

WESTERN AUSTRALIA

STRATA TITLES AMENDMENT ACT 1995

No. 58 of 1995

**AN ACT to amend the *Strata Titles Act 1985* and to
consequentially amend certain other Acts.**

[Assented to 20 December 1995.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Strata Titles Amendment Act 1995*.

Commencement

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

Principal Act

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

[* *Act No. 33 of 1985.*
For subsequent amendments see 1994 Index to Legislation of Western Australia, Table 1, p. 207 and Act No. 84 of 1994.]

Long title amended

4. The long title to the principal Act is amended by deleting “**subdivision of land into cubic spaces**” and substituting the following —

“ **horizontal and vertical subdivision of land** ”.

Section 3 amended and validation

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

- (a) in the definition of “common property” —
 - (i) by deleting “and” after paragraph (a);
 - (ii) by inserting “and” after paragraph (b); and
 - (iii) by inserting after paragraph (b) the following paragraph —

“
(c) the lot or lots shown on a survey-strata plan as common property;
”.

- (b) in the definition of “location plan” by inserting before “means” the following —

“ , in relation to a strata plan, ”;

- (c) in the definition of “lot” —

- (i) by inserting before “means” the following —

“ , in relation to a strata scheme, ”; and

- (ii) by deleting “strata plan of subdivision or strata” and substituting the following —

“ plan of re-subdivision or ”;

- (d) by deleting the definitions of “special resolution” and “strata plan”;

- (e) in the definition of “strata company” by inserting after “section 32” the following —

“
whether for a strata scheme or a survey-
strata scheme
”;

- (f) in the definition of “strata scheme”, in paragraph (a) by inserting after “property” the following —

“ under a strata plan ”; and

- (g) in the definition of “unanimous resolution”, by deleting paragraph (a) and substituting the following paragraph —

“
(a) a resolution that is passed
unanimously at a duly convened

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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

”.

(2) Section 3 (1) of the principal Act is amended by inserting the following definitions in their appropriate alphabetical positions —

“

“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;

“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;

“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;

“resolution without dissent” means a resolution that complies with sections 3A and 3C;

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

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

“special resolution” means a resolution that complies with sections 3B and 3C;

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

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

“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;

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“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;

”.

(3) After section 3 (2) of the principal Act the following subsection is inserted —

“

(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.

”.

(4) Section 3 (5) of the principal Act is amended by deleting “subdivision” and substituting the following —

“ re-subdivision ”.

(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.

Sections 3A, 3B, 3C and 3D inserted

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

“

Meaning of “resolution without dissent”

3A. (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

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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.

Meaning of “special resolution”

3B. (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

- (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;
- (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

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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 referee refuses to make the order, until the time for appeal under Division 4 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.

Supplementary provisions to sections 3A and 3B

3C. (1) For the purposes of sections 3A and 3B —

- (a) a sufficient notice of a meeting is given if at least 14 days’ notice specifying the proposed resolution has been given;
- (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
 - (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.

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(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 3A (2) or 3B (5) may be exercised in respect of the amended resolution.

Unfinancial proprietors may vote in certain cases

3D. 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.

”.

Part II heading amended

7. Part II of the principal Act is amended by deleting the heading “PART II.—LAND IN STRATA SCHEMES.” and substituting the following heading —

“

**PART II — STRATA SCHEMES
AND SURVEY-STRATA SCHEMES**

”.

Section 4 amended

8. Section 4 of the principal Act is amended by repealing subsection (1) and substituting the following subsections —

“

(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;
- (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;
- (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.

”.

Section 5 amended

9. Section 5 of the principal Act is amended —

- (a) in subsection (1) (d) by deleting “building” and substituting the following —

“ scheme ”;

- (b) by deleting subsection (1) (e) and substituting the following paragraph —
- “
- (e) have endorsed on it the address of the parcel; and
- ”,
- and
- (c) by repealing subsections (2), (3), (4) and (5).

Sections 5A, 5B and 5C inserted

10. After section 5 of the principal Act the following sections are inserted —

“

Survey-strata plan

5A. 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;
- (b) bear a statement containing such particulars as may be necessary to identify the title to such parcel;
- (c) show the area of each lot and of any common property;

- (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;
- (e) have endorsed on it the name of the scheme;
- (f) have endorsed on it the address of the parcel; and
- (g) contain such other features as may be prescribed.

Further provisions as to registration of plans

5B. (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;
- (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 certificate given by the local government authority in accordance with section 23.

(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.

Management statement setting out by-laws may be registered

5C. (1) When a strata/survey-strata plan is lodged for registration a management statement —

- (a) that is in the prescribed form; and
- (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 —

- (a) be signed by —
 - (i) the person who is registered as proprietor of the fee simple of the parcel; and
 - (ii) each person who has a registered interest in, or is a caveator in respect of, the parcel;
- (b) in the case of a strata plan, have endorsed on it a certificate —
 - (i) of the Commission; or
 - (ii) where under section 25 (1) the approval of the Commission to a strata plan is not required, of the local government authority,

stating that the Commission or authority, as the case may be, has no objection to the provisions in the management statement relating to matters described in items 4, 5 and 6 in Schedule 2A; and

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- (c) in the case of a survey-strata plan, have endorsed on it a certificate of the Commission stating that the Commission has no objection to the provisions in the management statement relating to matters described in items 4, 5, 6 and 8 in Schedule 2A.

(4) The Commission or a local government authority in giving a certificate as to any provisions for the purposes of subsection (3) (b) or (c) is not required to satisfy itself, and the certificate is not to be taken as a statement, that those provisions may lawfully be made.

(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 6 amended

11. Section 6 of the principal Act is amended —

- (a) in subsection (1) by deleting “a lot or part of a lot” and substituting the following —

“ the parcel or part of the parcel ”;

- (b) by inserting after subsection (1) the following subsections —

“

(1a) Subject to subsections (3a) and (4), a registered strata/survey-strata

plan may be amended, by resolution without dissent 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.

”;

- (c) by repealing subsections (2) and (3) and substituting the following subsections —

“

(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 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 authority 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.

”;

and

- (d) in subsection (4) by inserting after “A resolution” the following —

“ adding a restriction to or ”.

Section 6A inserted

12. After section 6 of the principal Act the following section is inserted —

“

Restrictions relating to age

6A. (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 of such a person;

“**spouse**” includes a person living with another person of the opposite sex as a husband or

wife of that person on a *bona fide* domestic basis, although not legally married to that person.

”.

Section 7 repealed and sections 7, 7A and 7B substituted

13. Section 7 of the principal Act is repealed and the following sections are substituted —

“

Structural extensions restricted, strata schemes

7. (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;
 - (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);
- (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);
- (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);
- (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;
 - (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*.

Structural extensions restricted, survey-strata schemes

7A. (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
- (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.

Further provisions as to approvals for purposes of sections 7 and 7A

7B. (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 8 repealed and sections 8, 8A, 8B and 8C substituted

14. Section 8 of the principal Act is repealed and the following sections are substituted —

“

Re-subdivision within a scheme

8. (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.

