (ii) fencing on the boundary of the parcel or any lot;

or

- (b) the strata company has by resolution without dissent (or unanimous resolution in the case of a two-lot scheme) determined that subsection (1) is not to apply to the scheme.

(3) A resolution under subsection (2) (b) remains in force until —

- (a) it is revoked; or
- (b) it ceases to have effect under subsection (4).

(4) A resolution of a strata company under subsection (2) (b) ceases to have effect if a proprietor at any time after the passing of the resolution serves notice in writing —

- (a) on the strata company; or
- (b) in the case of a two-lot scheme, on the other proprietor,

that he requires that subsection (1) apply to the scheme.

(5) While a resolution under subsection (2) (b) is in force —

- (a) whether there is insurance in respect of —
  - (i) the share of a proprietor in any building in the scheme that is common property; or
  - (ii) damage to property, death or bodily injury for which a proprietor 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 a proprietor in relation to those matters; and
- (c) the terms on which any insurance is obtained,

are at the discretion of the proprietor.

**Strata company's obligations where it has an insurance function**

**53D.** (1) This section applies where —

- (a) a determination is in force under section 53B (2); or
- (b) in accordance with section 53C, a strata company has the obligations described in subsection (1) of that section.

(2) This section also applies where a strata company makes a determination to insure common property that it is not obliged to insure by reason of section 53C (2) (a).

(3) In those cases the strata company shall —

- (a) insure and keep insured any building to which its obligation extends to the replacement value against fire, storm and tempest (excluding damage by sea, flood or erosion), lightning, explosion and earthquake; and
- (b) effect and maintain insurance in respect of damage to property, death, or bodily injury for not less than \$5 000 000 or such other amount as may be prescribed in place of that amount.

Penalty: \$400.

(4) Section 54 (2) and (3) apply to a strata company's obligations under subsection (3) of this section as if they referred to that subsection.

**Recovery of premium by strata company where no administrative fund**

**53E.** (1) Where —

- (a) under section 36A or 36B a fund for administrative purposes is not maintained under section 36 (1) (a); and

- (b) a strata company or any proprietor receives notice of the amount of any premium or other charge for insurance under section 53D,

the strata company, or the proprietor, may give notice in writing of that amount to the proprietor of each lot in the scheme, or each other proprietor, and require the proprietor to pay his share of the premium or other charge before a specified time.

(2) A proprietor's share is —

- (a) a sum equal to the same proportion of the amount as the unit entitlement of the proprietor's lot bears to the aggregate unit entitlement; or
- (b) if applicable, a sum fixed under a by-law of the strata company made under section 42B.

(3) Where —

- (a) notice has been given to a proprietor under subsection (1); and
- (b) the amount of the proprietor'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 proprietor to the strata company and may be recovered by it in a court of competent jurisdiction.

(4) If the amount of a proprietor's share has become due to the strata company but has not been paid, another proprietor may —

- (a) pay the amount; and
- (b) recover the amount under section 103L.

”.

**Part IV, Division 4, Subdivision heading inserted**

**26.** Immediately before section 54 of the principal Act the following heading is inserted —

“  
    *Subdivision 3 — Insurance in schemes other than single tier  
        strata schemes*  
”.

**Section 54 amended**

**27.** (1) Section 54 of the principal Act is amended by repealing subsection (1) and substituting the following subsections —

“  
    (1) In this section —  
        “**strata company**” means a strata company for a  
            scheme other than a single tier strata scheme.  
    (1a) Subject to subsection (4) and section 103J, a strata  
    company shall —  
        (a) insure and keep insured the building to the  
            replacement value against fire, storm and  
            tempest (excluding damage by sea, flood or  
            erosion), lightning, explosion and earthquake;  
            and  
        (b) effect and maintain insurance in respect of  
            damage to property, death, or bodily injury for  
            which the strata company could become liable in  
            damages in an amount of not less than  
            \$5 000 000 or such other amount as may be  
            prescribed in place of that amount.

Penalty: \$400.

”.

**s. 28**

(2) Section 54 (2), (3) and (4) of the principal Act are amended by deleting “(1)” in each place where it appears and substituting the following —

“ (1a) ”.

**Part IV, Division 4, Subdivision heading inserted**

**28.** After section 54 of the principal Act the following heading is inserted —

“

*Subdivision 4 — Insurance provisions applicable to all schemes*

”.

