



Western Australia

Strata Titles Act 1985

Compare between:

[18 Sep 2018, 07-e0-00] and [19 Nov 2018, 07-f0-03]

Western Australia

Strata Titles Act 1985

An Act to facilitate the horizontal and vertical subdivision of land and the disposition of titles thereto, to provide for incidental and connected purposes and to repeal the *Strata Titles Act 1966*.

[Long title amended ~~by~~: No. 58 of 1995 s. 4.]

Part I — Preliminary

1. Short title

This Act may be cited as the *Strata Titles Act 1985*¹.

2. Commencement

This Act shall come into operation on a day to be fixed by proclamation¹.

3. Terms used

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

administrator means an administrator appointed by the State Administrative Tribunal under section 102;

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

building means a building or buildings shown on a strata plan;

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

common property means —

- (a) so much of the land comprised in a strata plan as from time to time is not comprised in a lot shown on the plan; and
- (b) any leasehold interest acquired by a strata company under section 18; and
- (c) the lot or lots shown on a survey-strata plan as common property;

council means the council of a strata company constituted or deemed to have been constituted under this Act;

floor includes a stairway or ramp;

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

floor plan means a plan, consisting of one 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 proposed lot, or the whole of any part of a proposed lot, to which the plan relates; and
- (b) shows —
 - (i) the floor area of any such cubic space; and
 - (ii) where any such cubic space forms part only of a proposed lot, the aggregate of the floor areas of every cubic space that forms part of the proposed lot;and
- (c) where proposed lots or parts thereof to which the plan relates are superimposed on other proposed lots or parts thereof to which the plan relates —
 - (i) shows the base lines in respect of the proposed lots or parts thereof that are so superimposed separately from those in respect of the other proposed lots or parts thereof upon which they are superimposed; and
 - (ii) specifies, by reference to floors or levels, the order in which that superimposition occurs;

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;

licensed surveyor means a surveyor licensed under the *Licensed Surveyors Act 1909*;

licensed valuer means a licensed valuer licensed under the *Land Valuers Licensing Act 1978*;

local government means the local government of the district in which the parcel in question is situated;

location plan, in relation to a strata plan, means a plan, consisting of one 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 proposed lots or part of proposed lots not within any such building;

lot, in relation to a strata scheme, means one or more cubic spaces forming part of the parcel to which a strata scheme relates, the base of each such cubic space being designated as one lot or part of one lot on the floor plan forming part of the strata plan, plan of re-subdivision or plan of consolidation to which that strata scheme relates, being in each case, but subject to section 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 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;

lot, in relation to a survey-strata scheme, means land that is shown as a lot consisting of one or more parts on the plan for that scheme, but does not include —

- (a) a lot shown as common property; or
- (b) land shown as being set aside for a road or reserve;

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

occupier in relation to a lot, means a person in lawful occupation of that lot;

open space means the area of a lot that is not occupied by any building and is to be calculated in such manner as is prescribed;

original proprietor in relation to a scheme, means the person by whom the parcel that is the subject of that scheme is held in fee simple at the time of registration of the strata/survey-strata plan to which the scheme relates;

parcel means the land comprised in a strata/survey-strata plan;

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;

person concerned means —

- (a) a person appearing by the Register to have an estate or interest in the common property; and
- (b) a person having an estate or interest (other than a charge for a tax, rate or other statutory liability) that has been notified to the strata company;

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;

prescribed means prescribed by regulations;

proprietor means the person who is for the time being registered under the *Transfer of Land Act 1893* as proprietor of an estate in fee simple or an estate for life in a lot;

Register has the meaning given by the *Transfer of Land Act 1893*;

Registrar of Titles means the person who is Registrar of Titles under the *Transfer of Land Act 1893* and includes any person who is an Assistant Registrar under that Act;

resolution without dissent means a resolution that complies with sections 3AC and 3C and also has the meaning given by section 3CA;

re-subdivision has the meaning given by subsection (5) and section 8(1);

scheme means a strata scheme or a survey-strata scheme;

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

special resolution means a resolution that complies with sections 3B and 3C and also has the meaning given by section 3CA;

strata company means a body corporate constituted under section 32 whether for a strata scheme or a survey-strata scheme;

strata/survey-strata plan means a strata plan or a survey-strata plan;

strata plan has the meaning given by section 4(1a);

strata scheme means —

- (a) the manner of division, from time to time, of a parcel into lots or into lots and common property under a strata plan and the manner of the allocation, from time to time, of unit entitlements among the lots; and
- (b) the rights and obligations, between themselves, of proprietors, other persons having proprietary interests in or occupying the lots and the strata company, as conferred or imposed by this Act or by anything done under the authority of this Act and as in force from time to time;

structural cubic space means —

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

survey-strata plan has the meaning given by section 4(1b);

survey-strata scheme means —

- (a) the manner of division, from time to time, of a parcel into lots or into lots and common property under a survey-strata plan and the manner of the allocation, from time to time, of unit entitlements among the lots; and
- (b) the rights and obligations, between themselves, of proprietors, other persons having proprietary interests in or occupying the lots and the strata company, as conferred or imposed by this Act or by anything done under the authority of this Act;

take, taken and **taking** have the same meanings as they have for the purposes of Parts 9 and 10 of the *Land Administration Act 1997* and include a reference to the compulsory acquisition of land under any Act of the Commonwealth authorising the compulsory acquisition of land;

two-lot scheme means —

- (a) a strata scheme in which there are not more than 2 lots; or
- (b) a survey-strata scheme in which there are not more than 2 lots, not including lots designated as common property lots;

unanimous resolution means —

- (a) a resolution that is passed unanimously at a duly convened general meeting of the strata company —
 - (i) of which at least 14 days' notice specifying the proposed resolution has been given; and

- (ii) at which all persons entitled to exercise the powers of voting conferred under this Act are present and vote, either personally or by proxy;

or

- (b) a resolution that is passed unanimously at a duly convened general meeting of the strata company by every person entitled to exercise the powers of voting conferred under this Act who is present and votes either personally or by proxy and agreed to, in writing signed by him, within 28 days after the day of the meeting by every other person who was entitled to exercise the powers of voting conferred under this Act at the meeting, or by every person who at the time of his signature was entitled to exercise those powers in place of such other persons;

unit entitlement in respect of a lot, means the unit entitlement of that lot shown on the schedule of unit entitlement registered with the Registrar of Titles;

wall includes a door, window or other structure dividing a lot from common property or from another lot.

- (2) Except where section 3AB applies, the boundaries of any 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, where the base of any wall corresponds substantially with any 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, where any 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 prescribed manner by reference to a wall, floor or ceiling in a building to which that plan relates or to structural cubic space within that building).
- (2a) Notwithstanding subsection (2), where —
- (a) a strata plan creates a boundary external to a building; or
 - (b) other prescribed circumstances apply,
- the floor plan may include dimensions or survey information defining that boundary, in the prescribed manner, 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) A reference in this Act to a re-subdivision of a lot or common property is a reference to the alteration of the boundaries of —
- (a) one or more lots so as to create only 2 or more different lots; or
 - (b) one or more lots so to create one or more different lots and common property; or
 - (c) one or more lots and common property so as to create one or more different lots or one or more different lots and common property; or
 - (d) common property so as to create one or more lots,
- but does not include a reference to the consolidation of 2 or more lots into one lot or the conversion of one or more lots into common property.

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- (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.

[Section 3 amended-by: No. 84 of 1994 s. 46(12); No. 58 of 1995 s. 5², 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).]

3A. Single tier strata schemes to which s. 3AB applies

- (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;
 - (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.

[Section 3A inserted ~~by~~ No. 61 of 1996 s. 6.]

3AB. Alternative boundaries for lots in single tier strata schemes

- (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

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- (b) the part is destroyed and is not reinstated within one year, or a longer period allowed 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 section 3(2)(a); but
 - (b) does not affect the operation of subsection (2)(b) of that section.

[Section 3AB inserted ~~by~~ No. 61 of 1996 s. 6; amended ~~by~~ No. 55 of 2004 s. 1157.]

3AC. Resolution without dissent

- (1) For the purposes of this Act a resolution without dissent is a resolution —
 - (a) passed at a duly convened general meeting of the strata company of which sufficient notice (as defined by section 3C) has been given and at which a sufficient quorum (as so defined) is present; and
 - (b) against which no vote is cast by a person entitled to exercise the powers of voting on the resolution conferred under this Act —
 - (i) voting at the meeting either personally or by proxy; or
 - (ii) voting in accordance with subsection (2).
- (2) A person entitled to exercise the powers of voting conferred under this Act is also to be taken to vote —
 - (a) in support of a resolution if he signifies in writing served in accordance with subsection (3) that he agrees to the resolution; or

- (b) against the resolution if he signifies in writing served in accordance with subsection (3) that he disagrees with the resolution,

within 28 days after the day of the meeting, whether that writing is signed by the person or by another person who at the time of the signing is entitled to exercise the power of voting in place of that person.

- (3) The writing referred to in subsection (2) is not effective unless it is served —
 - (a) on the strata company; or
 - (b) where under section 36A or 36B a roll is not maintained by the strata company, on the other proprietors.

[Section 3AC inserted as section 3A ~~by~~ No. 58 of 1995 s. 6; renumbered as section 3AC ~~by~~ No. 61 of 1996 s. 5.]

3B. Special resolution of strata company

- (1) For the purposes of this Act a special resolution of a strata company shall be passed at a duly convened general meeting —
 - (a) of which sufficient notice (as defined by section 3C) has been given; and
 - (b) without limiting subsection (5), at which a sufficient quorum (as defined by section 3C) is present.
- (2) Except where subsection (3) applies, a special resolution is passed if —
 - (a) it is supported by votes, within the meaning in subsections (4) and (5) —
 - (i) having a value of not less than 50% of the aggregate unit entitlement of the lots in the scheme; and
 - (ii) of the proprietors of not less than 50% of the lots in the scheme;

and

s. 3B

- (b) the votes, within the meaning in subsections (4) and (5), against the resolution —
 - (i) do not have a value of 25% or more of the aggregate unit entitlement of the lots in the scheme; or
 - (ii) are not cast by the proprietors of 25% or more of the lots in the scheme.
- (3) A special resolution is passed in the case of a strata company for a scheme in which there are no more than the following number of lots, if it is supported by the votes, within the meaning in subsections (4) and (5), of the following number of proprietors —
 - (a) 3 lots, the votes of the proprietors of not less than 2 of the lots; or
 - (b) 4 lots, the votes of the proprietors of not less than 3 of the lots; or
 - (c) 5 lots, the votes of the proprietors of not less than 4 of the lots,

and if those votes have a value of not less than 50% of the aggregate unit entitlement of the lots.

- (4) References in subsections (2) and (3) to votes are to the votes of persons entitled to exercise the powers of voting conferred under this Act voting at the meeting either personally or by proxy.
- (5) Despite subsection (4), a person entitled to exercise the powers of voting conferred under this Act is also to be taken to vote —
 - (a) in support of a resolution if he signifies in writing served in accordance with subsection (6) that he agrees to the resolution; or
 - (b) against the resolution if he signifies in writing served in accordance with subsection (6) that he disagrees with the resolution,

within 28 days after the day of the meeting, whether that writing is signed by the person or by another person who at the time of

the signing is entitled to exercise the power of voting in place of that person.

- (6) The writing referred to in subsection (5) is not effective unless it is served —
 - (a) on the strata company; or
 - (b) where under section 36A or 36B a roll is not maintained by the strata company, on the other proprietors.
- (7) A special resolution referred to in subsection (3) does not have effect —
 - (a) until the expiration of the period referred to in section 103D(2); or
 - (b) if an application is made for an order under that section, until the application is dismissed, or withdrawn; or
 - (c) if the State Administrative Tribunal refuses to make the order, until the time for appeal against the refusal has expired or any appeal has been dismissed or withdrawn or determined in such a way that an order under section 103D is not made.
- (8) In subsection (3) *lot* does not include a lot in a survey-strata scheme that is designated as a common property lot.

[Section 3B inserted ~~by~~: No. 58 of 1995 s. 6; amended ~~by~~: No. 55 of 2004 s. 1108 and 1156(3).]

3C. Supplementary provisions to s. 3AC and 3B

- (1) For the purposes of sections 3AC and 3B —
 - (a) a sufficient notice of a meeting is given if at least 14 days' notice specifying the proposed resolution has been given; and
 - (b) a sufficient quorum is present if there are present at the meeting either personally or by proxy at the time when the resolution is voted on —
 - (i) the proprietors of not less than 50% of the lots in the scheme; and

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- (ii) proprietors whose votes have a value of not less than 50% of the aggregate unit entitlement of the lots in the scheme;
 - and
 - (c) the value of a vote cast by a proprietor of a lot entitled to vote in respect of that lot is equal to the unit entitlement of that lot.
- (2) If a resolution specified in a notice of a meeting is passed with amendment at the meeting the strata company shall, not later than 7 days after the meeting, serve a copy of the amended resolution on each proprietor who was not present at the meeting either personally or by proxy at the time when the resolution was voted on.
- (3) If subsection (2) is not complied with the amended resolution is of no effect.
- (4) If subsection (2) applies, the right to vote conferred by section 3AC(2) or 3B(5) may be exercised in respect of the amended resolution.

[Section 3C inserted ~~by~~ No. 58 of 1995 s. 6; amended ~~by~~ No. 61 of 1996 s. 5.]

3CA. Certain resolutions deemed to be resolutions without dissent or special resolutions

- (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*; or
 - (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*; or
 - (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 3CA inserted-by: No. 61 of 1996 s. 7.]

3D. Unfinancial proprietors may vote in certain cases

Despite anything in the by-laws of the strata company, a proprietor is entitled to exercise his powers of voting on a matter requiring a unanimous resolution or a resolution without dissent even though all contributions payable in respect of his lot have not been duly paid or other moneys recoverable under the Act by the strata company from him have not been paid.

[Section 3D inserted-by: No. 58 of 1995 s. 6.]

Part II — Strata schemes and survey-strata schemes

[Heading inserted ~~by~~ No. 58 of 1995 s. 7.]

Division 1 — Creation of lots and common property

4. Subdivision into lots and common property

- (1) Land may be subdivided into lots, or lots and common property, by the registration of a strata plan or a survey-strata plan.
 - (1a) A strata plan is a plan that —
 - (a) is described as such in its title or heading; and
 - (b) shows the whole or any part of the land comprised in the plan as being divided into 2 or more lots; and
 - (c) complies with section 5,and includes any amendment duly made to that plan.
 - (1b) A survey-strata plan is a plan that —
 - (a) is described as such in its title or heading; and
 - (b) shows the whole or any part of the land comprised in the plan as being divided into 2 or more lots; and
 - (c) complies with section 5A,and includes any amendment duly made to that plan.
 - (1c) Except as otherwise allowed by the regulations, a lot can only be created in a survey-strata scheme as a cubic space lot (limited in height and depth) if the balance of the land above and below the lot is common property.
- (2) Where a strata/survey-strata plan is registered under this Act, the lots comprised in the plan, or any one or more of them, may devolve or be transferred, leased, mortgaged or otherwise dealt with in the same manner and form as land held under the provisions of the *Transfer of Land Act 1893*.
- (3) A strata/survey-strata plan shall, for the purposes of the *Transfer of Land Act 1893*, be deemed upon registration under this Act to

be embodied in the Register; and notwithstanding the provisions of that Act, a proprietor shall hold his lot and share in the common property subject to —

- (a) any interests for the time being notified on the registered strata/survey-strata plan; and
 - (b) any amendments to lots or common property shown on that plan.
- (4) Where a strata/survey-strata plan is registered under this Act, a memorial shall be entered on the certificate of title relating to the parcel and thereupon the Registrar of Titles may create and register a separate certificate of title for each lot together with the share of common property appurtenant to that lot.
- (5) Easements and restrictions as to use implied or created by this Act, other than an easement created by section 5D, shall take effect without any memorial or notification in the Register in relation to the dominant or servient tenements and without any express indication of those tenements.
- (6) Subject to this section, any transfer, lease, mortgage or other dealing affecting a lot has the same effect in relation to the lot as a similar dealing affecting a lot on a plan of subdivision lodged pursuant to section 166 of the *Transfer of Land Act 1893* has in relation to such a lot.

[Section 4 amended-by: No. 58 of 1995 s. 8 and 95; No. 61 of 1996 s. 8; No. 81 of 1996 s. 153(1).]

5. Strata plan: requirements

- (1) A strata plan shall —
- (a) consist of a location plan and a floor plan in respect of the parcel; and
 - (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; and

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- (b) bear a statement containing such particulars as may be necessary to identify the title to the parcel; and
- (c) be accompanied by a schedule specifying, in a whole number, the proposed unit entitlement in respect of each lot into which the parcel is to be subdivided and specifying also the proposed aggregate unit entitlement; and
- (d) have endorsed on it the name of the scheme; and
- (e) have endorsed on it the address of the parcel; and
- (f) contain such other features as may be prescribed.

[(2) deleted]

[Section 5 amended-by: No. 84 of 1994 s. 46; No. 58 of 1995 s. 9; No. 61 of 1996 s. 9.]

5A. Survey-strata plan: requirements

A survey-strata plan shall —

- (a) contain a survey plan in respect of the parcel, that is a plan that defines, in the prescribed manner, the boundaries of lots and common property by dimensions and survey information obtained from a survey of the parcel; and
- (b) bear a statement containing such particulars as may be necessary to identify the title to such parcel; and
- (c) show the area of each lot and of any common property; and
- (d) be accompanied by a schedule specifying, in a whole number, the proposed unit entitlement in respect of each lot into which the parcel is to be subdivided and specifying also the proposed aggregate unit entitlement; and
- (e) have endorsed on it the name of the scheme; and
- (f) have endorsed on it the address of the parcel; and
- (g) contain such other features as may be prescribed.

[Section 5A inserted-by: No. 58 of 1995 s. 10.]

5B. Further provisions as to registration of plans

- (1) A strata/survey-strata plan lodged for registration shall be accompanied by certificates given by —
 - (a) a licensed surveyor in accordance with section 22; and
 - (b) a licensed valuer in accordance with section 14(2); and
 - (c) the Commission —
 - (i) where required under section 25(1), in the case of a strata plan; or
 - (ii) in the case of a survey-strata plan, under section 25B(2).
- (2) A strata plan lodged for registration shall be accompanied by —
 - (a) an occupancy permit granted under an application mentioned in the *Building Act 2011* section 50(1)(a); or
 - (b) a building approval certificate granted under an application mentioned in the *Building Act 2011* section 50(1)(b).
- (3) A strata/survey-strata plan shall not be registered if, in the opinion of the Registrar of Titles, the name of the scheme endorsed on the plan is undesirable.
- (4) When a strata/survey-strata plan is lodged for registration the Registrar of Titles shall allocate a number to the plan, and, if it complies with this Act and the regulations, shall register it in the prescribed manner.

[Section 5B inserted-by: No. 58 of 1995 s. 10; amended-by: No. 57 of 1997 s. 115(1); No. 24 of 2011 s. 174(2).]

5C. Management statement setting out by-laws may be registered

- (1) When a strata/survey-strata plan is lodged for registration a management statement —
 - (a) that is in the prescribed form; and

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- (b) that complies with subsection (3),
may be lodged for registration with it.
- (2) A management statement is a document setting out —
- (a) by-laws of the strata company that are to have effect under sections 42, 42A and 42B; and
- (b) amendments and repeals referred to in section 42(2),
and may include by-laws in relation to any matter specified in Schedule 2A.
- (3) A management statement shall be signed by —
- (a) the person who is registered as proprietor of the fee simple of the parcel; and
- (b) each person who has a registered interest in, or is a caveator in respect of, the parcel.
- [(4) deleted]*
- (5) Upon registration of a management statement, the by-laws set out in the statement, and any amendments and repeals, have effect for the purposes of section 42.
- (6) By-laws set out in a management statement may be amended in accordance with section 42 or as otherwise provided by this Act.
- [Section 5C inserted-by: No. 58 of 1995 s. 10; amended-by: No. 61 of 1996 s. 10.]*

5D. Creation of easements by notation on survey-strata plans

- (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; and
 - (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.

[Section 5D inserted ~~by~~ No. 61 of 1996 s. 11.]

5E. Provision on plan etc. overrides regulations as to easements

- (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.

[Section 5E inserted ~~by~~: No. 61 of 1996 s. 11.]

5F. Variation or discharge of easements under s. 5D

- (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.

[Section 5F inserted ~~by~~: No. 61 of 1996 s. 11.]

5G. Easement where common ownership

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

[Section 5G inserted ~~by~~: No. 61 of 1996 s. 11.]

5H. Regulations as to easements

- (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; and
 - (b) a proprietor's right of access to an area over which an easement is created to inspect any thing or carry out work; and
 - (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.
- (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 5H inserted ~~by~~ No. 61 of 1996 s. 11.]

6. Strata/survey-strata plan may restrict use of parcel or part of parcel

- (1) A strata/survey-strata plan lodged for registration under this Act may, by an appropriate endorsement that delineates the area or space affected and refers to this section, restrict the use to which the parcel or part of the parcel may be put.
- (1a) Subject to subsections (3a) and (4), a registered strata/survey-strata plan may be amended, by resolution without dissent (or unanimous resolution, in the case of a two-lot scheme) of the strata company, to restrict the use to which the parcel or part of the parcel may be put.
- (1b) A resolution under subsection (1a) shall refer to a plan of the parcel showing the area or space affected.
- (2) Where a registered strata/survey-strata plan restricts the use to which the parcel or part of the parcel may be put, a proprietor, occupier or other resident of any lot that is part of the parcel shall not use, or permit to be used, the parcel or part of the parcel in any manner that contravenes the restriction.
Penalty: \$2 000 and a daily penalty of \$200.
- (3) Subject to subsections (3a) and (4) a restriction endorsed on a registered strata/survey-strata plan under this section may be varied or removed by resolution without dissent (or unanimous resolution, in the case of a two-lot scheme) of the strata company.
- (3a) An addition of a restriction under subsection (1a) or a variation or removal under subsection (3) is effective only if the local government approves the resolution and, if the subdivision in the plan was one to which the consent of the Commission was required under this Act, the Commission approves the resolution.
- (4) A resolution adding a restriction to or varying or removing a restriction endorsed on a registered strata/survey-strata plan under this section shall not be effective until notice of the resolution is registered in the prescribed manner with the

Registrar of Titles and upon registration the Registrar of Titles shall amend the strata/survey-strata plan accordingly.

[Section 6 amended-by: No. 84 of 1994 s. 46; No. 58 of 1995 s. 11 and 95; No. 57 of 1997 s. 115(1); No. 24 of 2000 s. 40(1) and (2).]

6A. Restrictions relating to retired persons

- (1) A restriction under section 6 may limit the use of the lots by requiring that each lot is to be occupied only, or predominantly, by retired persons.
- (2) Nothing in this section or section 6 is to be read as limiting the power of the strata company to make by-laws under section 42 relating to the circumstances in which persons, other than the occupier, may reside in a lot which is subject to a restriction referred to in subsection (1).
- (3) In subsection (1) —
retired person means a person who has —
 - (a) attained the age of 55 years; or
 - (b) retired from full-time employment,

and is deemed to include a person who is or was the spouse or de facto partner of such a person.

[Section 6A inserted-by: No. 58 of 1995 s. 12; amended-by: No. 28 of 2003 s. 195.]

7. Structural erections, alterations and extensions restricted, strata schemes

- (1) This section does not apply to —
 - (a) a lot in a survey-strata scheme; or
 - (b) the erection of, alteration to or extension of a structure on a lot in a strata scheme if —
 - (i) each proprietor of a lot in the scheme has in writing given approval to the erection, alteration or extension; and

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- (ii) that approval, if subject to conditions, is given by each proprietor subject to the same conditions; and
 - (iii) a copy of each such approval is served on the strata company.
- (2) The proprietor of a lot shall not cause or permit —
 - (a) any structure to be erected; or
 - (b) any alteration of a structural kind to, or extension of, a structure,
on his lot except —
 - (c) with the prior approval of the proprietor of the other lot in the case of a strata scheme in which there are not more than 2 lots; and
 - (d) in any other case with the prior approval, expressed by resolution without dissent, of the strata company.
- (3) Where an application is made to a proprietor in accordance with section 7B the proprietor may refuse to give approval on any ground that is permitted by subsection (5), but not otherwise.
- (4) Where an application is made to a strata company in accordance with section 7B —
 - (a) notice of the general meeting to which the application is to be submitted shall contain or be accompanied by a statement, in the prescribed form, of the effect of paragraphs (c) and (d); and
 - (b) the chairman of the general meeting shall before a vote is taken on the application read out the statement referred to in paragraph (a); and
 - (c) a proprietor may vote —
 - (i) against a resolution to approve the application; or
 - (ii) in support of a resolution to refuse approval of the application,
on any ground that is 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 his vote one 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 ascertained in accordance with section 7A(3); 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 any easement created by section 11 or 12;
- or
- (c) any other ground that is prescribed.

- (6) In this section —

structure includes any prescribed improvement;

vacant lot means a lot that is wholly unimproved apart from having merged improvements within the meaning of that expression in the *Valuation of Land Act 1978*.

[Section 7 inserted ~~by~~: No. 58 of 1995 s. 13.]

7A. Structural erections, alterations and extensions restricted, survey-strata schemes

- (1) This section does not apply to a lot in a strata scheme.
- (2) The proprietor of a lot shall not cause or permit —
 - (a) any structure to be erected; or

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(b) any alteration of a structural kind to, or extension of, a structure to be made,

on his 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 —

(c) with the prior approval of the proprietor of the other lot in the case of a survey-strata scheme in which there are not more than 2 lots (not including lots designated as common property lots); and

(d) in any other case with the prior approval, expressed by resolution without dissent, of the strata company.

(3) For the purposes of subsection (2) the plot ratio restrictions or open space requirements for a lot are —

(a) those provided for by the by-laws of the strata company; or

(b) in the absence of any such provision, those that represent the *pro rata* entitlements of or requirements for the lot calculated on the proportion that the area of the lot bears to the area of the parcel.

(4) In this section —

structure includes any prescribed improvement.

[Section 7A inserted ~~by~~ No. 58 of 1995 s. 13.]

7B. Further provisions as to approvals for purposes of s. 7 and 7A

(1) A proprietor who wishes to obtain an approval of a proposal that comes within section 7(2) or 7A(2) shall serve an application on the strata company or the other proprietor, as the case may require, and in the application shall set out details of the proposal and such other information as may be prescribed.

(2) Where an application is made to a strata company under subsection (1) the council of the company shall submit the application to a general meeting of the company convened for

the purpose, or for purposes which include that purpose, within 35 days after the application is received (the *allowed period*).

- (3) If the council does not —
- (a) give notice of such a meeting, within 14 days after the application is served on the strata company, to each proprietor and registered mortgagee who has notified his interest to the strata company; or
 - (b) convene a general meeting of the company within the allowed period,

any proprietor 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) Notice in writing of the decision on an application shall be given to the applicant —
- (a) in the case of a two-lot scheme, by the other proprietor within 42 days after the service of the application on him; and
 - (b) in any other case, by the strata company within 77 days after service of the application on the company.
- (6) If an application made to a strata company or the other proprietor for approval under section 7 is not approved, a notice under subsection (5) shall show the ground or grounds —
- (a) disclosed by each proprietor who cast a vote of a kind referred to in section 7(4)(c); or
 - (b) on which approval is refused by the other proprietors,
- as the case may be.

- (7) If notice of a decision is not given to the applicant in accordance with subsection (5) and, where applicable, subsection (6) the approval applied for is to be taken to have been given.

[Section 7B inserted-by: No. 58 of 1995 s. 13.]

8. Re-subdivision within a scheme

- (1) Lots or common property, or lots and common property, may be re-subdivided by the registration of a plan under and in the manner provided by this Act as a plan of re-subdivision.
- (2) A lot in a strata scheme may only be re-subdivided by a strata plan of re-subdivision.
- (3) A lot in a survey-strata scheme may only be re-subdivided by a survey-strata plan of re-subdivision.
- (4) The reference in subsection (1) to common property does not include common property that is the subject of a lease accepted by the strata company under section 18.

[Section 8 inserted-by: No. 58 of 1995 s. 14.]

8A. Requirements for plan of re-subdivision

A plan of re-subdivision shall —

- (a) be accompanied by an application in the prescribed form requesting the Registrar of Titles to register the plan; and the application —
- (i) shall be under the seal of the strata company; and
- (ii) shall confirm that —
- (I) the strata company has by unanimous resolution consented to the proposed re-subdivision and to the proposed allocation of unit entitlement set out in the application; or
- (II) the plan either complies with any by-laws of the kind described in item 8

in Schedule 2A or sufficiently complies
with those by-laws in a way that is
allowed by the regulations;

and

- (b) define, in the prescribed manner, the boundaries of each lot in the parcel that is to be altered or created by the plan of re-subdivision and, in the case of a plan of re-subdivision for a strata scheme, do so by reference to a floor plan; and
 - (c) where amendment of the location plan is necessary in consequence of the re-subdivision, be accompanied by an amended location plan or a plan sufficient to enable the Registrar of Titles to amend the location plan to the extent made necessary by the re-subdivision; and
 - (d) be accompanied by a certificate given by a licensed surveyor containing, subject to appropriate and necessary modifications, the same particulars as are required by section 22(1) or (2), as the case may require; and
 - (e) where paragraph (a)(ii)(II) applies, be accompanied by a certificate in the prescribed form given by a licensed surveyor; and
 - (f) in the case of a re-subdivision of a lot in a strata scheme, be accompanied by —
 - (i) an occupancy permit granted under an application mentioned in the *Building Act 2011* section 50(2)(a); or
 - (ii) a building approval certificate granted under an application mentioned in the *Building Act 2011* section 50(2)(b);
- and
- (g) where section 25(1) requires or section 25B(2) applies, be accompanied by a certificate of approval of the re-subdivision given by the Commission; and

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- (h) be accompanied by a certificate of a licensed valuer in accordance with section 14(2); and
- (i) unless paragraph (a)(ii)(II) applies, be accompanied by a certificate given by every person who —
 - (i) has a registered interest in any lot 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 re-subdivision; and
- (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.

[Section 8A inserted ~~by~~: No. 58 of 1995 s. 14; amended ~~by~~: No. 61 of 1996 s. 12; No. 57 of 1997 s. 115(1); No. 24 of 2011 s. 174(3).]

8B. Transfers etc. to give effect to plan

- (1) Subject to subsection (2), every transfer or other document that is necessary to give effect to the plan of re-subdivision shall be lodged for registration together with the plan of re-subdivision.
- (2) The regulations may provide for the registration of an instrument (a *disposition statement*) —
 - (a) by which various interests in land affected by the proposed re-subdivision 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 section 8A(i) is set out,

and subsection (1) does not apply if a disposition statement is lodged for registration with the plan of re-subdivision.

[Section 8B inserted ~~by~~ No. 58 of 1995 s. 14.]

8C. Effect of registration of plan of re-subdivision

- (1) Upon registration, a plan of re-subdivision shall be deemed to be part of the strata/survey-strata plan as previously registered, and the Registrar of Titles shall amend the strata/survey-strata plan and the schedule of unit entitlement in the manner prescribed.
- (2) Upon registration of a plan of re-subdivision every lot of the strata/survey-strata plan as previously registered that —
- (a) is enlarged under the plan of re-subdivision by the addition of part of a lot or common property of the strata/survey-strata plan as previously registered; or
 - (b) is diminished under the plan of re-subdivision,
- is by operation of law subject to any encumbrance registered or caveat lodged with the Registrar of Titles against the first-mentioned lot and every such encumbrance or caveat is deemed to be amended accordingly.
- (3) Upon registration of a plan of re-subdivision —
- (a) every lot or part lot of the strata/survey-strata plan as previously registered that is common property under the plan of re-subdivision by operation of law vests in the proprietors to be held by them as tenants in common in shares proportional to the unit entitlements of their respective lots; and
 - (b) the share of a proprietor in common property vested in the proprietors pursuant to the amended schedule of unit entitlement by operation of law is subject to any encumbrance registered or caveat lodged with the

Registrar of Titles against his lot and every such encumbrance or caveat is deemed to be amended accordingly.

[Section 8C inserted ~~by~~ No. 58 of 1995 s. 14.]

9. Consolidation of lots

- (1) Two or more lots may be consolidated into one lot by the registration of a plan under and in the manner provided by this Act as a strata/survey-strata plan of consolidation.
- (2) The unit entitlement of a lot created by the consolidation of 2 or more lots shall be the sum of the unit entitlements of each of those lots.
- (3) A strata/survey-strata plan of consolidation shall —
 - (a) where section 25(1) requires, be accompanied by a certificate of approval of the consolidation given by the Commission; and
 - (b) in the case of a consolidation of lots in a strata scheme, be accompanied by a certificate given by the local government certifying —
 - (i) that the local government consents to the consolidation; and
 - (ii) in a case where the proposed consolidation is exempt from the requirement of approval by the Commission, that the proposed consolidation is so exempt; and
 - (iii) in a case where the Commission has granted approval subject to conditions under section 25, that the conditions attached to the approval of the Commission have been complied with;and
 - (c) be accompanied by consent to the consolidation given in the prescribed manner by every person registered as proprietor of an interest in any lot proposed to be consolidated.

- (4) Upon registration a strata/survey-strata plan of consolidation shall be deemed to be part of the strata/survey-strata plan as previously registered and the Registrar of Titles shall amend the strata/survey-strata plan and the schedule of unit entitlement accordingly in the prescribed manner.

[Section 9 amended-by: No. 84 of 1994 s. 46; No. 58 of 1995 s. 15 and 95; No. 14 of 1996 s. 4.]

10. Conversion of lots into common property

- (1) One or more lots may be converted into common property by the registration of a transfer executed by the proprietor or proprietors of that lot or those lots and by the strata company.
- (2) A transfer under subsection (1) shall not be registered unless —
- (a) it is accompanied by a certificate given by the local government consenting to the conversion into common property effected by the transfer; and
 - (b) it is accompanied by a certificate under seal of the strata company certifying that the strata company has by resolution without dissent (or unanimous resolution, in the case of a two-lot scheme) consented to the conversion effected by the transfer; and
 - (c) every mortgage, charge, current lease, caveat or other interest recorded in the Register in relation to the lot or each lot to which the transfer relates has, in so far as it affects any such lot, been discharged or surrendered or withdrawn or otherwise disposed of, as the case may be.
- (3) Upon the registration of a transfer under this section, the land comprised in the transfer becomes common property and is subject to the provisions of this Act relating to common property and the Registrar of Titles shall —
- (a) amend the strata/survey-strata plan in the prescribed manner; and
 - (b) amend the schedule of unit entitlement in the prescribed manner; and

(c) cancel the certificate of title for each lot converted into common property.

(4) Upon the registration of a transfer under this section, the share of a proprietor in common property vested in the proprietors pursuant to this section shall by operation of law be subject to any encumbrance registered or caveat lodged with the Registrar of Titles against his lot and every such encumbrance or caveat is deemed to be amended accordingly.

[Section 10 amended-by: No. 58 of 1995 s. 92 and 95; No. 14 of 1996 s. 4; No. 81 of 1996 s. 153(1).]

11. Support and services

(1) In respect of each lot there shall be implied —

(a) in favour of the proprietor and as appurtenant to his lot —

(i) an easement for the subjacent and lateral support thereof by the common property and by every other lot capable of affording support; and

(ii) easements for the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air, heating oil and other services including telephone, radio and television services, through or by means of any pipes, wires, cables or ducts for the time being existing in the land comprising the parcel to the extent to which those pipes, wires, cables or ducts are capable of being used in connection with the enjoyment of that lot;

(b) as against the proprietor and to which his lot shall be subject —

(i) an easement for the subjacent and lateral support of the common property and of every other lot capable of enjoying support; and

- (ii) easements for the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air, heating oil and other services including telephone, radio and television services, through or by means of any pipes, wires, cables or ducts for the time being existing within that lot, as appurtenant to the common property and also to every other lot capable of enjoying such easements.
- (2) A proprietor, mortgagee in possession or occupier of a lot shall not do any thing or permit any thing to be done on or in relation to that lot so that —
- (a) any support or shelter provided by that lot for another lot or common property is interfered with; or
 - (b) the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air, heating oil and other services, including telephone, radio and television services, through or by means of any pipes, wires, cables or ducts for the time being in the lot is interfered with.

12. Shelter

- (1) Every proprietor of a lot on a strata plan is entitled to have his lot sheltered by all such parts of the building as are capable of affording shelter.
- (2) The right created by subsection (1) is an easement to which such parts of the building as are referred to in that subsection shall be subject.
- (3) The easement of shelter created by this section entitles the proprietor of the dominant tenement to enter on the servient tenement to replace, renew or restore any shelter.

[Section 12 amended ~~by~~ No. 58 of 1995 s. 16.]

12A. Access for maintenance where part of building intrudes into another lot

- (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
 - (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 12A inserted ~~by~~ No. 61 of 1996 s. 13.]

13. Ancillary rights

All ancillary rights and obligations reasonably necessary to make them effective belong to easements implied or created by this Act.

14. Unit entitlement of lots

- (1) The unit entitlement of a lot, as stated in the schedule referred to in section 5, determines —
- (a) the voting rights of a proprietor; and
 - (b) the quantum of the undivided share of each proprietor in the common property; and
 - (c) subject to subsection (1)(c)(ii) of section 36, the proportion payable by each proprietor of contributions levied under that section.
- (2) The certificate of a licensed valuer which is required by sections 5B(1)(b), 8A(h), 21T(1)(d) and 31E(1)(d) to accompany a strata/survey-strata plan and a plan of

re-subdivision lodged for registration shall be in the prescribed form and shall certify that, or to the effect that, the unit entitlement of each lot, as stated in the schedule referred to in those sections, bears in relation to the aggregate unit entitlement of all lots delineated on the strata/survey-strata plan a proportion not greater than 5% more or 5% less than the proportion that the value of that lot bears to the aggregate value of all the lots delineated on the plan.

(2a) In subsection (2) —

value means —

- (a) in the case of a strata scheme, the capital value within the meaning of the *Valuation of Land Act 1978*; and
- (b) in the case of a survey-strata scheme, the *site value* within the meaning of that Act.

