

# STRATA TITLES (LEASEHOLD) ACT 1986 No. 219

NEW SOUTH WALES



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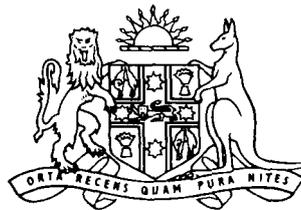
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**STRATA TITLES (LEASEHOLD) ACT 1986 No. 219**

NEW SOUTH WALES



**Act No. 219, 1986**

An Act to provide for leasehold strata schemes and for related purposes.  
[Assented to 23 December 1986]

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See also Miscellaneous Acts (Leasehold Strata Schemes) Amendment Act 1986.

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

**PART 1**

**PRELIMINARY**

**Short title (cf. Strata Titles Act 1973)**

1. This Act may be cited as the "Strata Titles (Leasehold) Act 1986".

**Commencement (1973 Act, s. 2)**

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

**Act binds Crown (1973 Act, s. 3)**

3. This Act binds the Crown.

**Interpretation (1973 Act, s. 5)**

4. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"administrative fund", in relation to a body corporate, means the fund established by the body corporate under section 98 (1) (m);

"aggregate unit entitlement", in relation to lots the subject of a leasehold strata scheme, means the sum of the unit entitlements of those lots;

"approved insurer", in relation to a contract of insurance referred to in Division 5 of Part 4, means a person, or a person belonging to a class of persons, approved by the Minister under section 156 of the Strata Titles Act 1973 for the purposes of Division 5 of Part IV of that Act;

"Board" means a Strata Titles Board referred to in subsection (6);

"body corporate" means a body corporate constituted under section 83 (1);

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- “building”, in relation to a leasehold strata scheme or a proposed leasehold strata scheme, means a building containing a lot or proposed lot or part of a lot or proposed lot that is comprised in the scheme or proposed scheme;
- “by-laws”, in relation to a leasehold strata scheme, means the by-laws in force in respect of that scheme;
- “Commissioner” means the Strata Titles Commissioner appointed under section 97 of the Strata Titles Act 1973;
- “common property” means so much of a parcel as from time to time is not comprised in any lot;
- “company nominee”, in relation to a corporation, means the individual, if any, for the time being authorised under section 112 (1) by the corporation;
- “consent authority”, in relation to the carrying out of any development on or with respect to land, means the person having the function of determining whether or not the development may be carried out on that land;
- “council”, in relation to a body corporate, means the council of the body corporate;
- “current plan” means a current plan, as defined in section 327AA (1) of the Local Government Act 1919, which is registered in the office of the Registrar-General, but does not include a strata plan, a strata plan of subdivision or a strata plan of consolidation within the meaning of this Act or the Strata Titles Act 1973;
- “developer”, in relation to the leasehold strata scheme constituted upon registration of the strata plan proposed under a development scheme, means the person who, for the time being, is—
- (a) the original lessee (if any); or
  - (b) a person, other than the original lessee, who is the lessee of at least one development lot within the strata plan;
- “development” has the same meaning as it has in the Environmental Planning and Assessment Act 1979;
- “development consent” means—
- (a) except as provided by paragraph (b)—consent under Division 1 of Part IV of the Environmental Planning and Assessment Act 1979; or

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- (b) where, in relation to the carrying out of any development on or with respect to specified land, the consent, permission or other authorisation of a person is declared by the regulations to be development consent for the purposes of this Act—that consent, permission or other authorisation in relation to the carrying out of that development on or with respect to that land;

“development lot” means a lot in a strata plan (not being a lot in a stratum parcel) that is identified by a development statement as a lot that is to be the subject of a strata plan of subdivision under the development scheme;

“development scheme” means the scheme of development provided for, and represented by, a development statement;

“development statement” means—

- (a) instruments, plans and drawings that are deemed by section 41 (2) (a) to have been approved by a consent authority or are referred to in section 42 (2) (c); and
- (b) amendments of those instruments, plans and drawings;

“enrolled mortgagee”, in relation to a lease of a lot the subject of a leasehold strata scheme, means a person notice of whose mortgage has been given to the body corporate for that scheme and whose name has been entered on the strata roll for that scheme as a mortgagee of a lease of that lot, but does not include such a person—

- (a) during any period during which the rights of the person as mortgagee under that mortgage are, by reason of a sub-mortgage, suspended; or
- (b) whose rights as mortgagee under that mortgage have, by reason of any other instrument, terminated,

if particulars of that sub-mortgage or other instrument have been entered on the strata roll for that scheme;

“floor” includes a stairway or ramp;

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

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“floor plan” means a plan, consisting of one or more sheets, which—

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

“initial period”, in relation to a body corporate, means the period (if any) commencing on the day on which the body corporate is constituted and ending on the day on which there are lessees of lots the subject of the leasehold strata scheme concerned (other than the original lessee, if any) the sum of whose unit entitlements is at least one-third of the aggregate unit entitlement;

“leasehold strata scheme” means—

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

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“lessee”, in relation to a lot, means—

- (a) except as provided by paragraph (b), (c) or (d), a person for the time being recorded in the Register as entitled to a leasehold estate in the lot;
- (b) a person notice of whose entitlement to that estate as transferee of a lease has been given to the body corporate pursuant to section 113 (2) and whose name has been entered on the strata roll as a lessee;
- (c) a person notice of whose entitlement to the lot has been given to the body corporate pursuant to section 113 (11) and whose name has been entered on the strata roll as a lessee; or
- (d) while a prescribed authority is deemed by section 35 (1) to be the lessee of the lot, that authority,

but does not include a sublessee from a lessee of the lot;

“lessor”, in relation to a leasehold strata scheme, means the prescribed authority which is the lessor of the lots or the lots and common property that are the subject of the scheme;

“local council”, in relation to land, means—

- (a) except as provided by paragraphs (b), (c) and (d)—the council of the area under the Local Government Act 1919 in which the land is situated;
- (b) in relation to land within the development area, within the meaning of the Darling Harbour Authority Act 1984—the Darling Harbour Authority, except to the extent that regulations made under that Act may otherwise provide;
- (c) in relation to land within the development area, within the meaning of the Sydney Cove Redevelopment Authority Act 1968—the Sydney Cove Redevelopment Authority, except to the extent that regulations made under that Act may otherwise provide; or
- (d) where, in relation to land (other than land referred to in paragraph (b) or (c)), a specified person is declared by the regulations to be the local council for the purposes of all provisions of this Act, specified provisions of this Act or all other than specified provisions of this Act—that person in relation to that land and for those purposes;

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“location plan” means a plan, consisting of one or more sheets, which relates to land the subject of a proposed leasehold strata scheme and—

(a) where the scheme does not relate to a proposed stratum parcel, delineates the perimeter of the land and, in relation to that perimeter, delineates the location—

(i) of any building erected on that land; and

(ii) of any proposed lots or part of proposed lots not within any such building; or

(b) where the scheme relates to a proposed stratum parcel, delineates the perimeter of the site of the building, being the building of which the proposed stratum parcel forms part, and, in relation to that perimeter, delineates the location—

(i) of the building; and

(ii) of the proposed stratum parcel,

and, in relation to the perimeter of the proposed stratum parcel, delineates the location—

(iii) of the part of the building which will be the subject of the proposed leasehold strata scheme; and

(iv) of any proposed lots or part of proposed lots not within the building,

and shows such other particulars as may be required by the regulations;

“lot” means one or more cubic spaces forming part of the parcel to which a leasehold strata scheme relates, the base of each such cubic space being designated as one lot or part of one lot on the floor plan forming part of the strata plan, a strata plan of subdivision or a strata plan of consolidation to which that scheme relates, being in each case cubic space the base of whose vertical boundaries is as delineated on a sheet of that floor plan and which has horizontal boundaries as ascertained under subsection (2), but does not include any structural cubic space unless that structural cubic space has boundaries described as prescribed and is described in that floor plan as part of a lot;

“mortgage” means a charge, other than a statutory interest or a covenant charge, on a lease of a lot for securing money or money’s worth;

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“notice of resumption” means a notice, notification or other instrument publication of which effects a vesting of the land described therein in a resuming authority by way of resumption;

“occupier”, in relation to a lot, means any person in lawful occupation of the lot;

“original lessee”, in relation to a leasehold strata scheme, means any person who, immediately after registration of the strata plan concerned, is—

- (a) the lessee of all the lots the subject of the scheme; or
- (b) the lessee of two or more of those lots, the sum of whose unit entitlements is more than two-thirds of the aggregate unit entitlement;

“parcel” means—

- (a) except as provided by paragraph (b), the land from time to time comprising the lots and common property the subject of a leasehold strata scheme; and
- (b) in relation to a plan lodged for registration as a strata plan, the land comprised in that plan;

“positive covenant” means a positive covenant imposed on land under section 88B, 88D or 88E of the Conveyancing Act 1919;

“prescribed authority” means the Crown in right of New South Wales or a public authority (including any local council) constituted or established by an Act;

“public place” means land vested in a local council, being a public place or public reserve, as defined in section 4 of the Local Government Act 1919, a drainage reserve referred to in section 340B of that Act or land held for drainage purposes as referred to in section 340E of that Act;