**Section 55 amended**

**29.** (1) Section 55 (1) of the principal Act is amended —

(a) by deleting “section 54” and substituting the following —

“ this Division ”;

(b) in paragraph (a) by inserting after “including” the following —

“ , where applicable, ”;

(c) by inserting after paragraph (a) the following —

“ and ”;

(d) at the end of paragraph (b) by deleting “; and” and substituting a full stop;



(e) by deleting paragraph (c); and

(f) in the penalty provision by deleting “or (c)”.

(2) Section 55 (2) and (3) of the principal Act are repealed.

(3) Section 55 (4) of the principal Act is amended by deleting “54 (1)” and substituting the following —

“ 53D or 54 (1a) ”.

### **Transitional provisions as to insurance**

**30.** (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.

**s. 31**

(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.

**Section 70 amended**

**31.** (1) Section 70 (4) of the principal Act is repealed and the following subsection is substituted —

- “
- (4) If the strata/survey-strata plan is not registered —
    - (a) within such period after the date of the contract as is agreed in writing by the purchaser and the vendor; or
    - (b) in the absence of any such agreement, within 6 months after that date,

the purchaser may avoid the sale at any time before the plan is registered.

”.

(2) Section 70 (8) of the principal Act is amended by inserting immediately before the definition of “real estate agent” the following definition —

“

“**date of the contract**” means the day on which the contract of sale referred to in subsection (1) was signed or, if the parties signed it on different days, the last of those days;

”.

### **Section 103C amended**

**32.** (1) Section 103C (1) of the principal Act is amended by inserting after “special resolution,” the following —

“ for which an order under this section may be made ”.

(2) Section 103C (2) of the principal Act is repealed and the following subsection is substituted —

“

(2) An order under this section is an order declaring that —

- (a) a resolution or a special resolution, as the case may be, specified in the order is to be deemed to have been duly passed by the strata company; or
- (b) a resolution specified in the order is to be deemed to have been duly passed by the strata company as a unanimous resolution for the purposes of section 21F or 21Q.

”.

**s. 33****Section 103J amended**

**33.** Section 103J (1) of the principal Act is repealed and the following subsection is substituted —

“

(1) An application to a referee for an order under this section may be made by —

- (a) a strata company; or
- (b) a proprietor of a lot in a strata scheme if —
  - (i) a general meeting of the strata company has been duly convened; but
  - (ii) a quorum was not present within half an hour of the time appointed for the general meeting or for the adjourned meeting provided for by by-law 12 (4) in Schedule 1.

”.

**Section 103L amended and transitional provision**

**34.** (1) Section 103L (1) of the principal Act is repealed and the following subsections are substituted —

“

(1) A person who as a proprietor has paid a premium or other charge —

- (a) for any insurance effected or maintained under section 56A; or
- (b) in the circumstances mentioned in section 53E,

may apply to a referee for an order under this section.

(1a) An application under subsection (1) (b) is to be made within 3 months after the day on which the payment is made.

”.

(2) Section 103L (2) of the principal Act is amended —

- (a) by deleting “or” after paragraph (a);
- (b) by deleting the full stop at the end of paragraph (b) and substituting the following —

“ ; or ”; and

- (c) by inserting after paragraph (b) the following paragraph —

“

(c) where —

(i) in accordance with section 36A or 36B there is no fund under section 36 (1) (a); or

(ii) the applicant is no longer a proprietor,

that any proprietor or the strata company pay to the applicant a proportion of any premium or other charge referred to in subsection (1).

”.

(3) Section 103L (3) of the principal Act is amended by deleting “was justified in exercising the power in section 56A to effect or maintain insurance.” and substituting the following —

“

was justified in —

- (a) exercising the power in section 56A to effect or maintain insurance; or
- (b) paying the amount of another proprietor’s share under section 53E.

”.

**s. 35**

(4) Section 103L of the principal Act as amended by this section applies to the amount of a premium or other charge of which a proprietor received notice before the commencement of subsection (1) if —

- (a) under section 36A or 36B a fund for administrative purposes was not maintained under section 36 (1) (a);
- (b) the strata company was required to effect and maintain the insurance to which the premium or other charge related; and
- (c) the proprietor —
  - (i) paid another proprietor's share of the amount; and
  - (ii) applies to a referee for an order under section 103L within 3 months after the commencement of subsection (1).

**Sections 103M, 103N, 103O, 103P, 103Q and 103R inserted**

**35.** After section 103L of the principal Act the following sections are inserted —

“

**Order as to resolution under section 21F or 21Q**

**103M.** (1) Where a resolution of the kind described in section 21F or 21Q has been passed by a strata company for a strata scheme but not as a resolution without dissent, the strata company may apply to a referee for an order under this section.