(3) A certificate given by a licensed valuer for the purposes of this Act shall be valid for such period as is prescribed.

[Section 14 amended ~~by~~ No. 58 of 1995 s. 17 and 95; No. 61 of 1996 s. 14; No. 24 of 2000 s. 40(3).]

15. Reallocation of unit entitlement by resolution without dissent (or unanimous resolution, in the case of a two-lot scheme)

- (1) The schedule of unit entitlement registered in respect of a scheme may be amended by the registration with the Registrar of Titles of an amended schedule of unit entitlement under and in the manner provided by this section.
- (2) An amended schedule of unit entitlement shall not be registered under this section unless it is accompanied by —
 - (a) a certificate under seal of the strata company certifying that the strata company has by resolution without dissent (or unanimous resolution, in the case of a two-lot scheme) consented to the registration of the amended schedule of unit entitlement; and

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- (b) a certificate given by every person, other than a proprietor, who has a registered interest in any lot the unit entitlement of which is affected by the amended schedule of unit entitlement certifying his consent to the registration of the amended schedule; and
- (c) a certificate given in the prescribed form by a licensed valuer certifying that, or to the effect that, the unit entitlement of each lot, as stated in the amended schedule of unit entitlement, bears in relation to the aggregate unit entitlement of all lots delineated on the strata/survey-strata plan a proportion not greater than 5% more or 5% less than the proportion that the value of that lot bears to the aggregate value of all the lots delineated on the plan.

[(3) *deleted*]

- (4) Upon the registration of an amended schedule of unit entitlement under this section, the share of a proprietor in common property vested in the proprietors pursuant to the amended schedule of unit entitlement shall by operation of law be subject to any encumbrance registered or caveat lodged with the Registrar of Titles against his lot and every such encumbrance or caveat is deemed to be amended accordingly.

- (5) In subsection (2) —

registered interest includes a caveat in respect of a lot but excludes an order or other legal process issued in respect of a lot for the purposes of enforcing a judgment or fine;

value means —

- (a) in the case of a strata scheme, the capital value within the meaning of the *Valuation of Land Act 1978*; and
- (b) in the case of a survey-strata scheme, the site value within the meaning of that Act.

[Section 15 amended ~~by~~ No. 58 of 1995 s. 18, 92, 95 and 96; No. 59 of 2004 Sch. 1 cl. 150.]

16. Reallocation of unit entitlement by SAT

- (1) Upon the application of a proprietor of a lot within a scheme or a strata company, the State Administrative Tribunal may, under and in the manner provided by this section, order that the schedule of unit entitlement registered in respect of the scheme be amended.
- (2) An application under this section shall not be accepted by the State Administrative Tribunal unless it is accompanied by —
 - (a) a certificate under seal of the strata company certifying that the strata company has by special resolution authorised an application to the State Administrative Tribunal under this section for an order that the schedule of unit entitlement be amended; and
 - (b) a certificate given by a licensed valuer certifying that, or to the effect that, the value of a lot identified in the certificate has varied by more than 5% in relation to the value of another lot identified in the certificate since the registration of the strata/survey-strata plan or, if an amended schedule or schedules of unit entitlement has or have been registered, since the most recent registration of an amended schedule of unit entitlement.
- (3) Notice of an application under subsection (1) shall be served on —
 - (a) every person who was entitled to exercise the power of voting conferred under this Act and did not, either in person or by proxy, vote in favour of the resolution authorising the application; and
 - (b) every person whom the State Administrative Tribunal declares to have a sufficient interest in the proceedings to require that he should be served with notice of the application.
- (3a) Subsection (3) does not limit the ability of the State Administrative Tribunal to order that a person be joined as a party to the proceedings.

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- (4) Except where in the circumstances of a particular application the State Administrative Tribunal is satisfied that there are good and sufficient reasons for not making an order under this subsection, the State Administrative Tribunal shall —
- (a) determine every application under this section by the allocation to each lot in the scheme of a unit entitlement that bears in relation to the aggregate unit entitlement of all lots delineated on the strata/survey-strata plan a proportion not greater than 5% more or 5% less than the proportion that the value of each lot bears to the aggregate value of all the lots delineated on the plan; and
 - (b) order that the schedule of unit entitlement registered in respect of the scheme be amended in accordance with the allocation of unit entitlements made under paragraph (a).
- (5) Upon receiving a copy of an order made under this section, the Registrar of Titles shall amend the schedule of unit entitlement registered in respect of the scheme in the manner prescribed and thereupon the share of a proprietor in common property vested in the proprietors pursuant to the amended schedule of unit entitlement shall by operation of law be subject to any encumbrance registered or caveat lodged with the Registrar of Titles against his lot and every such encumbrance or caveat is deemed to be amended accordingly.
- (6) The State Administrative Tribunal shall not order a party who opposes an application under this section to pay the costs of a successful applicant unless the State Administrative Tribunal considers the actions of that party in relation to the application to have been unreasonable.
- (7) In subsections (2) and (4) —
- value* means —
- (a) in the case of a strata scheme, the capital value within the meaning of the *Valuation of Land Act 1978*; and

- (b) in the case of a survey-strata scheme, the site value within the meaning of that Act.

[Section 16 amended-by: No. 58 of 1995 s. 19, 95 and 96; No. 55 of 2004 s. 1109.]

Division 2 — Common property

17. Ownership of common property

- (1) Common property shall be held by the proprietors as tenants in common in shares proportional to the unit entitlements of their respective lots.
- (2) The Registrar of Titles shall in the certificate of title to a lot certify that the proprietor holds the share in the common property appurtenant to the lot in accordance with the unit entitlement of that lot as stated in the schedule of unit entitlement registered in respect of the scheme.

[Section 17 amended-by: No. 58 of 1995 s. 96.]

18. Acquisition of additional common property

- (1) A strata company may, pursuant to a resolution without dissent (or unanimous resolution, in the case of a two-lot scheme), accept a transfer or lease of land which is part of, or contiguous to, the parcel and is not subject to a mortgage, charge or other encumbrance, for the purpose of creating, or creating additional, common property.
- (2) A transfer or lease referred to in subsection (1) shall be accompanied by —
 - (a) the certificate of title comprising the land described in the transfer or lease or, in the case of a transfer of a lease or sub-lease, the registered lease referred to in the transfer or sub-lease;
 - (b) a certificate under the seal of the strata company certifying that the resolution authorising the acceptance of the transfer or lease was a resolution without dissent

(or unanimous resolution, in the case of a two-lot scheme),

and, in the case of a transfer other than a transfer of a lease, there shall be lodged in the Authority's office a plan showing as a single lot the land comprised in the transfer and the land comprised in the parcel before the registration of the transfer.

- (3) Upon the registration in the prescribed manner of any such transfer, other than a transfer of a lease, the land comprised in the transfer becomes common property and is subject to the provisions of this Act relating to common property and the Registrar of Titles shall make an appropriate recording on the registered strata/survey-strata plan to which the parcel relates and on the certificate of title of the land transferred.
- (4) Upon the registration of any such lease, transfer of a lease or sub-lease —
 - (a) the leasehold interest becomes common property and thereupon is subject to such of the provisions of this Act relating to common property as are applicable to a leasehold interest; and
 - (b) the strata company is responsible for all payments and the performance of all duties required of the lessee by the terms of the lease or sub-lease, as the case may be; and
 - (c) the Registrar of Titles shall make an appropriate note on the registered strata/survey-strata plan to which the parcel relates and on the certificate of title or the lease, as the case may be, comprising the demised land to the effect that during the term of the lease or sub-lease the demised land is incorporated with and as part of the common property.
- (5) A strata company may, pursuant to a resolution without dissent (or unanimous resolution, in the case of a two-lot scheme) and with the concurrence of the lessor, surrender a lease accepted by it under this section, but if the lessor is also a proprietor, that

proprietor may participate in debate on the resolution that the lease be surrendered but may not vote on that resolution.

- (6) Upon the registration of any such surrender, the Registrar of Titles shall make an appropriate recording on the registered strata/survey-strata plan on which the lease was recorded.
- (7) The share of a proprietor in common property vested in the proprietors pursuant to this section shall by operation of law be subject to any encumbrance registered or caveat lodged with the Registrar of Titles against his lot and every such encumbrance or caveat is deemed to be amended accordingly.

[Section 18 amended ~~by~~ No. 58 of 1995 s. 20, 92 and 95; No. 60 of 2006 s. 160(3).]

19. Transfer or lease of common property

- (1) Except as otherwise provided in this section —
 - (a) no share in the common property may be disposed of except as appurtenant to the lot of the proprietor thereof; and
 - (b) an assurance of a lot operates to assure the share of the disposing party in the common property, without express reference thereto.
- (2) Subject to subsection (10), a strata company may, pursuant to a resolution without dissent (or unanimous resolution, in the case of a two-lot scheme) and where satisfied that all persons concerned have consented in writing to the transfer or lease, execute a transfer or lease of common property, other than common property the subject of a lease accepted or acquired by the strata company under section 18(1).
- (3) Subject to subsection (10), a strata company, pursuant to a resolution without dissent (or unanimous resolution, in the case of a two-lot scheme) and where satisfied that all persons concerned have consented in writing to the transfer, may, if not

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prevented by the terms of the lease, transfer a lease of common property accepted or acquired by the strata company under section 18(1) or grant, by way of sub-lease, a lease of its estate or interest in common property the subject of a lease so accepted or acquired.

- (4) A strata company may, if otherwise empowered so to do, re-enter under a lease, or, pursuant to a resolution without dissent (or unanimous resolution, in the case of a two-lot scheme), accept a surrender of a lease, granted under subsection (2) or (3).
- (5) Upon execution of a transfer or lease or sub-lease in accordance with subsection (2) or (3) —
 - (a) the transfer or lease or sub-lease is valid and effective without execution by any person having any estate or interest in the common property; and
 - (b) the receipt of the strata company —
 - (i) is a sufficient discharge for; and
 - (ii) exonerates the person taking under the transfer or lease or sub-lease from responsibility for the application of,

the moneys expressed to have been received by it and is likewise a sufficient discharge and exoneration for all moneys payable to the strata company under the transfer or lease or sub-lease.
- (6) Every transfer or lease or sub-lease executed under subsection (2) or (3) shall be endorsed with or accompanied by a certificate under the seal of the strata company that the resolution referred to in the relevant subsection was duly passed and that all necessary consents were given.
- (7) In favour of —
 - (a) a purchaser or lessee of the common property; and
 - (b) the Registrar of Titles,

a certificate under subsection (6) is conclusive evidence of the facts stated in it.

- (8) The Registrar of Titles shall —
- (a) in the case of a transfer of common property under this section, register the transfer by creating and registering in the transferee's name a certificate of title for the land transferred, and no notification of the transfer shall be otherwise made in the Register; and
 - (b) in the case of a lease or sub-lease of common property under this section, register the lease or sub-lease in the manner prescribed.
- (9) Upon the lodging for registration of a transfer of common property, the Registrar of Titles shall, before creating and registering a certificate of title, amend the registered strata/survey-strata plan in the manner prescribed.
- (10) Subject to subsections (11), (12) and (13) —
- (a) a transfer or mortgage of the common property or part of the common property; or
 - (b) a lease or licence, or lease and licence, to use or occupy the common property or part of the common property, for any term or terms exceeding the prescribed period in the aggregate including an option to extend or renew the term of a lease or licence granted in respect of the common property or part thereof,
- is not effective unless it has been approved in writing by the Commission and the local government.
- (11) Subsection (10) does not apply so as to require the approval of the Commission in the case of a subdivision of a parcel exempted from the requirement of a certificate of approval of the Commission by regulations made under section 25(2).
- (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.

[Section 19 amended-by: No. 84 of 1994 s. 46; No. 58 of 1995 s. 21, 92 and 95; No. 14 of 1996 s. 4; No. 61 of 1996 s. 15; No. 81 of 1996 s. 153(1).]

20. Creation of easements and covenants

- (1) A strata company may, pursuant to a resolution without dissent (or unanimous resolution, in the case of a two-lot scheme) —
- (a) execute a grant of easement or a restrictive covenant burdening the parcel;
 - (b) accept a grant of easement or a restrictive covenant benefiting the parcel;
 - (c) surrender a grant of easement or a restrictive covenant benefiting the parcel.
- (2) Subsection (1) does not authorise a strata company to accept a grant or execute a surrender of an easement relating to common property the subject of a lease accepted or acquired by the strata company under section 18(1) that, apart from subsection (1), it is not entitled to accept or execute as a lessee or, by the terms of the lease, it is prevented from accepting or executing.
- (3) A strata company may, pursuant to a resolution without dissent (or unanimous resolution, in the case of a two-lot scheme), consent to the execution or acceptance by a lessor of a grant or surrender of easement relating to common property the subject of a lease accepted or acquired by the strata company under section 18(1).
- (4) The strata company, if it is satisfied that all persons having registered interests in the parcel and all other persons having interests (other than statutory interests) which have been notified to the strata company have consented in writing to the proposed

dealing, shall execute the appropriate instrument and any plan necessary therefor and every instrument shall be valid and effective without execution by any person having an interest in the parcel, and the receipt of the strata company of any moneys payable to the strata company under the terms of the instrument shall be a sufficient discharge, and shall exonerate the persons taking under the instrument from any responsibility for the application of the moneys expressed to have been so received.

- (5) Every instrument executed pursuant to subsection (4) and lodged for registration with the Registrar of Titles shall be endorsed with or accompanied by a certificate under the seal of the strata company that the resolution was duly passed and that all necessary consents were given.
- (6) In favour of persons dealing with the strata company pursuant to this section and in favour of the Registrar of Titles, the certificate referred to in subsection (5) shall be conclusive evidence of the matters certified in it.
- (7) The Registrar of Titles shall register the instrument creating or surrendering a grant of easement or a restrictive covenant by noting it on the strata plan in the manner prescribed.

[Section 20 amended ~~by~~ No. 58 of 1995 s. 92.]

21. Encroachments treated as common property

Where a strata plan or plan of re-subdivision in respect of a strata scheme indicates the existence of an encroachment, the provisions of this Act, other than those relating to ownership and certification of title, apply to the encroachment as if it were common property.

[Section 21 amended ~~by~~ No. 58 of 1995 s. 22.]

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

[Heading inserted ~~by~~ No. 61 of 1996 s. 16.]

Subdivision 1 — Preliminary

[Heading inserted-by: No. 61 of 1996 s. 16.]

21A. Term used: existing small strata scheme

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.

[Section 21A inserted-by: No. 61 of 1996 s. 16.]

21B. Division only applies to single tier strata schemes

This Division applies only to a single tier strata scheme.

[Section 21B inserted-by: No. 61 of 1996 s. 16.]

21C. Procedures cannot be invoked more than once

- (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.

[Section 21C inserted-by: No. 61 of 1996 s. 16.]

21D. Saving

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

[Section 21D inserted-by: No. 61 of 1996 s. 16.]

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

[Heading inserted-by: No. 61 of 1996 s. 16.]

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.

[Section 21E inserted-by: No. 61 of 1996 s. 16.]

21F. Resolution by strata company

- (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; or
 - (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 under section 103M to be treated as a resolution without dissent.

[Section 21F inserted-by: No. 61 of 1996 s. 16; amended-by: No. 55 of 2004 s. 1157.]

21G. Lodgement of notice of resolution for registration

- (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

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- (b) if applicable, a copy of any relevant order under section 103C or 103M certified by the executive officer of the State Administrative Tribunal 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.

[Section 21G inserted ~~by~~: No. 61 of 1996 s. 16; amended ~~by~~: No. 55 of 2004 s. 1110.]

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.

[Section 21H inserted ~~by~~: No. 61 of 1996 s. 16.]

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 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.

[Section 21I inserted-by: No. 61 of 1996 s. 16.]

21J. Registrar of Titles to amend strata plan

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

[Section 21J inserted-by: No. 61 of 1996 s. 16.]

Subdivision 3 — Automatic merger of buildings that are common property

[Heading inserted-by: No. 61 of 1996 s. 16.]

21K. Terms used

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 operation¹.

[Section 21K inserted-by: No. 61 of 1996 s. 16.]

21L. Application of this Subdivision

This Subdivision applies only to an existing small strata scheme.

[Section 21L inserted-by: No. 61 of 1996 s. 16.]

21M. Automatic application of lot boundaries under s. 3AB

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.

[Section 21M inserted-by: No. 61 of 1996 s. 16.]

21N. Plan to be noted

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.

[Section 21N inserted-by: No. 61 of 1996 s. 16.]

21O. Objection by proprietor

- (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.

[Section 21O inserted-by: No. 61 of 1996 s. 16.]

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

[Heading inserted-by: No. 61 of 1996 s. 16.]

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.

[Section 21P inserted-by: No. 61 of 1996 s. 16.]

21Q. Resolution by strata company

- (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; or
 - (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 under section 103M to be treated as a resolution without dissent.

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- (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.

[Section 21Q inserted ~~by~~ No. 61 of 1996 s. 16; amended ~~by~~ No. 55 of 2004 s. 1157.]

21R. Further provisions as to contents of resolution

- (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 permit under the *Building Act 2011* or a building licence under section 374³ 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.

[Section 21R inserted ~~by~~ No. 61 of 1996 s. 16; amended ~~by~~ No. 24 of 2011 s. 174(4).]

21S. Notice of resolution may be lodged for registration

- (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.

[Section 21S inserted ~~by~~ No. 61 of 1996 s. 16.]

21T. Documents to accompany notice

- (1) The notice of resolution is to be accompanied by —
 - (a) a copy of any relevant order under section 103C or 103M certified by the executive officer of the State Administrative Tribunal 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; 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 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;

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- (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.

[Section 21T inserted ~~by~~ No. 61 of 1996 s. 16; amended ~~by~~ No. 55 of 2004 s. 1111.]

21U. Certificate of licensed surveyor

- (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 permit under the *Building Act 2011* or a building licence under section 374³ 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 proprietors of lots in the 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 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 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 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 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.

[Section 21U inserted ~~by~~: No. 61 of 1996 s. 16; amended ~~by~~: No. 38 of 2005 s. 15; No. 28 of 2010 s. 37(2) and (3); No. 24 of 2011 s. 174(5).]

21V. Transfers etc. to give effect to notice of resolution

- (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; and
 - (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) a transaction referred to in the *Duties Act 2008* section 112(6).

[Section 21V inserted ~~by~~: No. 61 of 1996 s. 16; amended ~~by~~: No. 12 of 2008 Sch. 1 cl. 36(1).]

21W. Creation of easements for parking etc.

- (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.

[Section 21W inserted-by: No. 61 of 1996 s. 16.]

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.

[Section 21X inserted-by: No. 61 of 1996 s. 16.]

21Y. Effect of registration

- (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*⁴; or

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- (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.

[Section 21Y inserted ~~by~~: No. 61 of 1996 s. 16.]

21Z. Registrar of Titles to make necessary amendments

- (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
Authority's office for the purpose of a dealing.

*[Section 21Z inserted ~~by~~: No. 61 of 1996 s. 16; amended ~~by~~:
No. 60 of 2006 s. 160(4).]*

Division 3 — Certificates and approvals

22. Certificate of licensed surveyor

- (1) The certificate of a licensed surveyor which is required by section 5B to accompany a strata plan lodged for registration shall be in the prescribed form and shall certify that —
- (a) each lot that is not wholly within a building shown on the plan is within the external surface boundaries of the parcel; and either
 - (b) each building shown on the plan is within the external surface boundaries of the parcel; or
 - (c) in a case where a part of a wall or building, or material attached thereto, encroaches beyond the external surface boundaries of the parcel —
 - (i) all lots shown on the plan are within the external surface boundaries of the parcel; and
 - (ii) the plan clearly indicates the existence of the encroachment and its nature and extent; and
 - (iii) where the encroachment is not on to a public road, street or way, that an appropriate easement has been granted and will be lodged with the Registrar of Titles to enable it to be registered as an appurtenance of the parcel.
- (2) The certificate of a licensed surveyor which is required by section 5B to accompany a survey-strata plan lodged for registration shall be in the prescribed form.

[Section 22 amended ~~by~~ No. 58 of 1995 s. 23.]

[23. Deleted ~~by~~ No. 24 of 2011 s. 174(6).]

24. Preliminary determinations by local government

[(1) deleted]

- (2) Upon 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 in force under the *Planning and Development Act 2005*; and
 - (b) any consent or approval required under any such local planning scheme or under the provisions of the last-mentioned Act relating to any 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 shall have regard to such considerations as may be prescribed to be 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 shall 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 shall 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 shall be 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 shall be valid and binding for such period as is specified, being a period greater than 2 years but not exceeding 3 years.

[Section 24 amended ~~by~~: 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).]

25. Certificate of Commission

- (1) Subject to this section, every strata plan and every plan of re-subdivision or consolidation for a strata scheme lodged for registration under this Act shall be accompanied by a certificate of approval given by the Commission unless the proposed subdivision, re-subdivision or consolidation is exempt from the requirement of such a certificate by reason of regulations made under this section.
- (2) The Governor may make regulations providing for the exemption of a proposed subdivision, re-subdivision or consolidation, or subdivisions, re-subdivisions or consolidations of any class or description or in any geographical area, from the requirement of a certificate of approval given by the Commission for the purposes of section 5B, 8A or 9.
- (3) An application for a certificate under this section shall be made to the Commission in the prescribed form and manner and, where a building is to be constructed or modified for the purposes of the strata scheme or a proposed strata scheme, the application shall be made prior to the construction or modification of the building unless the Commission otherwise agrees in a particular case.

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- (4) A certificate granted by the Commission under this section shall certify the approval of the Commission to the subdivision, re-subdivision or consolidation, as the case may be, and shall be in the prescribed form and in the case of an application made prior to construction or modification of a building proposed to be divided into lots under the scheme, the Commission may grant a certificate unconditionally or subject to such conditions as are specified in the certificate.
- (5) Without limiting section 25A, sections 135, 136, 146 and 147 of the *Planning and Development Act 2005* do not apply to —
- (a) a subdivision effected by the registration of a strata plan; or
 - (b) a re-subdivision effected by a plan of re-subdivision for a strata scheme; or
 - (c) a consolidation effected by the registration of a plan of consolidation for a strata scheme; or
 - (d) a transfer converting a lot within a strata scheme to common property.
- [(6) *deleted*]
- (7) This section and the giving of a certificate of approval by the Commission for the purposes of this section shall be subject to the requirements of section 78 of the *Heritage of Western Australia Act 1990*.
- (8) No exemption from the requirements of this section shall take effect where the land or any part of the land to which the strata scheme relates is land to which section 78 of the *Heritage of Western Australia Act 1990* applies.

[Section 25 amended ~~by~~ by: No. 97 of 1990 s. 30; No. 84 of 1994 s. 46; No. 58 of 1995 s. 261; No. 55 of 2004 s. 1114; No. 38 of 2005 s. 15.]

25A. Commission to refer plan to other bodies in certain cases

- (1) If a strata plan or a plan of re-subdivision or consolidation for a strata scheme submitted to the Commission for approval under section 25 contains any vacant lot, the Commission shall comply with sections 142, 143 and 144 of the *Planning and Development Act 2005*, and section 151 of that Act applies, as if the plan were a plan of subdivision which required the approval of the Commission under that Act.
- (2) For the purposes of subsection (1) a vacant lot is one that is wholly unimproved apart from having merged improvements within the meaning of that expression in the *Valuation of Land Act 1978*.
- (3) Where subsection (1) applies, a prescribed period shall apply for the purposes of section 27(4) instead of the period of 40 days mentioned in that subsection.

[Section 25A inserted-by: No. 58 of 1995 s. 27; amended-by: No. 55 of 2004 s. 1115; No. 38 of 2005 s. 15.]

25B. Subdivision in survey-strata scheme requires approval by Commission

- (1) The provisions of Divisions 1, 2 (other than section 141) and 3 of Part 10 of the *Planning and Development Act 2005*, and section 166 of that Act, apply to —
 - (a) the subdivision or re-subdivision of land by a survey-strata plan or a plan of re-subdivision for a survey-strata scheme; and
 - (b) the consolidation of lots by a plan of consolidation for a survey-strata scheme.
- (2) Every survey-strata plan and every plan of re-subdivision or consolidation for a survey-strata scheme lodged for registration under this Act shall have endorsed on it a statement that the approval of the Commission, required by the provisions referred to in subsection (1), has been granted.

[(3) deleted]

- (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 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 subsection (2); and
 - (b) otherwise complies with this Act.

[Section 25B inserted ~~by~~: No. 58 of 1995 s. 27; amended ~~by~~: No. 61 of 1996 s. 17; No. 24 of 2002 s. 28(2); No. 55 of 2004 s. 1116; No. 38 of 2005 s. 15.]

26. Review of local government decision

- (1) In this section, **application** means an application to a local government for a certificate, determination or approval, as the case may be —
- [(a)-(i) deleted]*
- (j) under section 24(2) that the local government is satisfied as to the matters referred to in section 24(2)(a), (b) and (c) in relation to a proposed development; and
 - (k) under section 6(3) that the local government approves a resolution of a strata company varying or removing a restriction as to use endorsed on a registered strata/survey-strata plan under that section; and
- [(l) deleted]*
- (m) as required in the case of an application for registration of a plan of consolidation for a strata scheme, under section 9(3)(b); and
 - (n) under section 10(2) that the local government consents to the conversion effected by a transfer of a lot or lots within a scheme into common property; and

- (o) under section 19(10) that the local government approves a transfer, mortgage or other disposition as referred to in that subsection of common property within a scheme.
- (2) A local government to which an application is made shall cause notice of its decision on the application to be given in writing to the applicant.
- (3) A notice of refusal by a local government to approve an application shall —
 - (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 State Administrative Tribunal for a review of —
 - (a) a refusal by a local government to approve an application; or
 - (b) the attachment of a condition to the approval of an application.
- (5) A review is to be in accordance with Part 14 of the *Planning and Development Act 2005*, if the review is of —
 - (a) a refusal by a local government to approve of an application of the kind referred to in subsection (1)(j), (k), (m), (n) and (o); or
 - (b) the attachment of a condition to the approval of an application of the kind referred to in subsection (1)(j).
- (6) For the purposes of subsections (4) and (5), if a local government fails to notify its approval of an application to the applicant within 40 days of receiving 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 of the day on which the applicant received notice of the refusal or attachment of a condition or within 30 days of the

expiration of the period of 40 days referred to in subsection (6), as the case may be.

[Section 26 amended ~~by~~ by: 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).]

27. Review of Commission decision

- (1) In this section, **application** means an application to the Commission for approval or a certificate of approval, as the case may be —
 - (a) under section 25 that the Commission approves the proposed subdivision in a strata plan or a plan of re-subdivision for a strata scheme or approves the proposed consolidation in a plan of consolidation for a strata scheme;
 - (b) under section 19(10) that the Commission approves a transfer, mortgage or other disposition as referred to in that provision of common property within a strata scheme;
 - (c) under section 6(3) that the Commission approves a resolution of a strata company varying or removing a restriction as to use endorsed on a registered strata plan under that provision.
- (2) The Commission shall cause notice of its decision on an application made to it under this Act to be given in writing to the applicant.
- (3) Subject to this section, an applicant may apply to the State Administrative Tribunal for a review, in accordance with Part 14 of the *Planning and Development Act 2005*, of —
 - (a) a refusal by the Commission to approve of an application of the kind referred to in subsection (1)(a) to (c); or

- (b) the attachment of a condition under section 25(4) to the approval of the Commission.
- (4) For the purposes of subsection (3), if the Commission fails to notify its approval of an application to the applicant within 40 days of receiving the application, it is taken to have refused the application at the end of that period.
- [(5) deleted]*
- (6) An application under this section to the State Administrative Tribunal may be made within 30 days of the day on which the applicant received notice of the refusal or attachment of a condition or within 30 days of the expiration of the period of 40 days referred to in subsection (4), as the case may be.

[Section 27 amended ~~by~~ No. 84 of 1994 s. 46; No. 58 of 1995 s. 29; No. 24 of 2002 s. 28(10)-(15); No. 74 of 2003 s. 112(4); No. 55 of 2004 s. 1118; No. 38 of 2005 s. 15.]

Part III — Variation, termination and conversion of schemes

[Heading amended ~~by~~ No. 61 of 1996 s. 18.]

Division 1 — Variation of schemes

[Heading inserted ~~by~~ No. 61 of 1996 s. 19.]

28. Variation of strata scheme upon damage or destruction of building

- (1) Where a building shown on a registered strata plan is damaged or destroyed, the District Court may, on an application by the strata company or by a proprietor or a registered mortgagee of a lot within the strata scheme, 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 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 District Court under this section.
- (3) Without limiting the generality of subsection (1), an order made under that subsection may include such directions for or with respect to any one or more of the following matters as the District Court considers necessary or expedient —
 - (a) the reinstatement in whole or in part of the building;
 - (b) the transfer or conveyance of the interests of the proprietors of lots that have been damaged or destroyed to the other proprietors in proportion to their unit entitlements;
 - (c) the substitution for the existing schedule of unit entitlement of a new schedule of unit entitlement;
 - (d) the application of insurance moneys received by the strata company in respect of damage to or destruction of the building;

- (e) the payment of moneys to or by the strata company or any one or more of the proprietors;
 - (f) the amendment of the registered strata plan, in such manner as the District Court 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 building;
 - (h) any matter in respect of which it is, in the opinion of the District Court, 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 District Court thinks fit.
- (4) The District Court may from time to time amend any order made under this section.
- (5) An order made under this section shall take effect —
- (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 29, on the day on which the taking referred to in the order takes effect.
- (6) Where the District Court is of the opinion that an order should not be made under this section —
- (a) it may, upon application made by any person entitled to appear and be heard on the hearing of the application made under subsection (1) or of its own motion, direct that the application be treated as an application for an order under section 31; and
 - (b) where it makes such a direction —
 - (i) the application the subject of the direction shall be deemed to be made under section 31 by a person entitled to make the application; and

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(ii) the applicant under subsection (1), as well as any other, person entitled to appear and be heard under section 31, is entitled to appear and be heard on the hearing of the application.

(7) On any application under this section, the District Court may make such order for the payment of costs as it thinks fit.

[Section 28 amended-by: No. 58 of 1995 s. 30 and 93(1); No. 74 of 2003 s. 112(5).]

29. Variation of strata scheme upon taking

Subject to any necessary modifications, section 28 shall apply and the District Court shall have 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 that section applies and the District Court has jurisdiction in the case of damage to or destruction of a building.

[Section 29 amended-by: No. 58 of 1995 s. 31 and 93(1); No. 74 of 2003 s. 112(5).]

29A. Variation of survey-strata scheme on resumption

(1) Where part of the land in a parcel in a survey-strata scheme is taken, the District Court may, on an application by the strata company or by a proprietor or a registered mortgagee of a lot within the scheme, 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 the generality of subsection (1), an order made under that subsection may include such directions for or with respect to any one or more of the following matters as the District Court considers necessary or expedient —

- (a) the substitution for the existing schedule of unit entitlement of a new schedule of unit entitlement; and
- (b) the payment of moneys to or by the strata company or any one or more of the proprietors; and

- (c) the amendment of the registered survey-strata plan, in such manner as the District Court 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 District Court, 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 District Court thinks fit.
- (3) The District Court may from time to time amend any order made under this section.
- (4) Where the District Court is of the opinion that an order should not be made under this section —
- (a) it may, upon application made by any person entitled to appear and be heard on the hearing of the application made under subsection (1) or of its own motion, direct that the application be treated as an application for an order under section 31; and
 - (b) where it makes such a direction —
 - (i) the application the subject of the direction shall be deemed to be made under section 31 by a person entitled to make the application; and
 - (ii) the applicant under subsection (1), as well as any other person entitled to appear and be heard under section 31, is entitled to appear and be heard on the hearing of the application.
- (5) On any application under this section, the District Court may make such order for the payment of costs as it thinks fit.

[Section 29A inserted ~~by~~ No. 58 of 1995 s. 32; amended ~~by~~ No. 74 of 2003 s. 112(6).]

29B. Lodgement of documents with Registrar following partial taking in strata scheme

- (1) Where part of the land in a strata plan is taken and the taking includes part but not the whole of any lot in the scheme, the

acquiring authority shall, 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 subsection (2).

- (2) The plan shall —
- (a) define the boundaries of the balance of the lot that remains in the scheme after the taking and do so by reference to a floor plan; and
 - (b) comply with such requirements as may be prescribed.
- (3) Upon registration of the plan referred to in subsection (2) —
- (a) that plan shall be deemed to be part of the strata plan as previously registered; and
 - (b) the Registrar of Titles shall amend that plan in the manner prescribed.
- (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) where the land is taken for the purposes of a local government, the local government.

[Section 29B inserted ~~by~~: No. 58 of 1995 s. 32; amended ~~by~~: No. 74 of 2003 s. 112(5)-(8).]

Division 2 — Termination of schemes

[Heading inserted ~~by~~: No. 61 of 1996 s. 20.]

29C. Termination of scheme by resumption

- (1) The Minister for Lands may in a taking order in respect of the whole of a parcel declare that a scheme for that parcel is terminated on the registration of that order.

(2) Where subsection (1) applies the Registrar of Titles shall 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 29C inserted ~~by~~ No. 58 of 1995 s. 32; amended ~~by~~ No. 74 of 2003 s. 112(9)-(11).]

30. Termination of strata scheme by unanimous resolution

(1) The proprietors of lots in a strata scheme may resolve by unanimous resolution that the strata scheme be terminated in accordance with this section and upon the passing of such a resolution the strata company shall immediately lodge notice of the resolution with the Registrar of Titles in the prescribed form.

(2) Upon receipt of the notice referred to in subsection (1), the Registrar of Titles shall make an entry on the relevant registered strata plan in the manner prescribed and thereupon the proprietors of lots in that plan are entitled to the parcel as tenants in common in shares proportional to the unit entitlements of their respective lots.

(3) Where all the proprietors of lots in a strata scheme desire to transfer the parcel or any part or parts of the parcel, they may by unanimous resolution direct the strata company to transfer the parcel or part or parts thereof, and thereupon —

(a) the strata company shall execute the appropriate transfer; and

(b) the proprietors of the parcel or part of the parcel transferred are entitled to the proceeds of the sale in shares proportional to the unit entitlements of their respective lots; and

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- (c) subsections (5) to (8) of section 19 apply as if the parcel were the common property.
- (4) Upon lodgement for registration of a transfer of a parcel by the strata company pursuant to this section, the Registrar of Titles, before issuing a certificate of title, shall make the entry required by subsection (2).
- (5) Where land is transferred by the strata company pursuant to this section —
 - (a) the proprietors shall surrender to the Registrar of Titles their duplicate certificates of title (if any) for cancellation; and
 - (b) the Registrar of Titles, after cancelling the certificates of title relating to the lots, shall create and register in the transferee's name a new certificate of title for the land transferred.

[Section 30 amended-by: No. 58 of 1995 s. 33; No. 81 of 1996 s. 153(1).]

30A. Termination of survey-strata scheme by unanimous resolution

- (1) The proprietors of lots in a survey-strata scheme may resolve by unanimous resolution that the scheme be terminated in accordance with this section.
- (2) Upon the passing of such a resolution the strata company shall immediately lodge —
 - (a) notice of the resolution with the Registrar of Titles in the prescribed form; and
 - (b) except in a case where the regulations confer an exemption from the requirement of this paragraph, a certificate given by the Commission stating that it consents to the termination of the scheme.
- (3) Upon receipt of the notice referred to in subsection (2), the Registrar of Titles shall make an entry on the relevant registered

survey-strata plan and, where applicable, on the relevant certificates of title in the manner prescribed.

- (4) Where an entry has been made on the plan under subsection (3), the common property in the survey-strata scheme may be transferred by the strata company on the authority of a unanimous resolution of the proprietors of all of the lots in the scheme.
- (5) On the transfer of common property as mentioned in subsection (4) —
 - (a) the proprietors are entitled to the proceeds of the sale of the common property in shares proportional to the unit entitlements of their respective lots; and
 - (b) subsections (6) and (7) of section 19 apply.

[Section 30A inserted-by: No. 58 of 1995 s. 34.]

31. Termination of scheme by order of District Court

- (1) The District Court may, on an application by the strata company or by a proprietor or a registered mortgagee of a lot within a scheme, make an order terminating the scheme.
- (2) An insurer who has effected insurance on the building (other than a building on a lot in a survey-strata scheme), 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 District Court under this section.
- (3) An order made under this section shall include directions for or with respect to the following matters —
 - (a) the sale or disposition of any property of the strata company; and
 - (b) the discharge of the liabilities of the strata company; and
 - (c) the persons liable to contribute moneys required for the discharge of the liabilities of the strata company and the proportionate liability of each such person; and

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- (d) the distribution of the assets of the strata company and the proportionate entitlement of each person under that distribution; and
 - (e) the administration, powers, authorities, duties and functions of the strata company; and
 - (f) the voting power at meetings of the strata company of persons referred to in paragraph (c) or (d); and
 - (g) any matter in respect of which it is, in the opinion of the District Court, just and equitable, in the circumstances of the case, to make provision in the order; and
 - (h) the winding up of the strata company (including the appointment, powers, authorities, duties and functions of any person to carry out the winding up).
- (4) An order made under this section may include a direction that money received by the strata company from an insurer of the building shall be paid directly to a mortgagee of a lot.
- (5) The District Court may from time to time amend any order made under this section.
- (6) Where the District Court is of the opinion that an order should not be made under this section —
- (a) it may, upon application made by any person entitled to appear and be heard on the hearing of the application made under subsection (1) or of its own motion, direct that the application be treated as an application for an order under section 28; and
 - (b) where it makes such a direction —
 - (i) the application the subject of the direction shall be deemed to be an application made under section 28 by a person entitled to make the application; and
 - (ii) the applicant under subsection (1), as well as any other person entitled to appear and be heard

under section 28, is entitled to appear and be heard on the hearing of the application.