“registered” means registered in the office of the Registrar-General in accordance with this Act;

“registered mortgagee” means a mortgagee registered as such under the Real Property Act 1900;

“registered surveyor” means a surveyor registered under the Surveyors Act 1929;

“regulations” means regulations made under this Act;

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“resumption” means the compulsory acquisition of land under the provisions of any Act or Act of the Commonwealth authorising compulsory acquisition of land;

“schedule of unit entitlement”, in relation to a leasehold strata scheme, means—

- (a) except as provided by paragraph (b), the schedule recorded as the schedule of unit entitlement in the folio of the Register for the leasehold interest in the common property the subject of that scheme; or
- (b) where a plan referred to in section 59 (3) relating to the parcel the subject of that scheme has been registered by the Registrar-General and the resumption of the land referred to in that plan has taken effect—
  - (i) if that plan is a strata plan of subdivision—the schedule of unit entitlement which accompanied that plan when it was registered; or
  - (ii) if that plan is a current plan—the schedule of unit entitlement, if any, which the Supreme Court, on making an order under section 61 or, pursuant to an application made under section 61 (7), under section 79, ordered to be substituted for a previous schedule of unit entitlement;

“sinking fund”, in relation to a body corporate, means the fund established by that body corporate under section 98 (1) (n);

“special resolution” means a resolution which is passed at a duly convened general meeting of a body corporate and against which not more than one-quarter in value, ascertained in accordance with clause 10 (3) and (4) of Part 1 of Schedule 4 or clause 12 (3) and (4) of Part 2 of that Schedule, of votes is cast;

“statutory interest” means a charge or other proprietary interest, created by this or any other Act or by any Act of the Commonwealth, affecting a lot or common property and enforceable against a lessee for the time being or the body corporate, whether or not it has been recorded in the Register;

“strata roll”, in relation to a leasehold strata scheme or a leasehold strata scheme which has been terminated, means the roll referred to in section 99 which relates to that scheme;

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“stratum parcel” means a parcel created by a subdivision permitted by section 6 (3);

“structural cubic space” means—

- (a) cubic space occupied by a vertical structural member, not being a wall, of a building;
- (b) any pipes, wires, cables or ducts that are not for the exclusive enjoyment of one lot and are in a building or in a part of a parcel that is not a building; and
- (c) any cubic space enclosed by a structure enclosing any such pipes, wires, cables or ducts;

“unanimous resolution” means a resolution which is passed at a duly convened general meeting of a body corporate and against which no vote is cast;

“unit entitlement”, in relation to a lot, means the unit entitlement of the lot shown on the schedule of unit entitlement;

“wall” includes a door, window or other structure dividing a lot—

- (a) from common property or from another lot; or
- (b) if the lot is a lot in a stratum parcel, from any part of a building which is not a part within the parcel.

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

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

- (i) are, in the case of a vertical boundary, where the base of any wall corresponds substantially to any line referred to in paragraph (a) of that definition—the inner surface of that wall; and
- (ii) are, in the case of a horizontal boundary, where any floor or ceiling joins a vertical boundary of that cubic space—the upper surface of that floor and the under surface of that ceiling; or

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

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

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

- (a) a wall that is not vertical; or
- (b) a floor or ceiling that is not horizontal,

does not prevent the plan from being a floor plan.

(5) A reference in this Act—

- (a) to a strata plan, a strata plan of subdivision, a strata plan of consolidation or a building alteration plan is a reference to a plan registered as such; or
- (b) to a notice of conversion is a reference to a notice registered as such,

together with any endorsements required to be made on or any plans and documents required to accompany the plan or notice so registered before it may be registered.

(6) Every Fair Rents Board for the time being constituted under the Landlord and Tenant (Amendment) Act 1948 shall also be a Strata Titles Board and a clerk of a Fair Rents Board shall be the clerk of the corresponding Strata Titles Board.

(7) A reference in this Act to a subdivision of a lot or common property is a reference to the alteration of the boundaries of—

- (a) one or more lots so as to create only two or more different lots;
- (b) one or more lots so as to create one or more different lots and common property;
- (c) one or more lots and common property so as to create one or more different lots or one or more different lots and common property; or
- (d) common property so as to create one or more lots,

but does not include a reference to the consolidation of two or more lots into one lot or the conversion of one or more lots into common property.

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

(9) Where, in any provision of this Act, reference is made to any person, body, matter or thing (including land) and that provision has effect in relation to a leasehold strata scheme, a reference in that provision to any other person, body, matter or thing (including land) is a reference to that other person, body, matter or thing (including land) in connection with that scheme.

(10) In this Act—

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

**Construction of Act (1973 Act, s. 6)**

5. (1) This Act shall be read and construed with the Real Property Act 1900 as if it formed part thereof.

(2) The Real Property Act 1900 applies to lots and common property in the same way as it applies to other land except in so far as any provision of that Act is inconsistent with this Act or is incapable of applying to lots or common property.

(3) No stamp duty is payable under the Stamp Duties Act 1920 in respect of the determination or partial determination of a lease by the operation of Part 2.

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## PART 2

## LAND IN LEASEHOLD STRATA SCHEMES

DIVISION 1—*Creation of lots and common property***Subdivision (1973 Act, s. 7)****6. (1)** In this section—

“current plan lot” means a lot or portion referred to in section 327AA (2) of the Local Government Act 1919 (not being a lot as defined in section 4 (1) of this Act or in section 5 (1) of the Strata Titles Act 1973);

“land” means land under the Real Property Act 1900, held in fee simple by a prescribed authority (other than land comprised in a qualified or limited folio of the Register) being, except as provided by subsection (3) (a), (b) and (c)—

- (a) land consisting of one current plan lot or of two or more contiguous current plan lots;
- (b) land to which section 327AA (2) of the Local Government Act 1919 does not apply by virtue of section 327AA(4) of that Act and every part of which is contiguous to another part thereof; or
- (c) land part of which comprises land, as defined in paragraph (a), and the remainder of which comprises land, as defined in paragraph (b), contiguous to that firstmentioned part,

and, where the land is leased, being land subject to a lease or leases (the terms of which are all expressed to expire at the same time) which is or are registered, or lodged for registration, under the Real Property Act 1900.

(2) Land including the whole of a building may be subdivided into lots or into lots and common property by the registration of a plan as a strata plan.

(3) Land including part only of a building, being—

- (a) land consisting of one current plan lot or of two or more current plan lots, whether contiguous or not;
- (b) land to which section 327AA (2) of the Local Government Act 1919 does not apply by virtue of section 327AA (4) of that Act; or
- (c) land part of which comprises land, as defined in paragraph (a), and the remainder of which comprises land, as defined in paragraph (b),

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may be subdivided into lots or into lots and common property by the registration of a plan as a strata plan, but only if the building is erected on a site of land vested in fee simple in the prescribed authority in which the proposed lots or proposed lots and common property are vested.

(4) The provisions of section 88B of the Conveyancing Act 1919 apply to a strata plan and a strata plan of subdivision in the same way as they apply to a plan referred to in that section relating to land under the Real Property Act 1900, except in so far as that section authorises the creation of easements, restrictions on the use of land or positive covenants burdening or benefiting land not under those provisions.

(5) Where a plan is lodged in the office of the Registrar-General for the purpose of creating under section 88B of the Conveyancing Act 1919 an easement, a restriction on the use of land or a positive covenant relating to land the subject of a proposed leasehold strata scheme or of a leasehold strata scheme, in each case before leases of the lots and common property (if any) are registered for the purposes of the scheme, the plan shall be treated as having been registered for the purposes of section 88B (3) of that Act only when the leases have been registered under the Real Property Act 1900.

**Registration of strata plans (1973 Act, s. 8)**

7. (1) A plan relating to land and illustrating a proposed subdivision referred to in section 6 (2) or (3) shall not be registered as a strata plan unless—

(a) it consists of—

- (i) a location plan; and
- (ii) a floor plan,

in respect of the land;

(b) where all of the land is subject to a lease or leases registered under the Real Property Act 1900 which is or are intended to be replaced wholly or partly by leases of each of the lots and the common property (if any) shown on the plan—

- (i) the replacement leases relating to the proposed lots and, if the plan provides for common property, the common property have been lodged in the office of the Registrar-General for registration;

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- (ii) those replacement leases are expressed to be wholly or partly in substitution for the lease or leases first referred to in this paragraph; and
  - (iii) the terms of those replacement leases are all expressed to commence on registration of the plan and to expire at the same time as the lease or leases first referred to in this paragraph and, if those replacement leases confer rights of renewal, the renewal terms are the same;
- (c) where the land is subject to leases registered under the Real Property Act 1900 which are intended to subsist after the plan is registered as leases of each of the lots shown on the plan—
- (i) the terms of those leases have commenced and are all expressed to expire at the same time and, if those leases confer rights of renewal, the renewal terms are the same; and
  - (ii) the Registrar-General is satisfied, as a result of evidence produced to the Registrar-General, that the area to which each of those leases relates (not being an area that is leased solely or principally for use by lessees of the land in common with each other) corresponds to a lot or lots shown on the plan,

and either—

- (iii) there has been lodged in the office of the Registrar-General a certificate in an approved form, purporting to be signed by the persons prescribed for the purposes of this subparagraph and certifying that at a meeting held for the purpose a resolution, supported by all of the lessees under those leases, was passed agreeing to the proposed subdivision of the land as shown on the plan; or
- (iv) if at such a meeting a majority but not all of those lessees supported such a resolution—there has been lodged in the office of the Registrar-General a certified or office copy of the minute of an order, made in accordance with subsection (7), approving the scheme for subdivision,

and—

- (v) if the plan provides for common property—there has been lodged in the office of the Registrar-General for registration a lease of the common property; and