Requirements for plan of re-subdivision

8A. 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 resolution without dissent 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 bylaws of the kind described in item 8 in Schedule 2A or sufficiently complies with those bylaws in a way that is allowed by the regulations;
- (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;
- (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;
- (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;
- (e) where paragraph (a) (ii) (II) applies, be accompanied by a certificate in the

prescribed form given by a licensed surveyor;

- (f) in the case of a re-subdivision of a lot in a strata scheme, be accompanied by a certificate given by the local government authority containing, subject to appropriate and necessary modifications, the same particulars as are required by section 23 and the local government authority shall not issue a certificate for the purposes of this paragraph unless satisfied, subject to appropriate and necessary modifications, in respect of the matters referred to in section 23 (2);
- (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;
- (h) be accompanied by a certificate of a licensed valuer in accordance with section 14 (2);
- (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; 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 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.

Transfers etc. to give effect to plan

8B. (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;
- (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.

Effect of registration of plan of re-subdivision

8C. (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 9 amended

15. Section 9 (3) of the principal Act is amended —

- (a) in paragraph (a) by deleting “in accordance with that section and signed by the Chairman of the Commission”; and

- (b) in paragraph (b) by inserting before “be accompanied” the following —

“
in the case of a consolidation of lots in a strata scheme,
”.

Section 12 amended

16. Section 12 (1) of the principal Act is amended by inserting after “proprietor” the following —

“ of a lot on a strata plan ”.

Section 14 amended

17. (1) Section 14 (2) of the principal Act is amended —

- (a) by deleting “sections 5” and substituting the following —

“ sections 5B ”;

- (b) by deleting “strata plan of subdivision” and substituting the following —

“ plan of re-subdivision ”; and

- (c) by deleting “capital” in both places where it occurs.

(2) After section 14 (2) of the principal Act the following subsection is inserted —

“

(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.

”.

Section 15 amended

18. (1) Section 15 (2) (c) of the principal Act is amended by deleting “capital” in both places where it occurs.

(2) Section 15 (3) of the principal Act is repealed.

(3) Section 15 (5) of the principal Act is repealed and the following subsection is substituted —

“

(5) In subsection (2) —

“**registered interest**” includes a caveat in respect of a lot but excludes a writ of *fiery facias* or a warrant of execution in respect of a lot;

“**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

19. (1) Section 16 of the principal Act is amended, in subsections (2) (b) and (4) (a), by deleting “capital” in each place where it occurs.

(2) Section 16 (7) of the principal Act is repealed and the following subsection is substituted —

“

(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 18 amended

20. (1) Section 18 (1) of the principal Act is amended by deleting “, not being a lot within the parcel, which is contiguous to” and substituting the following —

“ which is part of, or contiguous to, ”.

(2) Section 18 (5) of the principal Act is amended by deleting “and for the purposes of this subsection a resolution may be taken to be a unanimous resolution although such a proprietor has not voted”.

Section 19 amended

21. Section 19 (10) (b) of the principal Act is amended by deleting “10 years” and substituting the following —

“ the prescribed period ”.

Section 21 amended

22. Section 21 of the principal Act is amended by deleting “strata plan of subdivision” and substituting the following —

“ plan of re-subdivision in respect of a strata scheme ”.

Section 22 amended

23. Section 22 of the principal Act is amended —

(a) by inserting after the section designation “**22.**” the subsection designation “(1)”;

(b) by deleting “5” and substituting the following —

“ 5B ”;

(c) in paragraph (c) (iii) by inserting after “granted and” the following —

“
will be lodged with the Registrar of Titles
to enable it to be
and ”;

(d) by inserting the following subsection —

“
(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 23 amended

24. (1) Section 23 (1) of the principal Act is amended by deleting “5” and substituting the following —

“ 5B (2) ”.

(2) After section 23 (2) of the principal Act the following subsection is inserted —

“ (2a) In satisfying itself in respect of any matter referred to in subsection (1) or (2) a local government authority shall have regard to such considerations as may be prescribed to be relevant to that matter. ”.

Section 24 amended

25. (1) Section 24 (1) of the principal Act is amended —

(a) by inserting after “specifications” in the first place where it occurs, the following —

“ in respect of a proposed strata scheme ”;

and

(b) by inserting after “this Act” the following —

“ as a building in a strata scheme ”.

(2) After section 24 (2) of the principal Act the following subsection is inserted —

“ (2a) In making determinations of a kind provided for by this section a local government authority shall have regard to such considerations as may be prescribed to be relevant to determinations of that kind. ”.

(3) Section 24 (7) of the principal Act is amended by deleting “5” and substituting the following —

“ 5B (2) ”.

Section 25 amended

26. Section 25 of the principal Act is amended —

(a) by repealing subsection (1) and substituting the following subsection —

“

(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.

”;

(b) in subsection (2) —

(i) by inserting after “subdivision” the following —

“ , re-subdivision ”;

(ii) by inserting after “subdivisions” the following —

“ , re-subdivisions ”; and

(iii) by deleting “5” and substituting the following —

“ 5B ”;

- (c) in subsection (4) —
- (i) by inserting after “subdivision” the following —
- “ , re-subdivision ”; and
- (ii) by deleting “and signed on behalf of the Board by the Chairman”;
- and
- (d) by repealing subsections (5) and (6) and substituting the following subsection —
- “
- (5) Without limiting section 25A of this Act, sections 20 and 21 of the *Town Planning and Development Act 1928* do not apply to —
- (a) a subdivision effected by the registration of a strata plan;
- (b) a re-subdivision effected by a plan of re-subdivision for a strata scheme;
- (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.
- ”.

Sections 25A and 25B inserted

27. After section 25 of the principal Act the following sections are inserted —

“

Planning Commission to refer plan to other bodies in certain cases

25A. (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 section 24 of the *Town Planning and Development Act 1928* as if the plan were a plan of subdivision which required the approval of the Commission under Part III of 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 paragraph (c) of section 27 (3) instead of the period of 40 days mentioned in that paragraph.

Subdivision in survey-strata scheme requires approval by Planning Commission

25B. (1) The provisions of Part III of the *Town Planning and Development Act 1928*, other than section 20 (1) (b), 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.

”.

Section 26 amended

28. (1) Section 26 (1) of the principal Act is amended —

- (a) in paragraph (i) by inserting after “Act” the following —

“ as a building in a strata scheme ”;

- (b) in paragraph (l) by deleting “strata plan of subdivision” and substituting the following —

“ plan of re-subdivision for a strata scheme ”;

and

- (c) in paragraph (m) by deleting “strata plan of consolidation” and substituting the following —

“ plan of consolidation for a strata scheme ”.

(2) Section 26 (12) of the principal Act is amended —

- (a) by deleting “strata plan of subdivision, strata plan of consolidation” and substituting the following —

“

a plan of re-subdivision or consolidation for
a strata scheme

”;

and

- (b) by deleting “the strata plan” in both places where it occurs and substituting the following —

“ the plan ”.

Section 27 amended

29. (1) Section 27 (1) of the principal Act is amended by deleting paragraph (a) and substituting the following paragraph —

“

- (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;

”.

(2) Section 27 of the principal Act is amended, in subsections (8) and (9), by deleting “that Board” and substituting the following —

“ that Commission ”.

(3) Section 27 (10) of the principal Act is repealed and the following subsection is substituted —

“

(10) The Registrar of Titles may accept for registration a strata plan or a plan of re-subdivision or consolidation for a strata scheme in respect of which the Commission has refused or failed to give a certificate, notwithstanding that the plan is not endorsed with or accompanied by such a certificate, if the plan —

- (a) is accompanied by the appropriate certificate of the Minister or the Town

Planning Appeal Tribunal referred to in
subsection (9); and

(b) otherwise complies with this Act.