- (7) On any application under this section, the District Court may make such order for the payment of costs as it thinks fit.
- (8) Upon the making of an order under this section terminating a scheme, the strata company shall immediately lodge a copy of the order with the Registrar of Titles.
- (9) Upon receipt of the copy of the order terminating a scheme, the Registrar of Titles shall make an entry on the relevant registered strata/survey-strata plan and, where applicable, on the relevant certificates of title in the manner prescribed.
- (10) On the making of an entry under subsection (9) —
 - (a) in the case of a strata scheme, subsections (2) to (5) of section 30 apply; and
 - (b) in the case of common property in a survey-strata scheme, subsections (4) and (5) of section 30A apply,as if the scheme had been terminated by unanimous resolution under section 30(1) or 30A(1) as the case may require.

[Section 31 amended-by: No. 58 of 1995 s. 35, 93(1) and 96.]

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

[Heading inserted-by: No. 61 of 1996 s. 21.]

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.

[Section 31A inserted-by: No. 61 of 1996 s. 21.]

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Division 3 Conversion of strata schemes to survey-strata schemes

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31B. Saving

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.

[Section 31B inserted-by: No. 61 of 1996 s. 21.]

31C. Resolution by strata company

- (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.

[Section 31C inserted-by: No. 61 of 1996 s. 21.]

31D. Notice of resolution may be lodged for registration

- (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.

[Section 31D inserted-by: No. 61 of 1996 s. 21.]

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 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; 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 for the purposes of section 5A(g);
and
 - (b) a certificate given by a licensed surveyor in accordance with section 31F; and
 - (c) a schedule specifying, in a whole number —
 - (i) the proposed unit entitlement in respect of each lot; and

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s. 31F

- (ii) the aggregate unit entitlement;
 - and
 - (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).

[Section 31E inserted ~~by~~ No. 61 of 1996 s. 21.]

31F. Certificate of licensed surveyor

- (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); and
 - (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; 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 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 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 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 local planning scheme or improvement scheme.

[Section 31F inserted ~~by~~: No. 61 of 1996 s. 21; amended ~~by~~: No. 38 of 2005 s. 15; No. 28 of 2010 s. 37(5) and (6).]

31G. Creation of easements

- (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).

[Section 31G inserted ~~by~~: No. 61 of 1996 s. 21.]

31H. Transfers etc. to give effect to resolution

- (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; and
 - (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) a transaction referred to in the *Duties Act 2008* section 112(6).

[Section 31H inserted ~~by~~ No. 61 of 1996 s. 21; amended ~~by~~ No. 12 of 2008 Sch. 1 cl. 36(2).]

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.

[Section 31I inserted ~~by~~ No. 61 of 1996 s. 21.]

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 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*⁴; 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.

[Section 31J inserted ~~by~~: No. 61 of 1996 s. 21.]

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31K. Registrar of Titles to make necessary amendments

- (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 Authority's office for the purpose of a dealing.

[Section 31K inserted ~~by~~: No. 61 of 1996 s. 21; amended ~~by~~: No. 60 of 2006 s. 160(5).]

Part IV — Management

Division 1 — Strata companies

32. Incorporation of proprietors

- (1) Upon the registration of a strata/survey-strata plan, the proprietors from time to time shall constitute a strata company by the name of “The Owners of [the name of the scheme]” and the number of the strata/survey-strata plan allocated to it by the Registrar of Titles.
- (2) A strata company created under subsection (1) is a body corporate with perpetual succession and a common seal.
- (2a) For the purposes of subsection (1) the name of the scheme shall be that stated on the strata plan under section 5(1)(d), or on the survey-strata plan under section 5A(e).
- (2b) In the case of a strata plan registered before the commencement of section 36 of the *Strata Titles Amendment Act 1995*¹ the name of the building endorsed on the plan, or recorded under section 41(2), shall be deemed to be the name of the scheme for the purposes of subsection (1).
- (3) A strata company —
 - (a) is capable of suing and being sued; and
 - (b) shall be regulated in accordance with this Act and the by-laws in force in respect of that strata company; and
 - [(c) deleted]*
 - (d) may do and suffer all things that bodies corporate generally may, by law, do and suffer and that are necessary for or incidental to the purposes for which a strata company is constituted.
- (4) The following matters are declared to be excluded matters for the purposes of section 5F of the *Corporations Act 2001* of the

Commonwealth in relation to the whole of the Corporations legislation to which Part 1.1A of that Act applies —

- (a) a strata company;
- (b) any act or omission of any person, body or other entity in relation to a strata company.

[Section 32 amended-by: No. 58 of 1995 s. 36; No. 10 of 2001 s. 189.]

33. Strata company is representative of proprietors in proceedings

- (1) Where the proprietors of the lots the subject of a scheme are jointly entitled to take proceedings against any person or are liable to have proceedings taken against them jointly (any such proceedings being proceedings for or with respect to common property), 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 any such proceedings shall have effect as if it were a judgment or order given or made in favour of or against the proprietors.
- (2) Where a proprietor is liable to make a contribution to another proprietor in respect of a judgment debt arising under a judgment referred to in subsection (1), the amount of that contribution shall bear to the judgment debt the same proportion as the unit entitlement of the lot of the first-mentioned proprietor bears to the aggregate unit entitlement.

[Section 33 amended-by: No. 58 of 1995 s. 96.]

34. Contract formalities

- (1) In so far as the formalities of making, varying or discharging a contract are concerned, a person acting under the express or implied authority of a strata company may make, vary or discharge a contract in the name of or on behalf of the strata company in the same manner as if that contract were made, varied or discharged by a natural person.

- (2) The making, variation or discharge 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 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 or discharge of a contract.

35. Duties of strata companies

- (1) A strata company shall —
 - (a) enforce the by-laws; and
 - (b) control and manage the common property for the benefit of all the proprietors; and
 - (c) keep in good and serviceable repair, properly maintain and, where 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 vested in the strata company, and to do so whether damage or deterioration arises from fair wear and tear, inherent defect or any other cause; and
 - [(d) deleted]*
 - (e) cause to be recorded in a loose-leaf or bound book particulars of the purport of notices served on the strata company under this or any other Act, orders under Part VI served on the strata company and orders made by a court and served on the strata company and, in relation to each such notice or order —
 - (i) the date on which it was served and the manner of service; and
 - (ii) the part of the parcel to which it relates; and
 - (iii) the date by which compliance therewith is required; and

- (iv) the date on which it is complied with;
- and
- (f) cause to be kept minutes of its meetings, which shall include particulars of motions passed at those meetings, and proper books of account in respect of moneys received or expended by the strata company showing the items in respect of which the moneys were received or expended; and
- (g) cause to be prepared from the books of account referred to in paragraph (f), a proper statement of accounts of the strata company in respect of each period commencing on the date of registration of the strata/survey-strata plan or the date up to which the last previous such statement was prepared and ending on a date not earlier than 2 months before each annual general meeting; and
- (h) cause to be retained for the prescribed period —
 - (i) the records kept under, and the notices and orders referred to in, paragraph (e); and
 - (ii) the minutes and books of account referred to in paragraph (f); and
 - (iii) the statements of account referred to in paragraph (g); and
 - (iv) copies of correspondence received and sent by the strata company; and
 - (v) notices of meetings of the strata company and its council; and
 - (vi) proxies delivered to the strata company; and
 - (vii) voting papers relating to motions for resolutions by the strata company and to the election of office holders and the council; and
 - (viii) records of unanimous and special resolutions passed by proprietors; and
 - (ix) such other documents as may be prescribed;

and

- (i) cause to be continuously available and suitably placed on the parcel a receptacle suitable for purposes of postal delivery with the name of the strata company clearly shown on it; and
 - (j) effect insurance in accordance with Division 4; and
 - (k) comply with notices and orders of any competent public authority or local government requiring repairs to or work to be done in respect of the parcel or building, or anything in, on or over it.
- (2) A strata company that contravenes subsection (1)(e) or (f) commits an offence and is liable to a fine not exceeding \$400.

[Section 35 amended by: No. 58 of 1995 s. 37, 94 and 95; No. 14 of 1996 s. 4.]

35A. Roll to be kept by strata company

- (1) A strata company shall prepare and maintain a roll containing the particulars required by subsection (4).
Penalty: \$400.
- (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, a proprietor or a mortgagee of a lot.
- (4) The particulars to be entered in the roll are —
 - (a) the plan number allocated by the Registrar of Titles under section 5B(4); and
 - (b) the name and address of each proprietor; and

- (c) the address for service of any proprietor or mortgagee of a lot who has notified an address for service to the strata company; and
 - (d) the name and address of any agent of the strata company employed by it to carry out duties of the strata company in relation to the scheme; and
 - (e) the name of any lessee or tenant of a lot notified to the strata company; and
 - (f) the name and address of any mortgagee of a lot notified to the strata company under section 50(7).
- (5) A strata company shall 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 duplicate or 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 35A inserted ~~by~~: No. 58 of 1995 s. 38(1).]

36. Levy of contributions on proprietors

- (1) A strata company shall —
- (a) establish a fund for administrative expenses that is sufficient in the opinion of the 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 from time to time the amounts to be raised for the purposes described in paragraph (a); and
 - (c) raise amounts so determined by levying contributions on proprietors —
 - (i) in proportion to the unit entitlements of their respective lots; or
 - (ii) where a by-law referred to in section 42B or an order under section 99A is in force, in accordance with that by-law or order;and
 - (d) recover from any proprietor, 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 any notice or order of a competent public authority or local government in respect of that portion of the building comprising the lot of that proprietor.
- (1a) If a mortgagee of a lot has entered into possession of the lot any contribution in respect of that lot may be levied on the mortgagee.
- (2) A strata company may —
- (a) establish 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 from time to time the amounts to be raised for the purpose described in paragraph (a); and
 - (c) raise amounts so determined by levying contributions on the proprietors in proportion to the unit entitlements of their respective lots.
- (3) Except in so far as and to the extent that the by-laws of a strata company may empower the council of that company to exercise the functions in subsections (1)(a), (b) and (c) and (2), those

functions shall be performed by and in accordance with resolutions of proprietors passed at a general meeting of 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 prescribed, unless the company determines (either generally or in a particular case) that an unpaid contribution shall bear 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) shall form part of the fund to which the contribution belongs.
- (6) Subject to section 43(4), a proprietor of a lot is liable in respect of any contribution levied under this section and any interest thereon, jointly and severally with any person who was liable to pay that contribution and interest when that proprietor became the proprietor of that lot, to pay so much of that contribution and interest as was unpaid when he became the proprietor of that lot.

[Section 36 amended ~~by~~: No. 58 of 1995 s. 39; No. 14 of 1996 s. 4.]

36A. Certain provisions do not apply to companies for two-lot schemes

- (1) Despite sections 35, 35A and 36, the provisions of this Act —
- (a) specified in the table to this subsection; or
 - (b) prescribed by the regulations,
- do not apply to a strata company for a two-lot scheme.

section	Table relating to
35(1)(f)	minutes of meetings, books of account
35(1)(g)	statements of account
35(1)(i)	receptacle for postal delivery
35A(1)	roll of proprietors etc.
36(1)(a)	fund for administrative purposes.
(2)	Nothing in subsection (1) prevents a strata company for a two-lot scheme doing anything described in a provision referred to in the table to that subsection.
(3)	Despite subsection (2), a strata company for a two-lot scheme cannot establish a fund for administrative purposes, as mentioned in section 36(1)(a), except pursuant to a by-law made by it.
(4)	The operation of this section is subject to any order for the time being in force under section 103A.

[Section 36A inserted ~~by~~: No. 58 of 1995 s. 40.]

36B. Certain provisions may be excluded for 3, 4 or 5 lot schemes

- (1) Despite sections 35, 35A and 36, any provision of this Act —
- (a) specified in the table to this subsection; or
 - (b) prescribed by the regulations,

does not apply to a strata company for a scheme in which there are 3, 4 or 5 lots if the company has, by resolution without dissent, made a by-law to that effect and that by-law has effect under section 42(4).

section	Table relating to
35(1)(f)	minutes of meetings, books of account
35(1)(g)	statements of account
35(1)(i)	receptacle for postal delivery
35A(1)	roll of proprietors etc.
36(1)(a)	fund for administrative purposes.

- (2) In subsection (1) *lot* does not include a lot in a survey-strata scheme that is designated as a common property lot.

[Section 36B inserted ~~by~~: No. 58 of 1995 s. 40.]

37. Powers of strata company

- (1) A strata company may —
- (a) purchase, hire or otherwise acquire personal property for use by proprietors 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 moneys required by it in the performance of its functions; and
 - (d) secure the repayment of moneys borrowed by it, and the payment of interest thereon, by negotiable instrument, or mortgage of unpaid contributions (whether imposed or not), or mortgage of any property vested in it, or by a combination of those means; and
 - (e) invest any moneys in its administrative fund or reserve fund in any manner permitted by law for the investment of trust funds or in any investment prescribed; and
 - (f) where the strata company considers it necessary, effect a compromise of any action for the recovery of money due to the strata company; and
 - (g) make an agreement with any proprietor or occupier of a lot for the provision of amenities or services by it to that lot or to the proprietor or occupier of that lot; and
 - (h) accept or acquire a lease, licence or permit for the purpose of providing moorings or landings for vessels.
- (2) Any interest received on an investment made under subsection (1) shall form part of the fund to which the investment belongs.

38. Power of strata company to carry out work

- (1) Where a notice has been served on the proprietor of a lot by a public authority or local government requiring that proprietor to carry out any work on or in relation to that lot and the notice is not complied with, the strata company may carry out the work.
- (2) Where a proprietor, mortgagee in possession, or occupier of a lot fails or neglects to carry out any work —
 - (a) required to be carried out by him under a term or condition of a by-law referred to in section 42(8); or
 - (b) necessary to remedy a breach of the duty imposed on him by section 11(2),the strata company may carry out that work.
- (3) Where a proprietor, mortgagee in possession, or occupier of a lot fails or neglects to carry out any 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) Where the strata company carries out any work on or in relation to a lot or common property pursuant to subsection (1), other than work performed for the benefit of the building generally, or (2), it may, subject to section 43(4), recover the cost of so doing, as a debt in a court of competent jurisdiction —
 - (a) from the proprietor, mortgagee in possession, or occupier referred to in subsection (1) or (2); or
 - (b) where the work is carried out pursuant to —
 - (i) subsection (1) or (2)(b), from any person who, after the work is carried out, becomes the proprietor of the lot on or in relation to which the work was carried out; or
 - (ii) subsection (2)(a), from any person who, after the work is carried out, becomes the proprietor of the lot in respect of which the by-law referred to in subsection (2)(a) was made.

(5) Where 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) Where —

- (a) any part of a 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; or
- (b) a defect occurs in any pipes, wires, cables or ducts referred to in section 11(2)(b) within a lot,

and the defect is not due to any breach of the duty imposed on any person by section 11(2), the strata company may, at its own expense, carry out such work as is necessary to rectify the defect.

[Section 38 amended-by: No. 14 of 1996 s. 4; No. 55 of 2004 s. 1119.]

39. Power of strata company to enter

(1) For the purpose of carrying out —

- (a) any work pursuant to section 38(1), (2), (3) or (6); or
- (b) any work required to be carried out by a strata company by a notice or order of a public authority or local government; or
- (c) any work referred to in section 35(1)(c); or
- (d) any work necessary to repair or renew any pipes, wires, cables or ducts referred to in section 11(2)(b); or
- (e) any work required to be carried out by the strata company by order of a court or tribunal,

the strata company may, by its agents, servants or contractors, enter upon any part of the parcel for the purpose of carrying out the work —

- (f) in the case of an emergency, at any time; or

- (g) in any other case, at any reasonable time on notice given to an occupier of that part of the parcel.
- (2) The strata company may, by its agents, enter upon any part of the parcel for the purpose of —
 - (a) inspecting that part of the parcel; or
 - (b) ensuring that the by-laws are being observed,and may do so in the case of an emergency at any time or, in any other case, at any reasonable time on notice given to an occupier of that part of the parcel.
- (3) A person shall not obstruct or hinder a strata company in the exercise of its power under subsection (1) or (2).

Penalty: \$400.

[Section 39 amended-by: No. 58 of 1995 s. 94; No. 14 of 1996 s. 4; No. 74 of 2003 s. 112(12); No. 55 of 2004 s. 1120.]

39A. Power to terminate certain contracts for services

- (1) There is implied in every agreement to which this section applies a provision that the strata company may terminate the agreement, by notice in writing to every other party to the agreement, after 5 years have passed since the agreement was entered into.
- (2) No cause of action against any person arises from the exercise of the power referred to in subsection (1).
- (3) An agreement shall 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 an agreement if —
 - (a) it relates to the provision of services to the strata company or the proprietors, including the services of an agent in connection with the management of the common property or the performance of the functions of the strata company; and
 - (b) it is made after the commencement of section 41 of the *Strata Titles Amendment Act 1995*; and

- (c) either —
 - (i) it was entered into by the strata company when any proprietor held 50% or more of the aggregate unit entitlement of the lots; or
 - (ii) the State Administrative Tribunal has, by order made on the application of a proprietor, determined that the agreement is unfair to the proprietors of 25% or more of the aggregate unit entitlement of the lots.
- (5) The State Administrative Tribunal may, on the application of any person made in respect of an agreement, by order extend the period of 5 years provided for by subsection (1), so far as it applies to that agreement, if satisfied that the agreement —
 - (a) is fair to all proprietors; and
 - (b) will remain fair to all proprietors during the extended period.
- (6) An extended period under subsection (5) is not to exceed the term specified in the agreement or a period of 10 years from the time when the agreement was entered into, whichever is the lesser.
- (7) The provisions of Part VI apply to an application made to the State Administrative Tribunal under subsection (4)(c)(ii) or (5) 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.

[Section 39A inserted-by: No. 58 of 1995 s. 41; amended-by: No. 55 of 2004 s. 1121, 1156(1) and (3) and 1158.]

40. Change of strata company's address for service

- (1) A strata company may, in general meeting, resolve that the address registered by the Registrar of Titles for the service of notices on the strata company, shall be changed.

(2) Where —

- (a) a strata company has under subsection (1) resolved that the address for the service of notices on it shall be changed; and
- (b) notice in the prescribed form of the change of address has been lodged in the Authority's office; and
- (c) the Registrar of Titles has made such record with respect to the change of address as he considers appropriate,

the address for service of notices on the strata company shall, notwithstanding any other provision of this Act, be the address so recorded.

[Section 40 amended-by: No. 60 of 2006 s. 160(6).]

41. Change of name of strata company

(1) A strata company may by special resolution and with the approval of the Registrar of Titles resolve that the name of the scheme and, in consequence, the name of the strata company shall be changed.

(2) Where —

- (a) a strata company has under subsection (1) resolved to change its name; and
- (b) notice in the prescribed form of the change of name has been lodged in the Authority's office; and
- (c) the Registrar of Titles has recorded the change of name on the strata/survey-strata plan,

the name of the strata company shall, notwithstanding any other provision of this Act, be the name so recorded.

(3) A change of name of a strata company under this section does not operate —

- (a) to create a new legal entity; or
- (b) to prejudice or affect the identity of the body corporate constituted by the strata company or its continuity as a body corporate; or

- (c) to affect the property, or the rights or obligations, of the strata company; or
- (d) to render defective any legal proceedings by or against the strata company,

and any legal proceedings that could have been continued or commenced by or against the strata company by its former name may be continued or commenced by or against it by its new name.

[Section 41 amended-by: No. 58 of 1995 s. 42 and 95; No. 60 of 2006 s. 160(7).]

42. By-laws

- (1) A strata company may make by-laws, not inconsistent with this Act, for —
 - (a) its corporate affairs; and
 - (b) any matter specified in Schedule 2A; and
 - (c) other matters relating to the management, control, use and enjoyment of the lots and any common property.
- (2) The provisions set out in Schedules 1 and 2 shall be deemed to be by-laws of the strata company and may be amended, repealed or added to by the strata company —
 - (a) by resolution without dissent (or unanimous resolution, in the case of a two-lot scheme), in the case of Schedule 1 by-laws; or
 - (b) in accordance with any order of a court or the State Administrative Tribunal or any written law; or
 - (c) in any other case, by special resolution.
- (2a) Each by-law that is additional to the by-laws in Schedules 1 and 2 or any amendment to a Schedule 1 or Schedule 2 by-law shall be classified in the by-laws as —
 - (a) a Schedule 1 by-law; or
 - (b) a Schedule 2 by-law.

- (2b) A by-law of the kind described in items 4, 6 and 8 in Schedule 2A is classified as a Schedule 1 by-law and may only be made, amended or repealed by resolution without dissent (or unanimous resolution, in the case of a two-lot scheme) of the strata company; but if such a by-law is included in a management statement under section 5C lodged with a strata/survey-strata plan it shall be deemed to be made in accordance with this subsection.
- (2c) Despite subsection (2) but without affecting section 49, by-law 11(1) in Schedule 1 is not a by-law of a strata company for a two-lot scheme unless the strata company makes such a by-law.
- (2d) A by-law made by a strata company at the request of a public authority or a local government may be expressed to require the consent of that authority or local government to an amendment or repeal of the by-law, and any such restriction has effect according to its tenor.
- (3) No by-law, amendment or repeal of a by-law is capable of operating so as to prohibit or restrict the devolution of lots or any transfer, lease, mortgage or other dealing therewith or to destroy or modify any easement implied or created by this Act.
- (4) No amendment or repeal of a by-law or additional by-law has effect until —
- (a) the strata company has, not later than 3 months after the passing of the resolution for the amendment, repeal or additional by-law, lodged a notice of the amendment, repeal or additional by-law in the prescribed form with the Registrar of Titles, including in the case of a by-law made under subsection (8) a description of the area affected; and
 - (b) the Registrar of Titles has made a reference to the amendment, repeal or additional by-law on the appropriate registered strata/survey-strata plan.

- (4a) If a notice under subsection (4)(a) applies to the amendment or addition of a by-law of the kind described in item 8 of Schedule 2A it must be accompanied by —
- (a) a certificate given by every person who —
 - (i) has a registered interest in any lot proposed to be affected; or
 - (ii) is a caveator in respect of any such lot, certifying his consent to the proposed re-subdivision; and
 - (b) a certificate given by every person who has a registered interest in any lot the unit entitlement of which is proposed to be affected certifying his consent to the proposed allocation of unit entitlement set out in the application.
- (5) A lease of a lot or common property shall be deemed to contain an agreement by the lessee that he will comply with the by-laws in force.
- (6) Without limiting the operation of any other provision of this Act, the by-laws for the time being in force bind the strata company and the proprietors and any mortgagee in possession (whether by himself or any other person) or occupier or other resident of a lot to the same extent as if the by-laws had been signed and sealed by the strata company and each proprietor and each such mortgagee, occupier or other resident respectively and as if they contained mutual covenants to observe and perform all the provisions of the by-laws.
- (7) A proprietor or mortgagee in possession of a lot shall take all steps that are reasonable in the circumstances to ensure that every occupier or other resident of that lot complies with the by-laws for the time being in force.
Penalty: \$400.
- (8) Without limiting the generality of any other provision of this section other than subsection (1), a strata company may, with the consent in writing of the proprietor of a lot, pursuant to a resolution without dissent (or unanimous resolution, in the case

of a two-lot scheme) make, under this subsection only and not otherwise, a by-law in respect of that lot conferring on that proprietor the exclusive use and enjoyment of, or special privileges in respect of, the common property or any part of it upon such terms and conditions (including the proper maintaining and keeping in a state of good and serviceable repair of the common property or that part of the common property, as the case may be, and the payment of money by that proprietor to the strata company) as may be specified in the by-law and may, pursuant to a resolution without dissent (or unanimous resolution, in the case of a two-lot scheme), make a by-law amending or repealing any by-law made under this subsection.

- (9) After the expiration of the period of 2 years that next succeeds the making, or purported making, of a by-law referred to in subsection (8) (including a by-law so referred to that amends, adds to or repeals another by-law), it shall be conclusively presumed that all conditions and preliminary steps precedent to the making of the by-law have been complied with and performed.
- (10) Any by-law referred to in subsection (8) shall, while it remains in force, enure as appurtenant to, and for the benefit of, the lot in respect of which it was made and the proprietor, occupier and (subject to the terms of the by-law) any other resident thereof for the time being.
- (11) The proprietor for the time being of a lot in respect of which a by-law referred to in subsection (8) is in force —
- (a) is, subject to section 43(4), liable to pay to the strata company any moneys referred to in the by-law in accordance with the by-law; and
 - (b) is, unless excused by the by-law, responsible for the performance of the duty of the strata company under section 35(1)(c) in respect of the common property, or the part of the common property, to which the by-law relates.

- (12) Where a person becomes proprietor of a lot at a time when, pursuant to subsection (11)(a) or this subsection, another person is liable to pay money to the strata company, the person who so becomes proprietor is, subject to section 43(4), jointly and severally liable with the other person to pay the money to the strata company.
- (13) Any moneys payable by a proprietor to the strata company under a by-law referred to in subsection (8) or pursuant to subsection (12) may be recovered, as a debt, by the strata company in a court of competent jurisdiction.
- (14) Notwithstanding subsection (2), in the case of a scheme in which none of the lots is used or intended to be used for residential purposes, the strata company may, by special resolution, amend by-laws contained in Schedule 1 for the purpose of making special provision that in an election of the members of the council of the strata company the voting rights of the proprietors shall be proportionate to the unit entitlements of their respective lots; and any such special provisions may be further amended or repealed by special resolution of the strata company.
- (15) To the extent to which a by-law purports to prohibit or restrict —
- (a) the keeping on a lot of a dog used as a guide by a completely or partially blind proprietor, occupier or other resident of a lot; or
 - (b) the use of a dog as a guide on a lot or common property by a completely or partially blind person,

the by-law has no force or effect.

[Section 42 amended by: No. 58 of 1995 s. 43, 92, 94, 95 and 96; No. 57 of 1997 s. 115(2); No. 24 of 2000 s. 40(4) to (7); No. 55 of 2004 s. 1156(1).]

42A. By-laws may provide for penalties

- (1) By-laws made by a strata company under section 42 may provide for penalties, not exceeding the prescribed amount, for a breach of any specified provision of the by-laws.
- (2) A penalty cannot be imposed under a by-law except by order of the State Administrative Tribunal under section 103I.

[Section 42A inserted ~~by~~: No. 58 of 1995 s. 44; No. 55 of 2004 s. 1156(3).]

42B. By-laws may provide for different basis for levying contributions

- (1) By-laws made by a strata company under section 42 may provide for a method of assessing contributions to be levied on proprietors under section 36 otherwise than in proportion to the unit entitlement of their respective lots.
- (2) Such a by-law may relate to contributions to all of the expenses of the strata company or to one or more particular kinds of expenses.

[Section 42B inserted ~~by~~: No. 58 of 1995 s. 44.]

42C. Transitional provision

- (1) Subject to Schedule 4, section 42(2), as inserted by section 43(1) of the *Strata Titles Amendment Act 1995* applies also to strata companies for which a strata plan was registered after the commencement of this Act but before the commencement of section 43(1) referred to.
- (2) Schedule 4 has effect to make transitional provisions for the purposes of subsection (1).

[Section 42C inserted ~~by~~: No. 58 of 1995 s. 44.]

43. Supply of information and certificates by strata company

- (1) Upon application made in writing to a strata company by a proprietor or mortgagee of a lot, or by a person authorised in writing by such a proprietor or mortgagee, and on payment of the prescribed fee (if any), the strata company shall do such one or more of the following things as are required of it in the application —
- (a) inform the applicant of the name and address of each person who is the chairman, secretary or treasurer of the strata company or a member of the council;
 - (b) make available for inspection by the applicant or his agent and for the exercise of the rights conferred by subsection (5) —
 - (i) a copy of the schedule of unit entitlement as recorded on the strata/survey-strata plan; and
 - (ia) the roll maintained under section 35A; and
 - (ii) the notices and orders referred to in and the records kept under section 35(1)(e); and
 - (iii) the plans, specifications, drawings, certificates, diagrams and other documents delivered under section 49(3); and
 - (iv) the minutes of general meetings of the strata company and meetings of the council; and
 - (v) the record of unanimous resolutions, resolutions without dissent and special resolutions passed by the proprietors; and
 - (vi) the books of account of the strata company; and
 - (vii) a copy of the statement of accounts of the strata company last prepared by the strata company in accordance with section 35(1)(g); and
 - (viii) every current policy of insurance effected by the strata company and the receipt for the premium last paid in respect of each such policy; and

- (ix) any other record or document in the custody or under the control of the strata company; and
 - (x) the by-laws for the time being in force;
- at such time and place as may be agreed upon by the applicant or his agent and the strata company and, failing agreement, at the parcel at a time and on a date fixed by the strata company under subsection (2);
- (c) certify, as at the date of the certificate, in respect of the lot in respect of which the application is made —
 - (i) the amount of any regular periodic contributions determined by the strata company under section 36 and the periods in respect of which those contributions are payable; and
 - (ii) whether there is any amount of any contribution determined under section 36 due and payable and, if so, the amount due and payable and, in the case of a contribution levied under section 36(2), the date on which any such contribution was levied; and
 - (iii) whether there is any amount due and payable by a proprietor under a by-law referred to in section 42(8); and
 - (iv) whether there is any amount recoverable from the proprietor, mortgagee in possession or occupier of that lot under section 38(4) or (5) and, if so, the amount recoverable; and
 - (v) any amount and rate of interest payable under section 36(4) in respect of any unpaid contribution referred to in that section; and
 - (vi) whether any penalty imposed on a proprietor under section 103I is due but unpaid, and if so the amount unpaid; and
 - (vii) where the lot has a submeter for measuring the amount of gas, electricity or water supplied,

whether there is any amount due but unpaid for gas, electricity or water, and if so the amount unpaid;

- (d) certify, as at the date of the certificate —
- (i) details of insurance policies maintained by the strata company, including the name of the insurer, the policy number, the type and amount of cover, and the expiry date; and
 - (ii) whether any transfer, lease or other disposition has been entered into or exclusive use by-law made in favour of any person in respect of 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-law.

Penalty: \$400.

- (1a) On application made in writing to a strata company by a proprietor or mortgagee of a lot, or by a person authorised in writing by such a proprietor or mortgagee, the strata company may provide to the applicant copies of —
- (a) any document referred to in subsection (1)(b); or
 - (b) the roll maintained by the strata company under section 35A,

and, except for one copy of minutes of general meetings of the strata company provided to each proprietor or mortgagee of that lot, may require the applicant to pay the prescribed fee for any copy so provided.

- (2) Where an applicant and a strata company fail to reach agreement in accordance with subsection (1)(b) within 3 days after the receipt of the application by the strata company, the strata company shall forthwith send by post to the applicant a notice fixing a time, specified in the notice, between 9 a.m. and 8 p.m. on a date so specified, being a date not later than 10 days

after the receipt of the application by the strata company, for the making of the inspection referred to in subsection (1)(b).

- (3) Information referred to in subsection (1)(a), and a certificate referred to in subsection (1)(c), shall be provided by the strata company not later than 14 days after receiving the application for the information or certificate, as the case may be.
Penalty: \$400.
- (4) In favour of a person taking for valuable consideration an estate or interest in any lot, a certificate given under subsection (1)(c) by the strata company in respect of that lot is conclusive evidence, as at the date of the certificate, of the matters stated in the certificate.
- (5) A person entitled to inspect a document made available under subsection (1)(b) may take extracts from, or make a copy of, the document but may not, without the consent of the strata company, remove the document from the custody of the strata company for the purpose of inspecting the document, taking extracts therefrom, or making a copy of it.
- (6) A strata company shall comply with any reasonable request for the name and address of each person who is the chairman, secretary or treasurer of the strata company or a member of the council of the strata company.

[Section 43 amended ~~by~~ No. 58 of 1995 s. 45, 94 and 95.]

Division 2 — Councils

44. Functions of councils

- (1) The functions of a strata company shall, subject to this Act and to any restriction imposed or direction given at a general meeting, be performed by the council of the strata company.
- (2) The council of a strata company shall be constituted and shall perform its functions in accordance with and in the manner provided by the by-laws of the strata company.

45. Corporate body may be chairman, secretary, treasurer or council member

- (1) A corporation is eligible to be chairman, secretary or treasurer of the strata company or a member or alternate member of the council.
- (2) A corporation may authorise an individual to perform on its behalf any function conferred by or under this Act on the corporation as chairman, secretary or treasurer of the strata company or as a member or alternate member of the council and may revoke authority of an individual so authorised.
- (3) Where an individual performs a function that the individual is authorised to perform by a corporation under subsection (2), the function shall be deemed to be performed by the corporation.

46. Performance of functions where no council or no 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 by-laws of the strata company, the functions of the council may be performed by the proprietors in general meeting of the strata company.

47. Restrictions on powers of expenditure

- (1) Except as authorised by or under this section the council of a strata company shall not, in any one case, undertake expenditure exceeding the sum obtained by multiplying —
 - (a) a sum per lot fixed by special resolution of the strata company; or
 - (b) if no such sum is fixed, the prescribed amount per lot,by the number of lots that are the subject of the scheme.
- (2) Subsection (1) does not apply to —
 - (a) expenditure authorised in an emergency by the State Administrative Tribunal by an order made on the

- application of the council of the strata company or a person concerned; or
- (b) expenditure that is deemed to be approved under subsection (3); or
 - (c) the payment of any premium of insurance effected by or on behalf of the strata company; or
 - (d) any payment required to comply with —
 - (i) a notice or order served on the strata company by any public authority or local government; or
 - (ii) an order made with respect to the strata company by a court or tribunal;
- or
- (e) expenditure authorised by the strata company in general meeting as part of the budget of the company.
- (2a) The provisions of Part VI apply to an application made to the State Administrative Tribunal under subsection (2)(a) 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.
- (3) For the purposes of subsection (2)(b) expenditure is deemed to be approved if notice in writing of the purpose and amount of the proposed expenditure has been given to the proprietors and first mortgagees of all lots in the scheme and, within 14 days after all proprietors and first mortgagees have been given the notice, objection to the proposed expenditure has not been notified in writing to the council by —
- (a) the proprietors or first mortgagees of not less than 25% of the lots in the scheme; or
 - (b) the proprietors or first mortgagees of lots of which the total unit entitlement is at least 25% of the aggregate unit entitlement of the lots in the scheme.
- (4) References in subsection (3) to first mortgagees are to registered mortgagees who are first entitled in priority and who have given written notice of their mortgages to the strata company.

- (5) If an objection is notified under subsection (3) by a first mortgagee of a lot, any objection notified by the proprietor of that lot shall be disregarded.
- (6) Subsection (3) has effect subject to any restriction imposed on the council by the by-laws of the strata company.
- (7) Where proposed expenditure to which subsection (1) applies would exceed an amount calculated in accordance with that subsection, the council shall —
 - (a) submit the proposal for determination at a general meeting of the strata company convened for the purpose of, or for purposes which include, consideration of the proposal; and
 - (b) if the proposed expenditure is in respect of work to be performed or the purchase of personal property, submit at least 2 tenders to that meeting with the proposal.

[Section 47 inserted-by: No. 58 of 1995 s. 46(1)⁵; amended-by: No. 57 of 1997 s. 115(3); No. 55 of 2004 s. 1122.]

48. Recovery of books and records by council

- (1) A person who has possession or control of —
 - (a) any records, books of account or keys belonging to a strata company; or
 - (b) any other property of a strata company,shall, within 7 days after service on the person of notice of a resolution of the council requiring that person to do so, deliver those records, books of account, keys or that other property to a member of the council specified in the notice.
Penalty: \$400.
- (2) Nothing in subsection (1) shall be construed so as to take away or affect any just claim or lien which a person may have against or upon any records, accounts or property of a strata company.

[Section 48 amended-by: No. 58 of 1995 s. 94.]

Division 3 — Meetings

49. First annual general meeting

- (1) Within 3 months after the registration of the strata/survey-strata plan, the original proprietor, whether or not he is a proprietor at the time he does so, shall, in the prescribed manner, convene and hold a meeting of the strata company to be held within that period.

Penalty: \$2 000.

- (2) The meeting convened and held under subsection (1) shall be the first annual general meeting of the strata company.
- (3) An original proprietor shall deliver to the strata company at its first annual general meeting —
- (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 policies of insurance) obtained or received by him and relating to the parcel or building; and
 - (b) if they are in his possession or under his control, books of account and any notices or other records relating to the 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: \$2 000.

- (4) Where a meeting of the strata company convened in accordance with this section is held after the time limited by this section for the holding of the meeting, it does not on that account fail to be the first annual general meeting of the strata company.

[Section 49 amended ~~by~~ No. 58 of 1995 s. 95 and 96.]

50. Voting at meetings

- (1) Powers of voting conferred under this Act may be exercised —
 - (a) in the case of a proprietor who is an infant, by his guardian;
 - (b) in the case of a proprietor who is for any reason unable to control his property, by the person who for the time being is authorised by law to control his property.

- (2) Where the District Court, upon the application of the strata company or of a proprietor or of a mortgagee in possession, is satisfied that there is no person able to vote in respect of a lot or that the person able to vote in respect of a lot cannot be found, the District Court —
 - (a) shall, in cases where a unanimous resolution is required by this Act; and
 - (b) may, in any other case,

appoint the Public Trustee under the *Public Trustee Act 1941*, or some other fit and proper person, for the purpose of exercising such powers of voting under this Act as the District Court shall determine.

- (3) The District Court may order service of notice of an application under subsection (2) on such persons as it thinks fit or may dispense with service of that notice.

- (4) On making an appointment under subsection (2), the District Court may make such order as it thinks necessary or expedient to give effect to the appointment, including an order as to the payment of costs of the application, and may vary any order so made.

- [(5) *deleted*]

- (6) Where the interest of a proprietor in a lot is subject to a registered mortgage, a power of voting conferred on a proprietor under this Act —
 - (a) in a case where a unanimous resolution is required, shall not be exercised by the proprietor, but shall be exercised

by the mortgagee under such a mortgage first entitled in priority; and

- (b) in other cases, may be exercised by the mortgagee first entitled in priority and shall not be exercised by the proprietor when that mortgagee is present personally or by proxy.
- (7) Subsection (6) does not apply unless the mortgagee concerned has given written notice of his mortgage to the strata company.

[Section 50 amended ~~by~~ No. 58 of 1995 s. 47 and 93(1).]