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- (vi) the term of the lease of the common property is expressed to commence on registration of the plan and to expire at the same time as the terms of the leases referred to in subparagraph (i) and, if the leases so referred to confer rights of renewal, the lease of the common property confers a right of renewal for a term that is the same as that conferred by those rights;
- (d) where the plan is lodged in circumstances different from those described in paragraph (b) or (c)—
  - (i) there have been lodged in the office of the Registrar-General for registration leases from the prescribed authority of each of the lots (which may consist of or include leases to the authority) and, if the plan provides for common property, a lease of the common property; and
  - (ii) the terms of the leases referred to in subparagraph (i) are all expressed to commence on registration of the plan (but, in the case of the leases of the lots, may be expressed to commence before registration of the plan) and to expire at the same time and, if the leases confer rights of renewal, the renewal terms are the same;
- (e) if no part of the land to which the plan relates would become common property on registration of the plan as a strata plan, at least one of the proposed lots or part of such a lot to which the floor plan relates is superimposed on another proposed lot or part of such a lot;
- (f) there is endorsed on the location plan referred to in paragraph (a) the address at which documents may be served on the body corporate to be constituted on the registration of the plan;
- (g) that location plan is accompanied by a schedule showing as a whole number, in respect of each proposed lot, the proposed unit entitlement and showing the proposed aggregate unit entitlement;
- (h) that location plan is accompanied by a certificate given by the local council in accordance with section 66 (1) or (2), as the case may require; and
- (i) if the land does not comprise a proposed stratum parcel and any proposed lot is a development lot—
  - (i) the lot is designated as such on that location plan; and

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- (ii) the plan lodged for registration is accompanied by a copy of the relevant development statement, and the certificate, referred to in section 41 (4).

(2) A plan relating to the land comprising a proposed parcel and illustrating a proposed subdivision referred to in section 6 (2) or (3) shall not be registered as a strata plan unless the location plan referred to in subsection (1) (a) is accompanied by a certificate given by a registered surveyor certifying—

- (a) that any wall, the inner surface or any part of which corresponds substantially to any line shown on the floor plan relating to any building or part of a building erected on that land as a boundary of a proposed lot, exists;
- (b) that any floor or ceiling, the upper or under surface or any part of which forms a boundary of a proposed lot, exists; and
- (c) that any wall, floor, ceiling or structural cubic space, by reference to which any boundary of a proposed lot is to be ascertained, exists,

and either—

- (d) where the proposed parcel will not be a stratum parcel, that the building erected on that land and each proposed lot shown on that location plan are wholly within the perimeter of that land except to the extent of any encroachment referred to in section 67 (1) (b) or, where eaves encroach, or guttering encroaches, on land other than a public place, that an appropriate easement exists; or
- (e) where the proposed parcel will be a stratum parcel—
  - (i) that part only of a building is included in the proposed stratum parcel;
  - (ii) that the proposed stratum parcel and that building are wholly within the perimeter of the site of the building except to the extent of any encroachment referred to in section 67 (1) (b) or, where eaves encroach, or guttering encroaches, on land other than a public place, that an appropriate easement exists; and

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- (iii) that each part of the building and so much (if any) of the site as constitute the proposed lots and the common property (if any) shown on that location plan are wholly within the proposed stratum parcel except to the extent of any encroachment referred to in section 67 (1) (b) or, where eaves encroach, or guttering encroaches, on land other than a public place, that an appropriate easement exists.

(3) If a proposed strata plan provides for common property, a reference in subsection (1) to a lease of common property is a reference to a lease of common property from the prescribed authority as lessor under the proposed leasehold strata scheme to the body corporate to be constituted on the registration of the plan, being a lease executed by that authority as agent for that body corporate.

(4) The Registrar-General may, by instrument in writing served on the person who lodged a plan for registration as a strata plan, require that person to deposit in the office of the Registrar-General a plan, being a plan of survey within the meaning of the Survey Practice Regulations 1933, of the parcel that is the subject of the proposed leasehold strata scheme (showing, if the Registrar-General so requires, the relationship by measurement of the building to the perimeter of the proposed parcel and, in the case of a stratum parcel, to the perimeter of the site), together with such number of copies of that plan as may be specified in the instrument.

(5) The Registrar-General may refuse to register a plan as a strata plan unless—

- (a) any requirement made under subsection (4) in respect of that plan is complied with; and
- (b) any requisition made by the Registrar-General with respect to the registration of any lease lodged in connection with registration of the plan is complied with.

(6) Where a meeting of persons who are lessees of the land comprised in a parcel has been held for the purposes of subsection (1) (c) and a majority (but not all) of those persons supported a resolution for the subdivision of the parcel as shown on a proposed strata plan, any one or more of the persons who supported the resolution may apply to the Supreme Court for an order under subsection (7).

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(7) On hearing an application made under subsection (6), the Supreme Court may, if it appears to it to be just and equitable to do so, make an order approving the scheme for the subdivision of the parcel to which the application relates.

(8) Notice of an application made under subsection (6) must be given to any person who is a lessee of a part of the parcel concerned unless that person is the applicant or, as the case may be, one of the applicants.

(9) The provisions of subsection (1) (h) and (i) do not apply to or in respect of a plan lodged for registration as a strata plan by a person or body who or which, but for section 3, would not be bound by this Act.

**Effect of registration of a strata plan**

8. (1) On registration of a plan as a strata plan—

- (a) where, immediately before registration of the plan, the whole of the parcel was subject to a lease or leases registered under the Real Property Act 1900 which was or were intended to be wholly or partly replaced by leases of each of the lots and the common property (if any) shown on the plan—
  - (i) the lease or leases first referred to in this paragraph is or are determined in so far as it or they related to lots and common property;
  - (ii) any estate or interest (including any rates, taxes, charges or fees referred to in Division 6 of Part 4) and any caveat which affected the lease or leases wholly or partly determined by subparagraph (i) shall affect those replacement leases in so far as they relate to lots; and
  - (iii) all outstanding rights and obligations of the lessee under a lease wholly or partly determined by subparagraph (i), being rights and obligations existing immediately before the registration of the plan, shall continue to be exercisable or, as the case may be, shall be discharged by the person who was the lessee under that lease as if that lease had not been wholly or partly determined, except to the extent, if any, that those rights and obligations are inconsistent with the provisions of the replacement leases or extinguished or varied by the relevant parties;

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- (b) where, immediately before registration of the plan, the parcel was subject to two or more leases registered under the Real Property Act 1900 which were intended to subsist after the plan was registered as leases of each of the lots shown on the plan—
  - (i) every lease which was, immediately before the registration of the plan, a lease of a part of the parcel that corresponds to a lot shown on the plan shall become a lease of that lot for the residue of the term of the lease, subject to any estate or interest (including any rates, taxes, charges or fees referred to in Division 6 of Part 4) and any caveat affecting the lease immediately before registration of the plan; and
  - (ii) where any part of the parcel comprised in the plan is shown as common property, any lease affecting that part immediately before the registration of the plan is determined in so far as it relates to the common property;
- (c) notwithstanding section 88 of the Conveyancing Act 1919, if a stratum parcel is created there shall be implied—
  - (i) as appurtenant to the lots and common property (if any) comprising that stratum parcel, being lots and common property which are situated within a building, an easement for their subjacent and lateral support by such other parts of the building as are capable of affording support;
  - (ii) as affecting those lots and that common property, an easement for the subjacent and lateral support of such other parts of the building as are capable of enjoying support;
  - (iii) as appurtenant to those lots and that common property, an easement for their shelter by all such other parts of the building as are capable of affording shelter; and
  - (iv) as affecting those lots and that common property, an easement for the shelter of such other parts of the building as are capable of being sheltered by those lots and that common property;
- (d) all ancillary rights and obligations reasonably necessary to make easements effective shall apply in respect of an easement created by paragraph (c);
- (e) an easement for support or shelter created by paragraph (c)—
  - (i) shall entitle the owner of the dominant tenement to enter upon the servient tenement to replace, renew or restore any support or shelter; and

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- (ii) shall subsist until the leasehold strata scheme is terminated (or, where the leasehold strata scheme becomes a strata scheme within the meaning of the Strata Titles Act 1973, that strata scheme is terminated) or the easement is otherwise released; and
  - (f) the Registrar-General shall make in the Register such recordings in respect of the easements as the Registrar-General considers appropriate.
- (2) As soon as practicable after the registration of a plan as a strata plan, the Registrar-General shall—
- (a) create folios of the Register for—
    - (i) the leasehold estates of the lessees in lots; and
    - (ii) the leasehold estate of the body corporate in the common property (if any); and
  - (b) in the case of replacement leases referred to in subsection (1) (a)—record in the folios for the leases of those lots, in such a manner as will preserve their priority of registration, any mortgages, charges, covenant charges, writs or caveats affecting those leases by virtue of subsection (1) (a) (ii).
- (3) For the purposes of this section, a strata plan lodged for registration under this Act which is required to be accompanied by a lease to be registered under the Real Property Act 1900 shall be treated as having been registered only when the lease has been registered under that Act.
- (4) If a leasehold strata scheme for a stratum parcel becomes a strata scheme within the meaning of the Strata Titles Act 1973, the easements implied by subsection (1) (c) in respect of the former parcel shall be implied in respect of the parcel to which the strata scheme relates as if the references to lots and common property in subsection (1) (c) (i)–(iv) were references to the lots and common property the subject of that strata scheme.