- (2) Subsection (1) does not apply to a two-lot scheme.

(3) An order under this section is an order that a resolution —

- (a) of the kind described in section 21F or 21Q; and
- (b) specified in the order,

is to be treated as if it were a resolution without dissent.

(4) On the making of an application under subsection (1), the referee may make an order under this section if he is satisfied that it is fair to all of the proprietors in the scheme to do so.

**Order for extension of period for reinstatement of building under section 3AB (2)**

**103N.** (1) If a part of a building that constitutes a permitted boundary deviation has been destroyed as mentioned in section 3AB (2), the proprietor or a registered mortgagee of the lot that includes the part may apply to a referee for an order under this section.

(2) An application is to be made within one year from the time when the destruction occurred.

(3) An order under this section is an order extending the period within which the destroyed part of the building may be reinstated in terms of section 3AB (2).

(4) The period is not to be extended for more than 5 years from the time of the destruction.

(5) On the making of an application under subsection (1), the referee may make an order under this section if he is satisfied that there are reasonable grounds for a delay in completing the reinstatement.

**Order for extension of period for reinstatement of building under regulations**

**103O.** (1) If —

- (a) a part of a building to which an easement under section 5D relates has been destroyed; and
- (b) regulations made under section 5H —
  - (i) provide for reinstatement of the part to be completed within a specified period; but
  - (ii) authorize a referee to extend the period allowed for reinstatement,

the proprietor or a registered mortgagee of the lot that includes the part may apply to a referee for an order under this section.

(2) An application is to be made within one year from the time when the destruction occurred.

(3) An order under this section is an order extending the period within which the destroyed part of the building may be reinstated in terms of the regulations.

(4) The period is not to be extended for more than 5 years from the time of the destruction.

(5) On the making of an application under subsection (1), the referee may make an order under this section if he is satisfied that there are reasonable grounds for a delay in completing the reinstatement.

**Order reversing the effect of section 21M**

**103P.** (1) A proprietor of a lot in an existing small strata scheme, as defined in section 21A, who did not lodge



an objection under section 21O may apply to a referee for an order under this section.

(2) An order under this section is an order —

- (a) that the boundaries of lots in the scheme are to be amended to be those shown on the strata plan immediately before the change-over day for that scheme under section 21M; and
- (b) that such other specified things occur or be done as may be necessary to reinstate the rights and interests of proprietors accordingly.

(3) On the making of an application under subsection (1), the referee may make an order under this section if he is satisfied that —

- (a) the applicant was unable because of exceptional circumstances to lodge an objection under section 21O;
- (b) there is a good reason why the boundaries should be amended as mentioned in subsection (2); and
- (c) it would not be unfair to any person having a registered interest in any lot for the order to be made.

(4) An order under this section is to specify the day on which the boundaries as amended by the order are to have effect but that day cannot be before subsection (5) has been complied with.

(5) An order under this section is of no effect until a copy of the order has been recorded by the Registrar of Titles under section 115 on the strata plan to which it relates.

(6) In addition to the provisions referred to in subsection (2) an order under this section has the effects described in subsections (7), (8), (9) and (10).

(7) Each lot as enlarged or diminished by the order 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 day on which the order has effect.

(8) Each lot or part of a lot that becomes common property under the order vests in the proprietors to be held by them as tenants in common in shares proportional to the unit entitlements of their respective lots.

(9) The share of a proprietor so vested is subject to any encumbrance registered or caveat lodged with the Registrar of Titles against his lot.

(10) Any encumbrance or caveat referred to in subsection (7) or (9) is to be taken to be amended to give effect to that subsection.

### **Order rectifying failure to give notice under section 123A**

**103Q.** (1) A proprietor of a lot in a single tier strata scheme or a survey-strata scheme who did not before the expiry of the transition period referred to in section 123A —

- (a) give notice under subsection (3) of that section; and

- (b) cause a copy of the notice to be lodged with the Registrar of Titles in accordance with subsection (4) of that section,

may apply to a referee for an order under this section.

(2) An order under this section is an order —

- (a) that section 123 (2) applies to the scheme; and
- (b) making provisions of a transitional or incidental nature that may be necessary in the circumstances.

(3) On the making of an application under subsection (1), the referee may make an order under this section if he is satisfied that —

- (a) the applicant was unable because of exceptional circumstances to do the things mentioned in subsection (1) (a) and (b) before the expiry of the transition period;
- (b) there is a good reason why section 123 (2) should apply to the scheme; and
- (c) it would not be unfair to any person having a registered interest in any lot for the order to be made.