50A. Disqualification from voting as proxy

- (1) Subject to subsections (2) and (3), at a meeting of a strata company, or of a council of a strata company, a person shall not vote as a proxy of another person on a motion relating to a management contract or arrangement with the strata company if the person (the *proxy*) has a financial interest in the contract or arrangement.
- (2) Subsection (1) does not apply if —
 - (a) notice of the meeting included notice of the motion and, where applicable, the particulars described in subsection (3); and
 - (b) the instrument appointing the proxy expressly authorises the proxy to vote on the motion and specifies whether the proxy is to vote for or against it.
- (3) Where the motion relates to the strata company entering into or renewing a management contract or arrangement with a person, notice of the motion shall include —
 - (a) the name of that person; and
 - (b) the duration of the proposed contract or arrangement; and
 - (c) the remuneration that is payable under it.

- (4) For the purposes of this section the proxy has a financial interest in a contract or arrangement if the proxy or his or her spouse or de facto partner —
- (a) owns shares (whether beneficially or otherwise) in a company; or
 - (b) is a member of a firm; or
 - (c) is a director or employee of a company or of a firm,
- that benefits or will benefit directly from the contract or arrangement to which the motion relates.

- (5) In this section —

management contract or arrangement means a contract or arrangement, or a proposed contract or arrangement, for the provision to the strata company of services in connection with the strata company's powers and duties under this Act.

[Section 50A inserted ~~by~~: No. 58 of 1995 s. 48; amended ~~by~~: No. 28 of 2003 s. 196.]

50B. Quorum for meeting of strata company for two-lot scheme

Subject to any order under section 103B, the proprietors of the lots in a two-lot scheme, or their respective duly appointed proxies, constitute a quorum for a general meeting of the strata company for that scheme.

[Section 50B inserted ~~by~~: No. 58 of 1995 s. 48.]

51. Relief where unanimous resolution or resolution without dissent required

- (1) In any case where under this Act a unanimous resolution or a resolution without dissent is necessary before any act may be done and that resolution is not obtained but the resolution is supported to the extent necessary for a special resolution, a person included in the majority in favour of the resolution may apply to the District Court to have the resolution as so supported declared sufficient to authorise the particular act proposed and if

the District Court so orders, the resolution shall be deemed to have been passed as a unanimous resolution or a resolution without dissent, as the case may be.

- (1a) This section does not apply to a two-lot scheme.
- (2) Notice of an application under subsection (1) shall be served on —
 - (a) every person who was entitled to exercise the power of voting conferred under this Act and did not, either in person or by proxy, vote in favour of the resolution; and
 - (b) every person whom the District Court declares to have a sufficient interest in the proceedings to require that he should be served with notice of the application,

and the District Court may direct that any person served with notice of proceedings under this subsection shall be joined as a party to the proceedings.

- (3) The District Court shall not order a party who opposes an application under this section to pay the costs of a successful applicant unless the District Court considers the actions of that party in relation to the application to have been unreasonable.

[Section 51 amended ~~by~~ No. 58 of 1995 s. 49 and 93(1).]

51A. Relief where unanimous resolution required for two-lot scheme

- (1) Where —
 - (a) under this Act a unanimous resolution is necessary before any act may be done in respect of a two-lot scheme; but
 - (b) that resolution is not obtained because the proprietors of the lots in the scheme do not agree,

a proprietor may apply to the District Court for an order under this section.

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

- (2) An order under this section is an order declaring that a resolution specified in the order is to be deemed to have been duly passed by the strata company as a unanimous resolution.
- (3) On the making of an application by a proprietor under subsection (1), the District Court may make an order under this section if it is satisfied that a proprietor has acted unreasonably in refusing to agree to the resolution or that it is in the best interests of the proprietors that the order be made.
- (4) Where a proprietor makes an application under this section the other proprietor is a party to the proceedings and shall be served with notice of the application.
- (5) Section 51(3) applies to the awarding of costs in proceedings under this section.

[Section 51A inserted ~~by~~: No. 58 of 1995 s. 50; amended ~~by~~: No. 61 of 1996 s. 22.]

52. Performance of functions by proprietors in general meeting

Where by resolution passed at a general meeting of a strata company a restriction has been imposed in relation to the performance of a function by the council of the strata company, that function may be performed to the extent that it is so restricted by the proprietors in general meeting of the strata company.

Division 4 — Insurance

Subdivision 1 — Preliminary

[Heading inserted ~~by~~: No. 61 of 1996 s. 23.]

53. Terms used

In this Division —

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

- (a) proprietors' improvements and proprietors' fixtures forming part of the building including paint and

wallpaper but excluding carpet and temporary wall, floor and ceiling coverings; and

[(b) *deleted*]

(c) anything prescribed as forming part of a building for the purposes of this definition,

but does not include —

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

(e) anything prescribed as not forming part of a building for the purposes of this definition;

replacement value in relation to a contract of insurance of a building, requires provision to be specified in the policy —

(a) for —

(i) the rebuilding of the building or its replacement by a similar building in the event of its destruction; and

(ii) the repair of damage to, or the restoration of the damaged portion of, the building in the event of its being damaged but not destroyed,

so that, in the case of destruction, every part of the rebuilt building or the replacement building and, in the case of damage, the repaired or restored portion, is in a condition no worse nor less extensive than that part or portion or its condition when that part or portion was new; and

(b) for the payment of expenses incurred in the removal of debris and the remuneration of architects, surveyors, engineers and other persons whose services are necessary as an incident to the rebuilding, replacement, repair or restoration.

[Section 53 amended ~~by~~: No. 58 of 1995 s. 51; No. 61 of 1996 s. 24.]

Subdivision 2 — Insurance in single tier strata schemes

[Heading inserted-by: No. 61 of 1996 s. 25.]

53A. Application of this Subdivision

References in this Subdivision —

- (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 *proprietor* are to a proprietor of a lot in such a scheme.

[Section 53A inserted-by: No. 61 of 1996 s. 25.]

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) 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;
 - and
 - (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.

[Section 53B inserted-by: No. 61 of 1996 s. 25.]

53C. Insurance for common property in single tier strata schemes

- (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;
- and
- (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.

[Section 53C inserted-by: No. 61 of 1996 s. 25.]

53D. Strata company's obligations where it has an insurance function in single tier strata schemes

- (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) as if they referred to that subsection.

[Section 53D inserted ~~by~~ No. 61 of 1996 s. 25.]

53E. Recovery of premium by strata company or proprietor where no administrative fund in single tier strata schemes

- (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.

[Section 53E inserted ~~by~~: No. 61 of 1996 s. 25.]

Subdivision 3 — Insurance in schemes other than single tier strata schemes

[Heading inserted ~~by~~: No. 61 of 1996 s. 26.]

54. Insurance of buildings and strata companies

- (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.

- (2) A contract of insurance entered into for the purposes of subsection (1a) may provide that, instead of the work and the payments specified in the definition of “replacement value” in section 53 being carried out or made upon the occurrence of any of the events specified in the policy, the liability of the insurer shall, upon the occurrence of any such event, be limited to an amount specified in the policy.
- (3) It is a defence to a charge of an offence against subsection (1a) for a strata company to prove that, despite having taken all reasonably practicable steps available to it to comply with that subsection, no insurer is willing to enter into a contract of insurance, on reasonable terms, that meets the obligation imposed by that subsection.
- (4) In the case of a survey-strata scheme, the obligation of the strata company under subsection (1a) applies only to a building that is common property in the scheme.

[Section 54 amended ~~by~~ No. 58 of 1995 s. 52 and 94; No. 61 of 1996 s. 27.]

Subdivision 4 — Insurance provisions applicable to all schemes

[Heading inserted ~~by~~ No. 61 of 1996 s. 28.]

54A. Where insurance cover refused, proprietor may be required to take action

- (1) A proprietor of a lot in a scheme shall ensure that the lot is not used for an activity if the proprietor has been notified in writing by the strata company for the scheme that the strata company cannot obtain insurance cover for the building, or part of it, on reasonable terms because that activity is being carried on on the lot.
- (2) The proprietor of a lot in a scheme shall comply with a notice given to the proprietor by the strata company for the scheme to carry out any work on the building on the lot, being work specified in the notice, if the notice is expressed to be given on the grounds that the strata company cannot obtain insurance

cover for the building on reasonable terms until that work has been carried out.

- (3) A proprietor may, instead of complying with subsection (1) or (2), pay a part of the premium for insurance cover if the strata company is satisfied that the amount of premium remaining to be paid by the company is an amount that the company should reasonably pay for that insurance cover.
- (4) A proprietor may, instead of complying with subsection (2), take any other step that enables insurance cover on the building to be obtained on reasonable terms.
- (5) The obligations created by this section are enforceable under section 103K.

[Section 54A inserted ~~by~~ No. 58 of 1995 s. 53.]

55. Further insurance by strata company and actions by proprietor against strata company

- (1) In addition to insurance effected by the strata company under this Division, a strata company shall effect and maintain insurance —
 - (a) in respect of any occurrence against which it is required by law to insure, including, where applicable, insurance against liability to pay compensation under the *Workers' Compensation and Injury Management Act 1981*; and
 - (b) against such other risks as the strata company may from time to time determine.

Penalty for contravention of subsection (1)(a): \$400.

[(2), (3) deleted]

- (4) A strata company may insure and keep insured the building against any occurrence other than those occurrences referred to and included in section 53D or 54(1a).
- (5) A proprietor may bring against the strata company of which the proprietor is a member any action that the proprietor might have

brought against the strata company if the proprietor had not been a member of the strata company.

[Section 55 amended-by: No. 58 of 1995 s. 54(1) and (2)⁶ and 94; No. 61 of 1996 s. 29; No. 42 of 2004 s. 174.]

55A. Proprietor liable for increased insurance premium in certain cases

- (1) If any part of an insurance premium payable by a strata company is attributable solely to the risk associated with activities carried on on a lot, the proprietor of that lot is liable to pay to the strata company on demand an amount equal to that part of the premium.
- (2) An amount payable under subsection (1) may be recovered as a debt due in a court of competent jurisdiction.

[Section 55A inserted-by: No. 58 of 1995 s. 55.]

56. Insurance by proprietor

- (1) Nothing in this Division limits any right of a proprietor to effect insurance.
- (2) Insurance effected by a proprietor does not affect, and shall not be taken into consideration in determining the amount payable to a strata company under a contract of insurance entered into between it and an insurer pursuant to this Division, notwithstanding anything contained in that contract of insurance.

56A. Proprietor may insure if strata company in default

If a proprietor considers that a strata company is in breach of any obligation to insure imposed on it by this Act, the proprietor may effect and maintain in the name of the strata company such insurance as he thinks the strata company ought to effect and maintain to meet that obligation.

[Section 56A inserted-by: No. 58 of 1995 s. 56.]

57. Insurance of mortgaged lot

- (1) Where a building is insured to its replacement value, a proprietor may effect a contract of insurance in respect of any damage to his lot in a sum equal to the amount secured at the date of any loss referred to in the policy by mortgages charged upon his lot.
- (2) Where any contract of insurance of the kind authorised by subsection (1) is in force —
 - (a) payment shall be made by the insurer under the contract to the mortgagees whose interests are noted thereon in order of their respective priorities, subject to the terms and conditions of the contract;
 - (b) subject to the terms and conditions of the contract, the insurer is liable to pay thereunder —
 - (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 charged upon the lot,whichever is the least amount;
 - (c) where the amount so paid by the insurer equals the amount necessary to discharge a mortgage charged upon the lot, the insurer is entitled to an assignment of that mortgage;
 - (d) where the amount so paid by the insurer is less than the amount necessary to discharge a mortgage of the lot, the insurer shall be 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 insurance entered into as referred to in this section shall not be liable to be brought into contribution with any other such contract of insurance except another such contract of insurance which —
- (a) is in respect of damage to the same lot; and
 - (b) relates to the same mortgage debt,
- as that referred to in the contract of insurance first-mentioned in this subsection.
- (4) Where a building is uninsured or has been insured to less than its replacement value, a proprietor may, notwithstanding any existing contracts of insurance, effect a contract of insurance in respect of damage to his lot in a sum equal to the amount secured, at the date of the loss referred to in the last-mentioned contract, by mortgages charged upon his lot and the provisions of subsection (2)(a), (b), (c) and (d) apply in respect of any payment pursuant to that contract.
- (5) Nothing in this section limits the right of a proprietor to insure against risks other than damage to his lot.

58. Insurable interest

Notwithstanding any other law relating to insurance, a strata company shall, for the purpose of effecting any insurance entered into pursuant to this Division, be deemed to have an insurable interest in the subject matter of that insurance.

59. Application of insurance moneys to rebuilding

Subject to any order made under section 28 or 31, where a strata company receives payment of moneys from an insurer in respect of the destruction of or damage to a building, those moneys shall forthwith be applied by the strata company in rebuilding, replacing, repairing or restoring the building so far as that may lawfully be effected.

Division 5 — Rates, taxes and charges

60. Delivery of plans to authorities

- (1) Within 28 days after the registration of any plan under this Act the Registrar of Titles shall 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) Within 28 days after the amendment of any plan under section 10(3) the Registrar of Titles shall deliver a copy of the amended plan to each authority referred to in subsection (1)(b).
- (3) A copy of a plan delivered under this section shall be in such form as the Registrar considers appropriate.

[(4) deleted]

[Section 60 inserted ~~by~~: No. 58 of 1995 s. 57(1)⁷; amended ~~by~~: No. 14 of 1996 s. 4; No. 25 of 2012 s. 232(2).]

61. Particulars on plan to be conclusive for rating and taxing purposes

For all purposes in relation to the making, levying, imposing, assessing or recovery of rates, charges or taxes in respect of the parcel or any part of the parcel —

- (a) the particulars shown in the certified copy of the strata/survey-strata plan, plan of re-subdivision or consolidation for a scheme or transfer delivered as required by section 60, 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 certified copy of the plan or transfer so delivered is evidence that it is the certified copy so delivered.

[Section 61 amended *by*: No. 58 of 1995 s. 58; No. 14 of 1996 s. 4.]

62. Rating on unimproved value

- (1) Where the Valuer-General values the unimproved value of a parcel in a strata plan under the *Valuation of Land Act 1978* for rating and taxing purposes, the parcel shall, notwithstanding 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 thereto, including objection to and review of the valuation, but not otherwise, the parcel and improvements thereon shall be deemed to be owned by the strata company only.
- (3) During the period from the registration of the strata/survey-strata plan 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 shall for the purposes of this section be deemed to be a valuation of the parcel made by the Valuer-General as if the strata company is owner.
- (4) Subject to subsection (5), where a local government or other authority (in this section called 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 shall 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 as shown on the registered strata plan;

- (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 proprietor of each lot comprised in the parcel is deemed 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) Where —
- (a) part only of a lot is liable to any rate, that rate shall be made and levied upon 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 shall be the value of the parcel after deducting therefrom 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 such lot.

[Section 62 amended ~~by~~: No. 58 of 1995 s. 59 and 95; No. 14 of 1996 s. 4; No. 55 of 2004 s. 1123.]

62A. 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 shall be valued as a separate parcel of land and the strata company is not liable for any 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 shall take into account any benefits and disadvantages applicable to the lot as part of a survey-strata scheme.
- (4) Where part only of a lot is liable to any rate, that rate shall be made and levied upon 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 62A inserted ~~by~~: No. 58 of 1995 s. 60; amended ~~by~~: No. 57 of 1997 s. 115(4).]

63. Rating on gross rental value

- (1) Where 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 shall, notwithstanding that or any other Act, be valued separately as a single lot.
- (2) Subject to subsection (3), where a local government or other authority (in this subsection called 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 of the parcel for any rate made and levied by the local government or the rating authority, as the case may be; and
 - (b) the proprietor of each lot comprised in the parcel is, subject to any exemptions or concession that may be applicable, liable for any rate made and levied by the rating authority.
- (3) Where part only of a lot is liable to any rate, that rate shall be made and levied upon 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 63 amended ~~by~~: No. 14 of 1996 s. 4.]

64. Proprietor may seek a review of unimproved value of parcel

- (1) Notwithstanding section 62(2) and without prejudice to the rights of objection and review conferred on the strata company, where the Valuer-General values the unimproved value of a parcel under the *Valuation of Land Act 1978* for rating and taxing purposes, each proprietor of a lot within the parcel shall be 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 proprietor were a person liable to pay a rate or tax assessed in respect of the parcel.
- (2) Upon receiving an objection to the valuation of a parcel made by a proprietor of a lot within the parcel pursuant to subsection (1), the Valuer-General —
 - (a) shall inform the strata company of the objection and the grounds upon 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 such objections together.

[Section 64 amended ~~by~~: No. 55 of 2004 s. 1124.]

65. Land tax and metropolitan region improvement tax

- (1) For all purposes in relation to the imposition, assessment or recovery of land tax or metropolitan region improvement tax in respect of the parcel in a strata plan, the following provisions have effect —
 - (a) the unimproved value of the parcel shown in the valuation shall 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 as shown on the registered strata plan; and
 - (b) the strata company is not liable in respect of the parcel for land tax or metropolitan region improvement tax; and

- (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 shall be deemed to be a separate parcel of land with an unimproved value equal to that apportioned to it under paragraph (a).
- (2) A reference in the *Land Tax Assessment Act 2002* or the *Planning and Development Act 2005* to an owner includes a proprietor of a lot.

[Section 65 amended ~~by~~: No. 58 of 1995 s. 61; No. 45 of 2002 s. 23(2) and (3); No. 38 of 2005 s. 15.]

65A. Land tax etc. for 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 shall be treated as a separate parcel of land, with an unimproved value as determined under section 62A, 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; and
 - (c) a reference in the Acts referred to in subsection (1) to an owner includes a proprietor of a lot.

[Section 65A inserted ~~by~~: No. 58 of 1995 s. 62; amended ~~by~~: No. 45 of 2002 s. 23(4); No. 38 of 2005 s. 15.]

66. Charges for water supplied

Where in relation to a scheme an authority (including a licensee as defined in the *Water Services Act 2012* section 3(1)) provides one water supply connection to all the proprietors and the

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quantity of water used by each proprietor is not measured, any charges that may become payable according to the quantity of water used shall be payable by and may be recovered by the authority from the strata company.

[Section 66 amended ~~by~~: No. 24 of 1987 s. 166; No. 58 of 1995 s. 96; No. 25 of 2012 s. 232(3).]

67. Water service charges under the *Water Services Act 2012*

For the purposes of this Division —

- (a) a statutory water service charge (as defined in the *Water Services Act 2012* section 71(1)) that applies in respect of land is to be 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 to be taken to be an authority authorised to make and levy the rate on the land.

[Section 67 inserted ~~by~~: No. 25 of 2012 s. 232(4).]

Part V — Protection of purchasers

68. Terms used

In this Part, unless the contrary intention appears —

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

original proprietor includes, in respect of a proposed lot or proposed plan, the person who upon registration of the proposed plan becomes the original proprietor;

purchaser includes an intending purchaser;

vendor includes an intending vendor.

[Section 68 inserted ~~by~~ No. 58 of 1995 s. 63⁸.]

69. Information to be given to purchaser

- (1) A purchaser of a lot or proposed lot in a scheme shall be given the notifiable information, as provided by sections 69A and 69B, before he or she signs a contract to buy the lot or proposed lot.
- (2) The vendor of a lot or proposed lot in a scheme shall ensure that subsection (1) is complied with either —
 - (a) by giving the notifiable information to the purchaser on the form referred to in subsection (3); or
 - (b) by ensuring that the notifiable information forms part of the contract.
- (3) A form or forms shall be prescribed for use by vendors in giving the notifiable information under this section.
- (4) In any civil proceedings arising out of or connected with a contract, the onus of proving that the notifiable information was duly given in accordance with this Part shall lie upon the vendor.

[Section 69 inserted ~~by~~ No. 58 of 1995 s. 63⁸.]

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69A. Notifiable information, to be given by every vendor

The notifiable information to be given under section 69 by every vendor is —

- (a) the name and address of the vendor and the purchaser; and
- (b) a copy of either the registered strata/survey-strata plan or the proposed strata/survey-strata plan complying with section 5(1)(a), (b), (d) and (e) or 5A(a) to (c), (e) and (f), as the case may require, and particularly drawing attention to information that relates especially to any lot or proposed lot to which the contract relates; and
- (c) the unit entitlement of every lot within the scheme and the aggregate unit entitlement or, if the strata/survey-strata plan has not been registered, those entitlements as proposed; and
- (d) the contents of the by-laws for the scheme that are —
 - (i) in force; or
 - (ii) resolved to be made but not yet in force by virtue of section 42(4),but only so far as they amend, repeal or add to the by-laws set out in Schedules 1 and 2; and
- (e) in the case of a proposed scheme, the proposed by-laws for the scheme but only so far as they amend, repeal or add to the by-laws set out in Schedules 1 and 2; and
- (f) any information prescribed for the purposes of this section.

[Section 69A inserted ~~by~~ No. 58 of 1995 s. 63.]

69B. Notifiable information to be given by original proprietor in certain cases

- (1) This section applies only if —
 - (a) the strata/survey-strata plan has not been registered; or

- (b) the first annual general meeting of the strata company has not been held; or
 - (c) the original proprietor —
 - (i) is the registered proprietor of 50% or more of the lots in the scheme; or
 - (ii) has votes at a general meeting of the strata company equal in value to 50% or more of the aggregate unit entitlement of the lots in the scheme.
- (2) Where this section applies, the notifiable information to be given under section 69 by a vendor who is the original proprietor is, in addition to that required by section 69A —
- (a) details of every agreement for the provision of any amenity or service to the strata company or to any part of the parcel that —
 - (i) the company or the original proprietor has entered into and that is still in operation; or
 - (ii) the original proprietor in his own right or exercising the power of the company proposes to enter into,including the terms and conditions of every such agreement, the consideration for it, and the estimated costs to the proprietor of the lot;
 - (b) particulars of any direct or indirect pecuniary interest that the vendor has in any agreement referred to in paragraph (a), other than as a proprietor;
 - (c) the estimated receipts and expenditure of the company for the period of 12 months starting with —
 - (i) the day of registration of the strata/survey-strata plan; or
 - (ii) the day of the last annual general meeting or if no such meeting has been held during the 15 months

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preceding the date of the contract, the day for settlement designated in the contract,

whichever is the later;

- (d) the estimated contributions of the proprietor under section 36(1) and (2) during the period referred to in paragraph (c);
- (e) details of every lease granted, and still in operation, or proposed to be granted to the purchaser or any other person in relation to the common property;
- (f) details of every licence, right of exclusive use and enjoyment, or special privilege granted, and still in operation, or proposed to be granted to the purchaser or any other person in relation to the common property.

[Section 69B inserted ~~by~~ No. 58 of 1995 s. 63.]

69C. Vendor to inform purchaser of full particulars of notifiable variation

- (1) The vendor under a contract to sell a lot or proposed lot shall by notice in writing given to the purchaser inform the purchaser of full particulars of any notifiable variation.
- (2) Notice under subsection (1) shall be given as soon as the vendor becomes aware of the variation.
- (3) For the purposes of subsection (1), a notifiable variation occurs if before the registration of the purchaser as proprietor of the lot or proposed lot or earlier avoidance of the contract —
 - (a) the company, or the original proprietor in his own right or exercising the power of the company —
 - (i) enters into an agreement for the provision of any amenity or service to the strata company or that is otherwise likely to affect the rights of the purchaser; or
 - (ii) varies any existing agreement of that kind whereby the rights of the purchaser are likely to be affected;

- (b) the company or the original proprietor in his own right or exercising the power of the company —
 - (i) makes a by-law; or
 - (ii) amends or repeals any by-law;
 - (c) the registered or proposed strata/survey-strata plan is varied in a material particular or the registered strata/survey-strata plan differs in a material particular from the proposed strata/survey-strata plan;
 - (d) the unit entitlement of any lot or the aggregate unit entitlement is not the same as the unit entitlement or proposed unit entitlement or the aggregate unit entitlement or proposed aggregate unit entitlement, as the case may be, that was notified under section 69A(c);
 - (e) a lease, licence, right or privilege in relation to the common property is granted or varied.
- (4) Subsection (1) does not apply if —
- (a) the vendor has by notice in writing informed the purchaser of any proposed action or matter that would be a notifiable variation under subsection (3); and
 - (b) the action or matter when completed does not differ from that described in the notice.

[Section 69C inserted ~~by~~ No. 58 of 1995 s. 63.]

69D. When purchaser may avoid contract

- (1) Subject to subsection (3), if a vendor has failed to give to a purchaser information that substantially complies with section 69 or 69C and at the time required by that section, the purchaser has a right to avoid the contract by notice in writing given to the vendor before the settlement of the contract.
- (2) If —
 - (a) a vendor gives to a purchaser information that substantially complies with section 69C and at the time required by that section; and

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- (b) the purchaser has been materially prejudiced (proof of which shall lie on him) by any matter referred to in the notice and has not agreed to be bound by that matter,

the purchaser has a right to avoid the contract by notice in writing given to the vendor within 7 working days after that information is given.
- (3) If under subsection (1) a purchaser has a right to avoid a contract but before notice of avoidance is given the vendor gives to the purchaser information that substantially complies with section 69 or 69C, the purchaser's right under subsection (1) must be exercised within 7 working days after that information is given.
- (4) If the vendor gives to the purchaser information that substantially or partially complies with section 69 or 69C within 7 working days before the settlement date designated in the contract, the purchaser —
 - (a) may, despite the contract and without incurring any penalty under it, by notice in writing, postpone the time for settlement beyond that designated settlement date by not more than 7 working days after that information is given; and
 - (b) subject to subsection (5), has a right to avoid the contract by notice in writing given to the vendor at any time before the expiration of that period and before settlement is effected.
- (5) The right conferred on a purchaser by subsection (4) does not apply if the information was given under section 69C and at the time required by that section unless the purchaser has been materially prejudiced (proof of which shall lie on him) by any matter referred to in the notice and has not agreed to be bound by that matter.

(6) In this section —

settlement means —

- (a) the time at which the purchaser pays to the vendor the purchase price, or the balance of the purchase price, in exchange for the documents of title; or
- (b) in the case of a terms contract, as defined in section 5 of the *Sale of Land Act 1970*, the time at which the purchaser becomes entitled to possession or occupation;

working days means Monday to Friday but excluding, in the case of a contract relating to land in any area of the State, a day that is a public holiday in that area or throughout the State.

[Section 69D inserted ~~by~~ No. 58 of 1995 s. 63.]

69E. Effect of avoidance

Upon the avoidance of a contract under section 69D, the vendor is liable to repay to the purchaser all moneys paid by the purchaser under the contract and such moneys shall be recoverable, by action as for a debt, by the purchaser accordingly.

[Section 69E inserted ~~by~~ No. 58 of 1995 s. 63.]

70. Holding of deposit and other contract moneys when a lot is pre-sold

- (1) No person shall sell a lot in a proposed scheme before the strata/survey-strata plan is registered under Part II unless the contract of sale provides that any deposit and all other moneys payable by the purchaser prior to the registration of the strata/survey-strata plan are to be paid to a solicitor, real estate agent or settlement agent, who shall be named or specified in the contract, to be held by that solicitor, real estate agent or settlement agent on trust for the purchaser until the strata/survey-strata plan is registered.
- (2) Any deposit and other moneys payable and paid by the purchaser prior to the registration of the strata/survey-strata plan

under any such contract as is referred to in subsection (1) shall be paid by the purchaser to the solicitor, real estate agent or settlement agent named or specified in the contract of sale.

- (3) In the event of a contravention of subsection (1) or subsection (2), the purchaser may at any time before the strata/survey-strata plan is registered avoid the sale.
- (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.

- (5) Where a purchaser avoids a sale under this section, all moneys, including the deposit, shall be recoverable by him from the solicitor, real estate agent or settlement agent or other person to whom they were paid, but the purchaser shall be liable to pay an occupation rent for any period during which he was in occupation of the lot or entitled to receive the rents and profits of the lot.

[(6), (7) *deleted*]

- (8) In this section —

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;

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 70 amended ~~by~~: No. 42 of 1986 s. 4; No. 58 of 1995 s. 64, 95 and 96; No. 61 of 1996 s. 31.]

70A. 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 or the rights and remedies conferred on a purchaser by this Part.
- (2) A purported waiver of a right, remedy or benefit conferred on a purchaser by this Part is of no effect.

[Section 70A inserted ~~by~~ No. 58 of 1995 s. 65.]

70B. Saving

Except as provided by sections 69D, 70(3) and (4) and 70A, this Part does not apply so as to render any contract illegal or void or to empower any party to avoid the contract.

[Section 70B inserted ~~by~~ No. 58 of 1995 s. 65.]

Part VI — Resolution of disputes

[Division 1 (s. 71-76) deleted ~~by~~: No. 55 of 2004 s. 1125.]

Division 2 — Applications for orders

77. How applications are made

In addition to complying with any requirements of the *State Administrative Tribunal Act 2004*, an application to the State Administrative Tribunal for relief under this Part shall —

[(a) *deleted*]

(b) comply with section 77B; and

(c) specify the order or orders that are applied for and the grounds relied on for the making of each order.

[Section 77 inserted ~~by~~: No. 58 of 1995 s. 67; amended ~~by~~: No. 55 of 2004 s. 1126 and 1156(1).]

[77A. Deleted ~~by~~: No. 55 of 2004 s. 1127.]

77B. Disputes procedures for scheme to be followed

(1) An application for an order under this Part in relation to a scheme shall be accompanied by a certificate under subsection (2) given by the applicant.

(2) The certificate must state either —

(a) that there are no relevant provisions in the by-laws of the strata company for the scheme that relate to the resolution of the matter in dispute; or

(b) that there are such provisions and the applicant has, so far as is possible, complied with them.

[Section 77B inserted ~~by~~: No. 58 of 1995 s. 68.]

78. SAT may inspect certain records

(1) Where an application is made to the State Administrative Tribunal for an order under this Part in relation to a scheme, the

strata company for the scheme has, in relation to the State Administrative Tribunal, the same duties under sections 35A and 43 as it has under those sections in relation to a proprietor.

- (2) A strata company shall not neglect or fail to perform any duty owed by it to the State Administrative Tribunal under subsection (1).

Penalty: \$500.

[Section 78 amended-by: No. 58 of 1995 s. 69 and 96; No. 55 of 2004 s. 1156(1).]

79. Notice of application to be given

[(1) deleted]

- (2) A strata company that is given notice of an application to the State Administrative Tribunal under this Part shall forthwith serve a copy of the notice on each —

- (a) proprietor; and
- (b) mortgagee who has given notice in writing of his interest to the strata company; and
- (c) occupier who would be affected if the order sought were made.

[Section 79 inserted-by: No. 58 of 1995 s. 70; amended-by: No. 55 of 2004 s. 1128.]

[Division 2A (s. 80-80E) deleted-by: No. 55 of 2004 s. 1129.]

Division 3 — Orders by State Administrative Tribunal

[Heading amended-by: No. 55 of 2004 s. 1130.]

81. Orders under this Division

- (1) The State Administrative Tribunal may make an order sought by the applicant and an order made may be expressed in terms different from the order sought, so long as it does not differ in substance from the order sought.

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- (2) An order made may include such ancillary or consequential provisions as the State Administrative Tribunal thinks fit.
- (3) The State Administrative Tribunal may order a strata company, an administrator, a proprietor, a person having an estate or interest in a lot or an occupier or other resident of a lot to do, or to refrain from doing, a specified act with respect to a parcel.
- (4) The State Administrative Tribunal may by order dismiss an application for an order.
- (5) An application may be withdrawn by the applicant at any time before an order is made.

[(6) deleted]

- (7) The State Administrative Tribunal cannot make any order for the payment of costs in connection with an application for an order except —
 - (a) when allowing an applicant to amend the application, to compensate persons for time unnecessarily spent in connection with the application; or
 - (b) under section 103H(8).

[(8), (9) deleted]

- (10) Except to the extent that the order otherwise provides, an order under this Division (not being an order for payment of money referred to in section 84(1)(a)) ceases to have any force or effect upon the expiration of the period of 2 years that next succeeds the making of the order.
- (11) Notwithstanding section 36, where an order against a strata company is made under this Division on the application of the proprietor of a lot, the strata company may not levy in respect of that lot a contribution towards the expenses of the strata company in relation to the application.

[Section 81 amended ~~by~~ No. 58 of 1995 s. 72; No. 55 of 2004 s. 1131 and 1156(2) and (3).]

82. Interim orders

- (1) In this section, *interim order* means an order made under subsection (2).
- (2) Where an applicant for an order under this Division states in his application that he requests an interim order, the State Administrative Tribunal may, if satisfied on reasonable grounds that by reason of the urgent circumstances of the case it should do so —
 - (a) make under this subsection as an interim order any order that may be made under this Division with respect to the application; and
 - (b) before the expiration of 3 months from the date on which an interim order takes effect and upon a further request made by the applicant, renew the interim order that is in force by serving notice in accordance with section 104 that the order is renewed.
- (3) An interim order may be made or renewed notwithstanding that the time within which a person may make a written submission has not expired.
- (4) An interim order made pursuant to an application for an order under this Division ceases to have effect —
 - (a) at the expiration of 3 months from the date on which it takes effect or, where the State Administrative Tribunal has renewed the interim order, at the expiration of 6 months from that date; or
 - (b) where the interim order is revoked by the Supreme Court on appeal from the State Administrative Tribunal; or
 - (c) if the State Administrative Tribunal (or the Supreme Court on appeal from the State Administrative Tribunal) —
 - (i) makes an order under this Division with respect to the application; or
 - (ii) dismisses the application.

- (5) The State Administrative Tribunal may revoke an interim order and, if it does so, shall serve notice in accordance with section 104 that the order has been revoked.

[Section 82 amended by: No. 55 of 2004 s. 1132, 1156(2) and (3) and 1158.]

83. General powers of SAT to make orders

- (1) The State Administrative Tribunal may, pursuant to an application of a strata company, an administrator, a proprietor, a person having an estate or interest in a lot or an occupier or other resident of a lot, in respect of a scheme, make an order for the settlement of a dispute, or the rectification of a complaint, with respect to the exercise or performance of, or the failure to exercise or perform, a power, authority, duty or function conferred or imposed by this Act or the by-laws in connection with that scheme on any person entitled to make an application under this subsection or on the council or the chairman, secretary or treasurer of the strata company.
- (2) Where a strata company has a discretion as to whether or not it exercises or performs a power, authority, duty or function conferred or imposed on it by this Act, it shall be deemed to have refused or failed to exercise or perform that power, authority, duty or function only if it has decided not to exercise or perform that power, authority, duty or function.
- (3) For the purposes of subsection (2), where —
- (a) application is made to a strata company to exercise a discretion referred to in that subsection; and
 - (b) the strata company does not, before the expiration of the period of 2 months that next succeeds the making of the application —
 - (i) exercise or perform a power, authority, duty or function in accordance with the application; or

- (ii) inform the applicant that it has decided not to exercise or perform the power, authority, duty or function in accordance with the application,

the strata company shall be deemed to have decided not to exercise or perform the power, authority, duty or function.

- (4) Nothing in subsection (1) empowers the State Administrative Tribunal to make an order under that subsection for the settlement of a dispute, or the rectification of a complaint, with respect to the exercise or performance of, or the failure to exercise or perform, a power, authority, duty or function conferred or imposed on the strata company by this Act where that power, authority, duty or function may, in accordance with any provision of this Act, only be exercised or performed pursuant to a unanimous resolution, resolution without dissent or a special resolution.
- (5) Nothing in this Part authorises the State Administrative Tribunal to make an order of the kind that may be made under section 28, 29, 29A or 31.
- (6) Nothing in this Part affects the generality of subsection (1), but an order in respect of any matter referred to in any other section of this Part shall not be made under this section.

[Section 83 amended by: No. 58 of 1995 s. 73, 93(1) and 96; No. 24 of 2000 s. 40(8); No. 55 of 2004 s. 1133 and 1156(1) and (2).]

84. Further powers of SAT

- (1) The State Administrative Tribunal is empowered to make an order that —
- (a) requires a party to the dispute before it to pay money not exceeding the sum of \$1 000 to a person specified in the order;
- (b) requires a party to the dispute before it to do, or refrain from doing, some specified act to which the application relates;

- (c) strikes out for want of jurisdiction the dispute before it.
- (2) An order made by the State Administrative Tribunal may direct that the order shall be complied with within a period specified in the order.
- (3) An order made by the State Administrative Tribunal that requires the payment of money may be made to take effect immediately or so as to take effect upon default being made in complying with some other order made by it.

[Section 84 amended-by: No. 55 of 2004 s. 1134 and 1156(1) and (2).]

85. Order with respect to certain consents affecting common property

Where, pursuant to an application by a proprietor for an order under this section, the State Administrative Tribunal considers that the strata company for the scheme to which the application relates has unreasonably refused to consent to a proposal by that proprietor —

- (a) to effect alterations to the common property; or
- (b) to have carried out repairs to any damage to the common property or any other property of the strata company,

it may make an order that the strata company consent to the proposal.

[Section 85 amended-by: No. 58 of 1995 s. 96; No. 55 of 2004 s. 1135 and 1156(3).]

86. Order with respect to acquisition of personal property

Where, pursuant to an application by a proprietor for an order under this section, the State Administrative Tribunal considers that an acquisition or a proposed acquisition of personal property by the strata company for the scheme to which the application relates is unreasonable, the State Administrative Tribunal may order —

- (a) that the personal property acquired be sold or otherwise disposed of by the strata company within a specified time; or
- (b) that the personal property be not acquired.

[Section 86 amended-by: No. 58 of 1995 s. 96; No. 55 of 2004 s. 1156(3).]

87. Order to acquire personal property

Where, pursuant to an application by a proprietor for an order under this section, the State Administrative Tribunal considers that the strata company for the scheme to which the application relates has unreasonably refused to acquire personal property, the State Administrative Tribunal may order the strata company to acquire the personal property.

[Section 87 amended-by: No. 58 of 1995 s. 96; No. 55 of 2004 s. 1156(3).]

88. Order to make or pursue insurance claim

Where, pursuant to an application by a proprietor for an order under this section, the State Administrative Tribunal considers that the strata company for the scheme to which the application relates has unreasonably refused to make or pursue an insurance claim in respect of damage to a building or any other property insured by the strata company under Part IV, the State Administrative Tribunal may order the strata company to make or pursue the claim.