**Easements in certain leasehold strata schemes****9. (1) In this section—**

“drainage” includes the product of rain, storm, soakage, a spring or seepage;

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“service” means a water, sewage, drainage, gas, electricity, oil, garbage, conditioned air or telephone, television or radio impulses or signals service or any other prescribed service.

**(2) Where—**

- (a) a stratum parcel is the subject of a leasehold strata scheme or a former stratum parcel has become a parcel within the meaning of the Strata Titles Act 1973;
- (b) an instrument has or has had the effect of creating after the commencement of this Act a right of vehicular access, a right of personal access or an easement for a specified service, over or through or as appurtenant to the stratum parcel, former stratum parcel or parcel, or the land comprised in that parcel or former parcel; and
- (c) the site of the easement is identified on a plan lodged in the office of the Registrar-General,

the rights and obligations conferred or imposed by the easement created by the instrument shall be as specified in Schedule 1, except in so far as those rights or obligations may have been varied or negated under this section or in the instrument.

**(3)** Nothing in section 88 of the Conveyancing Act 1919 or in subsection (2) (c) requires the site of an easement for a service, being an easement to which this section applies, to be identified on a plan lodged in the office of the Registrar-General.

**(4)** The terms of an easement created pursuant to subsection (2) in so far as they relate to—

- (a) responsibility for maintaining in good order or repairing the access or other things required for enjoyment of the easement; or
- (b) the proportions in which the persons having the benefit or burden of the easement are liable to contribute towards the cost of maintaining in good order or repairing that access or those things,

may be varied by memorandum of variation in the approved form and registered under the Real Property Act 1900 as if it were a dealing.

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(5) A variation of the terms of an easement referred to in subsection (4) must be executed by every person having an estate or interest registered under the Real Property Act 1900 in the land benefited or burdened by the easement.

(6) On the application of any person who has an estate or interest in any land which has the benefit or burden of an easement to which this section applies, the Supreme Court may, by order, vary the terms of the easement in so far as they relate to—

- (a) responsibility for maintaining in good order or repairing the access or other things required for enjoyment of the easement; or
- (b) the proportions in which the persons having the benefit or burden of the easement are liable to contribute towards the cost of maintaining in good order or repairing that access or those things.

(7) An order under subsection (6) shall, when registered as provided by subsection (8), be binding on all persons, whether of full age or capacity or not, then entitled or later becoming entitled to the easement, and whether those persons are parties to the proceedings or have been served with notice or not.

(8) The Registrar-General shall, on application made in a form approved under the Real Property Act 1900, make all necessary recordings in the Register for giving effect to the order.

**Subdivision of development lots (1973 Act, s. 8A)**

10. (1) Land (not being land within a stratum parcel) that is a development lot may be subdivided by the registration, as a strata plan of subdivision, of a plan that complies with subsection (2).

(2) A plan complies with this subsection if—

- (a) it consists of—
  - (i) a location plan; and
  - (ii) a floor plan,

in respect of the land to which the plan relates;

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- (b) where no part of that land would become common property on the registration of the plan as a strata plan of subdivision, at least one of the proposed lots or part of such a lot to which the floor plan relates is superimposed on another such lot or part of such a lot to which the floor plan relates;
  - (c) that location plan is accompanied by a schedule showing as a whole number the unit entitlement in respect of each lot into which the land is proposed to be subdivided, the aggregate of those unit entitlements being equal to the unit entitlement ascribed to the development lot;
  - (d) that location plan is accompanied by a certificate given by the local council in accordance with section 66 (2); and
  - (e) that location plan is accompanied by a certificate given by a registered surveyor, certifying—
    - (i) that any wall, the inner surface or any part of which corresponds substantially to any line shown on the floor plan relating to any building erected on that land as a boundary of a proposed lot, exists;
    - (ii) that any floor or ceiling, the upper or under surface or any part of which forms a boundary of a proposed lot, exists;
    - (iii) that any wall, floor, ceiling or structural cubic space, by reference to which any boundary of a proposed lot is to be ascertained, exists; and
    - (iv) that the building erected on that land and each proposed lot shown on that location plan are wholly within the perimeter of that land except to the extent of any encroachment referred to in section 67 (1) (b) or, where eaves encroach, or guttering encroaches, on land other than a public place, that an appropriate easement exists.
- (3) A plan shall not be registered as a strata plan of subdivision of a development lot unless—
- (a) the Registrar-General is satisfied that the lease of the development lot will determine on registration of the plan;
  - (b) there have been lodged in the office of the Registrar-General for registration replacement leases relating to the proposed lots comprised in the plan;

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- (c) those replacement leases contain a provision to the effect that they are in substitution for the lease referred to in paragraph (a); and
- (d) the terms of those replacement leases are all expressed to commence on registration of the plan and to expire at the same time as the lease of the development lot and, where the replacement leases confer rights of renewal, the renewal terms are the same as those contained in the leases of other lots comprised in the leasehold strata scheme concerned.

(4) The provisions of section 7 (4) and (5) apply to the registration, as a strata plan of subdivision, of a plan illustrating a proposed subdivision of a development lot in the same way as they apply to the registration of a plan as a strata plan.

(5) Subsection (2) (d) does not apply to or in respect of a plan lodged for registration as a strata plan of subdivision of a development lot by a person or body who or which, but for section 3, would not be bound by this Act.

**Subdivision of lots and common property (1973 Act, s. 9)**

**11. (1)** A lot (other than a development lot) or common property, or a lot (other than a development lot) and common property, may be subdivided by the registration, as a strata plan of subdivision, of a plan that complies with subsection (2).

(2) A plan complies with this subsection if—

- (a) it consists of a floor plan;
- (b) that floor plan is accompanied by a certificate given by the local council—
  - (i) where the plan is a plan illustrating a proposed subdivision referred to in section 4 (7) (a)—in accordance with section 66 (4); or
  - (ii) where the plan is a plan illustrating a proposed subdivision referred to in section 4 (7) (b), (c) or (d)—in accordance with section 66 (5);

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(c) that floor plan is accompanied by a certificate given by a registered surveyor certifying—

- (i) that any wall, the inner surface or any part of which corresponds substantially to any line shown on the floor plan relating to the proposed subdivision as a boundary of a proposed lot, exists;
- (ii) that any floor or ceiling, the upper or under surface or any part of which forms a boundary of a proposed lot, exists;
- (iii) that any wall, floor, ceiling or structural cubic space, by reference to which any boundary of a proposed lot is to be ascertained, exists; and
- (iv) that every lot illustrated by that floor plan is wholly within the parcel that is the subject of the leasehold strata scheme concerned except to the extent of any encroachment referred to in section 67 (1) (b) or, where eaves encroach, or guttering encroaches, on land other than a public place, that an appropriate easement exists,

but any such certificate shall not certify as to the matters referred to in subparagraph (i), (ii) or (iii) in respect of any wall, floor, ceiling or structural cubic space if the inner, upper or under surface or any part of the wall, floor or ceiling was, immediately before the subdivision, a boundary of any lot the subject of the proposed subdivision or if the boundary of any such lot was, immediately before the subdivision, ascertained by reference to any wall, floor, ceiling or structural cubic space; and

(d) except where the land comprised in the plan is held otherwise than by the original lessee (if any) or a certificate under this paragraph or section 16 (2) (b) or 32 (4) (b) has been previously lodged in the office of the Registrar-General, that floor plan is accompanied by—

- (i) a certificate under the seal of the body corporate certifying that the certificate referred to in paragraph (b) was given after the expiration of the initial period or that there was no initial period; or
- (ii) a certified or office copy of the minute of an order made under section 97 (4) authorising the registration of the plan.

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(3) A plan shall not be registered as a strata plan of subdivision under this section unless—

- (a) there have been lodged in the office of the Registrar-General for registration the replacement leases relating to the proposed lots comprised in the plan;
- (b) those replacement leases contain provisions to the effect that they are in substitution for the leases determined or otherwise affected by the subdivision; and
- (c) the terms of those replacement leases are all expressed to commence on registration of the plan and to expire at the same time as any lease to be determined and, where the replacement leases confer rights of renewal, the renewal terms are the same as those contained in the leases of other lots comprised in the leasehold strata scheme concerned.