(4) An order under this section is to specify the day on and from which section 123 (2) is to apply to the scheme but that day cannot be before subsection (5) has been complied with.

(5) An order under this section is of no effect until a copy of the order has been recorded by the Registrar of Titles under section 115 on the strata plan to which it relates.

**Order rectifying failure to give notice under section 123C**

**103R.** (1) A proprietor of a lot in a single tier strata scheme or a survey-strata scheme who did not before the expiry of the transition period referred to in section 123C —

- (a) give notice under subsection (3) of that section; and
- (b) cause a copy of the notice to be lodged with the Registrar of Titles in accordance with subsection (4) of that section,

may apply to a referee for an order under this section.

(2) An order under this section is an order —

- (a) that liability in relation to fencing between lots in the scheme is to be determined as if section 123B had not been enacted; and
- (b) making provisions of a transitional or incidental nature that may be necessary in the circumstances.

(3) On the making of an application under subsection (1), the referee may make an order under this section if he is satisfied that —

- (a) the applicant was unable because of exceptional circumstances to do the things mentioned in subsection (1) (a) and (b) before the expiry of the transition period;
- (b) there is a good reason why liability in relation to fencing between lots in the scheme should be determined as if section 123B had not been enacted; and

(c) it would not be unfair to any person having a registered interest in any lot for the order to be made.

(4) An order under this section is to specify the day on and from which liability in relation to fencing between lots in the scheme is to be determined as if section 123B had not been enacted but that day cannot be before subsection (5) has been complied with.

(5) An order under this section is of no effect until a copy of the order has been recorded by the Registrar of Titles under section 115 on the strata plan to which it relates.

”.

#### **Section 115 amended**

**36.** Section 115 (1) (a) of the principal Act is amended by deleting “or 103J” and substituting the following —

“ , 103J, 103P, 103Q or 103R ”.

#### **Section 123 repealed and sections 123, 123A, 123B and 123C substituted**

**37.** Section 123 of the principal Act is repealed and the following sections are substituted —

“

##### **Dividing fences**

**123.** (1) The ownership of land in a scheme is to be determined in accordance with this section for the purposes of the *Dividing Fences Act 1961*.

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(2) Subject to subsection (3), the strata company for a scheme shall be regarded as the owner of the parcel that is the subject of that scheme, other than such part (if any) of the parcel as is the subject of a lease accepted or acquired by the strata company under section 18.

(3) In a single tier strata scheme or a survey-strata scheme the owner of land in the scheme that adjoins land outside the scheme shall be regarded to be —

- (a) in the case of a lot, the proprietor of the lot; and
  - (b) in the case of common property, the strata company.
- (4) If a by-law of a strata company for —
- (a) a single tier strata scheme; or
  - (b) a survey-strata scheme,

determines who is to be regarded as the owner of land in the scheme for the purposes of the *Dividing Fences Act 1961*, that by-law has effect despite any provision of that Act or of this section.

**Transitional provision as to dividing fences**

**123A.** (1) This section applies to any —

- (a) single tier strata scheme; or
- (b) survey-strata scheme,

the plan for which is registered before the commencement of section 37 of the *Strata Titles Amendment Act 1996*.

(2) During the period of 6 months after that commencement (“**the transition period**”) the ownership of

land in a scheme is to be determined, for the purposes of the *Dividing Fences Act 1961*, in accordance with section 123 (2).

(3) Before the expiry of the transition period a proprietor of a lot in a scheme may serve notice in writing —

- (a) on the strata company; or
- (b) in the case of a two-lot scheme, on the other proprietor,

that he requires that section 123 (2) continue to apply to the scheme after the expiry of that period.

(4) If before the expiry of the transition period —

- (a) a notice is given under subsection (3) by a proprietor of a lot in a scheme; and
- (b) a copy of the notice accompanied by the prescribed form is lodged with the Registrar of Titles for recording on the strata/survey-strata plan,

section 123 (2) continues to apply to the scheme after the expiry of the transition period.

(5) It is for the proprietor who has served a notice under subsection (3) 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) If before the expiry of the transition period —

- (a) a notice is not given under subsection (3) by a proprietor of a lot in a scheme; and

- (b) a copy of the notice accompanied by the prescribed form is not lodged with the Registrar of Titles for recording on the strata/survey-strata plan,

section 123 (3) applies to the scheme after the expiry of the transition period.

- (7) This section has effect subject to —
  - (a) any order under section 103Q; and
  - (b) any by-law of the kind referred to in section 123 (4).