[Section 88 amended-by: No. 58 of 1995 s. 96; No. 55 of 2004 s. 1156(3).]

89. Order varying certain rates of interest

Where, pursuant to an application by a proprietor for an order under this section, the State Administrative Tribunal considers that the strata company for the scheme to which the application relates has determined an unreasonable rate as the rate of

interest chargeable for the late payment of a contribution levied under section 36, the State Administrative Tribunal may, in respect of such contributions as are specified in the order and instead of the rate so determined, order that no interest be so chargeable or that the rate so chargeable be a rate specified in the order.

[Section 89 amended-by: No. 58 of 1995 s. 96; No. 55 of 2004 s. 1136 and 1156(3).]

90. Order to supply information or documents

Where, pursuant to an application for an order under this section, the State Administrative Tribunal considers that the strata company for the scheme to which the application relates, or the administrator for that scheme, or the chairman, secretary or treasurer of that strata company has wrongfully —

- (a) withheld from the applicant information to which he is entitled under this Act; or
- (b) failed to make available for inspection by the applicant or his agent a record or document that under this Act he is entitled to inspect,

the State Administrative Tribunal may order that strata company, administrator, chairman, secretary or treasurer to supply or make available the information or to make so available the record or document, as the case may require, to the applicant.

[Section 90 amended-by: No. 58 of 1995 s. 96; No. 55 of 2004 s. 1156(3).]

91. Order relating to animal kept contrary to by-laws

Where, pursuant to an application by a strata company, a proprietor, an administrator, a person having an estate or interest in a lot or an occupier or other resident of a lot for an order under this section, the State Administrative Tribunal considers that a person is keeping an animal on a lot or common property in contravention of the by-laws, the State Administrative

Tribunal may order that person to cause the animal to be removed from the parcel within a specified time and thereafter to be kept away from the parcel, unless the keeping of the animal on the lot or common property, as the case may be, is subsequently authorised by the by-laws.

[Section 91 amended-by: No. 55 of 2004 s. 1156(3).]

92. Order relating to animal kept pursuant to by-laws

Where, pursuant to an application by a strata company, a proprietor, an administrator, a person having an estate or interest in a lot or an occupier or other resident of a lot for an order under this section, the State Administrative Tribunal considers that an animal kept on a lot or the common property in accordance with the by-laws causes a nuisance or hazard to the proprietor, occupier or resident of another lot or unreasonably interferes with the use and enjoyment of another lot or of the common property, the State Administrative Tribunal may —

- (a) order the person keeping the animal to cause the animal to be removed from the parcel within a specified time, and thereafter to be kept away from the parcel; or
- (b) order the person keeping the animal to take, within a time specified in the order, such action as is specified in the order and, in the opinion of the State Administrative Tribunal, will terminate the nuisance, hazard or unreasonable interference.

[Section 92 amended-by: No. 55 of 2004 s. 1156(3).]

93. Order relating to by-laws

- (1) Any person entitled to vote at a meeting of a strata company (including both a first mortgagee and a proprietor who is a mortgagor of a lot) may apply to the State Administrative Tribunal for an order under this section.
- (2) An order under this section is an order for one or more of the following —

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- (a) a declaration that a by-law or an amendment or repeal of a by-law is invalid;
 - (b) the repeal of a by-law;
 - (c) the repeal of an amendment to a by-law;
 - (d) the re-instatement of —
 - (i) a by-law that was repealed or deemed by subsection (4) to be repealed; or
 - (ii) any provision of a by-law that was amended or deemed by subsection (4) to be amended.
- (3) On the making of an application under subsection (1) the State Administrative Tribunal may make an order under this section if satisfied that the by-law or the repeal or amendment of a by-law —
- (a) was made without power; or
 - (b) was not made in accordance with this Act or the regulations or any other requirement that ought to have been observed; or
 - (c) should not have been made having regard to the interests of all proprietors in the use and enjoyment of their lots or the common property.
- (4) An order under this section, when recorded under section 115, has effect according to its tenor and subject to any order with respect thereto made by a superior court; and in particular an order has effect —
- (a) where subsection (2)(a) applies, as if its terms were an exercise of the power to repeal or amend the by-laws; and
 - (b) in any other case, as if it were the exercise by the strata company of its powers in respect of by-laws.
- (5) This section does not apply with respect to a by-law made or deemed to be made under section 42(8).

[Section 93 inserted ~~by~~: No. 58 of 1995 s. 74; amended ~~by~~: No. 55 of 2004 s. 1156(1) and 1158.]

94. Order granting certain licence

- (1) Pursuant to an application by a proprietor for an order under this section, the State Administrative Tribunal may, subject to this section, order that the applicant, and any occupier or other resident of the lot of which the applicant is the proprietor, may use specified common property in such a manner, for such purposes, and upon such terms and conditions, if any, as are specified in the order.
- (2) The State Administrative Tribunal shall not make an order under subsection (1) unless satisfied —
 - (a) that the lot of which the applicant is proprietor is incapable of reasonable use and enjoyment by the proprietor, occupier, or other resident of the lot unless the order is made; and
 - (b) that the strata company has refused to grant a licence to use common property in such a manner, for such purposes, and upon such terms and conditions as would enable that proprietor or such an occupier or other resident reasonably to use and enjoy that lot.
- (3) An order under subsection (1), 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.

[Section 94 amended ~~by~~ No. 55 of 2004 s. 1156(1) and (2) and 1158.]

95. SAT may make certain by-laws

- (1) Where, pursuant to an application by a proprietor under this section, the State Administrative Tribunal considers that the strata company has unreasonably refused to make a by-law under section 42(8) with respect to any fixture or fitting to be attached to the common property, the State Administrative Tribunal may —
 - (a) by order, exercise the powers conferred on the strata company under section 42(8) with respect to the making of a by-law in relation to the fixture or fitting; and

(b) include among the terms and conditions specified in the by-law terms and conditions relating to insurance of the fixture or fitting.

(2) In making a by-law under subsection (1), the State Administrative Tribunal shall specify in the order whether or not section 42(10) is to apply to the by-law and section 42(10) shall, or shall not, apply accordingly.

[Section 95 amended ~~by~~: No. 55 of 2004 s. 1156(1) and (3).]

[96. Deleted ~~by~~: No. 58 of 1995 s. 75.]

97. Power of SAT to invalidate a resolution or election

(1) Where, pursuant to an application by a proprietor or first mortgagee of a lot for an order under this section, the State Administrative Tribunal considers that the provisions of this Act have not been complied with in relation to a meeting of the strata company, the State Administrative Tribunal may, by order —

- (a) invalidate any resolution of, or election held by, the persons present at the meeting; or
- (b) refuse to invalidate any such resolution or election.

(2) The State Administrative Tribunal shall not make an order under subsection (1) refusing to invalidate a resolution or election unless it considers —

- (a) that the failure to comply with the provisions of this Act did not prejudicially affect any person; and
- (b) that compliance with the provisions of this Act would not have resulted in a failure to pass the resolution, or have affected the result of the election, as the case may be.

[Section 97 amended ~~by~~: No. 55 of 2004 s. 1137 and 1156.]

98. Order authorising application to SAT

Where, pursuant to an application by a proprietor for an order under this section, the State Administrative Tribunal considers that the failure of a strata company to authorise by special resolution an application by that proprietor under section 16 is inequitable, the State Administrative Tribunal may, by order, exercise the function conferred on the strata company under section 16(2)(a).

[Section 98 amended ~~by~~ No. 55 of 2004 s. 1138 and 1156(3).]

99. Order for variation or manner of payment of contributions

- (1) Where, pursuant to an application by a proprietor or by a mortgagee in possession (whether by himself or another person) for an order under this section, the State Administrative Tribunal considers that any amount of contributions levied under section 36 is inadequate or excessive, or that the manner of payment of contributions is unreasonable, the State Administrative Tribunal may —
 - (a) order variation of the amount; or
 - (b) order payment of contributions in a different manner; or
 - (c) make orders under paragraphs (a) and (b).
- (2) Where an order under subsection (1) takes effect in relation to a contribution levied by a strata company that has been wholly or partly paid in respect of a lot, the strata company shall —
 - (a) where the contribution required to be paid in respect of the lot pursuant to the order is greater than the amount already paid in respect of the lot — be deemed to have determined to make a levy under section 36 of an amount equal to the difference between the amount already paid in respect of the lot and the amount of the contribution required to be paid in respect of the lot pursuant to the order; or
 - (b) where the contribution required to be paid in respect of the lot pursuant to the order is less than the amount

already paid in respect of the lot — refund to the proprietor by whom, or on whose behalf, the payment had already been made an amount equal to the difference between the amount already paid in respect of the lot and the amount of the contribution required to be paid in respect of the lot pursuant to the order.

[Section 99 amended ~~by~~ No. 55 of 2004 s. 1139 and 1156(1) and (3).]

99A. Order fixing different basis for levying contributions

- (1) A proprietor who is aggrieved by the operation of a by-law referred to in section 42B may apply to the State Administrative Tribunal for an order under this section.
- (2) An order under this section is an order —
 - (a) fixing a method of assessing contributions to be levied on proprietors under section 36 otherwise than —
 - (i) in proportion to the unit entitlements of their respective lots; or
 - (ii) in accordance with a by-law referred to in section 42B;
 - or
 - (b) that such contributions are to be levied in accordance with section 36(1)(c)(i).
- (3) An order under this section may relate to contributions to all of the expenses of the strata company or to one or more particular kinds of expenses.
- (4) On the making of an application under subsection (1), the State Administrative Tribunal may make an order under this section that appears to it to provide for a method of fixing contributions that is fair to all proprietors having regard to their use and enjoyment of the common property and any building or other improvement on the parcel.
- (5) To the extent of any inconsistency, an order under this section prevails over section 36(1)(c) or a by-law under section 42B.

- (6) 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/survey-strata plan to which it relates.
- (7) An order under this section is to be taken to be revoked or amended to the extent that it is inconsistent with a by-law, or an amendment of a by-law, subsequently made by the strata company by resolution without dissent (or unanimous resolution, in the case of a two-lot scheme) and of effect under section 42(4).

[Section 99A inserted ~~by~~: No. 58 of 1995 s. 76; amended ~~by~~: No. 24 of 2000 s. 40(9); No. 55 of 2004 s. 1140 and 1156(1) and (3).]

100. Order where voting rights denied or due notice of item of business not given

- (1) Where, pursuant to an application by a person under this section, the State Administrative Tribunal is satisfied that a particular resolution would not have been passed at a general meeting of a strata company but for the fact that the applicant —
 - (a) was improperly denied a vote on the motion for the resolution; or
 - (b) was not given due notice of the item of business pursuant to which the resolution was passed,the State Administrative Tribunal may order that the resolution be treated as a nullity on and from the date of the order.
- (2) An application for an order under subsection (1) may not be made later than 30 days after the day of the meeting at which the resolution was passed.
- (3) Where —
 - (a) an order under subsection (1) is made in respect of a resolution making a by-law or amending or repealing a by-law; and
 - (b) the by-law made or amended by that resolution is in force; and

(c) the order is recorded as provided by section 115, the by-laws shall, subject to their having been or being amended, added to or repealed under section 42 and to any order with respect to the order under subsection (1) made by a superior court, have force and effect on and from the date the order is so recorded to the same extent as they would have had if the resolution had not been passed.

[Section 100 amended-by: No. 55 of 2004 s. 1156(1) and (3).]

101. Order varying amount of insurance to be provided

Where, pursuant to an application by a proprietor or a mortgagee of a lot for an order under this section, the State Administrative Tribunal considers that the amount for which the strata company for the scheme concerned has insured under section 54 or 55(1)(b) is not reasonable, the State Administrative Tribunal may order the strata company to vary that amount to a specified amount.

[Section 101 amended-by: No. 58 of 1995 s. 96; No. 55 of 2004 s. 1156(1) and (3).]

102. Order appointing administrator

(1) Where —

- (a) in consequence of the making of an order under this Part a duty is imposed on a strata company; or
- (b) a duty is otherwise imposed by this Act or the by-laws on a strata company; or
- (c) a duty is imposed by this Act or the by-laws on the chairman, secretary or treasurer of a strata company or on the council of a strata company; or
- (d) a judgment debt is owed by a strata company,

the State Administrative Tribunal may —

- (e) in the case referred to in paragraph (a), on the application of the person who obtained the order so referred to; or

- (f) in a case referred to in paragraph (b) or (c), on the application of a person having an estate or interest in a lot the subject of the scheme concerned; or
- (g) in the case referred to in paragraph (d), on the application of the judgment creditor,

by order appoint an administrator (being a person who has consented in writing to the appointment) to perform that duty and any other duty specified in the order or to pay that judgment debt, as the case may require.

- (2) If it appoints an administrator under subsection (1), the State Administrative Tribunal may also order that the administrator shall have and may exercise and perform —
 - (a) all of the powers, authorities, duties and functions of the strata company for the parcel to which the order relates or of the chairman, secretary or treasurer of that strata company or the council of that strata company; or
 - (b) any one or more of those powers, authorities, duties or functions as specified in the order; or
 - (c) all of those powers, authorities, duties and functions except those specified in the order.
- (3) An order made under this section may be revoked or varied by the State Administrative Tribunal upon the application of the administrator or a person entitled to apply for an order of the kind sought to be revoked or varied.
- (4) Where the State Administrative Tribunal makes an order under subsection (1) —
 - (a) no person other than the administrator appointed by the order may, while that administrator holds office, exercise or perform any power, authority, duty or function which the administrator is authorised to exercise or perform by that order or an order under subsection (2); and

- (b) any act or thing done or suffered by that administrator in the exercise or performance of such a power, authority, duty or function 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 exercise or perform the power, authority, duty or function.
- (5) The appointment of an administrator under this section may be made upon such terms and conditions (including terms and conditions as to remuneration by the strata company and the duration of the appointment) as are specified in the order making the appointment.
- (6) An administrator appointed under subsection (1) who exercises or performs a power, authority, duty or function pursuant to an order under subsection (1) shall, forthwith after its exercise or performance —
 - (a) make a written record specifying the power, authority, duty or function and the manner of its exercise or performance; and
 - (b) serve the record on the strata company for the scheme to which the order relates.

[Section 102 amended-by: No. 58 of 1995 s. 96; No. 55 of 2004 s. 1141 and 1156(1).]

103. Order calling first annual general meeting of strata company

- (1) If the first annual general meeting of the strata company is not convened in accordance with section 49 or, having been so convened, is not held, the State Administrative Tribunal may, pursuant to an application by the strata company, a proprietor or a mortgagee of a lot, appoint by order a person to convene a meeting of the strata company within such time as may be specified in the order and the meeting convened by that person shall be deemed to be the meeting convened under that section.

- (2) At any time after the meeting convened under subsection (1) has been held, the State Administrative Tribunal may, pursuant to an application made by a proprietor or a mortgagee of a lot, appoint by order a person, nominated by the proprietor or mortgagee, who has consented to that nomination —
- (a) if there is not a council of the strata company, to convene a meeting of the strata company within such time as may be specified in the order and a meeting so convened shall, for the purpose of the election of a council, be deemed to be the first annual general meeting of the strata company; or
 - (b) if there is not a chairman, secretary and treasurer of the council of the strata company, to convene a meeting of the council of the strata company within such time as may be specified in the order and a meeting so convened shall be deemed to have been convened by that council.
- (3) An order made under subsection (1) or (2) may include such ancillary or consequential provisions as the State Administrative Tribunal thinks fit.
- (4) Notwithstanding Schedule 1, where an order made under subsection (1) or (2) so provides —
- (a) the person appointed by the order to convene a meeting of a strata company shall preside at the meeting and, while he so presides, shall be deemed to be the chairman of the strata company; and
 - (b) notice of that meeting may be given in the manner specified in the order.
- (5) Where a meeting of the strata company convened in accordance with this section is held after the time limited under this section for the holding of the meeting, it does not on that account fail to be the first annual general meeting of the strata company.
- (6) An original proprietor who has failed to convene and hold a meeting of the body corporate in accordance with section 49 remains liable to the penalty provided by that section

notwithstanding that an order is made under subsection (1) or that a meeting is convened and held pursuant to such an order.

[Section 103 amended-by: No. 55 of 2004 s. 1156(1) and (3).]

103A. Order for compliance, despite s. 36A

- (1) A proprietor of a lot in a two-lot scheme may apply to the State Administrative Tribunal for an order under this section.
- (2) An order under this section is an order that, despite subsection (1) of section 36A, one or more of the provisions in the Table to that subsection apply to the strata company for the two-lot scheme.
- (3) On the making of an application under subsection (1), the State Administrative Tribunal may make an order under this section if satisfied that, having regard to the interests of all proprietors, the provision or provisions should apply to the strata company.
- (4) 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/survey-strata plan to which it relates.
- (5) An order under this section is to be taken to be revoked or amended to the extent that it is inconsistent with a by-law, or an amendment of a by-law, subsequently made by the strata company by unanimous resolution and of effect under section 42(4).

[Section 103A inserted-by: No. 58 of 1995 s. 77; amended-by: No. 24 of 2000 s. 40(10); No. 55 of 2004 s. 1156(1) and 1158.]

103B. Order to enable quorum in two-lot scheme

- (1) Where a proprietor of a lot in a two-lot scheme (the *proprietor in default*) has failed or refused to attend a general meeting of the strata company, the proprietor of the other lot may apply to the State Administrative Tribunal for an order under this section.

- (2) An order under this section is an order appointing a fit and proper person to exercise such powers of voting under this Act in respect of the lot of the proprietor in default as the State Administrative Tribunal shall specify in the order.
- (3) On the making of an application by a proprietor under subsection (1), the State Administrative Tribunal may make an order under this section if satisfied that the proprietor in default has acted unreasonably in refusing to attend a general meeting of the strata company.

[Section 103B inserted ~~by~~: No. 58 of 1995 s. 77; No. 55 of 2004 s. 1156(1) and (3) and 1158.]

103C. Order making resolution for two-lot scheme

- (1) Where a resolution, including a special resolution, for which an order under this section may be made has been proposed by a proprietor of a lot in a two-lot scheme for passing by the strata company for the scheme but has been defeated, the proprietor may apply to the State Administrative Tribunal for an order under this section.
- (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.
- (3) On the making of an application by a proprietor under subsection (1), the State Administrative Tribunal may make an order under this section if satisfied that the other proprietor has acted unreasonably in refusing to agree to the resolution.

[Section 103C inserted ~~by~~: No. 58 of 1995 s. 77; amended ~~by~~: No. 61 of 1996 s. 32; No. 55 of 2004 s. 1156(1) and (3) and 1158.]

103D. Order cancelling special resolution

- (1) Where a special resolution has been passed by a strata company for a scheme in which there are 3, 4 or 5 lots a proprietor who did not vote, either personally or by proxy, in support of the resolution may apply to the State Administrative Tribunal for an order under this section.
- (2) An application under subsection (1) cannot be made by a proprietor later than —
 - (a) the 28th day after the day of the meeting at which the special resolution was passed; or
 - (b) if any vote in support of the resolution was cast under section 3B(5), the 56th day after the day of the meeting or the 28th day after service of notice of passing of the special resolution on the proprietor, whichever first occurs.
- (3) An order under this section is an order declaring that a special resolution specified in the order is to be deemed not to have been passed by the strata company.
- (4) On the making of an application by a proprietor under subsection (1), the State Administrative Tribunal may make an order under this section if satisfied that the other proprietors have acted unreasonably in passing the special resolution.
- (5) In subsection (1) *lot* does not include a lot in a survey-strata scheme that is designated as a common property lot.

[Section 103D inserted ~~by~~ No. 58 of 1995 s. 77; No. 55 of 2004 s. 1156(1) and (3) and 1158.]

103E. Order for termination of contract for services to strata company

- (1) A strata company for a scheme, or a proprietor of a lot in a scheme, may apply to the State Administrative Tribunal for an order under this section.

- (2) An order under this section is an order —
- (a) terminating; or
 - (b) shortening the term of,
- an agreement to which this section applies made between the strata company and another person.
- (3) On the making of an application under subsection (1), the State Administrative Tribunal may make an order under this section if satisfied that the agreement —
- (a) is unfair to the proprietors of 25% or more of the aggregate unit entitlement of the lots in the scheme; or
 - (b) is for an excessively long term.
- (4) This section applies to an agreement if —
- (a) it relates to the provision of services to the strata company or the proprietors; and
 - (b) it is made before the commencement of section 77 of the *Strata Titles Amendment Act 1995*.
- (5) An order under this section may include an order for the payment of money by any party to the agreement to another party for the purpose of adjusting the position or rights of the parties consequentially on the termination or shortening of the term of the agreement.

[Section 103E inserted by: No. 58 of 1995 s. 77; No. 55 of 2004 s. 1156(1) and 1158.]

103F. Order dispensing with approval under s. 7(2) or 7A(2)

- (1) A proprietor of a lot who has applied for but not obtained an approval under section 7B may apply to the State Administrative Tribunal for an order under this section.
- (2) An order under this section is an order declaring that the approval required under section 7 or 7A, as the case may be, is to be deemed to have been given by the proprietor or the strata company.

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- (3) On the making of an application under subsection (1), the State Administrative Tribunal may make an order under this section if satisfied that the approval —
- (a) should have been given under section 7 or 7A, as the case may be; but
 - (b) has been unreasonably withheld,
- by the proprietor or the strata company.
- (4) If —
- (a) a proprietor has made an application to a strata company under section 7B; and
 - (b) the application has been considered at a general meeting at which no vote was passed against the application,
- the proprietor may make a conditional application for an order under this section.
- (5) The State Administrative Tribunal cannot make an order on a conditional application unless a proprietor, voting in accordance with section 3AC(2), casts a vote against the application referred to in subsection (4)(a) nor until the expiration of 35 days after the meeting.

[Section 103F inserted ~~by~~: No. 58 of 1995 s. 77; amended ~~by~~: No. 61 of 1996 s. 5; No. 55 of 2004 s. 1142, 1156(1) and 1158.]

103G. Order granting relief for breach of s. 7(2)

- (1) An application to the State Administrative Tribunal for a finding and an order under this section may be made —
- (a) by the proprietor of a lot in a two-lot scheme; or
 - (b) in the case of any other scheme, by the strata company.
- (2) A finding under this section is a finding that the proprietor of a lot in the scheme has committed a breach of section 7(2).

- (3) An order under this section is an order that the proprietor —
- (a) stop carrying out any work or any specified work in breach of subsection (2) of section 7; or
 - (b) within a specified time, pull down, remove, or alter anything or any specified thing that is in place as a result of work done in breach of that subsection,
- or an order under both of those paragraphs.
- (4) On the making of an application under subsection (1), the State Administrative Tribunal shall —
- (a) make a finding under this section if satisfied that a breach of section 7(2) has occurred;
 - (b) make an order under this section unless satisfied that the work done or intended to be done will not cause any significant inconvenience or detriment to the other proprietors.

[Section 103G inserted ~~by~~ No. 58 of 1995 s. 77; amended ~~by~~ No. 55 of 2004 s. 1156(1) and 1158.]

103H. Order for variation of unit entitlement

- (1) An application to the State Administrative Tribunal for an order under this section may be made —
- (a) by the proprietor or a registered mortgagee of a lot in a scheme; or
 - (b) by the strata company for the scheme.
- (2) An order under this section is an order amending the schedule of unit entitlement registered in respect of the scheme in a manner that the State Administrative Tribunal thinks appropriate.
- (3) On the making of an application under subsection (1), the State Administrative Tribunal may make an order under this section if satisfied that —
- (a) the proportion that the unit entitlement of any lot in the scheme bears to the aggregate unit entitlement of all lots

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in the scheme is not consistent with the proportion that the value of that lot bears to the aggregate value of all lots in the scheme; and

- (b) that the lack of consistency is sufficiently great as to be unfair or anomalous.
- (4) References in subsection (3)(a) to *value* are to —
- (a) capital value as defined in the *Valuation of Land Act 1978*, in the case of lots in a strata scheme; and
 - (b) site value as defined in that Act, in the case of lots in a survey-strata scheme.
- (5) An order under this section is of no effect until a copy of the order has been lodged with the Registrar of Titles under section 115 and he has made the amendment required by subsection (7).
- (6) Upon the lodgement of a copy of an order certified by the executive officer of the State Administrative Tribunal as a true copy, the Registrar of Titles shall amend the schedule of unit entitlement registered in respect of the scheme in the prescribed manner.
- (7) When the schedule is so amended the share of a proprietor in common property vested in the proprietor pursuant to the amended schedule shall by operation of law be subject to any encumbrance registered or caveat lodged with the Registrar of Titles against his lot, and every such encumbrance or caveat is deemed to be amended accordingly.
- (8) The State Administrative Tribunal may order a party who opposes an application under this section to pay the costs of a successful applicant if the State Administrative Tribunal considers the actions of that party in relation to the application have been unreasonable.

[Section 103H inserted ~~by~~ by No. 58 of 1995 s. 77; amended ~~by~~ by No. 55 of 2004 s. 1143, 1156 and 1158.]

103I. Order for payment of penalty

- (1) A strata company for a scheme may apply to the State Administrative Tribunal for an order under this section.
- (2) An order under this section is an order that a proprietor shall pay to the strata company one or both of the following —
 - (a) a specified sum by way of penalty for a breach of a by-law;
 - (b) the company's costs of making the application.
- (3) On the making of an application under subsection (1), the State Administrative Tribunal may make an order under this section in respect of a by-law if satisfied that —
 - (a) the by-law specifies a penalty for breach of it; and
 - (b) the strata company has authorised the application; and
 - (c) the proprietor has wilfully and persistently breached the by-law.
- (4) The State Administrative Tribunal cannot order an amount exceeding the prescribed amount to be paid by way of penalty under subsection (2)(a).

[Section 103I inserted by: No. 58 of 1995 s. 77; No. 55 of 2004 s. 1156 and 1158.]

103J. Order for exemption from s. 54 or 55(1)

- (1) An application to the State Administrative Tribunal 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.

- (2) An order under this section is an order exempting the strata company from the obligation to insure imposed upon it by section 54 or 55(1), or both of those provisions, either generally or in a particular respect.
- (3) On the making of an application under subsection (1), the State Administrative Tribunal may make an order under this section if satisfied that the exemption will not be against the interests of any proprietor.
- (4) 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/survey-strata plan to which it relates.
- (5) An order under this section is to be taken to be revoked or amended to the extent that it is inconsistent with a by-law, or an amendment of a by-law, subsequently made by the strata company by resolution without dissent (or unanimous resolution, in the case of a two-lot scheme) and of effect under section 42(4).

[Section 103J inserted ~~by~~: No. 58 of 1995 s. 77; amended ~~by~~: No. 61 of 1996 s. 33; No. 24 of 2000 s. 40(11); No. 74 of 2003 s. 112(14); No. 55 of 2004 s. 1156(1) and 1158.]

103K. Order for compliance with s. 54A

- (1) A strata company for a scheme may apply to the State Administrative Tribunal for an order under this section against a proprietor of a lot in that scheme.
- (2) An order under this section is an order that a proprietor of a lot —
 - (a) ensure that the lot is not used for a specified activity contrary to a notice given to the proprietor by the strata company under section 54A(1); or
 - (b) carry out any specified work required by a notice given under section 54A(2).

- (3) On the making of an application for an order referred to in subsection (2)(a) against a proprietor of a lot, the State Administrative Tribunal may make the order if satisfied that —
- (a) a notice referred to in section 54A(1) has been served on the proprietor; and
 - (b) section 54A(3) does not apply; and
 - (c) the strata company cannot obtain insurance cover for the building, or a part of it, on reasonable terms because of the activity being carried on on the lot.
- (4) On the making of an application for an order referred to in subsection (2)(b) against a proprietor of a lot, the State Administrative Tribunal may make the order if satisfied that —
- (a) a notice referred to in section 54A(2) has been served on the proprietor; and
 - (b) section 54A(3) or (4) does not apply; and
 - (c) the strata company cannot obtain insurance cover for the building, or a part of it, on reasonable terms until work is carried out by the proprietor on the building on the lot.
- (5) An order referred to in subsection (2)(b) shall specify a time by which the work is to be carried out.
- (6) An order may be made under this section notwithstanding the terms of any lease, licence or tenancy agreement between a proprietor and any other person, and any such lease, licence or agreement is modified to the extent necessary to enable the proprietor to comply with such an order.

[Section 103K inserted ~~by~~: No. 58 of 1995 s. 77; amended ~~by~~: No. 55 of 2004 s. 1156(1) and (3) and 1158.]

103L. Order to contribute to insurance premium paid by proprietor

- (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 the State Administrative Tribunal 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) An order under this section is an order —
- (a) varying the amount of contributions levied under
section 36 in a way that the State Administrative
Tribunal considers necessary to ensure that the cost of
any premium or other charge referred to in
subsection (1) falls fairly on all proprietors of lots in the
scheme; or
 - (b) requiring the strata company to allow the applicant a
credit, against contributions payable by the proprietor,
for any premium or other charge paid by him; or
 - (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) On the making of an application under subsection (1) the State
Administrative Tribunal may make an order under this section if
satisfied that the applicant 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.
- (4) The amount of a contribution required to be paid by a proprietor
pursuant to an order under this section shall be deemed to have

been levied on that proprietor by the strata company under section 36(1)(c).

[Section 103L inserted-by: No. 58 of 1995 s. 77; amended-by: No. 61 of 1996 s. 34; No. 55 of 2004 s. 1156(1) and (3) and 1158.]

103M. Order as to resolution under s. 21F or 21Q

- (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 the State Administrative Tribunal 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 State Administrative Tribunal may make an order under this section if satisfied that it is fair to all of the proprietors in the scheme to do so.

[Section 103M inserted-by: No. 61 of 1996 s. 35; No. 55 of 2004 s. 1156(1) and (3) and 1158.]

103N. Order for extension of period for reinstatement of building under s. 3AB(2)

- (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 the State Administrative Tribunal 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 State Administrative Tribunal may make an order under this section if satisfied that there are reasonable grounds for a delay in completing the reinstatement.

[Section 103N inserted ~~by~~ No. 61 of 1996 s. 35; No. 55 of 2004 s. 1156(1) and (3) and 1158.]

103O. Order for extension of period for reinstatement of building under regulations

- (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) authorise the State Administrative Tribunal to extend the period allowed for reinstatement,

the proprietor or a registered mortgagee of the lot that includes the part may apply to the State Administrative Tribunal 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 State Administrative Tribunal may make an order under this section if satisfied that there are reasonable grounds for a delay in completing the reinstatement.

[Section 103O inserted ~~by~~: No. 61 of 1996 s. 35; amended ~~by~~: No. 55 of 2004 s. 1156(1) and (3) and 1158.]

103P. Order reversing the effect of s. 21M

- (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 the State Administrative Tribunal 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 State Administrative Tribunal may make an order under this section if satisfied that —
 - (a) the applicant was unable because of exceptional circumstances to lodge an objection under section 21O; and
 - (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.

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- (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.

[Section 103P inserted ~~by~~: No. 61 of 1996 s. 35; amended ~~by~~: No. 55 of 2004 s. 1156(1) and (3) and 1158.]

103Q. Order rectifying failure to give notice under s. 123A

- (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 the State Administrative Tribunal 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 State Administrative Tribunal may make an order under this section if 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; and
 - (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.

[Section 103Q inserted ~~by~~ No. 61 of 1996 s. 35; amended ~~by~~ No. 55 of 2004 s. 1156(1) and (3) and 1158.]

103R. Order rectifying failure to give notice under s. 123C

- (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 the State Administrative Tribunal 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 State Administrative Tribunal may make an order under this section if 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; and
 - (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 103R inserted ~~by~~: No. 61 of 1996 s. 35; amended ~~by~~: No. 55 of 2004 s. 1156(1) and (3) and 1158.]

104. Copy of order to be served

- (1) A copy of an order by the State Administrative Tribunal shall be served on —
- (a) the strata company for the scheme to which the order relates; and
 - (b) the applicant for the order; and
 - (c) any person who was entitled to make and made a written submission to the State Administrative Tribunal in connection with the application; and
 - (d) any person against whom the order was sought and any other person who by the order is required to do or to refrain from doing a specified act.
- (2) Each copy of the order served under subsection (1) shall be accompanied by a statement setting out the reasons for the State Administrative Tribunal's decision.
- (3) In this section, **order** includes a variation of an order, an interim order and a renewal or revocation of an interim order.

[Section 104 amended ~~by~~: No. 58 of 1995 s. 96; No. 55 of 2004 s. 1144 and 1156(3).]

Division 4 — Appeals

[Heading amended ~~by~~: No. 42 of 1986 s. 5.]

[105-107. Deleted ~~by~~: No. 55 of 2004 s. 1145.]

[108, 109. Deleted ~~by~~: No. 42 of 1986 s. 6.]

[110. Deleted ~~by~~: No. 55 of 2004 s. 1146.]

111. Expenses of strata company on appeal

- (1) Notwithstanding section 36, where the strata company is the respondent to a successful appeal to the Supreme Court from the State Administrative Tribunal by the proprietor of a lot, the strata company may not levy in respect of that lot a contribution towards the expenses of the strata company in relation to the appeal.

[(2) deleted]

[Section 111 amended ~~by~~: No. 42 of 1986 s. 8; No. 55 of 2004 s. 1147.]

[112. Deleted ~~by~~: No. 42 of 1986 s. 9.]

113. Copy of order to be served

[(1) deleted]

- (2) Where an order has been made by the Supreme Court on appeal from the State Administrative Tribunal, the executive officer of the State Administrative Tribunal shall cause a copy of the order to be served on —

(a) the strata company for the scheme to which the order relates;

(b) the appellant;

[(c) deleted]

(d) any person who by the order is required to do or to refrain from doing a specified act.

[Section 113 amended ~~by~~: No. 42 of 1986 s. 10; No. 58 of 1995 s. 96; No. 55 of 2004 s. 1148 and 1156(1) and (3).]

Division 5 — Miscellaneous

114. Effect of certain orders

- (1) The terms of an order made under section 85, 86, 87, 89, 99, or 100 (other than section 100(3)(a)) or under section 101 or an

order made under section 83 in which the State Administrative Tribunal declares that it is to have effect as a decision of a strata company shall be deemed to be a resolution passed by the strata company in respect of the scheme to which the order relates.

- (2) Upon service upon it of a copy of an order referred to in subsection (1), the strata company shall cause the terms of the order to be recorded in its minute book.
- (3) Except in the case of a unanimous resolution, a resolution passed by a strata company has no force or effect if it purports to rescind or amend a resolution deemed by subsection (1) to have been passed by the strata company.
- (4) Where an order referred to in subsection (1) specifies a period during which a resolution passed by the strata company has no force or effect if it purports to alter the effect of that order, such a resolution has no force or effect if it is passed during that period —
 - (a) unless it is a unanimous resolution; or
 - (b) unless, upon an application made as referred to in subsection (5), the State Administrative Tribunal makes an order under this paragraph authorising the submission to a general meeting of the strata company of a motion for that resolution.
- (5) An application for an order under subsection (4)(b) —
 - (a) may be made by any person who, if the application for the order referred to in subsection (1) were made at the time the application referred to in this subsection is made, would be entitled to make the application for the order referred to in subsection (1); and
 - (b) shall specify the order sought.

[Section 114 amended ~~by~~ No. 58 of 1995 s. 96; No. 55 of 2004 s. 1149 and 1156(1) and (3).]

115. Recording of certain orders

- (1) Where —
- (a) an order is made under section 93, 94, 99A, 103A, 103H, 103J, 103P, 103Q or 103R; or
 - (b) an order is directed by the State Administrative Tribunal to be recorded under this section,

a copy of the order certified by the executive officer of the State Administrative Tribunal as a true copy shall be lodged in the Authority's office together with the prescribed fee.

- (2) The person who applied for the order shall see to it that subsection (1) is complied with but if he fails to do so any other person may lodge the order together with the prescribed fee.
- (3) The Registrar of Titles shall record an order lodged under subsection (1) on the registered strata/survey-strata plan.

[Section 115 inserted ~~by~~: No. 58 of 1995 s. 79; amended ~~by~~: No. 61 of 1996 s. 36; No. 55 of 2004 s. 1150; No. 60 of 2006 s. 160(8).]

[116-120. Deleted ~~by~~: No. 55 of 2004 s. 1151.]

121. SAT not to have jurisdiction where title to land in question

Notwithstanding any other provision of this Part, the State Administrative Tribunal shall not have jurisdiction under this Part in any case in which the title to land is in question otherwise than for the purpose of determining any matter before the State Administrative Tribunal and any determination made by the State Administrative Tribunal shall not have any force or effect except as provided by this Act.

[Section 121 amended ~~by~~: No. 55 of 2004 s. 1156(1) and (3).]

Part VII — Miscellaneous

122. Other rights and remedies not affected by this Act

- (1) Nothing in this Act derogates from any rights or remedies that a strata company, a proprietor or mortgagee of a lot, an administrator, a person having an estate or interest in a lot or an occupier may have in relation to any lot or the common property apart from this Act.
- (2) Where a court in which any proceedings to enforce any 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 Part VI makes adequate provision for the enforcement of those rights or remedies, the court shall order the plaintiff to pay the defendant's costs in such amount as may be determined by the court.

122A. 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 or re-subdivided under this Act where that subdivision or re-subdivision would result in there being a caravan park on more than one lot, a camping ground on more than one lot or a caravan park and camping ground on more than one lot.

- (2) Despite subsection (1), land referred to in subsection (1)(a) may be re-subdivided where that re-subdivision would not result in the land being re-subdivided into more lots used or proposed to be used as, or as part of, a caravan park or camping ground.

s. 123

- (3) In this section *caravan park* and *camping ground* have the same meaning as they have for the purposes of the *Caravan Parks and Camping Grounds Act 1995*.

[Section 122A inserted as section 123A ~~by~~: No. 34 of 1995 s. 33 and redesignated as 122A ~~by~~: No. 10 of 1998 s. 66.]

123. Dividing fences

- (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*.
- (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.

[Section 123 inserted ~~by~~: No. 61 of 1996 s. 37.]

123A. Transitional provision as to dividing fences

- (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

s. 123B

- (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).