”.

Section 28 amended

30. Section 28 (1) of the principal Act is amended by inserting after “building” the following —

“ shown on a registered strata plan ”.

Section 29 amended

31. Section 29 of the principal Act is amended by inserting after “parcel” the following —

“ in a registered strata plan ”.

Sections 29A, 29B and 29C inserted

32. After section 29 of the principal Act the following sections are inserted —

“

Variation of survey-strata scheme on resumption

29A. (1) Where part of the land in a parcel in a survey-strata scheme is resumed, 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;
- (b) the payment of moneys to or by the strata company or any one or more of the proprietors;
- (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;
- (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.

Lodgment of documents with Registrar following partial resumption in strata scheme

29B. (1) Where part of the land in a strata plan is resumed and the resumption includes part but not the whole of any lot in the scheme, the relevant authority shall, as soon as is practicable after the resumption 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 resumption 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) —

“relevant authority” in relation to a resumption of land means —

- (a) the Minister under whose hand a notice of that resumption was published under section 17 (2) (b) of the *Public Works Act 1902*; or
- (b) where under section 18 of that Act the land is vested in a local authority within the meaning in that Act, that local authority.

Termination of scheme by resumption

29C. (1) The Governor may in a resumption notice in respect of the whole of a parcel declare that a scheme for that parcel is terminated on the publication of that notice.

(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 resumption notice.

(3) In this section —

“**resumption notice**” means a notice published in the *Gazette* under section 17 (1) of the *Public Works Act 1902* declaring that the whole of a parcel is taken or resumed under that Act.

”.

Section 30 amended

33. (1) Section 30 (1) of the principal Act is amended by inserting after “proprietors” the following —

“ of lots in a strata scheme ”.

(2) Section 30 (3) of the principal Act is amended by inserting after “of lots” the following —

“ in a strata scheme ”.

Section 30A inserted

34. After section 30 of the principal Act the following section is inserted —

“

Termination of survey-strata scheme by unanimous resolution

30A. (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 31 amended

35. (1) Section 31 (1) of the principal Act is amended by deleting “the strata scheme, make an order terminating the strata scheme concerned” and substituting the following —

“

a scheme, make an order terminating the scheme

”.

(2) Section 31 (2) of the principal Act is amended by inserting after “building” where it first occurs the following —

“

(other than a building on a lot in a survey-strata scheme)

”.

s. 36

(3) Section 31 of the principal Act is amended by repealing subsections (9), (10), (11) and (12) and substituting the following subsections —

“

(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 32 amended

36. Section 32 of the principal Act is amended by repealing subsections (1) and (2) and substituting the following subsections —

“

(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 (1) (e).

(2b) In the case of a strata plan registered before the commencement of section 36 of the *Strata Titles Amendment Act 1995* 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).

”.

Section 35 amended

37. Section 35 (1) of the principal Act is amended by deleting paragraphs (c) and (d) and substituting the following paragraph —

“

(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;

”.

Section 35A inserted and transitional provision

38. (1) After section 35 of the principal Act the following section is inserted —

“

Roll to be kept by strata company

35A. (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);
- (b) the name and address of each proprietor;
- (c) the address for service of any proprietor or mortgagee of a lot who has notified an address for service to the strata company;
- (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;
- (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.

”.

(2) A strata company does not commit an offence by contravening section 35A (1) of the principal Act during the period from the commencement of subsection (1) to the expiration of 12 months after that commencement.

Section 36 amended

39. (1) Section 36 (1) of the principal Act is amended by deleting paragraph (c) and substituting the following paragraph —

“

- (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
- ”.

(2) After section 36 (1) of the principal Act the following subsection is inserted —

“

- (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.
- ”.

(3) Section 36 (4) (b) of the principal Act is amended by deleting “, by special resolution, the strata” and substituting the following —

“ the ”.

Sections 36A and 36B inserted

40. After section 36 of the principal Act the following sections are inserted —

“

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

36A. (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.

TABLE

section	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.

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

36B. (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).

TABLE

section	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 39A inserted

41. After section 39 of the principal Act the following section is inserted —

“

Power to terminate certain contracts for services

39A. (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;
 - (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 referee 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 referee 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 he is 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 a referee under subsection (4) (c) (ii) or (5) and to an order made by the referee in the same way as they apply to an application and an order made under that Part.

”.

Section 41 amended

42. Section 41 of the principal Act is amended by deleting “building” and substituting the following —

“ scheme ”.

Section 42 amended and transitional provision

43. (1) Section 42 of the principal Act is amended by repealing subsections (1) and (2) and substituting the following subsections —

“

(1) A strata company may make by-laws, not inconsistent with this Act, for —

- (a) its corporate affairs;
- (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, in the case of Schedule 1 by-laws;

(b) in accordance with any order of a court or a referee 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 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 Part I of 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 authority may be expressed to require the consent of that authority to an amendment or repeal of the by-law, and any such restriction has effect according to its tenor.

”.

(2) Section 42 (4) (a) of the principal Act is amended by deleting “2 years” and substituting the following —

“ 3 months ”.

(3) After section 42 (4) of the principal Act the following subsection is inserted —

- “ (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.
- ”.

(4) Section 42 (16) of the principal Act is repealed.

(5) Subsection (4) of section 42 of the principal Act as in force immediately before the commencement of this section applies to any unrecorded by-laws, but the lodgment of notice under paragraph (a) of that subsection in respect of any unrecorded by-law shall be effected not later than —

- (a) 2 years after the passing of the resolution for that by-law; or

- (b) 12 months after the commencement of section 43 (5) of the *Strata Titles Amendment Act 1995*,

whichever is the sooner.

- (6) In subsection (5) —

“unrecorded by-law” means a by-law or an amendment or repeal of a by-law made, but not referred to on the strata/survey-strata plan as required by section 42 (4) of the principal Act, before the commencement of this section.

Sections 42A, 42B and 42C inserted

44. After section 42 of the principal Act the following sections are inserted —

“

By-laws may provide for penalties

42A. (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 referee under section 103I.

By-laws may provide for different basis for levying contributions

42B. (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.

Transitional provision

42C. (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 43 amended and transitional provision

45. (1) Section 43 (1) of the principal Act is amended —

(a) in paragraph (b) —

(i) by inserting after subparagraph (i) the following subparagraph —

“

(ia) the roll maintained under section 35A;

”;

(ii) in subparagraph (v) by inserting after “unanimous resolutions” the following —

“ , resolutions without dissent ”; and

(iii) by deleting “or” at the end of the paragraph;

(b) in paragraph (c) —

(i) by deleting the “and” after subparagraph (iv);

- (ii) in subparagraph (v) by deleting the full stop and substituting a semicolon; and
- (iii) by inserting after subparagraph (v) the following subparagraphs —

“

- (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.

”;

and

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

“

- (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.

”.

(2) After section 43 (1) of the principal Act the following subsection is inserted —

“

(1a) On application made in writing to a strata company by a proprietor or mortgagee of a lot, or by a person authorized 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.

”.