(4) The provisions of section 7 (4) and (5) apply to the registration, as a strata plan of subdivision, of a plan illustrating a proposed subdivision referred to in section 4 (7) (c) or (d) in the same way as they apply to the registration of a plan as a strata plan.

(5) Subsections (2) (b) and (2) (d) do not apply to or in respect of a plan lodged for registration as a strata plan of subdivision by a person or body who or which, but for section 3, would not be bound by this Act.

**Consequences of registration of strata plan of subdivision**

**12. (1)** On the registration of a plan as a strata plan of subdivision referred to in section 10 or 11—

- (a) the lease of any development lot, or other lot that is the subject of the subdivision, is determined and the lease of any common property concerned ceases to apply to any lot created by the subdivision;
- (b) any estate or interest (including any rates, taxes, charges or fees referred to in Division 6 of Part 4) and any caveat affecting a lease determined by paragraph (a) shall affect the replacement leases in so far as they relate to lots;
- (c) the leasehold estate in any common property created vests in the body corporate as lessee for the residue of the term specified in the lease of the common property; and

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(d) all outstanding rights and obligations of the lessee under a lease determined by paragraph (a), being rights and obligations existing immediately before registration of the plan, shall continue to be exercisable or, as the case may be, shall be discharged by the person who was lessee under that lease as if that lease had not been determined, except to the extent, if any, that those rights and obligations are inconsistent with the provisions of the replacement leases or extinguished or varied by the relevant parties.

(2) As soon as practicable after the registration of a plan as a strata plan of subdivision referred to in section 10 or 11, the Registrar-General shall—

- (a) create folios of the Register for the leases of the lots; and
- (b) record in those folios any mortgages, charges, covenant charges, writs or caveats affecting those leases by virtue of subsection (1) (b).

(3) For the purposes of this section, a strata plan of subdivision lodged for registration under this Act which is required to be accompanied by a lease to be registered under the Real Property Act 1900 shall be treated as having been registered only when the lease has been registered under that Act.

**Unit entitlement of lots in subdivision not involving common property (1973 Act, s. 10)**

**13. (1)** A plan illustrating a proposed subdivision altering the boundaries of one or more lots so as to create only two or more different lots, other than a plan referred to in section 10 (1), shall not be registered as a strata plan of subdivision unless it is accompanied by a schedule showing as a whole number, in respect of—

- (a) each lot comprised in the parcel, other than the lot or lots the subject of the proposed subdivision; and
- (b) each proposed lot,

the proposed unit entitlement of that lot or proposed lot, and showing the proposed aggregate unit entitlement.

(2) A number shown as referred to in subsection (1) in respect of a lot other than a proposed lot shall bear to the proposed aggregate unit entitlement so shown the same proportion as the unit entitlement of that lot bore, immediately before the plan was registered, to the aggregate unit entitlement.

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(3) The sum of the numbers shown as referred to in subsection (1) in respect of the proposed lots shall bear to the proposed aggregate unit entitlement so shown the same proportion as the unit entitlement or the sum of the unit entitlements of the lot or lots the subject of the proposed subdivision bore, immediately before the plan was registered, to the aggregate unit entitlement.

**Unit entitlement of lots in subdivision involving common property (1973 Act, s. 11)**

14. A plan illustrating a proposed subdivision, other than a plan referred to in section 10 (1) or 13 (1), shall not be registered as a strata plan of subdivision unless it is accompanied by—

- (a) a schedule showing as a whole number, in respect of—
  - (i) each lot comprised in the parcel, other than any lot or lots the subject of the proposed subdivision; and
  - (ii) each proposed lot,the proposed unit entitlement of that lot or proposed lot, and showing the proposed aggregate unit entitlement; and
- (b) a certificate under the seal of the body corporate concerned certifying that it has, by the special resolution referred to in section 66 (5) (a), agreed to each proposed unit entitlement and the proposed aggregate unit entitlement shown in the schedule referred to in paragraph (a).

**Consolidation of lots (1973 Act, s. 12)**

15. Two or more lots may be consolidated into one lot by the registration of a plan as a strata plan of consolidation.

**Conversion of lots into common property (1973 Act, s. 13)**

16. (1) Except as provided by section 45, one or more lots may be converted into common property by the registration, as a notice of conversion, of a notice in the approved form, being a notice executed by the lessor under the leasehold strata scheme concerned and the lessee of that lot, or that lessor and the lessees of those lots, and by the body corporate.

- (2) A notice shall not be registered as a notice of conversion unless—
  - (a) it is accompanied by a certificate in respect of the lot or lots to which it relates given by the local council in accordance with section 66 (6);

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(b) except where the land to which the notice of conversion relates is held otherwise than by the original lessee (if any) or a certificate under this paragraph or section 11 (2) (d) or 32 (4) (b) has been previously lodged in the office of the Registrar-General, it is accompanied by—

(i) a certificate under the seal of the body corporate certifying that the certificate referred to in paragraph (a) was given after the expiration of the initial period or that there was no initial period; or

(ii) a certified or office copy of the minute of an order made under section 97 (4) authorising the registration of the notice; and

(c) every mortgage, charge, covenant charge, current lease, caveat or writ recorded in the folio of the Register for the lease of the lot, or each lot, to which the notice relates has, in so far as it affects any such lease, been discharged or surrendered, or withdrawn or otherwise disposed of, as the case may be.

(3) Subsections (2) (a) and (2) (b) do not apply to or in respect of a notice lodged for registration as a notice of conversion by a person or body who or which, but for section 3, would not be bound by this Act.

(4) On registration of a notice of conversion, the lease of any lot converted into common property is determined and the lot vests in the body corporate as lessee for the residue of the term specified in the lease of the common property.

(5) As soon as practicable after the registration of a notice of conversion, the Registrar-General shall—

(a) cancel the folio of the Register for the lease of the converted lot; and

(b) make such other recordings in the Register as the Registrar-General considers appropriate.

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**Alteration of building affecting lot boundary (1973 Act, s. 14)**

17. (1) Where a building or a part of a building comprised in a leasehold strata scheme is altered—

- (a) by demolishing any wall, floor, ceiling or structural cubic space, and any boundary of a lot was, immediately before the alteration, the inner surface or any part of that wall, the upper surface or any part of that floor or the under surface or any part of that ceiling or was defined in terms of or by reference to that wall, floor, ceiling or structural cubic space; or
- (b) by constructing any wall, floor or ceiling so that a boundary of a lot coincides with the inner surface or any part of that wall, the upper surface or any part of that floor or the under surface or any part of that ceiling,

the lessee of the lot shall, within one month after the completion of the demolition or construction, lodge in the office of the Registrar-General for registration as a building alteration plan a plan which—

- (c) defines by lines the base of each vertical boundary of that lot after the alteration of the building; and
- (d) is accompanied by a certificate given by a registered surveyor certifying—
  - (i) that the wall, floor, ceiling or structural cubic space has been demolished or constructed, as the case may be;
  - (ii) that any wall, floor or ceiling referred to in paragraph (b) is wholly within the perimeter of the parcel except to the extent of any encroachment referred to in section 67 (1) (b) or, where eaves encroach, or guttering encroaches, on land other than a public place, that an appropriate easement exists; and
  - (iii) that any such encroachment and its nature and extent are shown on the plan.

Penalty: \$500.

(2) On registration of a plan lodged under subsection (1) showing an encroachment on a public place, the Registrar-General shall forward 2 copies of the plan to the local council.

(3) A copy of a plan forwarded under subsection (2) may be on a scale the same as or different from the original.

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(4) The provisions of this Act, other than those relating to ownership and certification of title, apply to any encroachment referred to in subsection (1) (d) (iii) as if it were common property.

**Certificates of title to be lodged with plans and notices (1973 Act, s. 15)**

18. (1) Where—

- (a) a plan is lodged in the office of the Registrar-General for registration as a strata plan of subdivision or a strata plan of consolidation;
- (b) a notice is lodged in that office for registration as a notice of conversion; or
- (c) a plan is lodged in that office for registration as a building alteration plan,

and the body corporate either—

- (d) has not, within a period of 21 days after notice in writing served on it by the person so lodging the plan or notice, lodged in the office of the Registrar-General the certificate of title for the lease of the common property; or
- (e) has not, within that period, made due application under section 111 of the Real Property Act 1900 and does not thereafter duly prosecute that application,

the certificate of title for the lease of the common property shall, for the purposes of Part XV of that Act, be deemed to be wrongfully retained.

(2) The Registrar-General may refuse to register any plan or notice lodged as referred to in subsection (1) unless it is accompanied by—

- (a) the certificate of title for the lease of the common property; or
- (b) evidence to the satisfaction of the Registrar-General of the service of the notice referred to in subsection (1) (d).

**Plans to be signed or consented to (1973 Act, s. 16)**

19. (1) The Registrar-General shall not register as a strata plan a plan lodged in the office of the Registrar-General unless the plan is signed—

- (a) by the registered proprietor of the land comprised in the plan;
- (b) by every lessee under a lease that is recorded in a folio of the Register relating to that land;

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- (c) by every mortgagee, chargee or covenant chargee under a mortgage, charge or covenant charge recorded in that folio of the Register; and
- (d) by every mortgagee or chargee under a mortgage of or charge affecting a lease referred to in paragraph (b).