[Section 123A inserted ~~by~~ No. 61 of 1996 s. 37.]

123B. Internal fencing

- (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; and
 - (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.

[Section 123B inserted ~~by~~ No. 61 of 1996 s. 37.]

123C. Transitional provision as to internal fencing

- (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
- (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.

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- (7) This section has effect subject to —
- (a) any order under section 103R; and
 - (b) any by-law of the strata company.

[Section 123C inserted-by: No. 61 of 1996 s. 37.]

124. Notice of application for order under s. 28, 29 or 31

- (1) The District Court may, in respect of any proceedings on an application for an order under section 28, 29 or 31, 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 rules of court, the District Court shall not make an order referred to in subsection (1)(b) in respect of any person unless the District Court 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 upon that person without expense disproportional to the value, if any, of his interest.

[Section 124 amended-by: No. 58 of 1995 s. 82 and 93(1).]

125. Service of documents on strata company, proprietors and others

- (1) A summons or other legal process may be served on a strata company by leaving it with the chairman or secretary of the strata company or with any member of the council or with every proprietor of a lot.
- (2) A document other than a document referred to in subsection (1) may be served on a strata company —
- (a) by leaving it with any person referred to in subsection (1) or in the receptacle provided by the strata company in accordance with section 35(1)(i); or

- (b) by posting it, by prepaid mail, to the strata company at its address recorded on the registered strata/survey-strata plan or recorded by the Registrar of Titles under section 40(2).
- (3) Subject to this Act, a notice or other document required or authorised by this Act or the by-laws to be served by the State Administrative Tribunal, the strata company, a council or the secretary of a council on a proprietor or occupier of a lot may be served —
 - (a) in the case of an occupier, by leaving it with some person apparently of or over the age of 16 years at the address of the lot; or
 - (b) in the case of a proprietor —
 - (i) personally;
 - (ii) by post to the proprietor's address for service appearing on the roll maintained by the strata company under section 35A or, where no such address is specified, by post to the address of the proprietor's lot;
 - (iii) where under section 36A or 36B a roll is not maintained by a strata company, by post to the address notified under subsection (3a);
 - [(iv) deleted]*
 - (v) in any manner authorised by the by-laws for the service of notices on proprietors.
- (3a) Where under section 36A or 36B a roll is not maintained by a strata company for a scheme, the proprietor of a lot in the scheme shall give notice in writing to the strata company and each of the other proprietors of his address for service.
Penalty: \$400.
- (3b) Where on a change of ownership a proprietor of a lot in a scheme for which a roll is not maintained under section 36A or 36B notifies an address for service to the strata company and each of the other proprietors, each of the other proprietors shall

give notice in writing to the new proprietor of their respective addresses for service.

- (4) Notice under section 48(1) may be served on a person —
- (a) 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.

[Section 125 amended ~~by~~: No. 58 of 1995 s. 83 and 95; No. 55 of 2004 s. 1156(1).]

126. Powers of entry by public authority or local government

A public authority or local government which is authorised by any Act to enter upon part of a parcel for the purpose of exercising any power conferred on it may enter upon any other part of that parcel if it is necessary to do so in order to exercise that power.

[Section 126 amended ~~by~~: No. 14 of 1996 s. 4.]

127. Service of orders by public authority or local government

Where a public authority or local government is authorised or required by any Act to serve or deliver a notice or order on all the proprietors of lots in a scheme, the public authority or local government may serve or deliver the notice or order on the strata company for the scheme and for the purposes of that Act such service shall be taken to be service on all the proprietors and any obligation imposed on the proprietors of that scheme by the notice or order shall be deemed to be imposed on the strata company.

[Section 127 amended ~~by~~: No. 58 of 1995 s. 96; No. 14 of 1996 s. 4.]

[128. Deleted ~~by~~: No. 55 of 2004 s. 1152.]

129. Procedure upon application to District Court

- (1) Every application to the District Court under this Act shall be by summons at chambers unless otherwise provided by rules of court.
- (2) Notice of an application to the District Court under this Act shall be served on such persons as the District Court thinks fit, or the Court may dispense with notice.
- (3) The District Court may, if it thinks fit, adjourn any application into Court and thereupon may give such directions as to all matters, including filing of pleadings as may appear necessary and proper for the final hearing of the application.

[(4) deleted]

- (5) Rules of court may be made for regulating the practice and procedure of the Court under this Act.

[Section 129 amended ~~by~~ No. 58 of 1995 s. 84 and 93(1).]

129A. Correction of errors by Registrar

- (1) The Commissioner of Titles may direct the Registrar of Titles —
 - (a) to correct errors in, or in entries made in, the Register; and
 - (b) to supply any entry omitted to be made in the Register,and the Registrar shall comply with any such direction.
- (2) The Registrar of Titles may in respect of any plan or other document lodged for registration or approval —
 - (a) correct any patent error appearing on the face of the plan or other document; and
 - (b) supply any entry omitted to be made under this Act in the plan or other document.

s. 129B

- (3) When correcting an error under subsection (1) or (2), the Registrar —
 - (a) shall not erase or render illegible the original writing; and
 - (b) shall affix the date upon which any correction was made or omission supplied together with his initials.
- (4) A plan or other document corrected under this section has the same validity and effect as if the error or omission had not been made except as regards any entry made in the Register before the time of correcting the error or supplying the omitted entry.
- (5) In this section —

Commissioner of Titles means the Commissioner of Titles under the *Transfer of Land Act 1893*, and includes the Deputy Commissioner of Titles under that Act.

[Section 129A inserted ~~by~~: No. 58 of 1995 s. 85; amended ~~by~~: No. 81 of 1996 s. 153(1).]

129B. Delegation by Commissioner of Titles

- (1) The Commissioner of Titles may delegate the power that section 129A gives the Commissioner to any other member of the Authority's staff who is an Australian lawyer (within the meaning of that term in the *Legal Profession Act 2008* section 3).
- (2) The delegation must be in writing signed by the Commissioner.
- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person exercising or performing a power or duty that has been delegated to the person under this section is to be 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 to perform a function through an officer or agent.

- (6) In this section —

Commissioner of Titles means the Commissioner of Titles under the *Transfer of Land Act 1893* but does not include a Deputy Commissioner of Titles under that Act except when acting as, and in place of, the Commissioner.

[Section 129B inserted ~~by~~: No. 60 of 2006 s. 160(9); amended ~~by~~: No. 21 of 2008 s. 707.]

129C. Delegation by Registrar of Titles

- (1) The Registrar of Titles may delegate any power or duty of the Registrar under another provision of this Act to a member of the Authority's staff.
- (2) The delegation must be in writing signed by the Registrar.
- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person exercising or performing a power or duty that has been delegated to the person under this section is to be 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 to perform a function through an officer or agent.
- (6) In this section —

Registrar of Titles does not include an Assistant Registrar under the *Transfer of Land Act 1893* except when acting as, and in place of, the Registrar.

[Section 129C inserted ~~by~~: No. 60 of 2006 s. 160(9).]

129D. Money received by Registrar

The Registrar of Titles is to pay to the Authority any money paid to the Registrar under this Act.

[Section 129D inserted ~~by~~: No. 60 of 2006 s. 160(9).]

130. Regulations

The Governor may make regulations prescribing all matters and things that by this Act are required or permitted to be prescribed or that are necessary or convenient to be prescribed for giving effect to this Act and in particular for and with respect to —

- (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 to be payable in respect of applications to the State Administrative Tribunal; and
- (c) prescribing forms under this Act and the respective purposes for which those forms are to be used and providing that in such cases as may be prescribed, forms or other documents required by or under this Act to be lodged with the Registrar of Titles shall 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) prescribing 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), (h) deleted]

- (i) providing that a contravention of a provision of the regulations constitutes an offence and for a penalty in respect of such a contravention not exceeding a fine of \$400.

[Section 130 amended-by: No. 58 of 1995 s. 86 and 94; No. 55 of 2004 s. 1153.]

131A. Certain prescribed fees may exceed cost recovery

- (1) Regulations made under section 130 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) The definition of *scheme* in section 3(1) does not apply to subsection (1).
- (3) This section does not limit the *Interpretation Act 1984* section 45A.

[Section 131A inserted-by: No. 11 of 2015 s. 8; amended-by: No. 12 of 2015 s. 6.]

s. 131B

131B. Expiry of section 131A

- (1) Section 131A expires at the end of 31 December 2019²¹.
- (2) However, the Governor, on the recommendation of the Minister, may, by proclamation made before section 131A expires, postpone the expiry of section 131A 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 131A should be postponed.
- (4) There is no limit on the number of times the expiry of section 131A 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 131A 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 131A does not affect the validity of any regulations made under section 130 and in effect immediately before that expiry.

[Section 131B inserted-by: No. 11 of 2015 s. 8.]

[Note: The expiry of 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).]

[131. Omitted under the Reprints Act 1984 s. 7(4)(f).]

132. Transitional and savings

- (1) Schedule 3 has effect.

- (2) Except as otherwise provided in Schedule 3, nothing in that schedule affects any saving provided by the *Interpretation Act 1984*.

Part VIII — Transitional provisions for amendments made to this Act

[Heading inserted ~~by~~: No. 24 of 2011 s. 174(12).]

Division 1 — Transitional provisions arising from certain amendments made by the *Building Act 2011*

[Heading inserted ~~by~~: No. 24 of 2011 s. 174(12).]

133. Terms used

In this Division —

amendments means the amendments made by the *Building Act 2011* section 174;

commencement day means the day on which the *Building Act 2011* section 174 comes into operation¹.

[Section 133 inserted ~~by~~: No. 24 of 2011 s. 174(12).]

134. Certificates of local government required by s. 5B(2)

A strata plan that was lodged for registration, but not registered, before commencement day must be dealt with as if the amendments had not been made.

[Section 134 inserted ~~by~~: No. 24 of 2011 s. 174(12).]

135. Certificates of local government required by s. 8A(f)

An application to register a plan of re-subdivision of a lot in a strata scheme that was started, but not finalised, before commencement day must be dealt with as if the amendments had not been made.

[Section 135 inserted ~~by~~: No. 24 of 2011 s. 174(12).]

136. Applications for certificates of local government and review of related decisions

(1) In this section —

application means an application as defined in section 26(1) as in force immediately before commencement day.

-
- (2) An application that was started, but not finalised, before commencement day must be dealt with as if the amendments had not been made.
- (3) A review under section 26 of an application mentioned in subsection (2) must be dealt with as if the amendments had not been made.
- (4) A review under section 26 that was started, but not finalised, before commencement day must be dealt with as if the amendments had not been made.
- (5) If a certificate that had been required by section 5B(2) and 8A(f) before the amendments is given by a local government as a consequence of —
- (a) an application mentioned in subsection (2); or
 - (b) a review mentioned in subsection (3) or (4),

sections 5B(2) and 8A(f) are to be read as if that particular certificate must accompany the plan.

[Section 136 inserted ~~by~~ No. 24 of 2011 s. 174(12).]

Schedule 1 — By-laws

[s. 42(2)]

[Heading amended ~~by~~: No. 19 of 2010 s. 4.]

[Part I heading deleted ~~by~~: No. 58 of 1995 s. 87(1).]

1. Duties of proprietor, occupiers etc.

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

another lot or of any person lawfully using common property;
and

- (d) take all reasonable steps to ensure that his visitors comply with the by-laws of the strata company relating to the parking of motor vehicles.

[By-law 1 amended ~~by~~: No. 58 of 1995 s. 87(2); No. 14 of 1996 s. 4; No. 74 of 2003 s. 112(15).]

2. Power of proprietor to decorate etc.

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

3. Power of strata company regarding submeters

- (1) Where the supply of gas or electricity to a lot is regulated by means of a submeter, the strata company may require the proprietor or other occupier of the lot to pay the strata company by way of security for the payment of charges arising through the submeter an amount not exceeding \$200 and, if any amount so paid is applied by the strata company under sub-by-law (2), to pay such further amount or amounts by way of such security as may be necessary to maintain the amount of the security as, subject to this sub-by-law, the strata company may require.
- (2) The strata company shall lodge every sum received under this by-law to the credit of an interest-bearing account with an ADI (authorised deposit-taking institution) as defined in section 5 of the *Banking Act 1959* of the Commonwealth and all interest accruing in respect of amounts so received shall, subject to this by-law, be held on trust for the proprietor or occupier who made the payment.
- (3) If the proprietor or other occupier of a lot in respect of which a submeter is used for the supply of gas or electricity refuses or fails to pay any charges due for the supply of gas or electricity to that lot, the strata company may apply in payment of those charges all, or such part as is necessary, of any amount paid to the strata company by that

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proprietor or occupier under this by-law, including any interest that may have accrued in respect of that amount.

- (4) Where a person who has paid an amount under this by-law to a strata company satisfies the strata company that he is no longer the proprietor or occupier of a lot and that the strata company no longer has any liability or contingent liability for the supply of gas or electricity to that lot during the period when that person was a proprietor or occupier of the lot, the strata company shall refund to that person the amount then held on his behalf under this by-law.

[By-law 3 amended ~~by~~: No. 26 of 1999 s. 104; No. 74 of 2003 s. 112(16).]

4. Constitution of council

- (1) The powers and duties of the strata company shall, subject to any restriction imposed or direction given at a general meeting, be exercised and performed by the council of the strata company and a meeting of the council at which a quorum is present shall be competent to exercise all or any of the authorities, functions or powers of the council.
- (2) Until the first annual general meeting of the strata company, the proprietors of all the lots shall constitute the council.
- (3) Where there are not more than 3 proprietors the council shall consist of all proprietors and where there are more than 3 proprietors the council shall consist of not less than 3 nor more than 7 proprietors as is determined by the strata company.
- (4) Where there are more than 3 proprietors the members of the council shall be elected at each annual general meeting of the strata company or, if the number of proprietors increases to more than 3, at an extraordinary general meeting convened for the purpose.
- (5) In determining the number of proprietors for the purposes of this by-law, co-proprietors of a lot or more than one lot shall be deemed to be one proprietor and a person who owns more than one lot shall also be deemed to be one proprietor.
- (6) If there are co-proprietors of a lot, one only of the co-proprietors shall be eligible to be, or to be elected to be, a member of the council and the co-proprietor who is so eligible shall be nominated by his

co-proprietors, but, if the co-proprietors fail to agree on a nominee, the co-proprietor who owns the largest share of the lot shall be the nominee or if there is no co-proprietor who owns the largest share of the lot, the co-proprietor whose name appears first in the certificate of title for the lot shall be the nominee.

- (7) On an election of members of the council, a proprietor shall have one vote in respect of each lot owned by him.
- (8) Except where the council consists of all the proprietors, the strata company may by special resolution remove any member of the council before the expiration of his term of office.
- (9) A member of the council vacates his office as a member of the council —
 - (a) if he dies or ceases to be a proprietor or a co-proprietor of a lot; or
 - (b) upon receipt by the strata company of notice in writing of his 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 he is not elected or re-elected; or
 - (d) in a case where he is a member of the council by reason of there being not more than 3 proprietors, upon an election of members of the council (as a result of there being an increase in the number of proprietors to more than 3) at which he is not elected; or
 - (e) where he is removed from office under sub-bylaw (8).
- (10) Any casual vacancy on the council may be filled by the remaining members of the council, except that, in a case where a casual vacancy arises because of the removal from office of a member under sub-bylaw (8), the strata company may resolve that the casual vacancy shall be filled by the strata company at a general meeting.
- (11) Except where there is only one proprietor, a quorum of the council shall be 2 where the council consists of 3 or 4 members; 3, where it consists of 5 or 6 members; and 4, where it consists of 7 members.
- (12) The continuing members of the council may act notwithstanding any vacancy in the council, but so long as the number of members is

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reduced below the number fixed by these by-laws as the quorum of the council, the continuing members or member of the council may act for the purpose of increasing the number of members of the council or convening a general meeting of the strata company, but for no other purpose.

- (13) All acts done in good faith by the council shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment or continuance in office of any member of the council, be as valid as if that member had been duly appointed or had duly continued in office.

5. Election of council

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

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

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

[By-law 5 amended ~~by~~ No. 74 of 2003 s. 112(17)-(19).]

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6. Chairman, secretary and treasurer of council

- (1) The members of a council shall, at the first meeting of the council after they assume office as such members, appoint a chairman, a secretary and a treasurer of the council.
- (2) A person —
 - (a) shall not be appointed to an office referred to in sub-bylaw (1) unless he is a member of the council; and
 - (b) may be appointed to one or more of those offices.
- (3) A person appointed to an office referred to in sub-bylaw (1) shall hold office until —
 - (a) he ceases to be a member of the council; or
 - (b) receipt by the strata company of notice in writing of his resignation from that office; or
 - (c) another person is appointed by the council to hold that office,whichever first happens.
- (4) The chairman shall preside at all meetings of the council at which he is present and, if he is absent from any meeting, the members of the council present at that meeting shall appoint one of their number to preside at that meeting during the absence of the chairman.

7. Chairman, secretary and treasurer of strata company

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

[By-law 7 inserted ~~by~~: No. 58 of 1995 s. 87(3); amended ~~by~~: No. 74 of 2003 s. 112(20).]

8. Meetings of council

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

9. Powers and duties of secretary of strata company

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

- (a) the preparation and distribution of minutes of meetings of the strata company and the submission of a motion for

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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 section 43(1)(a) and (b) of the Act; 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 sections 49 and 103 of the Act the convening of meetings of the strata company and of the council.

10. Powers and duties of treasurer of strata company

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

- (a) the notifying of proprietors of any contributions levied pursuant to the Act; 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 section 43 of the Act; and
- (d) the keeping of the books of account referred to in section 35(1)(f) of the Act and the preparation of the statement of accounts referred to in section 35(1)(g) of the Act.

11. General meetings of strata company

- (1) General meetings of the strata company shall be held once in each year and so that not more than 15 months shall elapse between the date of one annual general meeting and that of the next.
- (2) All general meetings other than the annual general meeting shall be called extraordinary general meetings.
- (3) The council may when ever it thinks fit and shall upon a requisition in writing made by proprietors entitled to a quarter or more of the aggregate unit entitlement of the lots convene an extraordinary general meeting.

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

[By-law 11 amended ~~by~~: No. 58 of 1995 s. 87(4).]

12. Proceedings at general meetings

- (1) All business shall be deemed special that is transacted at an annual general meeting, with the exception of the consideration of accounts and election of members to the council, or at an extraordinary general meeting.
- (2) Except as otherwise provided in these by-laws, no business may be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.
- (3) One-half of the persons entitled to vote present in person or by duly appointed proxy constitutes a quorum.
- (4) If within half an hour from the time appointed for a general meeting a quorum is not present, the meeting, if convened upon the requisition

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of proprietors, shall be dissolved and in any other case it shall stand adjourned to the same day in the next week at the same place and time and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the persons entitled to vote and present constitute a quorum.

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

[By-law 12 amended ~~by~~ by No. 58 of 1995 s. 87(5); No. 74 of 2003 s. 112(21).]

13. Restriction on moving motion or nominating candidate

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

14. Votes of proprietors

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

[By-law 14 amended ~~by~~: No. 24 of 2000 s. 40(12).]

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15. Common seal

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

[16. Deleted ~~by~~: No. 58 of 1995 s. 87(6).]

[Part II deleted ~~by~~: No. 58 of 1995 s. 87(7).]

Schedule 2 — Schedule 2 by-laws

[s. 42(2)]

[Heading amended ~~by~~ No. 19 of 2010 s. 4.]

[Heading deleted ~~by~~ No. 58 of 1995 s. 88(1)(b).]

1. Vehicles

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

2. Obstruction of common property

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

3. Damage to lawns etc. on common property

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

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

4. Behaviour of proprietors and occupiers

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

5. Children playing upon common property in building

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

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6. Depositing rubbish etc. on common property

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

[By-law 6 amended ~~by~~: No. 58 of 1995 s. 88(2).]

7. Drying of laundry items

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

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

[Former ~~By~~by-law 8 repealed ~~by~~: No. 58 of 1995 s. 88(3).]

8. Storage of inflammable liquids etc.

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

[By-law 8, formerly by-law 9, renumbered as by-law 8 ~~by~~: No. 58 of 1995 s. 88(4).]

9. Moving furniture etc. on or through common property

A proprietor, occupier, or other resident of a lot shall not transport any furniture or large object through or upon common property within the building unless he has first given to the council sufficient notice of his

intention to do so to enable the council to arrange for its nominee to be present at the time when he does so.

[By-law 9, formerly by-law 10, renumbered as by-law 9-by: No. 58 of 1995 s. 88(4).]

10. Floor coverings

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

[By-law 10, formerly by-law 11, renumbered as by-law 10-by: No. 58 of 1995 s. 88(4).]

11. Garbage disposal

A proprietor or occupier of a lot —

- (a) shall maintain within his lot, or on such part of the common property as may be 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 the proprietor, occupier or other resident of any other lot is not adversely affected by his disposal of garbage.

[By-law 11, formerly by-law 12, renumbered as by-law 11-by: No. 58 of 1995 s. 88(4); amended-by: No. 57 of 1997 s. 115(5).]

12. Additional duties of proprietors, occupiers etc.

A proprietor, occupier or other resident shall not —

- (a) use the lot that he owns, occupies or resides in for any purpose that may be illegal or injurious to the reputation of the building; or
- (b) make undue noise in or about any lot or common property; or
- (c) subject to section 42(15) of the Act, keep any animals on the lot that he owns, occupies or resides in or the common

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property after notice in that behalf given to him by the council.

[By-law 12 inserted ~~by~~: No. 58 of 1995 s. 88(5); amended ~~by~~: No. 74 of 2003 s. 112(22).]

13. Notice of alteration to lot

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

[By-law 13 inserted ~~by~~: No. 58 of 1995 s. 88(5).]

14. Appearance of lot

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

[By-law 14 inserted ~~by~~: No. 58 of 1995 s. 88(5).]

Schedule 2A — Matters that may be provided for in management statement

[s. 5C and 42]

[Heading inserted ~~by~~ No. 58 of 1995 s. 89; amended ~~by~~ No. 19 of 2010 s. 4.]

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

11. Insurance of the common property.
12. Safety and security.
13. The carrying on of any business or trading activity by the strata company, and the method of distributing and sharing any profit or loss.
14. Procedures to be followed for the resolution of disputes as a prerequisite to the making of an application to the State Administrative Tribunal for relief under this Act.

[Schedule 2A inserted ~~by~~ by No. 58 of 1995 s. 89; amended ~~by~~ by No. 61 of 1996 s. 38; No. 55 of 2004 s. 1156(3).]

Schedule 3 — Transitional and savings provisions

[s. 132]

[Heading amended ~~by~~: No. 19 of 2010 s. 4.]

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 2¹;

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 ~~by~~ 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 ~~by~~: 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 ~~by~~: 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 ~~by~~: 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 ~~by~~: 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 by: 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 by: 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 ~~by~~ No. 58 of 1995 s. 90(3); amended ~~by~~ 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 ~~by~~: 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 by 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 by-laws of strata companies other than companies to which Schedule 3 applies

[s. 42C]

[Heading inserted ~~by~~: No. 58 of 1995 s. 91; amended ~~by~~: No. 19 of 2010 s. 4.]

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 ~~by~~: 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 by: No. 58 of 1995 s. 91; amended by: No. 55 of 2004 s. 1155 and 1156(1).]

Notes

¹ This is a compilation of the *Strata Titles Act 1985* and includes the amendments made by the other written laws referred to in the following table^{1a,9}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Strata Titles Act 1985</i>	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 <i>Gazette</i> 21 Jun 1985 p. 2188)
<i>Strata Titles Amendment Act 1986</i>	42 of 1986	1 Aug 1986	1 Aug 1986 (see s. 2)
<i>Acts Amendment (Water Authority Rates and Charges) Act 1987 Pt. IX</i>	24 of 1987	25 Jun 1987	14 Jul 1987 (see s. 2 and <i>Gazette</i> 14 Jul 1987 p. 2647)
<i>Acts Amendment (Heritage Council) Act 1990 Pt. 2 Div. 6</i>	97 of 1990	22 Dec 1990	25 Feb 1991 (see s. 2 and <i>Gazette</i> 22 Feb 1991 p. 868)
<i>Retirement Villages Act 1992 s. 86</i>	34 of 1992	19 Jun 1992	10 Jul 1992 (see s. 2 and <i>Gazette</i> 10 Jul 1992 p. 3185)
<i>Financial Administration Legislation Amendment Act 1993 s. 11</i>	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
<i>Acts Amendment (Public Sector Management) Act 1994 s. 19</i>	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Planning Legislation Amendment Act (No. 2) 1994 s. 46(12)</i>	84 of 1994	13 Jan 1995	1 Mar 1995 (see s. 2 and <i>Gazette</i> 21 Feb 1995 p. 567)
<i>Caravan Parks and Camping Grounds Act 1995 s. 33</i>	34 of 1995	29 Sep 1995	1 Jul 1997 (see s. 2 and <i>Gazette</i> 20 Jun 1997 p. 2805)
<i>Strata Titles Amendment Act 1995</i> ^{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 <i>Gazette</i> 15 Mar 1996 p. 981)

Short title	Number and year	Assent	Commencement
<i>Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995</i> s. 188	73 of 1995	27 Dec 1995	1 Jan 1996 (see s. 2(2) and <i>Gazette</i> 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 <i>Caravan Parks and Camping Grounds Act 1995</i>)			
<i>Local Government (Consequential Amendments) Act 1996</i> s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Strata Titles Amendment Act 1996</i> ^{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 <i>Gazette</i> 17 Jan 1997 p. 405)
<i>Licensed Surveyors Amendment Act 1996</i> s. 28	79 of 1996	14 Nov 1996	5 Apr 1997 (see s. 2 and <i>Gazette</i> 4 Apr 1997 p. 1750)
<i>Transfer of Land Amendment Act 1996</i> 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 <i>Caravan Parks and Camping Grounds Act 1995</i> and the <i>Licensed Surveyors Amendment Act 1996</i>)			
<i>Equal Opportunity Amendment Act (No. 3) 1997</i> s. 8	42 of 1997	9 Dec 1997	6 Jan 1998 (see s. 2(1))
<i>Statutes (Repeals and Minor Amendments) Act 1997</i> s. 115	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998</i> s. 66	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
<i>Acts Amendment and Repeal (Financial Sector Reform) Act 1999</i> s. 104	26 of 1999	29 Jun 1999	1 Jul 1999 (see s. 2 and <i>Gazette</i> 30 Jun 1999 p. 2905)
Reprint of the Strata Titles Act 1985 as at 1 Jul 1999 (includes amendments listed above)			
<i>Statutes (Repeals and Minor Amendments) Act 2000</i> s. 40	24 of 2000	4 Jul 2000	4 Jul 2000 (see s. 2)

Strata Titles Act 1985

Short title	Number and year	Assent	Commencement
<i>Corporations (Consequential Amendments) Act 2001</i> Pt. 49	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<i>Planning Appeals Amendment Act 2002</i> s. 28	24 of 2002	24 Sep 2002	18 Apr 2003 (see s. 2 and <i>Gazette</i> 17 Apr 2003 p. 1243)
<i>Taxation Administration (Consequential Provisions) Act 2002</i> s. 23	45 of 2002	20 Mar 2003	1 Jul 2003 (see s. 2(1) and <i>Gazette</i> 27 Jun 2003 p. 2383)
<i>Acts Amendment (Equality of Status) Act 2003</i> Pt. 56	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)
Reprint 4: The Strata Titles Act 1985 as at 22 Aug 2003 (includes amendments listed above)			
<i>Acts Amendment and Repeal (Courts and Legal Practice) Act 2003</i> s. 67	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)
<i>Statutes (Repeals and Minor Amendments) Act 2003</i> s. 112 ¹³	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<i>Workers' Compensation Reform Act 2004</i> s. 174	42 of 2004	9 Nov 2004	4 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7131)
<i>Courts Legislation Amendment and Repeal Act 2004</i> 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 <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004</i> Pt. 2 Div. 121 ^{15,16}	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
Reprint 5: The Strata Titles Act 1985 as at 20 May 2005 (includes amendments listed above)			
<i>Planning and Development (Consequential and Transitional Provisions) Act 2005</i> s. 15 ¹⁷	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2 and <i>Gazette</i> 21 Mar 2006 p. 1078)
<i>Land Information Authority Act 2006</i> s. 160	60 of 2006	16 Nov 2006	1 Jan 2007 (see s. 2(1) and <i>Gazette</i> 8 Dec 2006 p. 5369)

Short title	Number and year	Assent	Commencement
<i>Duties Legislation Amendment Act 2008</i> Sch. 1 cl. 36	12 of 2008	14 Apr 2008	1 Jul 2008 (see s. 2(d))
<i>Legal Profession Act 2008</i> s. 707	21 of 2008	27 May 2008	1 Mar 2009 (see s. 2(b) and <i>Gazette</i> 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 <i>Legal Profession Act 2008</i>)			
<i>Standardisation of Formatting Act 2010</i> s. 4	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)
<i>Approvals and Related Reforms (No. 4) (Planning) Act 2010</i> s. 37	28 of 2010	19 Aug 2010	22 Nov 2010 (see s. 2(b) and <i>Gazette</i> 19 Nov 2010 p. 5709)
<i>Building Act 2011</i> s. 174	24 of 2011	11 Jul 2011	2 Apr 2012 (see s. 2(b) and <i>Gazette</i> 13 Mar 2012 p. 1033)
<i>Water Services Legislation Amendment and Repeal Act 2012</i> s. 232	25 of 2012	3 Sep 2012	18 Nov 2013 (see s. 2(b) and <i>Gazette</i> 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 <i>Water Services Legislation Amendment and Repeal Act 2012</i>)			
<i>Land Legislation Amendment Act 2015</i> Pt. 4	11 of 2015	29 Apr 2015	30 Jun 2015 (see s. 2(b) and <i>Gazette</i> 2 Jun 2015 p. 1937)
<i>Land Legislation Amendment (Taxing) Act 2015</i> Pt. 3	12 of 2015	29 Apr 2015	30 Jun 2015 (see s. 2(b) and <i>Gazette</i> 2 Jun 2015 p. 1937)

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>State Superannuation (Transitional and Consequential Provisions) Act 2000</i> s. 67 ¹⁸	43 of 2000	2 Nov 2000	To be proclaimed (see s. 2(2))

Short title	Number and year	Assent	Commencement
<i>Heritage Act 2018</i> s. 187 ¹⁹	22 of 2018	18 Sep 2018	To be proclaimed (see s. 2(b))
Strata Titles Amendment Act 2018 Pt. 2 ²⁰	30 of 2018	19 Nov 2018	To be proclaimed (see s. 2(b))

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 On the date as at which this compilation was prepared, the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 67 had not come into operation. It reads as follows:

67. Strata Titles Act 1985 amended

Section 73(1)(g)(i) of the *Strata Titles Act 1985* is amended by deleting “, and in particular his rights, if any, under the *Superannuation and Family Benefits Act 1938*.”.

The section that it seeks to amend has been repealed by the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* s. 1125.

¹⁹ On the date as at which this compilation was prepared, the *Heritage Act 2018* s. 187 had not come into operation. It reads as follows:

187. Strata Titles Act 1985 amended

- (1) This section amends the *Strata Titles Act 1985*.
- (2) In section 25(7) delete “section 78 of the *Heritage of Western Australia Act 1990*.” and insert:

the *Heritage Act 2018* Part 5 Division 2.

- (3) In section 25(8) delete “land to which section 78 of the *Heritage of Western Australia Act 1990* applies.” and insert:

included in a place of a kind referred to in the *Heritage Act 2018* section 72(1).

²⁰ On the date as at which this compilation was prepared, the *Strata Titles Amendment Act 2018* Pt. 2 had not come into operation. It reads as follows:

Part 2 — Strata Titles Act 1985 amended

Division 1 — Preliminary

4. Act amended

This Part amends the *Strata Titles Act 1985*.

Division 2 — Amendment of long title and Parts I to VIII

Note:

The sections amended in this Division and other sections not amended are redesignated or renumbered and relocated by Divisions 4 and 6.

5. Long title replaced

Delete the long title and insert:

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.**

6. Part 1 heading replaced

Delete the heading to Part 1 and insert:

Part 1 — Preliminary

7. Section 3 amended

(1) In section 3(1) delete the definitions of:

administrator

building

Commission

common property

council

licensed surveyor

licensed valuer

[local government](#)
[occupier](#)
[open space](#)
[original proprietor](#)
[parcel](#)
[permitted boundary deviation](#)
[person concerned](#)
[prescribed](#)
[proprietor](#)
[Register](#)
[Registrar of Titles](#)
[resolution without dissent](#)
[re-subdivision](#)
[scheme](#)
[single tier strata scheme](#)
[special resolution](#)
[strata company](#)
[strata/survey-strata plan](#)
[strata plan](#)
[strata scheme](#)
[structural cubic space](#)
[survey-strata plan](#)
[survey-strata scheme](#)
[take, taken and taking](#)
[two-lot scheme](#)
[unanimous resolution](#)
[unit entitlement](#)

(2) [In section 3\(1\) insert in alphabetical order:](#)

[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;

Australian legal practitioner has the meaning given in the *Legal Profession Act 2008* section 3;

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;
- 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: 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;

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);

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);

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);

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: 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;

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

- (3) In section 3(1) in the definition of **floor area** delete “**area** in relation to a cubic space,” and insert:

area of a cubic space

(4) In section 3(1) in the definition of *floor plan*:

(a) after “a plan” insert:

for a strata scheme

(b) delete “one” and insert”

1

(c) in paragraph (a) delete “proposed” (each occurrence):

(d) in paragraph (b)(ii) delete “where” and insert:

if

(e) in paragraph (b)(ii) delete “proposed” (each occurrence):

(f) in paragraph (c) delete “where proposed lots or parts thereof” and insert:

if lots or parts of lots

(g) in paragraph (c) delete “proposed lots or parts thereof” (each occurrence) and insert:

lots or parts of lots

(h) in paragraph (c)(i) delete “upon” and insert:

on

Note: At the end of the definition of *floor plan* the following note is to be inserted:

Note for this definition:

Also see subsections (2) to (4).

(5) In section 3(1) in the definition of *location plan*:

(a) delete “*plan*, in relation to a strata plan,” and insert:

plan for a strata scheme

(b) delete “one” and insert:

 1

 (c) delete “proposed” (each occurrence).

(6) In section 3(1) in the definition of *lot* (1st occurrence):

 (a) delete “*lot*, in relation to a strata scheme,” and insert:

 lot in a strata scheme

 (b) delete “one” (each occurrence) and insert:

 1

 (c) delete “to which a strata scheme relates,” and insert:

 subdivided by the strata scheme.

 (d) delete “plan, plan of re-subdivision or plan of consolidation to which that strata scheme relates, being in each case, but subject to section 3AB,” and insert:

 plan or an amendment of the strata plan being, in each case,

 (e) delete “where —” and insert:

 if that structural cubic space —

 (f) delete paragraphs (a) and (b) and insert:

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

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

 Note: At the end of the definition of *lot* the following note is to be inserted:

 Note for this definition:

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

(7) In section 3(1) in the definition of *lot* (2nd occurrence):

(a) delete “*lot*, in relation to a survey-strata scheme,” and insert:

lot in a survey-strata scheme

(b) delete “one” and insert:

1

(c) delete “scheme, but does not include —” and insert:

scheme;

(d) delete paragraphs (a) and (b).

(8) In section 3(1) in the definition of *wall*:

(a) after “a lot” insert:

in a strata titles scheme

(b) delete “another lot.” and insert:

another lot in the scheme;

(9) In section 3(2):

(a) delete “Except where section 3AB applies, the boundaries of any” and insert:

The boundaries of a

(b) in paragraph (a)(i) delete “where the base of any” and insert:

if the base of a

(c) in paragraph (a)(i) delete “any” and insert:

a

 (d) in paragraph (a)(ii) delete “where any” and insert:

 if a

 (e) in paragraph (b) delete “prescribed manner” and insert:

 manner required by the regulations

 Note: At the end of subsection (2) the following note is to be inserted:

 Note for this subsection:

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

 (10) In section 3(2a):

 (a) delete “(2a) Notwithstanding subsection (2), where —” and insert:

 (2A) Despite subsection (2), if —

 (b) delete “prescribed circumstances” and insert:

 circumstances specified in the regulations

 (c) delete “prescribed manner,” and insert:

 manner required by the regulations.

 (11) Delete section 3(5).

 (12) After section 3(6) insert:

 (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.

8. Section 3A amended

- (1) In section 3A(1):
 - (a) delete “Section” and insert:

Clause
 - (b) delete paragraphs (a) and (b) and insert:
 - (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) in paragraph (c) delete “where” and insert:

if
- (2) Delete section 3A(2) and insert:

(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.

Note: The heading to amended section 3A is to read:

Single tier strata schemes to which clause 3AB applies

Note:

Section 3A (as amended) is redesignated as clause 3A and relocated to Schedule 2A.

9. Section 3AB amended

(1) In section 3AB(1):

(a) delete “Where this section applies the boundaries of any” and insert:

If this clause applies, the boundaries of a

(b) In paragraph (b) delete “where” and insert:

if

(2) In section 3AB(2):

(a) delete “subsection (1) —” and insert:

subclause (1) —

(b) delete paragraph (b) and insert:

(b) the part is destroyed and is not reinstated within 1 year, or a longer period allowed under clause 4, after the destruction.

(3) In section 3AB(3) delete “section” and insert:

clause

(4) In section 3AB(4):

(a) delete “Where this section” and insert:

If this clause

(b) in paragraph (b) delete “subsection (2)(b) of that section.” and insert:

section 3(2)(b).

Note:

Section 3AB (as amended) is redesignated as clause 3AB and relocated to Schedule 2A.

10. Section 7 amended

(1) Delete section 7(1), (2) and (3) and insert:

(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.