(3) A strata company does not commit an offence by contravening section 43 (1) (b) (ia) of the principal Act during the period from the commencement of subsection (1) (a) (i) of this section to the expiration of 12 months after that commencement.

Section 47 repealed and a section substituted, and validation

46. (1) Section 47 of the principal Act is repealed and the following section is substituted —

“

Restrictions on powers of expenditure

47. (1) Except as authorized 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 authorized in an emergency, by the referee;
- (b) expenditure that is deemed to be approved under subsection (3);
- (c) the payment of any premium of insurance effected by or on behalf of the strata company;
- (d) any payment required to comply with —
 - (i) a notice or order served on the strata company by any public or local government authority; or

- (ii) an order made with respect to the strata company by a court or tribunal or the referee;

or

- (e) expenditure authorized by the strata company in general meeting as part of the budget of the company.

(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.

”.

(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.

Section 50 amended

47. Section 50 (5) of the principal Act is repealed.

Sections 50A and 50B inserted

48. After section 50 of the principal Act the following sections are inserted —

“

Disqualification from voting as proxy

50A. (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 authorizes 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;
- (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 —

- (a) owns shares (whether beneficially or otherwise) in a company;
- (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.

Quorum for meeting of strata company for two-lot scheme

50B. 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 51 amended

- 49.** (1) Section 51 (1) of the principal Act is amended —

- (a) by inserting after “unanimous resolution” where it first occurs the following —

“ or a resolution without dissent ”;

- (b) by deleting “(as defined in section 3 (1))”; and

- (c) by inserting after “unanimous resolution” in the second place where it occurs the following —

“ or a resolution without dissent, as the case may be

”.

(2) After section 51 (1) of the principal Act the following subsection is inserted —

“

(1a) This section does not apply to a two-lot scheme.

”.

Section 51A inserted

50. After section 51 of the principal Act the following section is inserted —

“

Relief where unanimous resolution required for two-lot scheme

51A. (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.

(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 53 amended

51. Section 53 of the principal Act is amended, in paragraph (a) of the definition of “building”, by deleting “other than paint, wallpaper and” and substituting the following —

“

including paint and wallpaper but excluding carpet
and

”.

Section 54 amended

52. Section 54 of the principal Act is amended —

(a) in subsection (1) by deleting “Unless the strata company otherwise resolves by unanimous resolution” and substituting the following —

“ Subject to subsection (4) and section 103J ”;

and

- (b) by repealing subsections (3) and (4) and substituting the following subsections —

“

(3) It is a defence to a charge of an offence against subsection (1) 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 (1) applies only to a building that is common property in the scheme.

”.

Section 54A inserted

53. After section 54 of the principal Act the following section is inserted —

“

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

54A. (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 55 amended and validation

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

(a) in paragraph (a), by inserting after “to insure” the following —

“

, including insurance against liability to pay compensation under the *Workers' Compensation and Rehabilitation Act 1981*

”;

(b) in paragraph (b), by deleting “by special resolution”; and

- (c) in paragraph (c) by deleting “unless the strata company otherwise resolves by unanimous resolution” and substituting the following —

“ subject to section 103J ”.

- (2) Section 55 (2) of the principal Act is amended by deleting “\$750 000” and substituting the following —

“ \$5 000 000 ”.

- (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.

Section 55A inserted

- 55.** After section 55 of the principal Act the following section is inserted —

“

Proprietor liable for increased insurance premium in certain cases

55A. (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 56A inserted

56. After section 56 of the principal Act the following section is inserted —

“

Proprietor may insure if strata company in default

56A. 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 60 repealed and a section substituted, and transitional provisions

57. (1) Section 60 of the principal Act is repealed and the following section is substituted —

“

Delivery of plans to authorities

60. (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 authority that appears to the Registrar to be authorized 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) A charge made under the *Water Authority Act 1984* that relates to the provision of a water service, within the meaning of that Act, in respect of land shall be taken, for the purposes of this section and section 61, to be a rate.

”.

(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.

Section 61 amended

58. Section 61 (a) of the principal Act is amended by deleting “strata plan, strata plan of subdivision, strata plan of consolidation” and substituting the following —

“

strata/survey-strata plan, plan of re-subdivision or consolidation for a scheme

”.

Section 62 amended

59. Section 62 (1) of the principal Act is amended by inserting after “of a parcel” the following —

“ in a strata plan ”.

Section 62A inserted

60. After section 62 of the principal Act the following section is inserted —

“

Rating for survey-strata schemes

62A. (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 authority 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 65 amended

61. Section 65 (1) of the principal Act is amended by inserting after “in respect of the parcel” the following —

“ in a strata plan ”.

Section 65A inserted

62. After section 65 of the principal Act the following section is inserted —

“

Land tax etc. for survey-strata schemes

65A. (1) This section applies to the imposition, assessment or recovery of land tax or metropolitan region improvement tax under the *Land Tax Assessment Act 1976* and the *Metropolitan Region Town Planning Scheme Act 1959* 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;
- (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.

”.

Sections 68 and 69 repealed and sections 68, 69, and 69A to 69E substituted

63. Sections 68 and 69 of the principal Act are repealed and the following sections are substituted —

“

Interpretation

68. 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.

Information to be given to purchaser

69. (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.

Notifiable information, all vendors

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

- (a) the name and address of the vendor and the purchaser;
- (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 (1) (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;
- (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;
- (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;
- (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.

Notifiable information — original proprietor

69B. (1) This section applies only if —

- (a) the strata/survey-strata plan has not been registered;
- (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 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.

Variation of information also to be notified

69C. (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.

When purchaser may avoid contract

69D. (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
- (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.

Effect of avoidance

69E. 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 70 amended

64. Section 70 of the principal Act is amended —

- (a) by deleting “or a real estate” and substituting the following —

“ , real estate agent or settlement ”;

- (b) by deleting “or real estate” in each place where it occurs and substituting the following —

“ , real estate agent or settlement ”;

- (c) by repealing subsections (6) and (7); and

- (d) by repealing subsection (8) and substituting the following —

“

- (8) In this section —

“**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*.

”.

Sections 70A and 70B inserted

65. After section 70 of the principal Act the following sections are inserted —

“

Contracting out prohibited

70A. (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.

Saving

70B. 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.

”.

Transitional provision

66. 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.

Section 77 repealed and a section substituted

67. Section 77 of the principal Act is repealed and the following section is substituted —

“

How applications are made

77. An application to a referee for relief under this Part shall —

- (a) be made in writing;
- (b) comply with section 77B;
- (c) specify the order or orders that are applied for and the grounds relied on for the making of each order; and
- (d) be accompanied by the prescribed fee.

”.

Section 77B inserted

68. After section 77A of the principal Act the following section is inserted —

“

Disputes procedures for scheme to be followed

77B. (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 78 amended

69. Section 78 (1) of the principal Act is amended by deleting “section 43 as it has under that section” and substituting the following —

“ sections 35A and 43 as it has under those sections ”.