(2) Without limiting the effect of subsection (1), the Registrar-General may refuse to register a plan referred to in that subsection unless consents in writing to the registration of the plan signed by (or by an agent authorised by) such of the following persons as the Registrar-General may determine:

- (a) the judgment creditor under any writ recorded in the folio of the Register relating to the land comprised in the plan;
- (b) the caveator under a caveat affecting any estate or interest in that land,

are lodged in the office of the Registrar-General.

(3) Subject to subsection (5), the Registrar-General shall not register as a strata plan of subdivision, a strata plan of consolidation or a building alteration plan a plan lodged in the office of the Registrar-General unless the plan is signed—

- (a) by the lessor and lessee of the lot or development lot to which the plan relates;
- (b) by every mortgagee, chargee or covenant chargee under a mortgage, charge or covenant charge that is recorded in the folio of the Register for the lease of that lot; and
- (c) where the plan relates to common property—by the body corporate constituted for the purposes of the leasehold strata scheme.

(4) Without limiting the effect of subsection (3), the Registrar-General may refuse to register a plan referred to in that subsection unless consents in writing to the registration of the plan signed by (or by an agent authorised by) such of the following persons as the Registrar-General may determine:

- (a) the judgment creditor under any writ that is recorded in the folio of the Register for the lease of any lot to which the plan relates;
- (b) the caveator under a caveat affecting any estate or interest in that lot,

are lodged in the office of the Registrar-General.

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(5) In relation to any particular plan lodged for registration as referred to in subsection (1) or (3), the Registrar-General may, without giving notice to any person, dispense with the requirement for a person mentioned in that subsection to sign the plan.

**Provisions prohibiting registration to operate cumulatively (1973 Act, s. 17)**

20. A provision of this Division prohibiting the registration of a plan or a notice of conversion in circumstances specified in that provision is in addition to any other provision of this Division prohibiting the registration of a plan or a notice of conversion in circumstances specified in that other provision.

**DIVISION 2—Common property****Effect of creation of common property (1973 Act, s. 18)**

21. (1) Where common property is created by the registration of—

- (a) a strata plan;
- (b) a strata plan of subdivision; or
- (c) a notice of conversion,

the common property is freed and discharged from any mortgage, charge, covenant charge, writ or caveat which, before registration of that plan or notice, affected the land comprising the common property, or affected any lease of that land.

(2) Nothing in subsection (1) affects any right or remedy that may be exercised otherwise than in relation to common property by a person who is a mortgagee, chargee, covenant chargee, judgment creditor or caveator, even though the person may have signed or consented to the registration of the plan or signed the notice creating the common property.

**Acquisition of additional common property (1973 Act, s. 19)**

22. (1) In this section, “land” means land under the Real Property Act 1900 (other than land comprised in a qualified or limited folio of the Register or a perpetual lease from the Crown) but does not include a leasehold interest in land evidenced by a lease not registered under that Act.

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(2) Subject to subsection (3), a body corporate established for the purposes of a leasehold strata scheme may, pursuant to a unanimous resolution, accept a lease or sublease, or a transfer of a lease or sublease, of land (not being a lot that is comprised in the scheme) which is contiguous—

- (a) in any case, to the parcel that is subject to the scheme; or
- (b) in the case of a stratum parcel, to the site on which is erected the building part of which is subject to the scheme,

for the purpose of creating, or creating additional, common property.

(3) A body corporate shall not accept a lease or sublease, or transfer of a lease or sublease, referred to in subsection (2) if—

- (a) the lease or sublease concerned is subject to a mortgage, charge, covenant charge or writ; or
- (b) the term of that lease or sublease would expire after the term of the lease of the common property.

(4) On accepting a lease or sublease, or a transfer of a lease or sublease, in accordance with subsection (2), the body corporate shall forthwith cause the dealing evidencing the transaction to be registered under the Real Property Act 1900.

(5) The Registrar-General may refuse to register the dealing, if—

- (a) it is not accompanied by—
  - (i) the certificate of title for the land affected by the lease or sublease; and
  - (ii) the certificate of title for the lease of the common property; or
- (b) it is not accompanied by a certificate under the seal of the body corporate certifying that the resolution authorising the acceptance of the lease, sublease or transfer was a unanimous resolution.

(6) On the registration under the Real Property Act 1900 of any such lease, sublease or transfer—

- (a) the leasehold interest becomes common property and is subject to the provisions of this Act relating to common property;
- (b) the body corporate is responsible for all payments and the performance of all duties required of the lessee by the terms of the lease or sublease, as the case may be; and

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- (c) the Registrar-General shall make in the Register such recordings with respect to the leasehold interest that becomes common property as the Registrar-General considers appropriate.

(7) A body corporate may, pursuant to a unanimous resolution and with the concurrence of the lessor or sublessor, surrender a lease or sublease accepted by it under this section.

(8) On the registration under the Real Property Act 1900 of any such surrender, the Registrar-General shall make in the Register such recordings with respect to the surrender as the Registrar-General considers appropriate.

**Body corporate to hold leasehold estate in common property as agent for lessees (1973 Act, s. 20)**

23. The leasehold estate of a body corporate in common property shall be held by the body corporate as agent—

- (a) where the same person or persons is or are the lessee or lessees of the lots the subject of the leasehold strata scheme concerned—for that lessee or those lessees; or
- (b) where different persons are lessees of each of two or more of the lots the subject of the leasehold strata scheme concerned—for those lessees as tenants in common in shares proportional to the unit entitlements of their respective lots.

**Common property to be dealt with only under this Act (1973 Act, s. 21)**

24. Common property shall not be capable of being dealt with except in accordance with the provisions of this Act.

**Folio where no common property (1973 Act, s. 22)**

25. (1) Where a strata plan that does not contain common property is registered, the Registrar-General shall create a folio of the Register and record in it, in such manner as the Registrar-General thinks fit—

- (a) a statement that the leasehold strata scheme concerned does not contain common property;
- (b) the name of the body corporate and the address for service of notices on it; and
- (c) the schedule of unit entitlement in force in respect of the scheme.

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(2) During any period for which a folio of the Register created under subsection (1) or section 8 (2) (a) does not relate to common property, the Registrar-General shall, in that folio—

- (a) record any change, from time to time, in the address for service of notices on the body corporate, evidenced by a notice lodged in accordance with section 91 (2) (b);
- (b) record particulars of any amendment of, addition to or repeal of the by-laws from time to time in force with respect to the leasehold strata scheme concerned, notification of which has been lodged in accordance with section 87 (3); and
- (c) make any other recording which, by or under this or any other Act, the Registrar-General is required or authorised to make in the folio.

(3) A reference—

- (a) in this Act to a folio of the Register or a certificate of title for the lease of the common property includes respectively a reference to a folio of the Register created under subsection (1) or section 8 (2) (a) during any period for which it does not relate to common property or to a certificate of title issued under section 26 (2) in respect of any such folio; and
- (b) in the Real Property Act 1900, to a folio of the Register or a certificate of title includes respectively a reference to a folio of the Register referred to in paragraph (a) during any period for which it does not relate to common property or to a certificate of title referred to in that paragraph, except in so far as the provision of that Act in which the reference occurs is incapable of applying to a folio of the Register or a certificate of title so referred to.

**Folios for bodies corporate, generally (1973 Act, s. 22A)**

26. (1) On a leasehold estate in any common property being vested in, acquired by or divested from a body corporate for a leasehold strata scheme in respect of which a folio of the Register has been created under section 8 (2) (a) or 25 (1), the Registrar-General shall make such recordings in the Register with respect to the leasehold estate so vested, acquired or divested as the Registrar-General considers appropriate.

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(2) The Registrar-General may, if the Registrar-General thinks fit, and shall, on the written request of the body corporate, issue to a body corporate in respect of which a folio of the Register has been created under section 8 (2) (a) or 25 (1), a certificate of title setting forth the information contained in that folio.

**Folio where there is common property (1973 Act, s. 23)**

27. (1) In any folio of the Register for the lease of common property it shall be sufficient that the land comprised in it be described as a leasehold estate in the common property in a designated strata plan without definition of the area or dimensions of the common property, and a folio of the Register for the lease of common property shall be construed as certifying title to the leasehold estate in the common property, other than common property that is the subject of a lease or sublease accepted or acquired under section 22, in the leasehold strata scheme concerned as that common property may exist from time to time.

(2) When creating a folio of the Register for the lease of common property, the Registrar-General shall record in the folio, in such manner as the Registrar-General thinks fit—

- (a) the name of the body corporate;
- (b) the address for service of notices on the body corporate;
- (c) the schedule of unit entitlement in force in respect of the scheme concerned; and
- (d) any easement benefiting or burdening the parcel and any restriction on the use of land or positive covenant burdening the parcel,

and shall, subsequently, in that folio—

- (e) record any change, from time to time, in the address for service of notices on the body corporate, evidenced by a notice prepared and lodged in accordance with section 91;
- (f) record particulars of any amendment of, addition to or repeal of the by-laws from time to time in force notification of which has been lodged in accordance with section 87 (3); and
- (g) make any other recording which, by or under this or any other Act, the Registrar-General is required or authorised to make in the folio.