(2) In section 7(4):

- (a) delete “Where an application is made to a strata company in accordance with section 7B —” and insert:

If an application is made to a strata company under this section —

- (b) delete paragraphs (a) and (b) and insert:

- (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) in paragraph (c) delete “a proprietor may vote —” and insert:

the vote for a lot may be cast —

- (d) in paragraph (c) delete “any ground that is” and insert:

a ground

- (e) in paragraph (d) delete “his vote one” and insert:

the person’s vote 1

(3) In section 7(5):

- (a) in paragraph (a) delete “lot ascertained in accordance with section 7A(3); or” and insert:

lot; or

- (b) in paragraph (b)(iii) delete “any easement created by section 11 or 12;” and insert:

a statutory easement;

(c) in paragraph (c) delete “that is prescribed.” and insert:

specified in the regulations.

(4) Delete section 7(6).

Note: The heading to amended section 7 is to read:

Structural alteration of lot in strata scheme

Note:

Section 7 (as amended) is renumbered as section 87 and relocated to Part 7
Division 2.

11. Section 7B amended

(1) Delete section 7B(1), (2) and (3) and insert:

(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.

(2) Delete section 7B(5), (6) and (7) and insert:

(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.

Note: The heading to amended section 7B is to read:

Approvals and objections to structural alterations

Note:

Section 7B (as amended) is renumbered as section 89 and relocated to Part 7 Division 2.

12. Section 12A amended

(1) Delete section 12A(1) and insert:

(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) In section 12A(2) delete “subsection (1)” and insert:

subclause (1)

(3) In section 12A(2) delete “to which the other lot is subject.” and insert:

_____ burdening the other lot.

_____ Note: The heading to amended 12A is to read:

_____ **Easement for access for certain work**

_____ Note:

_____ Section 12A (as amended) is redesignated as clause 12A and relocated to Schedule 2A.

13. Section 21A amended

_____ In section 21A delete the definition of *existing small strata scheme* and insert:

_____ *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.

_____ Note:

_____ Section 21A (as amended) is redesignated as clause 21A and relocated to Schedule 2A.

14. Section 21C amended

_____ In section 21C delete “section” (each occurrence) and insert:

_____ clause

_____ Note:

_____ Section 21C (as amended) is redesignated as clause 21C and relocated to Schedule 2A.

15. Section 21D amended

(1) In section 21D:

(a) delete “re-subdivision” and insert:

_____ subdivision

(b) delete “a plan of re-subdivision under section 8.” and insert:

_____ an amendment of the strata scheme.

Note:

Section 21D (as amended) is redesignated as clause 21D and relocated to Schedule 2A.

16. Section 21F amended

(1) In section 21F(1):

(a) delete “in the prescribed form.” and insert:

by resolution in the approved form.

(b) delete “section” and insert:

clause

(2) Delete section 21F(2) and insert:

(2) A resolution is effective for the purposes of subclause (1) only if it is a resolution without dissent.

Note:

Section 21F (as amended) is redesignated as clause 21F and relocated to Schedule 2A.

17. Section 21G amended

(1) Delete section 21G(1) and insert:

(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) In section 21G(2) delete the passage that begins with “company or alternatively —“ and ends with “one proprietor.” and insert:

company or, in the case of an existing small strata scheme, by all of the owners of lots in the scheme.

(3) Delete section 21G(3).

Note: The heading to amended 21G is to read:

Notice of resolution may be lodged for registration

Note:

Section 21G (as amended) is redesignated as clause 21G and relocated to Schedule 2A.

18. Section 21I amended

(1) In section 21I(1)(a) delete “section” and insert:

clause

(2) In section 21I(2) —

(a) delete “subsection (1) is to be” and insert:

subclause (1) is

(b) delete “that subsection.” and insert:

that subclause.

Note:

Section 21I (as amended) is redesignated as clause 21I and relocated to Schedule 2A.

19. Section 21J amended

In section 21J delete “prescribed manner to give effect to section 21I.” and insert:

manner specified in the regulations to give effect to clause 21I.

Note:

Section 21J (as amended) is redesignated as clause 21J and relocated to Schedule 2A.

20. Section 21Q amended

(1) In section 21Q(1) delete “prescribed form, resolve that the strata plan be amended in one” and insert:

approved form, resolve that the strata plan be amended in 1

(2) Delete section 21Q(2) and insert:

(2) A resolution is effective for the purposes of subclause (1) only if it is a resolution without dissent.

(3) In section 21Q(3) delete “subsection” and insert:

subclause

(4) In section 21Q(3) delete “section” and insert:

clause

(5) In section 21Q(4) delete “subsection” and insert:

subclause

Note:

Section 21Q (as amended) is redesignated as clause 21Q and relocated to Schedule 2A.

21. Section 21R amended

(1) In section 21R(1):

(a) delete “section 21Q(1)(a) or (b)” and insert:

clause 21Q(1)(a) or (b)

(b) in paragraph (b) delete “proprietors of lots in the scheme.” and insert:

owners of lots in the strata scheme.

(2) In section 21R(2) delete “section” (each occurrence) and insert:

clause

Note:

Section 21R (as amended) is redesignated as clause 21R and relocated to Schedule 2A.

22. Section 21S amended

- (1) Delete section 21S(1) and insert:
- (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) In section 21S(2) delete the passage that begins with “company or alternatively —” and ends with “one proprietor.” and insert:

company or, in the case of an existing small strata scheme, by all of the owners of lots in the scheme.

- (3) Delete section 21S(3).

Note:

Section 21S (as amended) is redesignated as clause 21S and relocated to Schedule 2A.

23. Section 21T amended

- (1) In section 21T(1):
- (a) delete paragraph (a).
- (b) in paragraph (b) delete “subsection (2) applies, a sketch plan (the *sketch plan*) showing in the prescribed manner” and insert:
- subclause (2) applies, a plan (the *sketch plan*) showing in the manner specified in the regulations
- (c) in paragraph (b)(iv) delete “section” and insert:
- clause
- (d) delete paragraphs (c) and (d) and insert:
- 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) in paragraph (e) delete “pro rata”.

(f) in paragraph (e) delete “his” and insert:

the person’s

(2) In section 21T(2) delete “he” and insert:

the Registrar

Note:

Section 21T (as amended) is redesignated as clause 21T and relocated to Schedule 2A.

24. Section 21U amended

(1) Delete section 21U(1) and insert:

(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) In section 21U(2):

(a) in paragraph (b)(ii) delete “proprietors of lots in the” and insert:

owners of lots in the strata

(b) delete paragraph (d)(ii) and insert:

(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) In section 21U(3):

(a) delete “subsection” and insert:

subclause

(b) in paragraph (b) delete “section” and insert:

clause

(4) In section 21U(4)(a) delete “subsection” and insert:

subclause

(5) In section 21U(5) delete “subsection (3) is to relate to matters prescribed for the purposes of subsection” and insert:

subclause (3) is to relate to matters prescribed under subclause

Note:

Section 21U (as amended) is redesignated as clause 21U and relocated to Schedule 2A.

25. Section 21V amended

(1) In section 21V(1) delete “subsection (2).” and insert:

subclause (2A).

(2) Delete section 21V(2)(c) and the words following that paragraph and insert:

(c) in which any certificate required by clause 21T(1)(e) is set out.

(3) After section 21V(2) insert:

(2A) Subclause (1) does not apply if a disposition statement is lodged for registration with the notice of resolution.

Note:

Section 21V (as amended) is redesignated as clause 21V and relocated to Schedule 2A.

26. Section 21W amended

- (1) In section 21W(1):
- (a) delete “section 21T(1)(b)” and insert:
- clause 21T(1)(b)
- (b) delete “under section 5D” and insert:
- as a short form easement or restrictive covenant
- (2) Delete section 21W(2) and (3) and insert:
- (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).

Note:

Section 21W (as amended) is redesignated as clause 21W and relocated to Schedule 2A.

27. Section 21Y amended

- (1) In section 21Y(1):
- (a) delete paragraphs (a) and (b) and insert:
- (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.
- (b) delete “subsections” and insert:
- subclauses

(2) Delete section 21Y(2)(b) and insert:

(b) exclusive use by-laws,

(3) In section 21Y(4) delete “proprietors” and insert:

owners of the lots

(4) In section 21Y(5) delete “a proprietor” and insert:

the owner of a lot

(5) In section 21Y(5) delete “his” and insert:

the

(6) Delete section 21Y(6) and insert:

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

Note:

Section 21Y (as amended) is redesignated as clause 21Y and relocated to Schedule 2A.

28. Section 21Z amended

(1) Delete section 21Z(1)(a) and insert:

(a) the strata plan in the manner specified in the regulations to give effect to clauses 21V, 21W and 21Y; and

(2) In section 21Z(2) delete “subsection” and insert:

subclause

Note:

Section 21Z (as amended) is redesignated as clause 21Z and relocated to Schedule 2A.

29. Section 24 amended

- (1) In section 24(2):
- (a) delete “Upon or at any time after” and insert:
- On, or at any time after,
- (b) in paragraph (a) delete “in force” and insert:
- or interim development order
- (c) in paragraph (b) delete “under the provisions of the last-mentioned Act relating to any”
- (2) Delete section 24(2a) and insert:
- (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) In section 24(4) and (5) delete “shall” and insert:
- must
- (4) In section 24(6) delete “shall be” (each occurrence) and insert:

is

Note:

Section 24 (as amended) is relocated to Part 3 Division 2.

30. Section 26 amended

- (1) Delete section 26(1) and (2) and insert:
- (1) A local government must give written notice of its decision on an application made to it under this Part to the applicant.
- (2) In section 26(3) delete “shall —” and insert:

made to it under this Part must —

(3) Delete section 26(4) and (5) and insert:

(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).

(4) In section 26(6):

(a) delete “subsections (4) and (5).” and insert:

subsection (4),

(b) after “application” (1st occurrence) insert:

under this Part

(c) delete “40 days of receiving” and insert:

the prescribed period after being given

(5) In section 26(7):

(a) delete “of the day on which the applicant received” and insert:

after the day on which the applicant is given

(b) delete “of the expiration of the period of 40 days” and insert:

after the expiration of the prescribed period

(6) After section 26(7) insert:

(8) In this section —

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

Note:

Section 26 (as amended) is renumbered as section 28 and relocated to Part 3 Division 4.

31. Section 28 amended

(1) Delete section 28(1) and insert:

(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) In section 28(2):

(a) after “on the” insert:

scheme

(b) delete “District Court” and insert:

Tribunal

(3) In section 28(3):

(a) delete “the generality of”;

(b) delete “such directions for or with respect to any one”
and insert:

directions for any 1

(c) delete “matters as the District Court considers necessary
or expedient —” and insert:

matters —

(d) in paragraph (b) delete “proprietors” (1st occurrence) and
insert:

owners

(e) in paragraph (b) delete “proprietors” (2nd occurrence) and
insert:

owners of lots

(f) in paragraph (c) delete “entitlement of” and insert:

entitlements of

(g) in paragraph (c) delete “entitlement;” and insert:

entitlements;

(h) in paragraph (d) delete “moneys” and insert

money

(i) in paragraph (d) after “destruction of the” insert:

_____ scheme

_____ (j) delete paragraph (e) and insert:

_____ (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:

_____ (k) in paragraph (f) delete “registered”:

_____ (l) in paragraph (f) delete “District Court” and insert:

_____ Tribunal

_____ (m) in paragraph (g) after “insurer of the” insert:

_____ scheme

_____ (n) in paragraph (h) delete “District Court,” and insert:

_____ Tribunal,

_____ (o) in paragraph (i) delete “District Court” and insert:

_____ Tribunal

_____ (4) In section 28(4) delete “District Court may from time to time amend any” and insert:

_____ Tribunal may amend an

_____ (5) In section 28(5):

_____ (a) delete “shall take effect —” and insert:

_____ takes effect as follows —

_____ (b) in paragraph (b) delete “section 29.” and insert:

section 167.

(6) Delete section 28(6) and (7).

Note: The heading to amended section 28 is to read:

Variation of strata scheme on damage or destruction of building

Note:

Section 28 (as amended) is renumbered as section 166 and relocated to Part 11 Division 1.

32. Section 29 amended

In section 29:

(a) delete “28 shall apply and the District Court shall have” and insert:

166 applies and the Tribunal has

(b) delete “that section applies and the District Court” and insert:

section 166 applies and the Tribunal

(c) after “destruction of a” insert:

scheme

Note: The heading to amended section 29 is to read:

Variation of strata scheme on taking

Note:

Section 29 (as amended) is renumbered as section 167 and relocated to Part 11 Division 2.

33. Section 29A amended

(1) Before section 29A(1) insert:

(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.

(2) In section 29A(1) delete “Where part of the land in a parcel in a survey-strata scheme is taken, the District Court may, on an application by the strata company or by a proprietor or a registered mortgagee of a lot within the scheme,” and insert:

If part of a parcel subdivided by a survey-strata scheme is taken, the Tribunal may

(3) In section 29A(2):

(a) delete “the generality of”;

(b) delete “such directions for or with respect to any one” and insert:

directions for any 1

(c) delete “matters as the District Court considers necessary or expedient —” and insert:

matters —

(d) in paragraph (a) delete “entitlement of” and insert:

entitlements of

(e) in paragraph (a) delete “entitlement; and” and insert:

entitlements; and

(f) in paragraph (b) delete “moneys” and insert

money

(g) in paragraph (b) delete “any one or more of the proprietors; and” and insert:

the owner of a lot or, in the case of a leasehold scheme, the owner of the leasehold scheme; and

- (h) in paragraph (c) delete “registered”;
- (i) in paragraphs (c), (d) and (e) delete “District Court” (each occurrence) and insert:

Tribunal

- (4) In section 29A(3) delete “District Court may from time to time amend any” and insert:

Tribunal may amend an

- (5) Delete section 29A(4) and (5).

Note: The heading to amended 29A is to read:

Variation of survey-strata scheme on taking

Note:

Section 29A (as amended) is renumbered as section 168 and relocated to Part 11 Division 2.

34. Section 29B amended

- (1) In section 29B(1):

- (a) delete “Where part of the land in a strata plan is taken and the taking includes part but not the whole of any lot in the scheme,” and insert:

If part of a parcel subdivided by a strata titles scheme is taken,

- (b) delete “shall,” and insert:

must,

- (c) delete “subsection (2).” and insert:

requirements specified in the regulations (the *redefining plan*).

- (2) Delete section 29B(2) and (3) and insert:

- (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) In section 29B(4) in the definition of *acquiring authority* paragraph (b) delete “where” and insert:

if

Note: The heading to amended 29B is to read:

Acquiring authority to lodge redefining plan after partial taking

Note:

Section 29B (as amended) is renumbered as section 169 and relocated to Part 11 Division 2.

35. Section 29C amended

(1) In section 29C(1) after “that a” insert:

strata titles

(2) In section 29C(2):

(a) delete “Where” and insert:

If

(b) delete “shall” and insert:

must

Note: The heading to amended section 29C is to read:

Termination on compulsory acquisition

Note:

Section 29C (as amended) is renumbered as section 196 and relocated to Part 12 Division 7.

36. Section 31B amended

In section 31B delete “in respect of any land under Division 2 and the subsequent registration of a survey-strata plan relating to the land under Part II.” and insert:

_____ and the subsequent subdivision of the land by a strata titles scheme.

_____ Note:

_____ Section 31B (as amended) is redesignated as clause 31B and relocated to Schedule 2A.

37. Section 31C amended

(1) In section 31C(1) delete “prescribed form” and insert:

_____ approved form

(2) In section 31C(2) delete “section” and insert:

_____ clause

(3) In section 31C(3):

(a) delete “subsection” and insert:

_____ subclause

(b) delete “section” and insert:

_____ clause

(4) Delete section 31C(4).

_____ Note:

_____ Section 31C (as amended) is redesignated as clause 31C and relocated to Schedule 2A.

38. Section 31D amended

(1) Delete section 31D(1) and insert:

(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) In section 31D(2) delete “proprietors” and insert:

owners

 (3) Delete section 31D(3) and insert:

 (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.

 Note:

 Section 31D (as amended) is redesignated as clause 31D and relocated to Schedule 2A.

39. Section 31E amended

 (1) In section 31E(1):

 (a) in paragraph (a)(i) delete “prescribed manner —” and insert:

 manner specified in the regulations —

 (b) delete paragraph (a)(i)(II) and insert:

 (II) the location of a short form easement or restrictive covenant that is to be created under section 33 as read with clause 31G.

 (c) delete paragraph (a)(v) and insert:

 (v) containing such other features as may be prescribed by the regulations relating to the preparation of scheme plans by a licensed surveyor;

 (d) in paragraph (b) delete “section” and insert:

 clause

(e) delete paragraph (c)(ii) and insert:

(i) the sum of the unit entitlements of all the lots in the strata titles scheme;

(f) delete paragraph (d) and insert:

(d) a certificate of a licensed valuer as required for a schedule of unit entitlements; and

(g) in paragraph (e) delete “a proprietor.” and insert:

the owner of a lot,

(h) in paragraph (e) delete “his consent to the proposed schedule of unit entitlement.” and insert:

the person’s consent to the proposed schedule of unit entitlements.

(2) In section 31E(2):

(a) delete “section” and insert:

clause

(b) delete “subsection” and insert:

subclause

Note:

Section 31E (as amended) is redesignated as clause 31E and relocated to Schedule 2A.

40. Section 31F amended

(1) In section 31F(1) delete “section 31E(1)(b)” and insert:

clause 31E(1)(b)

(2) In section 31F(1)(a) delete “section.” and insert:

clause;

 (3) In section 31F(1)(b) delete “section.” and insert:

 clause.

 (4) In section 31F(2):

 (a) delete paragraphs (a) and (b) and insert:

 (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

 (b) in paragraph (d) delete “where” and insert:

 if

 (c) in paragraph (e) delete “subsection” and insert:

 subclause

 (d) in paragraph (e)(ii) delete “section” and insert:

 clause

 (5) In section 31F(3)(a) delete “subsection” and insert:

 subclause

 (6) In section 31F(4) delete “subsection” (each occurrence) and insert:

 subclause

Note:

Section 31F (as amended) is redesignated as clause 31F and relocated to Schedule 2A.

41. Section 31G amended

- (1) In section 31G(1) delete “section 31E(1)(a) may provide for easements to be created under section 5D,” and insert:

clause 31E(1)(a) may provide for a short form easement or restrictive covenant to be created under section 33.

- (2) Delete section 31G(2) and insert:

- (2) Section 33 also applies to the discharge of an easement that is created under subclause (1).

Note:

Section 31G (as amended) is redesignated as clause 31G and relocated to Schedule 2A.

42. Section 31H amended

- (1) In section 31H(1) delete “subsection (2),” and insert:

subclause (2A).

- (2) Delete section 31H(2)(c) and all the words after that paragraph and insert:

(c) in which any certificate required by clause 31E(1)(e) is set out.

- (3) After section 31H(2) insert:

(2A) Subclause (1) does not apply if a disposition statement is lodged for registration with the notice of resolution.

Note:

Section 31H (as amended) is redesignated as clause 31H and relocated to Schedule 2A.

43. Section 31J amended

- (1) Delete section 31J(2) and insert:

(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).

(2) In section 31J(3):
(a) delete “Where” and insert:
 If
(b) delete paragraph (b)(ii) and insert:
 (ii) exclusive use by-laws,

(3) In section 31J(5) delete “proprietors” and insert:
 owners of the lots

(4) In section 31J(6):
(a) delete “a proprietor” and insert:
 the owner of a lot
(b) delete “his” and insert:
 the

(5) In section 31J(7):
(a) delete “this section is to be” and insert:
 this clause is
(b) delete “that section.” and insert:

that clause.

Note:

Section 31J (as amended) is redesignated as clause 31J and relocated to Schedule 2A.

44. Section 31K amended

Delete section 31K(1)(a) and insert:

- (a) the strata plan in the manner specified in the regulations to give effect to clauses 31G, 31H and 31J; and

Note:

Section 31K (as amended) is redesignated as clause 31K and relocated to Schedule 2A.

45. Section 33 amended

(1) In section 33(1):

- (a) delete “Where the proprietors of the lots the subject of a” and insert:

If the owners of the lots in a strata titles

- (b) delete “any” (1st occurrence) and insert:

a

- (c) delete “taken against them jointly (any such proceedings being proceedings for or with respect to common property),” and insert:

relating to common property taken against them jointly,

- (d) delete “any such proceedings shall have” and insert:

the proceedings has

- (e) delete “proprietors.” and insert:

owners.

(2) In section 33(2):

(a) delete “Where a proprietor” and insert:

If an owner of a lot

(b) delete “proprietor in respect of” and insert:

owner for

(c) delete “shall” and insert:

must

(d) delete “proprietor bears to the aggregate unit entitlement.” and insert:

owner bears to the sum of the unit entitlements of all the lots.

Note: The heading to amended section 33 is to read:

Strata company is representative of owners in proceedings

Note:

Section 33 (as amended) is renumbered as section 103 and relocated to Part 8 Division 1 Subdivision 4.

46. Section 34 amended

(1) In section 34(1):

(a) delete “varying or discharging” and insert:

varying, extending, discharging or terminating

(b) delete “vary or discharge” and insert:

vary, extend, discharge or terminate

(c) delete “varied or discharged” and insert:

varied, extended, discharged or terminated

(2) In section 34(2) delete “variation or discharge” and insert:

variation, extension, discharge or termination

(3) Delete section 34(3) and insert:

(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.

Note:

Section 34 (as amended) is renumbered as section 139 and relocated to Part 8 Division 5.

47. Section 35 amended

(1) In section 35(1):

(a) delete “shall —” and insert:

must —

(b) delete paragraph (a);

(c) in paragraph (b) delete “proprietors; and” and insert:

owners of lots; and

(d) in paragraph (c) delete “where” and insert:

if

(e) in paragraph (c)(ii) delete “vested in” and insert:

owned by

(f) in paragraph (c) delete “cause; and” and insert:

cause.

 (g) delete paragraphs (e) to (k).

(2) Delete section 35(2) and insert:

(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.

Note: The heading to amended section 35 is to read:

General duty

Note:

Section 35 (as amended) is renumbered as section 91 and relocated to Part 8 Division 1 Subdivision 1.

48. Section 35A amended

(1) In section 35A(1) delete “shall” and insert:

 must

(2) In section 35A(1) delete the Penalty and insert:

 Penalty for this subsection: a fine of \$3 000.

(3) In section 35A(3)(b) delete “a proprietor” and insert:

 an owner

(4) Delete section 35A(4) and insert:

(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) In section 35A(5) delete “shall” and insert:

must

Note:

Section 35A (as amended) is renumbered as section 105 and relocated to Part 8 Division 1 Subdivision 5.

49. Section 36 amended

(1) Delete section 36(1), (1a) and (2) and insert:

- (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.

(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.

(2) In section 36(3):

(a) delete “by-laws of a strata company” and insert:

scheme by-laws

(b) delete “shall” and insert:

must

(c) delete “of proprietors passed at a general meeting of” and insert:

passed by

(3) In section 36(4):

(a) in paragraph (b) delete “prescribed,” and insert:

specified in the regulations,

(b) in paragraph (b) delete “shall bear” and insert:

bears

(4) In section 36(5) delete “shall form” and insert:

forms

(5) In section 36(6):

(a) delete “Subject to section 43(4), a proprietor” and insert:

The owner

(b) delete “thereon,” and insert:

on the contribution,

(c) delete “proprietor” (each occurrence) and insert:

owner

(d) delete “he” and insert:

the owner

(6) After section 36(6) insert:

(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.

Note: The heading to amended section 36 is to read:
Administrative and reserve funds and contributions

Note:
Section 36 (as amended) is renumbered as section 100 and relocated to Part 8 Division 1 Subdivision 3.

50. Section 37 amended

(1) In section 37(1):

(a) delete "A" and insert:

Without limiting the powers of a strata company to perform its functions, a

(b) in paragraph (a) delete "proprietors" and insert:

owners of lots

(c) in paragraph (c) delete "moneys" and insert:

money

(d) in paragraph (d) delete "moneys" and insert:

money

(e) in paragraph (d) delete "thereon," and insert:

on that money.

(f) in paragraph (d) delete "vested in" and insert:

owned by

(g) in paragraph (e) delete "any moneys" and insert:

money

(h) in paragraph (e) delete “any” (1st occurrence) and insert:

the

(i) in paragraph (e) delete “in any investment prescribed; and” and insert:

by the regulations; and

(j) in paragraph (f) delete “where” and insert:

if

(k) in paragraph (f) delete “any” and insert:

an

(l) in paragraph (g) delete “make an agreement with any proprietor” and insert:

make a contract with the owner

(m) in paragraph (g) delete “that lot or to the proprietor or occupier of that lot; and” and insert:

the lot or to the owner or occupier; and

(n) in paragraph (h) delete “vessels.” and insert:

vessels; and

(o) after paragraph (h) insert:

(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) In section 37(2) delete “shall form” and insert:

forms

Note: The heading to amended section 37 is to read:

Powers of strata company generally

Note:

Section 37 (as amended) is renumbered as section 116 and relocated to Part 8 Division 1 Subdivision 7.

51. Section 38 amended

(1) Delete section 38(1) and (2) and insert:

(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.

(2) In section 38(3):

(a) delete “Where a proprietor, mortgagee in possession,” and insert:

If an owner

(b) delete “ any”.

(3) Delete section 38(4) and insert:

(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).

(4) In section 38(5) delete “Where” and insert:

If

(5) Delete section 38(6) and insert:

(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.

Note:

Section 38 (as amended) is renumbered as section 94 and relocated to Part 8 Division 1 Subdivision 1.

52. Section 39A amended

(1) In section 39A(1):

(a) delete “agreement” (1st occurrence) and insert:

contract

(b) delete “agreement, by notice in writing to every other party to the agreement,” and insert:

contract, by written notice to every other party to the contract.

(c) delete “agreement was entered into.” and insert:

contract was made.

(2) In section 39A(3) delete “An agreement shall” and insert:

A contract or any other agreement or arrangement must

(3) In section 39A(4):

(a) delete “an agreement if —” and insert:

a contract if —

(b) delete paragraph (a) and insert:

(a) it relates to the provision of amenities or services to the strata company or the owners of lots; and

(c) delete paragraph (c) and insert:

(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.

(4) Delete section 39A(5) and insert:

(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.

(5) In section 39A(6):

(a) delete “agreement” (1st occurrence) and insert:

contract

(b) delete “agreement was entered into,” and insert:

contract was made.

(6) Delete section 39A(7).

Note: The heading to amended 39A is to read:

Power to terminate certain contracts for amenities or services

Note:

Section 39A (as amended) is renumbered as section 115 and relocated to Part 8 Division 1 Subdivision 7.

53. Section 44 amended

(1) In section 44(1):

(a) delete “ company shall,” and insert:

company.

(b) delete “at a general meeting, be” and insert:

by ordinary resolution, are to be

(2) In section 44(2):

(a) delete “shall” (1st occurrence) and insert:

must

(b) delete “shall” (2nd occurrence);

(c) delete “and in the manner provided by the by-laws of the strata company.” and insert:

this Act and the scheme by-laws.

(3) After section 44(2) insert:

(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.

Note: The heading to amended section 44 is to read:

Functions and constitution of councils

Note:

Section 44 (as amended) is renumbered as section 135 and relocated to Part 8 Division 4.

54. Section 45 amended

(1) Delete section 45(1) and insert:

(1) A corporation is eligible to be an officer of a strata company or a member of the council of a strata company.

(2) In section 45(2):

(a) delete “any function conferred by or” and insert:

a function conferred

(b) delete “chairman, secretary or treasurer of the strata company or as a member or alternate” and insert:

an officer of the strata company or as a

(c) after “revoke” insert:

the

(3) In section 45(3):

(a) delete “Where” and insert:

If

 (b) delete “shall be deemed” and insert:

 is taken

 Note: The heading to amended section 45 is to read:

 Corporate body may be officer or council member

 Note:

 Section 45 (as amended) is renumbered as section 136 and relocated to Part 8 Division 4.

55. Section 53A amended

 In section 53A:

 (a) delete “Subdivision —” and insert:

 Part —

 (b) in paragraph (c) delete “*proprietor* are to a proprietor” and insert:

 an *owner of a lot* are to an owner

 Note: The heading to amended section 53A is to read:

 References in this Part

 Note:

 Section 53A (as amended) is redesignated as clause 53A and relocated to Schedule 2A.

56. Section 53B amended

 (1) In section 53B(1):

 (a) delete paragraph (a)(i) and (ii) and insert:

 (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;

 (b) in paragraph (b) delete “proprietor” and insert:

 owner of the lot

(c) in paragraph (c) delete “any”;

(d) delete “section, at the discretion of the proprietor” and insert:

clause, at the discretion of the owner

(2) Delete section 53B(2) and (3) and insert:

(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.

Note:

Section 53B (as amended) is redesignated as clause 53B and relocated to Schedule 2A.

57. Section 53C amended

(1) In section 53C(1):

(a) delete “shall —” and insert:

must —

(b) in paragraph (a) delete “any building, or part of a building, or improvement on the parcel that is” and insert:

insurable assets that are within the

(c) in paragraph (b) delete “death or bodily injury for which the proprietors” and insert:

death, bodily injury or illness for which the owners

-
- (2) In section 53C(2):
- (a) delete “subsection” and insert:
- subclause
- (b) in paragraph (a)(i) delete “is no building or improvement” and insert:
- are no insurable assets
- (c) in paragraph (a)(ii) delete “lot;” and insert:
- lot or on the boundary of temporary common property;
- (d) in paragraph (b) delete “(or unanimous resolution in the case of a two-lot scheme) determined that subsection” and insert:
- determined that subclause
- (3) Delete section 53C(3) to (5) and insert:
- (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.

Note:

Section 53C (as amended) is redesignated as clause 53C and relocated to Schedule 2A.

58. Section 53D amended

- (1) Delete section 53D(1) and (2) and insert:
 - (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).
- (2) In section 53D(3):
 - (a) delete “shall —” and insert:
 - must —
 - (b) delete paragraph (a) and insert:
 - (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

(c) in paragraph (b) delete “or bodily injury for not less than \$5 000 000 or such other amount as may be prescribed” and insert:

bodily injury or illness for not less than \$10 000 000 or such other amount as may be specified in the regulations

(3) In section 53D(3) delete the penalty and insert:

Penalty for this subclause: a fine of \$3 000.

(4) Delete section 53D(4) and insert:

(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.

Note: The heading to amended section 53D is to read:

Strata company’s obligations if it has insurance function in single tier strata scheme

Note:

Section 53D (as amended) is redesignated as clause 53D and relocated to Schedule 2A.

59. Section 53E amended

(1) Delete section 53E(1) and (2) and insert:

(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.

(2) In section 53E(3):

(a) delete “Where —” and insert:

 If —

(b) delete paragraph (a) and insert:

(a) notice has been given to the owner of a lot under subclause (1); and

(c) in paragraph (b) delete “proprietor’s” and insert:

 owner’s

(d) delete “proprietor” and insert:

 owner

(3) Delete section 53E(4) and insert:

(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.

Note: The heading to amended section 53E is to read:

Recovery of premium by strata company or owner if no administrative fund in single tier strata schemes

Note:

Section 53E (as amended) is redesignated as clause 53E and relocated to Schedule 2A.

60. Section 57 amended

(1) Delete section 57(1) and insert:

(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) In section 57(2):

(a) delete “Where any contract of insurance of the kind authorised by subsection (1)” and insert:

 If a contract of mortgage insurance

(b) in paragraph (a) delete “shall” and insert:

 must

(c) in paragraph (a) delete “thereon” and insert:

 in the contract

(d) in paragraph (b) delete “thereunder —” and insert:

 the lesser of the following —

(e) in paragraph (b)(iii) delete “charged upon the lot,” and insert:

 of the lot;

(f) in paragraph (b) delete “whichever is the least amount.”;

(g) in paragraph (c) delete “where” and insert:

 if

(h) in paragraph (c) delete “charged upon” and insert

of

 (i) in paragraph (d) delete “where” and insert:

 if

 (j) in paragraph (d) delete “shall be” and insert:

 is

 (3) In section 57(2) after each of paragraphs (a), (b) and (c) insert:

 and

 (4) Delete section 57(3), (4) and (5) and insert:

 (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.

 Note: The heading to amended section 57 is to read:

 Insurance for lot

 Note:

 Section 57 (as amended) is renumbered as section 84 and relocated to Part 7 Division 1.

61. Section 60 amended

 (1) In section 60(1):

 (a) delete “any plan” and insert:

 a scheme plan or an amendment of a scheme plan

 (b) delete “shall” and insert:

 must

(2) Delete section 60(2).

(3) In section 60(3):

(a) after “plan” insert:

or amended plan

(b) delete “shall” and insert:

must

Note: The heading to amended section 60 is to read:

Registrar of Titles to deliver copies of plans

Note:

Section 60 (as amended) is renumbered as section 67 and relocated to Part 5 Division 4.

62. Section 61 amended

In section 61:

(a) delete “all purposes in relation to”;

(b) delete “the parcel or any part of the” and insert:

a parcel or part of a

(c) in paragraph (a) delete “certified copy of the strata/survey-strata plan, plan of re-subdivision or consolidation for a scheme or transfer” and insert:

copy of the scheme plan or amended plan

(d) in paragraph (a) delete “section 60.” and insert:

section 67,

(e) in paragraph (b) delete “certified” (each occurrence);

(f) in paragraph (b) delete “transfer” and insert:

amended plan

Note:

Section 61 (as amended) is renumbered as section 68 and relocated to Part 5 Division 4.

63. Section 62 amended

(1) In section 62(1):

(a) delete “Where” and insert:

If

(b) delete “in a strata plan” and insert:

subdivided by a strata scheme

(c) delete “shall, notwithstanding” and insert:

must, despite

(2) In section 62(2):

(a) delete “thereto,” and insert:

to the valuation,

(b) delete “thereon shall be deemed” and insert:

on the parcel are taken

(3) In section 62(3):

(a) delete “strata/survey-strata plan” and insert:

strata scheme

(b) delete “shall for the purposes of this section be deemed”
and insert:

is taken, for the purposes of this section,

(4) In section 62(4):

(a) delete “where” and insert:

if

(b) delete “in this section called”.

(c) in paragraph (a) delete “shall” and insert:

must

(d) in paragraph (a) delete “as shown on the registered strata plan;” and insert:

in the strata scheme;

(e) in paragraph (c) delete “proprietor” and insert:

owner

(f) in paragraph (c) delete “deemed” and insert:

taken

(5) In section 62(5):

(a) delete “Where —” and insert:

If —

(b) in paragraph (a) delete “shall” and insert:

must

(c) in paragraph (a) delete “upon” and insert:

on

(d) in paragraph (b) delete “shall” and insert:

is to

(e) in paragraph (b) delete “therefrom”;

(f) in paragraph (b) delete “such” and insert:

the

Note: The heading to amended section 62 is to read:

Rating for strata schemes

Note:

Section 62 (as amended) is renumbered as section 69 and relocated to Part 5 Division 4.

64. Section 62A amended

(1) In section 62A(2):

(a) delete "shall" and insert:

must

(b) delete "any" and insert:

a

(2) In section 62A(3):

(a) delete "shall" and insert:

must

(b) delete "any".

(3) In section 62A(4):

(a) delete "Where" and insert:

If

(b) delete "any" and insert:

a

(c) delete "shall" and insert:

must

(d) delete "upon" and insert:

on

Note:

Section 62A (as amended) is renumbered as section 70 and relocated to Part 5 Division 4.

65. Section 63 amended

(1) In section 63(1):

(a) delete “Where” and insert:

If

(b) delete “shall, notwithstanding” and insert:

must, despite

(2) In section 63(2):

(a) delete “where” and insert:

if

(b) delete “in this subsection called”.

(c) in paragraph (a) delete “of the parcel for any” and insert:

for a

(d) in paragraph (b) delete “proprietor” and insert:

owner

(e) in paragraph (b) delete “any rate” and insert:

a rate

(3) In section 63(3):

(a) delete “Where” and insert:

If

(b) delete "any" and insert:

a

(c) delete "shall" and insert:

must

(d) delete "upon" and insert:

on

Note:

Section 63 (as amended) is renumbered as section 71 and relocated to Part 5 Division 4.

66. Section 64 amended

(1) In section 64(1):

(a) delete "Notwithstanding section 62(2)" and insert:

Despite section 69(2)

(b) delete "where" and insert:

if

(c) delete "proprietor" (each occurrence) and insert:

owner

(d) delete "shall be" and insert:

is

(2) In section 64(2):

(a) delete "Upon" and insert:

On

(b) delete “a proprietor” and insert:

the owner

(c) delete “pursuant to” and insert:

under

(d) in paragraph (a) delete “shall” and insert:

must

(e) in paragraph (a) delete “upon” and insert:

on

(f) in paragraph (b) delete “such” and insert:

the

Note: The heading to amended section 64 is to read:

Owner may seek a review of unimproved value of parcel

Note:

Section 64 (as amended) is renumbered as section 72 and relocated to Part 5 Division 4.

67. Section 65 amended

(1) In section 65(1):

(a) delete “(1) For all” and insert:

For all

(b) delete “the parcel in a strata plan.” and insert:

a parcel subdivided by a strata scheme.

(c) in paragraph (a) delete “shall” and insert:

must

(d) in paragraph (a) delete “lots as shown on the registered strata plan; and” and insert:

lots;

(e) in paragraph (b) delete “improvement tax; and” and insert:

improvement tax;

(f) in paragraph (c) delete “shall be deemed” and insert:

is taken

(2) Delete section 65(2).

Note: The heading to amended section 65 is to read:

Land tax and metropolitan region improvement tax: strata schemes

Note:

Section 65 (as amended) is renumbered as section 73 and relocated to Part 5 Division 4.

68. Section 65A amended

In section 65A(2):

(a) in paragraph (a) delete “shall” and insert:

must

(b) in paragraph (a) delete “section 62A,” and insert:

section 70,

(c) in paragraph (b) delete “lot; and” and insert:

lot.

(d) delete paragraph (c).

Note: The heading to amended section 65A is to read:

Land tax and metropolitan region improvement tax: survey-strata schemes

Note:

Section 65A (as amended) is renumbered as section 74 and relocated to Part 5 Division 4.

69. Section 66 amended

In section 66:

(a) delete “Where in relation to a scheme” and insert:

If, in relation to a strata titles scheme,

(b) delete “as defined” and insert:

within the meaning given

(c) delete “one” and insert:

1

(d) delete “all the proprietors” and insert:

the parcel

(e) delete “proprietor” and insert:

lot

(f) delete “any” and insert:

the

(g) delete “shall be” and insert:

are

Note:

Section 66 (as amended) is renumbered as section 75 and relocated to Part 5 Division 4.