Sections 79 and 80 repealed and a section substituted

70. Sections 79 and 80 of the principal Act are repealed and the following section is substituted —

“

Notice of application to be given

79. (1) Subject to section 80A, after receiving an application under this Part, a referee —

- (a) shall give written notice of the application to the strata company to which the application relates and to any other person who, in the opinion of the referee, would be affected if the order sought were made;
- (b) shall, in a notice required to be given by paragraph (a), specify the order sought and invite the strata company and any member of the strata company and any other person to whom the notice is given to make to the

referee, within a time specified in the notice, a written submission in respect of the matter to which the application relates;

- (c) may, by further notice, allow the strata company, any member of the strata company and each person to whom a notice under paragraph (a) was given a longer time within which to make a submission under paragraph (b);
- (d) may allow an applicant to amend the application on any condition that the referee thinks fit, including a requirement —
 - (i) that the applicant give notice of the amendment in terms of paragraphs (a) and (b) to every party who was given notice of the application; or
 - (ii) that the applicant pay such costs of any person interested in the application as the referee may award to compensate that person for time unnecessarily spent in connection with the application.

(2) A strata company that is given notice under subsection (1) (a) or (c) shall forthwith serve a copy of the notice on each —

- (a) proprietor;
- (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.

”.

Division 2A inserted in Part VI

71. After Division 2 of Part VI of the principal Act the following Division is inserted —

“

Division 2A — Applications, referee’s powers and procedures

Investigations

80. (1) A referee shall make such investigations as he thinks necessary for the proper determination of an application under this Part, whether with or without a hearing.

(2) In conducting an investigation a referee —

- (a) shall proceed with as little formality and technicality and as speedily as the requirements of this Act and proper investigation of the matter permit;
- (b) is not bound by the rules of evidence but may inform himself of any matter in such manner as he considers appropriate; and
- (c) may, subject to this Act and the rules of natural justice, determine his own procedures.

Dismissal of applications in certain cases

80A. A referee may, without being obliged to comply with section 79 and notwithstanding that a time specified under that section may not have expired, by order dismiss an application under this Part if it appears to him that —

- (a) the application does not comply with section 77;
- (b) the application is not accompanied by a certificate under section 77B, or, even though such a certificate is included, the certificate has not been correctly given;
- (c) the application is frivolous, vexatious, misconceived or lacking in substance;
- (d) a decision in favour of the applicant is not within the jurisdiction of the referee; or
- (e) the applicant has unreasonably delayed complying with a requirement under section 80C (a).

Power to enter premises

80B. (1) A referee may enter upon any parcel, and every part of a parcel, to which an application relates for the purpose of carrying out any investigation with respect to the application.

(2) The power conferred by subsection (1) is exercisable at any reasonable time, but only after notice has been given to the strata company and to every person who has been notified of the application.

Further information may be requested

80C. A referee may —

- (a) require an applicant to provide him with such further information in relation to the application as, in his opinion, may assist the investigation of the application;
- (b) require the strata company for a scheme to which an application relates to give to him the names and addresses of the proprietors of lots in the scheme as appearing in the roll maintained under section 35A;
- (c) refuse to deal with the application until a requirement made under paragraph (a) or (b) has been complied with.

Powers to obtain information

80D. (1) For the purpose of an investigation —

- (a) a referee may by summons —
 - (i) require the attendance of any person before that referee;
 - (ii) require the production of any books, papers or documents; or
 - (iii) require both such attendance and production;and
- (b) a referee may —
 - (i) inspect any books, papers or documents produced, retain them for

such reasonable period as he thinks fit, and make copies of any of them, or of any of their contents;

- (ii) require any person appearing before him to make an oath or affirmation that he will truly answer any relevant question put to him by the referee;
- (iii) require any person appearing before him (whether he has been summoned to appear or not) to answer any relevant question put to him by the referee.

(2) A person shall not —

- (a) without reasonable excuse fail to comply with the requirements of a summons served on him under subsection (1) (a); or
- (b) refuse or fail to comply with a requirement under subsection (1) (b).

Penalty: \$500.

Obstruction

80E. A person shall not obstruct or hinder the referee or a delegate of the referee in the exercise of the powers conferred by this Division.

Penalty: \$500.

”.

Section 81 amended

72. (1) Section 81 (1) of the principal Act is amended —

- (a) by deleting “, or where an application has been amended under subsection (6), the expiration of the

time specified in the notice served under that subsection”;

(b) by deleting “(1) (c)” and substituting the following —

“ (1) (a) ”; and

(c) by deleting “(1) (e)” and substituting the following —

“ (1) (c) ”.

(2) After section 81 (2) of the principal Act the following subsection is inserted —

“

(2a) An order made by a referee may be expressed in terms different from the order sought by the applicant, so long as it does not differ in substance from the order sought.

”.

(3) Section 81 (6) of the principal Act is repealed.

(4) Section 81 (7) of the principal Act is amended by deleting “A” and substituting the following —

“ Subject to sections 79 (1) (d) and 103H (8), a ”.

Section 83 amended

73. Section 83 (4) of the principal Act is amended by inserting after “unanimous resolution” the following —

“ , resolution without dissent ”.

Section 93 repealed and a section substituted

74. Section 93 of the principal Act is repealed and the following section is substituted —

“

Order relating to by-laws

93. (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 a referee for an order under this section.

(2) An order under this section is an order for one or more of the following —

- (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) a referee may make an order under this section if he is satisfied that the by-law or the repeal or amendment of a by-law —

- (a) was made without power;

- (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 96 repealed

75. Section 96 of the principal Act is repealed.

Section 99A inserted

76. After section 99 of the principal Act the following section is inserted —

“

Order fixing different basis for levying contributions

99A. (1) A proprietor who is aggrieved by the operation of a by-law referred to in section 42B may apply to a referee 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 referee may make an order under this section that appears to him 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.

”.

Sections 103A to 103L inserted

77. After section 103 of the principal Act the following sections are inserted —

“

Order for compliance, despite section 36A

103A. (1) A proprietor of a lot in a two-lot scheme may apply to a referee 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), a referee may make an order under this section if he is 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 resolution without dissent.

Order to enable quorum in two-lot scheme

103B. (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 a referee 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 referee shall specify in the order.

(3) On the making of an application by a proprietor under subsection (1), the referee may make an order under this section if he is satisfied that the proprietor in default has acted unreasonably in refusing to attend a general meeting of the strata company.

Order making resolution for two-lot scheme

103C. (1) Where a resolution, including a special resolution, 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 a referee for an order under this section.

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

(3) On the making of an application by a proprietor under subsection (1), the referee may make an order under this section if he is satisfied that the other proprietor has acted unreasonably in refusing to agree to the resolution.

Order cancelling special resolution

103D. (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 a referee 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 referee may make an order under this section if he is 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.

Order for termination of contract for services to strata company

103E. (1) A strata company for a scheme, or a proprietor of a lot in a scheme, may apply to a referee 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), a referee may make an order under this section if he is 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.

Order dispensing with approval under section 7 (2)

103F. (1) A proprietor of a lot who has applied for but not obtained an approval under section 7B may apply to a referee 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.

(3) On the making of an application under subsection (1), a referee may make an order under this section if he is 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 referee cannot make an order on a conditional application unless a proprietor, voting in accordance with section 3A (2), casts a vote against the application referred to in subsection (4) (a) nor until the expiration of 35 days after the meeting.

Order granting relief for breach of section 7 (2)

103G. (1) An application to a referee 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), a referee shall —

- (a) make a finding under this section if he is satisfied that a breach of section 7 (2) has occurred;
- (b) make an order under this section unless he is satisfied that the work done or intended to be done will not cause any significant inconvenience or detriment to the other proprietors.