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(3) Notwithstanding the provisions of the Real Property Act 1900, the Registrar-General shall not record—

- (a) any easement of the description contained in section 30 (1) (a) or (b);
- (b) any easement acquired by resumption to the extent that it affects common property; or
- (c) any restriction on the use of land or positive covenant of the description contained in section 30 (1) (a),

(whether or not the easement, restriction or positive covenant was created after the commencement of this Act or under section 30 (1)) in the folio of the Register for the lease of a lot the subject of the leasehold strata scheme concerned but shall record the easement, restriction or positive covenant in the folio of the Register for the lease of the common property, and any such easement, restriction or positive covenant shall affect any such lot to the extent that it is capable of affecting that lot and as if it were recorded by the Registrar-General in the folio of the Register for the lease of that lot.

(4) Notwithstanding any provision of the Real Property Act 1900, the Registrar-General shall not record any mortgage, charge, covenant charge or writ in the folio of the Register for the lease of the common property, but any such mortgage, charge, covenant charge or writ recorded in the folio of the Register for the lease of a lot the subject of the leasehold strata scheme concerned affects the beneficial interest of the lessee of that lot in the leasehold estate or interest in the common property held by the body corporate as agent for that lessee as if that mortgage, charge, covenant charge or writ were recorded by the Registrar-General in the folio of the Register for the lease of that common property.

**Dealings with lots include leasehold estate in common property (1973 Act, s. 24)**

28. (1) In any dealing or caveat relating to a lease of a lot, a reference to the lot includes a reference to any estate or interest in the common property which is vested in the body corporate as agent for the lessee of the lot without express reference to the common property and without the dealing or caveat being recorded in the folio of the Register for the lease of the common property.

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(2) The beneficial interest of a lessee of a lot in the estate or interest in the common property, if any, held by the body corporate as agent for that lessee shall not be capable of being severed from, or dealt with except in conjunction with, the lease of the lot.

**Transfer or sublease of common property (1973 Act, s. 25)**

29. (1) A body corporate may, pursuant to a unanimous resolution and with the consent of the lessor, and if not prevented by the terms of the lease, transfer a lease of part of the common property or grant a sublease of such a part.

(2) A body corporate, pursuant to a unanimous resolution, may accept a surrender of a sublease or, if otherwise empowered so to do, re-enter under a sublease, granted under subsection (1).

(3) The Registrar-General shall register a dealing referred to in subsection (1) or (2) by making in the Register such recordings with respect to the dealing as the Registrar-General considers appropriate.

**Creation of easements, restrictions and positive covenants (1973 Act, s. 26)**

30. (1) Subject to subsection (4), a body corporate may, pursuant to a unanimous resolution—

- (a) execute a dealing creating an easement which burdens the leasehold estate in the common property or a restriction on the use of land or a positive covenant which burdens the leasehold estate in the common property or the leasehold estates in the whole parcel;
- (b) accept a dealing creating an easement or a restriction on the use of land which benefits the leasehold estate in the common property or the leasehold estates in the whole of the parcel;
- (c) execute a dealing releasing an easement or a restriction on the use of land which benefits the leasehold estate in the common property or the leasehold estates in the whole parcel; or
- (d) accept a dealing releasing an easement which burdens the leasehold estate in the common property or a restriction on the use of land or a positive covenant which burdens the leasehold estate in the common property or the leasehold estates in the whole parcel.

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(2) Subsection (1) does not authorise a body corporate to execute or accept a dealing relating to common property the subject of a lease or sublease accepted or acquired by the body corporate under section 22 (2) that, apart from subsection (1), it is not entitled to execute or accept as a lessee or sublessee or, by the terms of the lease or sublease, it is prevented from executing or accepting.

(3) A body corporate (pursuant to a unanimous resolution) or the lessor under the scheme, or both of them, may join in or consent to the execution or acceptance of a dealing referred to in subsection (1) relating to a lease or sublease accepted or acquired by the body corporate under section 22 (2).

(4) A dealing referred to in subsection (1) is not effective unless the lessor has consented in writing to the execution or acceptance of the dealing by the body corporate.

(5) A body corporate (pursuant to a unanimous resolution) and the lessor under the scheme may—

- (a) execute a dealing creating an easement which burdens the common property or a restriction on the use of land or a positive covenant which burdens the common property or the whole parcel;
- (b) accept a dealing creating an easement or a restriction on the use of land which benefits the common property or the whole parcel;
- (c) execute a dealing releasing an easement or a restriction on the use of land which benefits the common property or the whole parcel; or
- (d) accept a dealing releasing an easement which burdens the common property or the whole parcel.

(6) Subsection (5) does not authorise a body corporate or the lessor under the scheme—

- (a) to execute or accept a dealing relating to—
  - (i) common property the subject of a lease accepted or acquired by the body corporate under section 22 (2), unless the lessor under the scheme is the lessor under the lease; or
  - (ii) common property the subject of a sublease; or
- (b) to execute or accept any such dealing contrary to the terms of the lease or sublease concerned or any other agreement entered into by either of them.

**Dedication of common property (1973 Act, s. 27)**

**31. (1)** In this section—

“drainage reserve” means a drainage reserve referred to in section 340B of the Local Government Act 1919 or land held for drainage purposes as referred to in section 340E of that Act;

“public reserve” and “public road” have the same meanings as they respectively have in the Local Government Act 1919.

**(2)** Subject to subsection (3), a body corporate may, pursuant to a unanimous resolution, affix its seal to a plan which bears a statement of intention in respect of designated common property—

- (a) to open or widen a public road;
- (b) to create a public reserve; or
- (c) to create a drainage reserve.

**(3)** A body corporate shall affix its seal to a plan referred to in subsection (2) which relates to common property the subject of a lease accepted or acquired by the body corporate under section 22 (2) only if—

- (a) the plan has been signed in accordance with Division 3 of Part XXIII of the Conveyancing Act 1919;
- (b) the seal is affixed pursuant to a unanimous resolution of the body corporate; and
- (c) the plan has been signed by the lessor under the leasehold strata scheme concerned.

**(4)** On registration, under the Conveyancing Act 1919, of a plan referred to in subsection (2), the Registrar-General shall make in the Register such recordings, with respect to the effect of that registration, as the Registrar-General considers appropriate.

**Effect of dealings under this Division (1973 Act, s. 28)**

**32. (1)** In this section—

“dealing” includes a plan referred to in section 31 (2).

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(2) A dealing executed by a body corporate for the purpose of the exercise of any of its powers under this Division shall be as valid and effective as it would be if it were also executed by the lessees of all the lots comprised in the leasehold strata scheme concerned and the receipt of the body corporate for purchase money, rent, premium or other money payable to the body corporate in respect of the dealing shall be a sufficient discharge and shall exonerate every person paying any such money from any responsibility for its application.

(3) A body corporate shall not execute a dealing for the purposes of this Division—

- (a) if the estate or interest of the body corporate or of the lessees or any of them in the parcel or in any part of the parcel is thereby diminished, unless—
  - (i) all persons (other than the body corporate and the lessees) having interests recorded in the Register in the parcel or that part, as the case may be, have released them in so far as they affect the estate or interest the subject of the dealing or the dealing may properly be, and has been, made subject to those interests; and
  - (ii) all persons having interests (other than interests referred to in subparagraph (i) or statutory interests) in the parcel or that part, as the case may be, being interests which have been notified to the body corporate, have released them as against the person taking under the dealing, not being a plan, or benefiting by the registration of the dealing, being a plan; and
- (b) unless any by-law referred to in section 87 (7) and relating to the land the subject of the dealing has been—
  - (i) repealed; or
  - (ii) amended in so far as it would, but for the amendment, have detracted from the interest passing under the dealing.

(4) A dealing lodged for registration under the Real Property Act 1900 or the Conveyancing Act 1919 for the purposes of this Division shall not be registered under either of those Acts unless it is accompanied by a certificate under the seal of the body corporate—

- (a) certifying that—
  - (i) the resolution authorising the execution of the dealing was a unanimous resolution; and

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(ii) the requirements of subsection (3) (a) (ii) were complied with;  
and

- (b) except where a certificate under this paragraph or section 11 (2) (d) or 16 (2) (b) has been previously lodged in the office of the Registrar-General or a certified or office copy of the minute of an order made under section 97 authorising the registration of the dealing is so lodged, certifying that the resolution referred to in paragraph (a) was passed after the expiration of the initial period or that there was no initial period.

and the certificate under the seal of the body corporate given for the purposes of this subsection shall be conclusive evidence of the facts stated in that certificate in favour of the Registrar-General and any person taking under the dealing, not being a plan, or benefiting by the registration of the dealing, being a plan.

**DIVISION 3—Leases of lots****Provisions generally applicable to leases**

**33. (1)** The provisions of the Conveyancing Act 1919 relating to leases of land apply to and in respect of a lease of a lot or of common property except in so far as those provisions are inconsistent with the provisions of this Part or the regulations.

(2) The lessor under a leasehold strata scheme may be the lessee of any lot subject to that scheme notwithstanding any law relating to the merger of leasehold and reversionary estates in land.