70. Section 67 amended

In section 67:

(a) in paragraph (a) delete “as defined” and insert:

within the meaning given

(b) in paragraph (a) and (b) delete “to be taken” and insert:

taken

Note:

Section 67 (as amended) is renumbered as section 76 and relocated to Part 5 Division 4.

71. Section 122 amended

(1) In section 122(1):

(a) delete “any rights or remedies that a strata company, a proprietor” and insert:

rights or remedies that a strata company, an owner

(b) delete “or an occupier may have in relation to any” and insert:

or, an owner of a leasehold scheme or an occupier may have in relation to a

(2) In section 122(2):

(a) delete “Where a court in which any proceedings to enforce any” and insert:

If a court in which proceedings to enforce

(b) delete “Part VI makes adequate provision for the enforcement of those rights or remedies, the court shall” and insert:

proceedings under this Act make adequate provision for the enforcement of those rights or remedies, the court must

Note:

Section 122 (as amended) is renumbered as section 211 and relocated to Part 14.

72. Section 122A amended

- (1) In section 122A(1) delete the passage that begins with “or re-subdivided under this Act” and continues until the end of the subsection and insert:

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) In section 122A(2) delete “re-subdivided where that re-subdivision would not result in the land being re-subdivided” and insert:

subdivided by registration of a strata titles scheme if that subdivision would not result in the land being subdivided

- (3) In section 122A(3) delete “meaning as they have for the purposes of the *Caravan Parks and Camping Grounds Act 1995*.” and insert:

meanings as they have in the *Caravan Parks and Camping Grounds Act 1995* section 5.

Note:

Section 122A (as amended) is renumbered as section 212 and relocated to Part 14.

73. Section 123 amended

- (1) In section 123(1) after “land in a” insert:

strata titles

- (2) Delete section 123(2) to (4) and insert:

- (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.

 Note:

 Section 123 (as amended) is renumbered as section 213 and relocated to Part 14.

74. Section 123B amended

- (1) In section 123B(1):
 - (a) delete “and a single tier strata scheme”;
 - (b) in paragraph (b) delete “a proprietor” and insert:
 - an owner

- (2) Delete section 123B(2) and insert:

- (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.

 Note:

 Section 123B (as amended) is renumbered as section 214 and relocated to Part 14.

75. Section 124 amended

- (1) In section 124(1) delete “District Court may, in respect of any proceedings on an application for an order under section 28, 29 or 31,” and insert:
 - Tribunal may, in proceedings on an application for an order under section 166, 167 or 168,
- (2) In section 124(2):

(a) delete “rules of court, the District Court shall not make an order referred to in subsection (1)(b) in respect of any person unless the District Court” and insert:

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

(b) in paragraph (c) delete “upon” and insert:

on

(c) in paragraph (c) delete “his” and insert:

the person’s

Note: The heading to amended section 124 is to read:

Notice of application for order under section 166, 167 or 168

Note:

Section 124 (as amended) is renumbered as section 170 and relocated to Part 11 Division 3.

76. Section 126 amended

In section 126 delete “public authority or local government which is authorised by any Act to enter upon part of a parcel for the purpose of exercising any power conferred on it may enter upon” and insert:

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

Note: The heading to amended 126 is to read:

Powers of entry under written laws

Note:

Section 126 (as amended) is renumbered as section 217 and relocated to Part 14.

77. Section 129B amended

(1) In section 129B(1) delete “power that section 129A gives the Commissioner to any other” and insert:

Commissioner’s functions under section 218 to a

(2) In section 129B(2) delete “Commissioner.” insert:

Commissioner of Titles.

(3) In section 129B(3):

(a) delete “power or duty” and insert:

function

(b) delete “power or duty.” and insert:

function.

(4) In section 129B(4) delete “exercising or performing a power or duty that has been delegated to the person under this section is to be” and insert:

performing a function that has been delegated to the person under this section is

(5) In section 129B(5) after “Commissioner” insert:

of Titles

(6) Delete section 129B(6).

Note:

Section 129B (as amended) is renumbered as section 219 and relocated to Part 14.

78. Section 129C amended

(1) In section 129C(1) delete “any power or duty of the Registrar under another provision of” and insert:

a function of the Registrar under

(2) In section 129C(2) delete “Registrar.” insert:

Registrar of Titles.

(3) In section 129C(3):

(a) delete “power or duty” and insert:

function

(b) delete “power or duty.” and insert:

function.

(4) In section 129C(4) delete “exercising or performing a power or duty that has been delegated to the person under this section is to be” and insert:

performing a function that has been delegated to the person under this section is

(5) In section 129C(5) after “Registrar” insert:

of Titles

(6) Delete section 129C(6).

Note:

Section 129C (as amended) is renumbered as section 220 and relocated to Part 14.

79. Section 130 amended

(1) At the beginning of section 130 insert:

(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) In section 130:

(a) delete the passage that begins with “The Governor” and ends with “to —” and insert:

- (2) Without limiting subsection (1), the regulations may provide for —
- (b) in paragraph (b) delete “to be payable in respect of applications to the State Administrative Tribunal; and” and insert:
- for applications to the Tribunal; and
- (c) in paragraph (c) delete “prescribing forms under this Act and the respective purposes for which those forms are to be used and providing that in such cases as may be prescribed, forms or other documents required by or” and insert:
- circumstances in which forms or other documents required
- (d) in paragraph (c) delete “shall” and insert:
- must
- (e) in paragraph (f) delete “prescribing”;
- (f) delete paragraph (i) and insert:
- (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.
- (3) At the end of section 130 insert:
- (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.

Note:

Section 130 (as amended) is renumbered as section 224 and relocated to Part 14.

80. Section 131A amended

- (1) In section 131A(1) delete “section 130” and insert:

section 224

- (2) Delete section 131A(2).

Note:

Section 131A (as amended) is renumbered as section 225 and relocated to Part 14.

81. Section 131B amended

- (1) In section 131B delete “131A” (each occurrence) and insert:

225

- (2) In section 131B(6) delete “130” and insert:

224

Note: The heading to amended 131B is to read:

Expiry of section 225

Note:

Section 131B (as amended) is renumbered as section 226 and relocated to Part 14.

Division 3 — Deletion and insertion of provisions in body of Act

82. Deletion of headings and provisions

In the body of the Act delete —

- (a) all Part, Division and Subdivision headings except the heading to Part 1 (as inserted by section 6 of this Act); and
- (b) all provisions except —
 - (i) the provisions amended by Part 2 Division 2 of this Act; and
 - (ii) the provisions relocated without amendment to Parts 2 to 14 (as inserted by section 83 of this Act) by Part 2 Division 4 of this Act; and
 - (iii) the provisions relocated without amendment to Schedule 2A (as replaced by section 114 of this Act) by Part 2 Division 6 of this Act.

83. Insertion of sections 4 and 5 and Parts 2 to 14

Note for this section:

The gaps in the Parts inserted by this section are filled by the relocation of provisions by Division 4.

After section 3 (as amended by section 7 of this Act) insert:

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.

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.

Part 2 — Strata titles schemes

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.

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.

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.

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).

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.

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.

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.

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.

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: 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).

Part 3 — Planning and development

Division 1 — Planning approvals

Subdivision 1 — Strata schemes

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.

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.

Subdivision 2 — Survey-strata schemes

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.

Subdivision 3 — General provisions

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.

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.

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.

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.

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.

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.

Division 2 — Preliminary determinations

Division 3 — Common property

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.

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.

Division 4 — Review of decisions

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.

Part 4 — Scheme documents

Division 1 — Scheme notice

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.

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.

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.

Division 2 — Scheme plans

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.

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.

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.

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).

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.

Division 3 — Schedule of unit entitlements

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.

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.

Division 4 — Scheme by-laws

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

Division 5 — Strata leases

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.

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.

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.

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.

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.

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.

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.

Part 5 — Registration and land titles

Division 1 — Schemes and amendment of schemes

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.

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.

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) The *Transfer of Land Act 1893* section 48B does not apply to a certificate of title for a lot in a leasehold scheme.
- (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.

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.

Division 2 — Re-entry or surrender of strata leases

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.

Division 3 — Statutory easements

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.

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.

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.

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.

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.

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.

Division 4 — Rates, taxes and charges

Part 6 — Scheme developer

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.

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.

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.

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.

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.

Part 7 — Lot owners and occupiers

Division 1 — General

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.

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.

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.

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.

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.

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.

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.

Part 8 — Strata company

Division 1 — Functions

Subdivision 1 — Property

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.

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.

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.

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.

Subdivision 2 — Insurance

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.

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.

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).

Subdivision 3 — Financial management

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.

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.

Subdivision 4 — Representation and judgment debts

Subdivision 5 — Records and correspondence

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.

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.

Subdivision 6 — Provision of information

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.

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.

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.

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.

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.

Subdivision 7 — Miscellaneous powers

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.

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.

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.

Subdivision 8 — Limitations

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.

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.

Division 2 — Objectives

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.

Division 3 — Procedures

Subdivision 1 — Voting and resolutions

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.

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.

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.

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

- (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.

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.

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.

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).

Subdivision 2 — Meetings of strata company

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.

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.

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).

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.

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.

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.

133. Resolutions of general meetings

Resolutions passed at a general meeting may be ordinary resolutions unless this Act requires otherwise.

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.

Division 4 — Councils

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.

Division 5 — Miscellaneous

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.

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 —

<u>Section</u>	<u>Description for information only</u>
<u>Section 100(1)(a)</u>	<u>Administrative fund</u>
<u>Section 101</u>	<u>Accounting records and statement of account</u>
<u>Section 104(1)(b)</u>	<u>Minutes of meetings</u>
<u>Section 104(3)(a)</u>	<u>Letterbox</u>
<u>Section 105(1)</u>	<u>Roll to be kept by strata company.</u>

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.

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.

Part 9 — Strata managers

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) An Australian legal practitioner does not act as a strata manager in providing services that can, under the *Legal Profession Act 2008*, be provided only by an Australian 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.

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.

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).

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

Part 10 — Protection of buyers

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;

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.

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.

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).

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.

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).

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.

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.

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 an Australian 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*.

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.

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.

Part 11 — Variation of strata titles scheme by Tribunal

Division 1 — On damage or destruction

Division 2 — On compulsory acquisition

Division 3 — Notice of applications

Part 12 — Termination of strata titles scheme

Division 1 — Introduction

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.

Division 2 — Expiry of leasehold scheme

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.

Division 3 — Termination proposal

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.

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.

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

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- 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.

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).

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.

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.

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.

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

- (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.

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).

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.

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.

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- (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.

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) if there is a duplicate certificate of title for a lot in the strata titles scheme, the owner of the lot must deliver the duplicate certificate of title to the Registrar of Titles; or
 - (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.

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- (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.

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.

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.

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.

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.

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.

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.

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).

Division 4 — Termination by single owner

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.

Division 5 — Directions for winding up of strata company

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.

Division 6 — Notice, application and registration process

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.

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*.

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.

Division 7 — Termination on compulsory acquisition

Part 13 — Tribunal proceedings

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;

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- (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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

209. Original jurisdiction

Unless otherwise provided in this Act, a proceeding before the Tribunal under this Act comes within the Tribunal's original jurisdiction.

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.

Part 14 — Miscellaneous

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.

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.

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.

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.

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.

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.

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.

Division 4 — Sections relocated to Parts 2 to 14

84. Sections relocated to Parts 2 to 14

The sections listed in column 1 of the Table below are, after their amendment as set out in Part 2 Division 2 of this Act, renumbered (if relevant) and relocated (in the order set out in the Table) to the Parts, Divisions and Subdivisions inserted by section 83 of this Act as set out in columns 2 and 4 of the Table.

Table

<u>Section number</u>	<u>Renumbered section number</u>	<u>Section heading</u>	<u>Relocation of section</u>
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<u>Section number</u>	<u>Renumbered section number</u>	<u>Section heading</u>	<u>Relocation of section</u>
s. 7	s. 87	Structural alteration of lot in strata scheme	Part 7 Division 2
s. 7B	s. 89	Approvals and objections to structural alterations	Part 7 Division 2
s. 24		Preliminary determinations by local government	Part 3 Division 2
s. 26	s. 28	Review of local government decision	Part 3 Division 4
s. 28	s. 166	Variation of strata scheme on damage or destruction of building	Part 11 Division 1
s. 29	s. 167	Variation of strata scheme on taking	Part 11 Division 2
s. 29A	s. 168	Variation of survey- strata scheme on taking	Part 11 Division 2
s. 29B	s. 169	Acquiring authority to lodge redefining plan after partial taking	Part 11 Division 2
s. 29C	s. 196	Termination on compulsory acquisition	Part 12 Division 7
s. 33	s. 103	Strata company is representative of owners in proceedings	Part 8 Division 1 Subdivision 4
s. 34	s. 139	Contract formalities	Part 8 Division 5

<u>Section number</u>	<u>Renumbered section number</u>	<u>Section heading</u>	<u>Relocation of section</u>
s. 35	s. 91	General duty	Part 8 Division 1 Subdivision 1
s. 35A	s. 105	Roll to be kept by strata company	Part 8 Division 1 Subdivision 5
s. 36	s. 100	Administrative and reserve funds and contributions	Part 8 Division 1 Subdivision 3
s. 37	s. 116	Powers of strata company generally	Part 8 Division 1 Subdivision 7
s. 38	s. 94	Power of strata company to carry out work	Part 8 Division 1 Subdivision 1
s. 39A	s. 115	Power to terminate certain contracts for amenities or services	Part 8 Division 1 Subdivision 7
s. 44	s. 135	Functions and constitution of councils	Part 8 Division 4
s. 45	s. 136	Corporate body may be officer or council member	Part 8 Division 4
s. 57	s. 84	Insurance for lot	Part 7 Division 1
s. 60	s. 67	Registrar of Titles to deliver copies of plans	Part 5 Division 4
s. 61	s. 68	Particulars on plan to be conclusive for rating and taxing purposes	Part 5 Division 4
s. 62	s. 69	Rating for strata schemes	Part 5 Division 4

<u>Section number</u>	<u>Renumbered section number</u>	<u>Section heading</u>	<u>Relocation of section</u>
s. 62A	s. 70	Rating for survey-strata schemes	Part 5 Division 4
s. 63	s. 71	Rating on gross rental value	Part 5 Division 4
s. 64	s. 72	Owner may seek a review of unimproved value of parcel	Part 5 Division 4
s. 65	s. 73	Land tax and metropolitan region improvement tax: strata schemes	Part 5 Division 4
s. 65A	s. 74	Land tax and metropolitan region improvement tax: survey-strata schemes	Part 5 Division 4
s. 66	s. 75	Charges for water supplied	Part 5 Division 4
s. 67	s. 76	Water service charges under the Water Services Act 2012	Part 5 Division 4
s. 122	s. 211	Other rights and remedies not affected by this Act	Part 14
s. 122A	s. 212	Caravan and camping areas not to be subdivided	Part 14
s. 123	s. 213	Dividing fences	Part 14
s. 123B	s. 214	Internal fencing	Part 14

<u>Section number</u>	<u>Renumbered section number</u>	<u>Section heading</u>	<u>Relocation of section</u>
s. 124	s. 170	Notice of application for order under section 166, 167 or 168	Part 11 Division 3
s. 126	s. 217	Powers of entry under written laws	Part 14
s. 129B	s. 219	Delegation by Commissioner of Titles	Part 14
s. 129C	s. 220	Delegation by Registrar of Titles	Part 14
s. 129D	s. 221	Money received by Registrar of Titles	Part 14
s. 130	s. 224	Regulations	Part 14
s. 131A	s. 225	Certain prescribed fees may exceed cost recovery	Part 14
s. 131B	s. 226	Expiry of section 225	Part 14

Note: The heading to section 129D is to read:

[Money received by Registrar of Titles](#)

85. References to renumbered provisions in other laws or other documents

[A reference in another law or another document to a provision renumbered under this Division is a reference to the provision as renumbered unless the contrary intention appears.](#)

Division 5 — Amendment of Schedules

86. Schedule 1 heading replaced

[Delete the heading to Schedule 1 and the reference after it and insert:](#)

Schedule 1 — Governance by-laws

87. Schedule 1 by-law 1 amended

(1) In Schedule 1 by-law 1(1):

(a) delete “A proprietor shall —” and insert:

The owner of a lot must —

(b) in paragraph (a) delete “forthwith” and insert:

immediately

(c) in paragraph (a) delete “by any competent public authority or local government” and insert:

under a written law

(d) in paragraph (a) delete “his” (each occurrence) and insert:

the

(e) in paragraph (b) delete “repair and maintain his” and insert:

maintain and repair the

(f) in paragraph (b) delete “repair,” and insert:

condition,

(2) In Schedule 1 by-law 1(1a):

(a) renumber sub-by-law (1a) as sub-by-law (1A);

(b) delete “A proprietor shall —” and insert:

The owner of a lot must —

(c) delete paragraph (a) and insert:

(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

(d) in paragraph (b) delete "his" and insert:

the

(3) Delete Schedule 1 by-law 1(2).

Note: The heading to amended by-law 1 is to read:

Duties of owner

88. Schedule 1 by-law 2 deleted

Delete Schedule 1 by-law 2.

89. Schedule 1 by-law 3 amended

(1) In Schedule 1 by-law 3(1):

(a) delete "Where" and insert:

If

(b) delete "proprietor or other" and insert:

owner or

(c) delete "sub-by-law (2)," and insert:

sub-by-law (3),

(2) In Schedule 1 by-law 3(2):

(a) delete "shall" and insert:

must

(b) delete "account with an ADI (authorised deposit-taking institution) as defined in section 5 of

the Banking Act 1959 of the Commonwealth” and insert:

ADI account

(c) delete “shall,” and insert:

must.

(d) delete “proprietor” and insert:

owner

(3) In Schedule 1 by-law 3(3):

(a) delete “proprietor or other” and insert:

owner or

(b) delete “proprietor” and insert:

owner

(4) In Schedule 1 by-law 3(4):

(a) delete “Where” and insert:

If

(b) delete “he is no longer the proprietor” and insert:

the person is no longer the owner

(c) delete “a proprietor” and insert:

an owner

(d) delete “shall” and insert:

must

 (e) delete “his” and insert:

 the person’s

90. Schedule 1 by-law 4 amended

 (1) In Schedule 1 by-law 4(1):

 (a) delete “shall,” and insert:

 must,

 (b) delete “shall be” and insert:

 is

 (2) In Schedule 1 by-law 4(2) delete “proprietor of all the lots
shall” and insert:

 owners of all the lots

 (3) Delete Schedule 1 by-law 4(3) and insert:

 (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) In Schedule 1 by-law 4(4):

 (a) delete “Where” and insert:

 If

 (b) delete “proprietors” and insert:

lots in the scheme.

(c) delete “shall” and insert:

must

(d) delete “proprietors” and insert:

lots in the scheme

(5) Delete Schedule 1 by-law 4(5), (6) and (7) and insert:

(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.

(6) In Schedule 1 by-law 4(8):

(a) delete “where” and insert:

if

(b) delete “proprietors,” and insert:

owners of lots in the scheme.

(c) delete “his” and insert:

the member’s

(7) In Schedule 1 by-law 4(9):

(a) delete “his”;

(b) delete paragraphs (a) and (b) and insert:

(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) in paragraph (c) delete "he" and insert:

the member

(d) delete paragraph (d) and insert:

(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) in paragraph (e) delete "where he" and insert:

if the member

(f) in paragraph (e) delete "sub-by-law (8)." and insert:

sub-by-law (8); or

(g) after paragraph (e) insert:

(f) if the Tribunal orders that the member's appointment is revoked and the member is removed from office.

(8) Delete Schedule 1 by-law 4(10) and (11) and insert:

(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-by-law (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-by-law:

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.

(9) In Schedule 1 by-law 4(12) delete "notwithstanding any" and insert:

even if there is a

(10) In Schedule 1 by-law 4(13):

(a) delete "council shall, notwithstanding that" and insert:

council, even if

(b) delete "be" and insert:

are

91. Schedule 1 by-law 5 amended

(1) In Schedule 1 by-law 5 delete "shall" and insert:

must

(2) In Schedule 1 by-law 5(1):

(a) delete "shall determine," and insert:

must determine,

(b) delete "shall consist." and insert:

is to consist.

(3) In Schedule 1 by-law 5(2) delete “chairman shall call upon those persons present” and insert:

chairperson must call on those persons who are present at the meeting in person or by proxy

(4) In Schedule 1 by-law 5(3):

(a) delete “his” and insert:

the

(b) in paragraph (a) delete “chairman” and insert:

chairperson

(c) in paragraph (b) delete “meeting.” and insert:

meeting in person or by proxy.

(5) In Schedule 1 by-law 5(4):

(a) delete “chairman — ” and insert:

chairperson —

(b) in paragraph (a) delete “where” and insert:

if

(c) in paragraph (a) delete “shall” and insert:

must

(d) in paragraph (b) delete “where” and insert:

if

(e) in paragraph (b) delete “shall” and insert:

must

(6) In Schedule 1 by-law 5(5):

(a) delete “chairman shall —” and insert:

chairperson must —

(b) in paragraph (b) delete “present and entitled to vote a blank paper” and insert:

entitled to vote and present in person or by proxy, a blank form

(c) in paragraph (b) delete “he” and insert:

the person

(d) in paragraph (b) delete “ballot-paper.” and insert:

ballot form.

(7) In Schedule 1 by-law 5(6):

(a) delete “shall complete a valid ballot-paper” and insert:

must complete a valid ballot form

(b) in paragraphs (a) and (b) delete “thereon” and insert:

on the form

(c) in paragraph (b) delete “his” and insert:

the person’s

(d) in paragraph (b) delete “he” and insert:

the person

(e) in paragraph (b) delete “proprietor” (each occurrence) and insert:

owner

(f) in paragraph (c) delete “ballot-paper; and” and insert:

ballot form; and

(g) in paragraph (d) delete “chairman.” and insert:

chairperson.

(8) Delete Schedule 1 by-law 5(7) and insert:

(7) The chairperson, or a person appointed by the chairperson, must count the votes recorded on valid ballot forms in favour of each candidate.

(9) In Schedule 1 by-law 5(8) delete “numbers of votes shall” and insert:

numbers (in terms of lots or unit entitlements as required under the *Strata Titles Act 1985* section 122) of votes are to

(10) In Schedule 1 by-law 5(9):

(a) delete “Where the number” and insert:

If the number (in terms of lots or unit entitlements as required under the *Strata Titles Act 1985* section 122)

(b) delete "shall" and insert:

must

(c) delete "present and entitled to vote." and insert:

entitled to vote and present in person or by proxy.

Note: The heading to amended by-law 5 is to read:

Election of council at general meeting

92. Schedule 1 by-law 6 amended

(1) In Schedule 1 by-law 6(1):

(a) delete "shall" and insert:

must

(b) delete "chairman," and insert:

chairperson.

(2) In Schedule 1 by-law 6(2):

(a) in paragraph (a) delete "shall" and insert:

must

(b) in paragraph (a) delete "he" and insert:

the person

(c) in paragraph (b) delete "one" and insert:

1

(3) Delete sub-by-law (3) and (4) and insert:

(3) A person appointed to an office referred to in sub-by-law (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-by-law (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.

Note: The heading to amended by-law 6 is to read:
Chairperson, secretary and treasurer of council

93. Schedule 1 by-law 7 amended

(1) In Schedule 1 by-law 7(1) delete "chairman," (each occurrence) and insert:

chairperson,

(2) In Schedule 1 by-law 7(2) delete "a proprietor to act as the chairman" and insert:

an owner of a lot to act as the chairperson

(3) In Schedule 1 by-law 7(3) delete "he" and insert:

the person

Note: The heading to amended by-law 7 is to read:
Chairperson, secretary and treasurer of strata company

94. Schedule 1 by-law 8 amended

(1) In Schedule 1 by-law 8(1) delete "shall" and insert:

must

(2) In Schedule 1 by-law 8(2):

(a) in paragraph (a) delete “shall” and insert:

must

(b) in paragraph (a) delete “him,” and insert:

the member

(c) in paragraph (a) delete “meeting;” and insert:

meeting; or

(d) delete paragraph (b) and insert:

(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

(e) in paragraph (c) delete “one” and insert:

1

(3) Delete Schedule 1 by-law 8(3) and insert:

(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) In Schedule 1 by-law 8(4):

(a) delete “A proprietor” and insert:

An owner of a lot

(b) delete “he” and insert:

that person

(5) In Schedule 1 by-law 8(5):

(a) delete “he” (each occurrence) and insert:

the person

(b) delete “his” and insert:

the person’s

(6) Delete Schedule 1 by-law 8(6).

95. Schedule 1 by-law 9 amended

In Schedule 1 by-law 9:

(a) delete paragraph (c) and insert:

(c) the supply of information on behalf of the strata company in accordance with the *Strata Titles Act 1985* sections 108 and 109; and

(b) delete paragraph (f) and insert:

(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.

96. Schedule 1 by-law 10 amended

In Schedule 1 by-law 10:

(a) in paragraph (a) delete “proprietors” and insert:

owners of lots

(b) in paragraph (a) delete “pursuant to the Act; and” and insert:

under the *Strata Titles Act 1985*; and

(c) in paragraph (c) delete “section 43 of the Act; and” and insert:

the *Strata Titles Act 1985* section 110; and

(d) delete paragraph (d) and insert:

(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.

97. Schedule 1 by-laws 11 to 15 deleted

Delete Schedule 1 by-laws 11 to 15.

98. Schedule 2 heading replaced

Delete the heading to Schedule 2 and the reference after it and insert:

Schedule 2 — Conduct by-laws

99. Schedule 2 by-law 1 replaced

Delete Schedule 2 by-law 1 and insert:

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.

100. Schedule 2 by-law 2 replaced

Delete Schedule 2 by-law 2 and insert:

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.

101. Schedule 2 by-law 3 amended

In Schedule 2 by-law 3:

- (a) delete "a proprietor, occupier, or other resident of a lot shall" and insert:

an owner or occupier of a lot must

- (b) in paragraph (a) delete "upon" and insert:

on

- (c) in paragraph (b) delete "his" and insert:

the owner's or occupier's

102. Schedule 2 by-law 4 amended

In Schedule 2 by-law 4:

- (a) delete "A proprietor, occupier, or other resident of a lot shall" and insert:

An owner or occupier of a lot must

(b) delete “upon” and insert:

on

(c) delete “shall” and insert:

must

(d) delete “the proprietor, occupier, or other resident”
and insert:

an owner or occupier

Note: The heading to amended by-law 4 is to read:
Behaviour of owners and occupiers

103. Schedule 2 by-law 5 deleted

Delete Schedule 2 by-law 5

104. Schedule 2 by-law 6 amended

In Schedule 2 by-law 6:

(a) delete “A proprietor, occupier, or other resident of a
lot shall” and insert:

An owner or occupier of a lot must

(b) delete “upon” and insert:

on

(c) delete “another proprietor, occupier or resident” and
insert:

an owner or occupier of another lot

105. Schedule 2 by-law 7 amended

In Schedule 2 by-law 7:

- (a) delete “A proprietor, occupier, or other resident of a lot shall” and insert:

An owner or occupier of a lot must

- (b) in paragraph (b) delete “his” and insert:

their

Note: The heading to amended by-law 7 is to read:
Drying of laundry items and signage

106. Schedule 2 by-law 8 amended

In Schedule 2 by-law 8:

- (a) delete “A proprietor, occupier, or other resident of a lot shall” and insert:

An owner or occupier of a lot must

- (b) delete “approval in writing” and insert:

written approval

- (c) delete “upon” (each occurrence) and insert:

on

107. Schedule 2 by-law 9 amended

In Schedule 2 by-law 9:

- (a) delete “A proprietor, occupier, or other resident of a lot shall” and insert:

An owner or occupier of a lot must

- (b) delete “upon” and insert:

on

 (c) delete “he” (each occurrence) and insert:

 that person

 (d) delete “his” and insert:

 their

108. Schedule 2 by-law 10 amended

 In Schedule 2 by-law 10:

 (a) delete “A proprietor of a lot shall” and insert:

 An owner of a lot must

 (b) delete “the proprietor, occupier, or other resident”
 and insert:

 an owner or occupier

109. Schedule 2 by-law 11 amended

 In Schedule 2 by-law 11:

 (a) delete “A proprietor” and insert:

 An owner

 (b) after “lot” insert:

 must

 (c) in paragraph (a) delete “shall maintain within his” and
 insert:

 maintain within their

(d) in paragraph (c) delete “the proprietor, occupier or other resident” and insert:

an owner or occupier

(e) delete “his” and insert:

their

110. Schedule 2 by-law 12 amended

In Schedule 2 by-law 12:

(a) delete “A proprietor, occupier or other resident shall” and insert:

An owner or occupier of a lot must

(b) in paragraph (a) delete “that he owns, occupies or resides in for any” and insert:

for a

(c) in paragraph (b) delete “any” and insert:

the

(d) in paragraph (c) delete “subject to section 42(15) of the Act, keep any” and insert:

keep

(e) in paragraph (c) after “lot” delete “that he owns, occupies or resides in”;

(f) in paragraph (c) delete “him” and insert:

that person

Note: The heading to amended by-law 12 is to read:

Additional duties of owners and occupiers

111. Schedule 2 by-law 13 amended

In Schedule 2 by-law 13:

(a) delete “A proprietor of a lot shall not alter” and insert:

An owner of a lot must not alter or permit the alteration of

(b) delete “shall” and insert:

must

112. Schedule 2 by-law 14 amended

In Schedule 2 by-law 14 “A proprietor, occupier or other resident of a lot shall” and insert:

An owner or occupier of a lot must

113. Schedule 2 by-law 15 inserted

After Schedule 2 by-law 14 insert:

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.

114. Schedule 2A replaced

Delete Schedule 2A and insert:

Schedule 2A — Special provisions for single tier strata schemes

Part 1 — Introduction

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.

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.

2A. Dividing fences

Sections 213 and 214 apply to a single tier strata scheme as if it were a survey-strata scheme.

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.

Part 2 — Lot boundaries

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.

Part 3 — Statutory easement

Part 4 — Subdivision

Division 1 — Merger of common property into lots in certain strata schemes

Subdivision 1 — Preliminary

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

Subdivision 3 — Merger by resolution of land that is common property

Division 2 — Conversion of strata schemes to survey-strata schemes

Part 5 — Insurance

Note:

Clauses are inserted into Schedule 2A through renumbering and relocation of provisions by Division 6.

115. Schedule 3 heading amended

(1) In the heading to Schedule 3 after “**provisions**” insert:

for transition from *Strata Titles Act 1966* to this Act

(2) Delete the reference after the heading to Schedule 3.

116. Schedule 4 heading amended

(1) In the heading to Schedule 4 after “**provisions**” insert:

for the *Strata Titles Amendment Act 1995*

(2) Delete the reference after the heading to Schedule 4.

Division 6 — Sections relocated to Schedule 2A

117. Sections relocated to Schedule 2A

The sections listed in column 1 of the Table below are, after their amendment by Part 2 Division 2 of this Act (if relevant), redesignated as clauses of Schedule 2A (as inserted by section 114 of this Act) and relocated (in the order in which they appear in the

Table) to the Parts, Divisions and Subdivisions of that Schedule as set out in columns 2 and 4 of the Table.

Table

<u>Section number</u>	<u>Redesignated clause number</u>	<u>Clause heading</u>	<u>Relocation of clause</u>
<u>s. 3A</u>	<u>cl. 3A</u>	<u>Single tier strata schemes to which clause 3AB applies</u>	<u>Schedule 2A</u> <u>Part 2</u>
<u>s. 3AB</u>	<u>cl. 3AB</u>	<u>Alternative boundaries for lots in single tier strata schemes</u>	<u>Schedule 2A</u> <u>Part 2</u>
<u>s. 12A</u>	<u>cl. 12A</u>	<u>Easement for access for certain work</u>	<u>Schedule 2A</u> <u>Part 3</u>
<u>s. 21A</u>	<u>cl. 21A</u>	<u>Term used: existing small strata scheme</u>	<u>Schedule 2A</u> <u>Part 4 Division 1</u> <u>Subdivision 1</u>
<u>s. 21B</u>	<u>cl. 21B</u>	<u>Division only applies to single tier strata schemes</u>	<u>Schedule 2A</u> <u>Part 4 Division 1</u> <u>Subdivision 1</u>
<u>s. 21C</u>	<u>cl. 21C</u>	<u>Procedures cannot be invoked more than once</u>	<u>Schedule 2A</u> <u>Part 4 Division 1</u> <u>Subdivision 1</u>
<u>s. 21D</u>	<u>cl. 21D</u>	<u>Saving</u>	<u>Schedule 2A</u> <u>Part 4 Division 1</u> <u>Subdivision 1</u>

<u>Section number</u>	<u>Redesignated clause number</u>	<u>Clause heading</u>	<u>Relocation of clause</u>
s. 21E	cl. 21E	Application of this Subdivision	Schedule 2A Part 4 Division 1 Subdivision 2
s. 21F	cl. 21F	Resolution by strata company	Schedule 2A Part 4 Division 1 Subdivision 2
s. 21G	cl. 21G	Notice of resolution may be lodged for registration	Schedule 2A Part 4 Division 1 Subdivision 2
s. 21H	cl. 21H	Registration of notice of resolution	Schedule 2A Part 4 Division 1 Subdivision 2
s. 21I	cl. 21I	Effect of registration	Schedule 2A Part 4 Division 1 Subdivision 2
s. 21J	cl. 21J	Registrar of Titles to amend strata plan	Schedule 2A Part 4 Division 1 Subdivision 2
s. 21P	cl. 21P	Application of this Subdivision	Schedule 2A Part 4 Division 1 Subdivision 3

<u>Section number</u>	<u>Redesignated clause number</u>	<u>Clause heading</u>	<u>Relocation of clause</u>
s. 21Q	cl. 21Q	Resolution by strata company	Schedule 2A Part 4 Division 1 Subdivision 3
s. 21R	cl. 21R	Further provisions as to contents of resolution	Schedule 2A Part 4 Division 1 Subdivision 3
s. 21S	cl. 21S	Notice of resolution may be lodged for registration	Schedule 2A Part 4 Division 1 Subdivision 3
s. 21T	cl. 21T	Documents to accompany notice	Schedule 2A Part 4 Division 1 Subdivision 3
s. 21U	cl. 21U	Certificate of licensed surveyor	Schedule 2A Part 4 Division 1 Subdivision 3
s. 21V	cl. 21V	Transfers etc. to give effect to notice of resolution	Schedule 2A Part 4 Division 1 Subdivision 3
s. 21W	cl. 21W	Creation of easements for parking etc.	Schedule 2A Part 4 Division 1 Subdivision 3

<u>Section number</u>	<u>Redesignated clause number</u>	<u>Clause heading</u>	<u>Relocation of clause</u>
s. 21X	cl. 21X	Registration of notice of resolution	Schedule 2A Part 4 Division 1 Subdivision 3
s. 21Y	cl. 21Y	Effect of registration	Schedule 2A Part 4 Division 1 Subdivision 3
s. 21Z	cl. 21Z	Registrar of Titles to make necessary amendments	Schedule 2A Part 4 Division 1 Subdivision 3
s. 31A	cl. 31A	Division only applies to single tier strata schemes registered before 1 January 1998	Schedule 2A Part 4 Division 2
s. 31B	cl. 31B	Saving	Schedule 2A Part 4 Division 2
s. 31C	cl. 31C	Resolution by strata company	Schedule 2A Part 4 Division 2
s. 31D	cl. 31D	Notice of resolution may be lodged for registration	Schedule 2A Part 4 Division 2
s. 31E	cl. 31E	Documents to accompany notice	Schedule 2A Part 4 Division 2
s. 31F	cl. 31F	Certificate of licensed surveyor	Schedule 2A Part 4 Division 2

<u>Section number</u>	<u>Redesignated clause number</u>	<u>Clause heading</u>	<u>Relocation of clause</u>
s. 31G	cl. 31G	Creation of easements	Schedule 2A Part 4 Division 2
s. 31H	cl. 31H	Transfers etc. to give effect to resolution	Schedule 2A Part 4 Division 2
s. 31I	cl. 31I	Registration of notice of resolution	Schedule 2A Part 4 Division 2
s. 31J	cl. 31J	Effect of registration	Schedule 2A Part 4 Division 2
s. 31K	cl. 31K	Registrar of Titles to make necessary amendments	Schedule 2A Part 4 Division 2
s. 53A	cl. 53A	References in this Part	Schedule 2A Part 5
s. 53B	cl. 53B	Insurance for lots in single tier strata schemes	Schedule 2A Part 5
s. 53C	cl. 53C	Insurance for common property in single tier strata schemes	Schedule 2A Part 5
s. 53D	cl. 53D	Strata company's obligations if it has insurance function in single tier strata scheme	Schedule 2A Part 5

<u>Section number</u>	<u>Redesignated clause number</u>	<u>Clause heading</u>	<u>Relocation of clause</u>
<u>s. 53E</u>	<u>cl. 53E</u>	<u>Recovery of premium by strata company or owner if no administrative fund in single tier strata schemes</u>	<u>Schedule 2A</u> <u>Part 5</u>

118. References to redesignated provisions in other laws or other documents

A reference in another law or another document to a provision redesignated under this Division is a reference to the provision as redesignated unless the contrary intention appears.

Division 7 — Insertion of transitional provisions

119. Schedule 5 inserted

After Schedule 4 insert:

Schedule 5 — Transitional provisions for *Strata Titles Amendment Act 2018*

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.

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.

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.

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.

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.

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.

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.

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.

9. Utility service easement

A utility service easement applies to utility conduits whether installed before, on or after commencement day.

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.

11. Structural alteration of lot

An application to the Tribunal under section 90 may relate to a structural alteration made before commencement day.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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).

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.

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.

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.

²¹ The Land Legislation (Postponement of Expiry) Proclamation 2018 published by Gazette 21 Dec 2018 p. 4845-6 provides that the expiry of section 131A is postponed until the end of 31 December 2024.