### **Internal fencing**

**123B.** (1) The *Dividing Fences Act 1961* applies to fencing between lots in a survey-strata scheme and a single tier strata scheme as if —

- (a) adjoining lots were adjoining lands to which that Act applies;
- (b) a proprietor 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) Subsection (1) has effect subject to any by-law of the strata company.

### **Transitional provision as to internal fencing**

**123C.** (1) This section applies to any —

- (a) single tier strata scheme; or
- (b) survey-strata scheme,

the plan for which is registered before the commencement of section 37 of the *Strata Titles Amendment Act 1996*.



(2) During the period of 6 months after that commencement (“**the transition period**”) liability in relation to fencing between lots in a scheme is to be determined as if section 123B had not been enacted.

(3) Before the expiry of the transition period a proprietor of a lot in a scheme may serve notice in writing —

- (a) on the strata company; or
- (b) in the case of a two-lot scheme, on the other proprietor,

that he requires that after the expiry of that period liability in relation to fencing between lots in the scheme is to be determined as if section 123B had not been enacted.

(4) If before the expiry of the transition period —

- (a) a notice is given under subsection (3) by a proprietor of a lot in a scheme; and
- (b) a copy of the notice accompanied by the prescribed form is lodged with the Registrar of Titles for recording on the strata/survey-strata plan,

after the expiry of the transition period liability in relation to fencing between lots in the scheme is to be determined as if section 123B had not been enacted.

(5) It is for the proprietor who has served a notice under subsection (3) 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) If before the expiry of the transition period —

- (a) a notice is not given under subsection (3) by a proprietor of a lot in a scheme; and

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- (b) a copy of the notice accompanied by the prescribed form is not lodged with the Registrar of Titles for recording on the strata/survey-strata plan,

section 123B applies to the scheme after the expiry of the transition period.

(7) This section has effect subject to —

- (a) any order under section 103R; and
- (b) any by-law of the strata company.

”.

**Schedule 2A amended**

**38.** Schedule 2A to the principal Act is amended —

- (a) in item 8 (b) by deleting “proposed re-subdivision” and substituting the following —

“ completion of all proposed re-subdivisions in the scheme

”;

and

- (b) by deleting item 9 and substituting the following item —

“ 9. Matters affecting the provision of, and payment for —

- (a) internal fencing on the parcel; or
- (b) fencing to which the *Dividing Fences Act 1961* applies,

including any obligations of the strata company.

”.

**Schedule 3 amended**

**39.** Schedule 3 to the principal Act is amended in clause 13 —

(a) in subclause (1) by deleting “(3)” and substituting the following —

“ 3 ”; and

(b) by inserting after subclause (2) the following subclause —

“

(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).

”.

**Stamp Act 1921 amended**

**40.** The Third Schedule to the *Stamp Act 1921\** is amended —

(a) in item 2 by inserting the following subitem —

“

(18) Any of the following matters under the *Strata Titles Act 1985* —

(a) the passing of any property that occurs by operation of section 21I, 21M or an order under section 103P;

(b) a transfer or other document or a disposition statement referred to in section 21V or 31H;

(c) anything that occurs by operation of section 21W, 21Y, 31G, 31J or an order under section 103P; or

- (d) anything done under, or to give effect to, Division 2A of Part II or Division 3 of Part III,

but this subitem does not apply to the extent that the consideration for the passing of property, or for any other thing referred to in this subitem, is other than an interest in common property.

”;

- (b) in item 3 by inserting the following subitem —

“

- (5) Any of the following matters under the *Strata Titles Act 1985* —

- (a) anything that occurs by operation of section 21W, 21Y, 31G or 31J; or
- (b) anything done under, or to give effect to, Division 2A of Part II or Division 3 of Part III,

but this subitem does not apply to the extent that the consideration for the passing of property, or for any other thing referred to in this subitem, is other than an interest in common property.

”;

and

- (c) in item 7 by inserting the following subitem —

“

- (13) Any of the following matters under the *Strata Titles Act 1985* —

- (a) the passing of any property that occurs by operation of section 21I, 21M or an order under section 103P;

- (b) a transfer or other document or a disposition statement referred to in section 21V or 31H;
- (c) anything that occurs by operation of section 21W, 21Y, 31G, 31J or an order under section 103P; or
- (d) anything done under, or to give effect to, Division 2A of Part II or Division 3 of Part III,

but this subitem does not apply to the extent that the consideration for the passing of property, or for any other thing referred to in this subitem, is other than an interest in common property.

”.

[\* *Reprinted as at 23 January 1996.*

*For subsequent amendments see Acts Nos. 14 and 20 of 1996.]*