Order for variation of unit entitlement

103H. (1) An application to a referee 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 referee thinks appropriate.

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

- (a) the proportion that the unit entitlement of any lot in the scheme bears to the aggregate unit entitlement of all lots 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 referee 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) A referee may order a party who opposes an application under this section to pay the costs of a successful applicant if the referee considers the actions of that party in relation to the application have been unreasonable.

Order for payment of penalty

103I. (1) A strata company for a scheme may apply to a referee 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 referee may make an order under this section in respect of a by-law if he is satisfied that —

- (a) the by-law specifies a penalty for breach of it;
- (b) the strata company has authorized the application; and
- (c) the proprietor has wilfully and persistently breached the by-law.

(4) A referee cannot order an amount exceeding the prescribed amount to be paid by way of penalty under subsection (2) (a).

Order for exemption from section 54 or 55 (1) (c)

103J. (1) A strata company may apply to a referee for an order under this section.

(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) (c), or both of those provisions, either generally or in a particular respect.

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

Order for compliance with section 54A

103K. (1) A strata company for a scheme may apply to a referee 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 referee may make the order if he is satisfied that —

- (a) a notice referred to in section 54A (1) has been served on the proprietor;
- (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 referee may make the order if he is satisfied that —

- (a) a notice referred to in section 54A (2) has been served on the proprietor;
- (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.

Order to contribute to insurance premium paid by proprietor

103L. (1) A proprietor who has paid a premium or other charge for any insurance effected or maintained under section 56A may apply to a referee for an order under this section.

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

- (a) varying the amount of contributions levied under section 36 in a way that the referee 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.

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

justified in exercising the power in section 56A to effect or maintain insurance.

(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 105 amended

78. Section 105 (2) of the principal Act is amended by deleting “section 82 (2)” and substituting the following —

“ sections 82 (2) or 116A (1) ”.

Section 115 repealed and a section substituted

79. Section 115 of the principal Act is repealed and the following section is substituted —

“

Recording of certain orders

115. (1) Where —

- (a) an order is made under section 93, 94, 99A, 103A, 103H or 103J; or
- (b) an order is directed by the referee to be registered under this section,

a copy of the order certified by the referee as a true copy shall be lodged in the office of the Registrar of Titles 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 116 amended

80. Section 116 of the principal Act is amended —

- (a) by deleting the penalty provision at the foot of subsection (1); and
- (b) by deleting the penalty provision at the foot of subsection (2) and substituting the following —

“

Penalty applicable to this
section: \$2 000 and a daily penalty
of \$200.

”.

Section 116A inserted

81. After section 116 of the principal Act the following section is inserted —

“

Enforcement of certain orders

116A. (1) Where —

- (a) an order has been made under this Part that a person do a specified act;

(b) the person (“**the defaulting party**”) has been convicted under section 116 of contravening the order; and

(c) the order has not been complied with,

the person in whose favour the order was made (“**the applicant**”) may apply to a referee for an order under this section; and the referee may make an order accordingly.

(2) An order under this section is an order that the act required to be done be done at the cost of the applicant by a person appointed by the referee.

(3) Where an order is made under this section the applicant may apply to a referee for an order that the defaulting party re-imburse the applicant for costs incurred in the doing of the act ordered to be done; and the referee may make an order accordingly.

(4) An application cannot be made for an order under subsection (1) until —

(a) the time for applying for leave to appeal under the *Justices Act 1902* against the conviction referred to in subsection (1) (b) has expired without an application for leave being made;

(b) leave to appeal has been refused; or

(c) if an appeal has been brought the appeal has been determined, withdrawn or discontinued.

- (5) An order under subsection (1) —
- (a) is not to have effect until the time for appeal under section 105 against the order has expired without an appeal being brought under that section; and
 - (b) is automatically stayed by the bringing of an appeal under section 105 and then has effect —
 - (i) subject to any order of the District Court on the appeal; or
 - (ii) if the appeal is withdrawn or discontinued.

”.

Section 124 amended

82. Section 124 (2) of the principal Act is amended by deleting “Subject to the *Supreme Court Act 1935*” and substituting the following —

“ Except as authorized by rules of court ”.

Section 125 amended

83. (1) Section 125 (2) (b) of the principal Act is amended by inserting after “strata plan” the following —

“
or recorded by the Registrar of Titles under section 40 (2)

”.

(2) Section 125 (3) (b) of the principal Act is amended by deleting subparagraphs (ii), (iii) and (iv) and substituting the following subparagraphs —

“

(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);

”.

(3) After section 125 (3) of the principal Act the following subsections are inserted —

“

(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.

”.

Section 129 amended

84. Section 129 (4) of the principal Act is repealed.

Section 129A inserted

85. After section 129 of the principal Act the following section is inserted —

“

Correction of errors by Registrar

129A. (1) The Commissioner of Titles may direct the Registrar of Titles —

- (a) to correct errors in, or in entries made in, the register book; and
- (b) to supply any entry omitted to be made in the register book,

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.

(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 book 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 130 amended

86. Section 130 (f) of the principal Act is amended by inserting after “strata titles,” the following —

“ or of strata schemes to survey-strata schemes, ”.

Schedule 1 amended

87. (1) Schedule 1 to the principal Act is amended by deleting the heading “PART I”.

(2) Schedule 1 to the principal Act is amended, in Part I as previously numbered, in by-law 1 —

- (a) in sub-by-law (1) (b) by deleting “; and” and substituting a full stop;
- (b) by deleting sub-by-law (1) (c); and

- (c) by inserting after sub-bylaw (1) the following sub-bylaw —

“

(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.

”.

(3) Schedule 1 to the principal Act is amended, in Part I, as previously numbered, by repealing by-law 7 and substituting the following by-law —

“

Chairman, secretary and treasurer of strata company

7. (1) Subject to sub-bylaw (2), the chairman, secretary and treasurer of the council are also respectively the chairman, secretary and treasurer of the strata company.

(2) A strata company may at a general meeting authorize a person who is not a proprietor to act as the chairman of the strata company for the purposes of that meeting.

(3) A person appointed under sub-bylaw (2) may act until the end of the meeting for which he was appointed to act.

”.

s. 88

(4) Schedule 1 to the principal Act is amended, in Part I, as previously numbered, in by-law 11 (5), by deleting “Subject to the provisions of the Act relating to special resolutions, not less than 7” and substituting the following —

“ Not less than 14 ”.

(5) Schedule 1 to the principal Act is amended, in Part I, as previously numbered, in by-law 12, by inserting after sub-bylaw (4) the following sub-bylaw —

“(4a) Sub-bylaws (3) and (4) do not apply to a general meeting of a strata company referred to in section 50B.”.

(6) Schedule 1 to the principal Act is amended in Part I, as previously numbered, by repealing by-law 16.

(7) Schedule 1 to the principal Act is amended by repealing Part II.

Schedule 2 amended

88. (1) Schedule 2 to the principal Act is amended —

(a) by deleting “(Section 42 (16))” and substituting the following —

“ (Section 42 (2)) ”; and

(b) by deleting the heading “OPTIONAL ADDITIONAL BY-LAWS.”.

(2) Schedule 2 to the principal Act is amended in by-law 6 —

(a) by inserting after “throw upon” the following —

“ that lot or any other lot or ”; and

- (b) by deleting “the proprietor, occupier, or other resident of another lot” and substituting the following —

“ another proprietor, occupier or resident ”.

(3) Schedule 2 to the principal Act is amended by repealing by-law 8.

(4) Schedule 2 to the principal Act is amended by renumbering by-laws 9, 10, 11 and 12 to be by-laws 8, 9, 10 and 11 respectively.

(5) Schedule 2 to the principal Act is amended by inserting after by-law 11 the following by-laws —

“

Additional duties of proprietors, occupiers, etc.

12. A proprietor, occupier or other resident shall not —

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

Notice of alteration to lot

13. 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.

Appearance of lot

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

”.

Schedule 2A inserted

89. After Schedule 2 to the principal Act the following Schedule is inserted —

“

SCHEDULE 2A

[Sections 5C and 42]

**MATTERS THAT MAY BE PROVIDED FOR
IN MANAGEMENT STATEMENT**

1. The amendment or repeal of a by-law contained in Schedule 1.
2. The amendment or repeal of a by-law contained in Schedule 2.
3. Any additional by-law that may be made under section 42.
4. The control or preservation of the essence or theme of the development under the scheme.
5. Architectural and landscaping guidelines to be observed by proprietors.
6. Plot ratio restrictions and open space requirements.
7. The control, management, use and maintenance of any part of the common property, including any special facilities provided on the common property.

8. Provisions relating to any proposed re-subdivision in a scheme being provisions that —
 - (a) comply with the requirements of section 8A (b) and (c) and any other prescribed requirements; and
 - (b) state the proposed unit entitlement of each lot and the proposed aggregate unit entitlement of the scheme following the proposed re-subdivision.
9. Matters affecting the provision of, and payment for, internal fencing on the parcel including any obligations of the strata company.
10. The maintenance of water, sewerage, drainage, gas, electricity, telephone and other services.
11. Insurance of the common property.
12. Safety and security.
13. The carrying on of any business or trading activity by the strata company, and the method of distributing and sharing any profit or loss.
14. Procedures to be followed for the resolution of disputes as a prerequisite to the making of an application to the referee for relief under this Act.

”.

Schedule 3 amended

90. (1) Schedule 3 to the principal Act is amended in clause 12 (1) by deleting “Schedule 1” and substituting the following —

“ Schedules 1 and 2 ”.

s. 90

(2) Schedule 3 to the principal Act is amended in clause 12 by repealing subclause (2) and substituting the following subclauses —

“

(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) of this Act, on the relevant strata plan registered under the former Act.

(4) A company continued as a strata company by operation of clause 4 may determine, by resolution without dissent, that subclause (2) applies for the purposes of the strata scheme as from a day that is sooner than the termination day.

(5) Subject to subclause (6), a company continued as a strata company for a scheme by operation of clause 4 may determine that —

- (a) despite subclause (2) (a), a by-law that is consistent with this Act, other than Schedules 1 and 2, is to continue to have effect after the termination day; and

- (b) despite subclause (2) (b), Schedule 2 or any provision of that Schedule does not apply in respect of that scheme.

(6) The power to make a determination under subclause (5) (b) does not apply to any by-law in Schedule 2 if immediately before the commencement of section 90 of the *Strata Titles Amendment Act 1995* that by-law applied to the strata company.

(7) A determination under subclause (5) does not have effect unless notification is recorded before the termination day, in the form prescribed under section 42 (4), on the relevant strata plan registered under the former Act.

(8) A former by-law made by a strata company under this Act or the former Act and recorded on the strata plan does not cease to have effect by operation of subclause (2) or (4) unless the by-law is inconsistent with this Act, other than Schedules 1 and 2.

(9) A by-law —

- (a) continued under subclause (5) (a) and recorded under subclause (7); or
- (b) referred to in subclause (8),

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

(10) Section 93 applies, with all necessary modifications, to enable —

- (a) an order of a referee to be applied for where —
 - (i) a strata company has purportedly exercised a power conferred by subclause (5) but has acted beyond power; or

- (ii) a power so conferred should have been exercised by a strata company but the company has failed to do so;

and

- (b) an order to be made by a referee —
 - (i) declaring a by-law purportedly continued under this clause to be invalid;
 - (ii) reinstating a by-law that should have been continued by a strata company under this clause; or
 - (iii) making applicable all provisions or any provision of Schedule 2 if it should not have been made inapplicable by a strata company under this clause,

as the case may require.

(11) An application for an order referred to in subclause (10) cannot be made after the expiration of 3 years from the commencement of section 90 (2) of the *Strata Titles Amendment Act 1995*, but a referee may extend that period if a proprietor applies for an extension and satisfies the referee that the justice of the case requires that the period be extended.

(12) Nothing in this clause is to be read as preventing a strata company from doing anything that it is authorized to do under section 42 (2).

”.

(3) Schedule 3 to the principal Act is amended by inserting after clause 13 the following clauses —

“

Exclusive use and privileges to lapse unless provided for by by-law or referee’s order

13A. (1) Where immediately before the commencement of section 90 (3) of the *Strata Titles Amendment Act 1995* —

- (a) a proprietor of a lot was entitled to any right or special privilege by operation of clause 13; but

- (b) that right or special privilege is not recorded on the strata plan,

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

(2) A proprietor for the time being of a lot who considers that he is entitled to a right or special privilege referred to in subclause (1) that is not recorded on the strata plan may serve notice on the strata company requiring it to make a by-law, in terms specified in the notice, confirming that right or special privilege.

(3) Notwithstanding section 42, the strata company may make a by-law referred to in subclause (2) otherwise than pursuant to a resolution without dissent or a special resolution.

(4) An order may be applied for and made under section 93 in respect of a by-law made following a requisition under subclause (2).

(5) Where a strata company on which a requisition has been served under subclause (2) —

- (a) fails to make a by-law in accordance with the requisition within one month after the service of the requisition; or
- (b) having made such a by-law and having been tendered the prescribed fee, does not cause the by-law to be recorded in accordance with section 42 (4) within a reasonable time,

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

(6) The provisions of Part VI apply to an application made to a referee under this clause and to an order made

by the referee in the same way as they apply to an application and an order made under that Part.

(7) An application under subclause (5) cannot be made after the expiration of 3 years from the commencement of section 90 (3) of the *Strata Titles Amendment Act 1995*, but a referee may extend that period if a proprietor applies for an extension and satisfies the referee that the justice of the case requires that the period be extended.

(8) Where on an application under subclause (5) the referee is of the opinion that —

- (a) the applicant was entitled to a right or special privilege by operation of clause 13; but
- (b) the right or special privilege is not recorded in the strata plan,

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

(9) Section 115 applies to an order under subclause (8) as if it were referred to in subsection (1) (a) of that section.

(10) An order under subclause (8), when recorded under section 115, has effect, subject to any order with respect thereto made by a superior court, as if its terms were a by-law.

(11) A by-law —

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

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

(12) A by-law —

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

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

Strata companies to notify proprietors of operation of clause 13A

13B. (1) A strata company for a scheme shall give notice in the prescribed form to the proprietor of each lot in the scheme.

(2) The notice shall be given not later than 6 months after the commencement of section 90 (3) of the *Strata Titles Amendment Act 1995*.

(3) The prescribed form shall —

- (a) state the effect of clause 13A (1);
- (b) advise any proprietor affected by that clause to take action under that clause for the protection of his rights as soon as is practicable; and
- (c) provide for the full text of clause 13A to be attached to the form when notice is given under subclause (1).

(4) Failure of a strata company to give notice under this clause does not affect the operation of clause 13A (1) but is a ground for the grant of an extension of time under clause 13A (7).

”.

Schedule 4 added

91. After Schedule 3 to the principal Act the following Schedule is added —

“

SCHEDULE 4

[Section 42C]

**TRANSITIONAL PROVISIONS FOR BY-LAWS OF
STRATA COMPANIES OTHER THAN COMPANIES
TO WHICH SCHEDULE 3 APPLIES**

Interpretation

1. 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*.

Transitional provisions

2. (1) Section 42C, as modified by subclause (2), applies to a post-1985 company after the expiration of the transition period but the company may determine by resolution without dissent that it is to apply as so modified from an earlier day.

(2) A by-law made by a post-1985 company and recorded on the strata plan, notwithstanding section 42C, continues in force except to the extent of any inconsistency with this Act, other than Schedules 1 and 2.

(3) Subject to subclause (4), a post-1985 company may determine that, notwithstanding section 42C, Schedule 2 or

any provision of that Schedule does not apply in respect of the strata scheme.

(4) The power to make a determination under subclause (3) does not apply to any by-law in Schedule 2 if immediately before the commencement of section 91 of the *Strata Titles Amendment Act 1995* that by-law applied to the strata company.

(5) A determination under subclause (3) does not have effect unless notification is recorded before the expiry of the transition period, in the form prescribed under section 42 (4), on the relevant strata plan.

(6) A by-law referred to in subclause (2) has effect despite the provisions of Schedules 1 and 2, and those provisions are modified accordingly.

(7) Section 93 applies, with all necessary modifications, to enable —

- (a) an order of a referee to be applied for where —
 - (i) a strata company has purportedly exercised the power conferred by subclause (3) but has acted beyond power; or
 - (ii) the power so conferred should have been exercised by a company but the company has failed to do so;
- and
- (b) an order to be made by a referee making applicable all provisions or any provision of Schedule 2 if it should not have been made inapplicable by determination made under subclause (3).

(8) An application for an order referred to in subclause (7) cannot be made after the expiration of 3 years from the commencement of section 44 of the *Strata Titles*

Amendment Act 1995, but a referee may extend that period if a proprietor applies for an extension and satisfies the referee that the justice of the case requires that the period be extended.

(9) Nothing in this Schedule is to be read as preventing a strata company from doing anything that it is authorized to do under section 42 (2).

”.

Various sections amended (“resolution without dissent”)

92. The principal Act is amended by deleting “unanimous resolution” wherever it occurs in the provisions referred to in the table to this section and substituting in each case the following —

“

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

”.

TABLE

Sections 10 (2) (b), 15 (2) (a), 18 (1), 18 (2) (b), 18 (5), 19 (2), 19 (3), 19 (4), 20 (1), 20 (3) and 42 (8) (twice).

Various sections amended (transfer of court jurisdiction) and transitional provision

93. (1) The principal Act is amended by deleting “Supreme” wherever it occurs in the provisions referred to in the table to this section and substituting in each case the following —

“ District ”.

TABLE

Sections 28, 29, 31, 50 (except subsection (5)), 51, 83 (5), 124 and 129.

(2) Any proceedings commenced under section 28, 29, 31, 50, 51 or 124 of the principal Act before the commencement of subsection (1) may be continued and determined, and any proceedings in the nature of an appeal arising from those proceedings may be taken and disposed of, as if subsection (1) had not been enacted.

Various sections amended (increase in penalty)

94. The principal Act is amended by deleting “\$200” wherever it occurs in the provisions referred to in the table to this section and substituting in each case the following —

“ \$400 ”.

TABLE

Sections 35 (2), 39 (3), 42 (7), 43 (1) and (3), 48 (1), 54 (1), 55 (1), 128 (3) and 130 (i).

Various references to “strata plan” changed to “strata/survey-strata plan”

95. The principal Act is amended by deleting “strata plan” wherever it occurs in the provisions referred to in the table to this section and substituting in each case the following —

“ strata/survey-strata plan ”.

TABLE

Section 3 (1) — definition of “original proprietor”.
Section 3 (1) — definition of “parcel”.

Sections 4 (2), 4 (3) (twice), 4 (4), 6 (1), 6 (4) (twice), 9 (1), 9 (3), 9 (4) (three times), 10 (3) (a), 14 (2) (first and third occurrences), 15 (2) (c), 16 (2) (b), 16 (4) (a), 18 (3), 18 (4) (c), 18 (6), 19 (9), 26 (1) (k), 35 (1) (g), 41 (2) (c), 42 (4) (b), 43 (1) (b) (i), 49 (1), 62 (3), 70 (1) (3 times), 70 (2), 70 (3), 70 (4), 125 (2) (b).

Various references to “strata scheme” changed to “scheme”

96. The principal Act is amended by deleting “strata scheme” wherever it occurs in the provisions referred to in the table to this section and substituting in each case the following —

“ scheme ”.

TABLE

Section 3 (1) — definition of “original proprietor”.

Sections 15 (1), 16 (1) (twice), 16 (4) (a), 16 (4) (b), 16 (5), 17 (2), 26 (1) (n), 26 (1) (o), 31 (8), 33 (1), 42 (14), 49 (3) (b), 66, 70 (1), 77A (1), 78 (1) (twice), 83 (1) (twice), 85, 86, 87, 88, 89, 90 (twice), 101, 102 (1) (f), 102 (6) (b), 104 (1) (a), 105 (5) (c), 110 (2), 113 (2) (a), 114 (1), 119 (d), 120 (a) (twice), 123, 127 (three times), 128 (2) (b).

***Home Building Contracts Act 1991* amended**

97. Section 3 (1) of the *Home Building Contracts Act 1991** is amended, in the definition of “strata-titled dwelling” by deleting “strata”.

[* *Act No. 61 of 1991.*]

***Settlement Agents Act 1981* amended**

98. Schedule 2 to the *Settlement Agents Act 1981** is amended, in clause 1 (2) (f), by deleting “strata”.

[* *Act No. 33 of 1981.*

For subsequent amendment see 1994 Index to Legislation of Western Australia, Table 1, p. 195.]

***Valuation of Land Act 1978* amended**

99. Section 37 (c) of the *Valuation of Land Act 1978** is amended by deleting “strata”.

[* *Reprint approved 2 February 1983.*

For subsequent amendment see 1994 Index to Legislation of Western Australia, Table 1, p. 226 and Act No. 69 of 1994.]

***Town Planning and Development Act 1928* amended**

100. Section 12A (1) of the *Town Planning and Development Act 1928** is amended —

(a) by deleting “owners of land” and substituting the following —

“ owners of land comprised in ”; and

(b) by deleting paragraphs (a) and (b) and substituting the following paragraphs —

“ (a) a plan of subdivision or proposed plan of subdivision; or

(b) a scheme or proposed scheme under the *Strata Titles Act 1985*, ”. ”.

[* *Reprinted as at 19 December 1988.*
For subsequent amendments see 1994 Index to
Legislation of Western Australia, Table 1, pp. 216-8.]