**Restrictions on alienation by lessor and on dealings by lessees**

**34. (1)** During the currency of a leasehold strata scheme the lessor shall not, except in accordance with the regulations, transfer to a person other than the lessees, another prescribed authority or the body corporate—

- (a) the lessor's reversion in the parcel that is the subject of the scheme;  
or  
(b) where the parcel is a stratum parcel, the site on which is erected the building part of which is subject to the scheme.

(2) Except as expressly provided by Division 2, any provision in the lease of a lot or common property which purports to require the consent of the lessor under the scheme to any dealing with the lease is void.

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**Powers of authority where no current lease**

35. (1) Where a prescribed authority is entitled to immediate possession of a lot because of the determination of a lease, the authority shall, for the purposes only of this Act (but subject to such exceptions as may be prescribed), be deemed to be the lessee of the lot.

(2) Nothing in subsection (1) confers or imposes on the prescribed authority any right or obligation created by any lease, sublease, mortgage, charge or covenant charge to which any former lessee was subject.

**Further leases of lots and common property**

36. (1) Except as provided by subsection (3) and section 122 of the Conveyancing Act 1919, the lessor under a leasehold strata scheme may grant further leases of the lots the subject of the scheme (which may consist of or include leases to the lessor) at any time before the scheme is terminated.

(2) If a lease is granted under subsection (1) so as to commence when the lease of the common property expires, the lessor under the scheme shall also grant a further lease of the common property to the body corporate.

(3) Where the lessees of lots the sum of whose unit entitlements is not less than four-fifths of the aggregate unit entitlement and the body corporate have, at least 6 months before the expiration of the terms of those leases, given written notice in accordance with subsection (4) to the lessor under the leasehold strata scheme concerned of their intention to exercise their rights to renew their leases, the lessor shall, at least 3 months before those terms expire, grant and deliver—

- (a) further leases of those lots to those lessees; and
- (b) a further lease of the common property to the body corporate.

(4) A lessee of a lot or a body corporate gives notice in accordance with this subsection to the lessor under the leasehold strata scheme concerned of an intention to exercise a right to renew a lease only if—

- (a) the right to a further lease, being a lease containing specified provisions, has been granted to the lessee or body corporate by the lessor in writing signed by the lessor; and
- (b) the notice is accompanied by a lease for execution by the lessor in the form approved for registration under the Real Property Act 1900 and containing those provisions.

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(5) Except where any such lease is granted so as to commence during the term of another lease of a lot or the common property and is expressed to expire at the same time as the other lease, the terms of all leases granted under this section with respect to a parcel shall be expressed—

- (a) to commence at the expiration of the terms of the leases they are intended to replace; and
- (b) to expire at the same time.

(6) If a lease granted under this section confers on the lessee a right of renewal, the renewal term shall be the same as that to which each other lessee under the leasehold strata scheme is entitled.

(7) The lessor under the scheme may execute a further lease of the common property as agent for the body corporate, unless the lease is granted pursuant to subsection (3).

(8) Notwithstanding subsection (3), the lessor under the scheme may refuse to grant—

- (a) a further lease of a lot to a lessee, if—
  - (i) the lessee has committed a breach of a provision of the lease of that lot and that breach has not been remedied; or
  - (ii) the lessee has not complied with a requirement imposed by the lessor in accordance with a provision of the lease for the renovation of improvements comprised within that lot; or
- (b) a further lease of the common property to the body corporate, if—
  - (i) the body corporate has committed a breach of a provision of the lease of the common property and that breach has not been remedied; or
  - (ii) the body corporate has not complied with a provision of the lease for the renovation of any improvements comprising common property.

(9) If a lessor refuses under subsection (8) (b) to grant a further lease of the common property the subject of a leasehold strata scheme, the lessor shall also refuse to grant further leases of lots the subject of the same scheme.

(10) A right to a further lease of a lot or of common property may not be exercised otherwise than in accordance with this section.

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**Expiry of leases of lots**

37. (1) When all leases of the lots and common property (if any) that are the subject of a leasehold strata scheme expire or are otherwise determined without being wholly or partly replaced by further leases of the lots or common property registered under the Real Property Act 1900, then except as otherwise provided by this section—

- (a) the scheme is terminated;
- (b) the body corporate constituted for the purposes of the scheme is dissolved;
- (c) if the leases so provide or it is so provided in any other agreement, the former lessor under the scheme is liable to pay to each person who, immediately before the termination of the scheme, was the lessee of a lot (in this section referred to as "the former lessee") such amount by way of compensation, determined in accordance with the formula set out in Schedule 2 or as otherwise agreed by the former lessor and former lessee, in respect of the value of the improvements comprised within the former parcel as is attributable to the lot leased by the former lessee;
- (d) all rights which were vested in the body corporate immediately before its dissolution (being rights which, but for the dissolution of the body corporate, would have survived the expiry of the term of the leases) are vested in the former lessees;
- (e) the former lessees become jointly and severally liable for all of the liabilities of the body corporate subsisting immediately before its dissolution; and
- (f) any legal proceedings begun by or against the body corporate may be completed by or against the former lessees.

(2) As soon as practicable after the termination of a leasehold strata scheme, the Registrar-General shall, on the application of the lessor under the scheme—

- (a) cancel the folios of the Register for the leases of the lots and common property comprised in the scheme;
- (b) cancel the strata plan relating to the scheme; and
- (c) record on the folio of the Register relating to the parcel that was the subject of the scheme the fact that the scheme has terminated.

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(3) Where, in relation to a lot comprised in a leasehold strata scheme that is about to be terminated by virtue of subsection (1) or to a former lot that was comprised in a leasehold strata scheme that has already been so terminated, a dispute arises as to the amount to be paid in respect of the value of improvements under subsection (1) (c) to the lessee or former lessee of that lot, that dispute shall be resolved—

(a) if the lease of that lot so provides or so provided or the parties to the dispute otherwise agree, by reference to arbitration under the Commercial Arbitration Act 1984; or

(b) in any other case, by an order of the Supreme Court.

(4) An application for an order under subsection (3) (b) may be made by any party to the dispute concerned.

(5) Notice of the application shall be served, in accordance with rules of court, on such persons as the Supreme Court may direct.

(6) As far as practicable, all applications which relate to the same leasehold strata scheme shall be heard together.

(7) At any time before the expiry of the terms of leases of the lots and the common property (if any) comprised in a leasehold strata scheme, the lessee of any of those lots, the body corporate or any creditor of the body corporate may apply to the Supreme Court for an order under subsection (10).

(8) Notice of an application under subsection (7) shall be served, in accordance with rules of court, on every person referred to in that subsection other than the applicant and on such other persons (including creditors of the body corporate) as the Supreme Court directs.

(9) The person making an application under subsection (7) and any person referred to in subsection (8) (whether served with a copy of the notice of the application or not) is entitled to appear and be heard at the hearing of the application.

(10) At the hearing of an application under subsection (7), the Supreme Court may make an order to the effect that, notwithstanding the expiry of the leases of the lots and common property (if any) the subject of the leasehold strata scheme concerned, the body corporate shall continue in existence for the purposes specified in the order until such date as may be specified in the order or in a further order of the Supreme Court.

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(11) An order made under subsection (10) may include directions for or with respect to any of the following matters:

- (a) the sale or disposition of any property of the body corporate;
- (b) the discharge of the liabilities of the body corporate;
- (c) the termination of any development scheme that relates to the parcel and the cancellation of the development statement concerned;
- (d) the persons liable to contribute money required for the discharge of the liabilities of the body corporate and the proportionate liability of each such person;
- (e) the distribution of the assets of the body corporate and the proportionate entitlement of each person under that distribution;
- (f) the administration and functions of the body corporate;
- (g) any legal proceedings which have been brought by or against the body corporate and which are currently pending;
- (h) the voting power at meetings of the body corporate of persons referred to in paragraphs (d) and (e);
- (i) any matter in respect of which it is, in the opinion of the Supreme Court, just and equitable, in the circumstances of the case, to make provision in the order;
- (j) the winding up of the body corporate (including the appointment and functions of any person to carry out the winding up).

(12) An order under subsection (10) shall have effect according to its tenor notwithstanding any other provision of this Part.

(13) The Supreme Court may, from time to time, vary any order made under subsection (10) on the application of any person who was entitled to appear and be heard on the hearing of the application for that order.

**Restrictions on re-entry or forfeiture of lease of lot**

38. (1) Where the lease of a lot is subject to a registered mortgage, charge or covenant charge, a right of re-entry or forfeiture under a provision of the lease for a breach of any covenant, condition or agreement (express or implied) in the lease shall, notwithstanding section 129 (6) of the Conveyancing Act 1919, not be exercised unless the lessor has served on the mortgagee, chargee or covenant chargee a copy of the notice relating to that breach served on the lessee under section 129 of that Act.

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(2) Where a lessor has brought legal proceedings to enforce a right of re-entry or forfeiture under a provision of a lease of a lot, the Supreme Court may, on application by any person claiming as mortgagee, chargee or covenant chargee of the lot make an order—

- (a) staying those proceedings on such terms as appear to the Supreme Court to be just and equitable; and
- (b) vesting, for the whole of the remaining term of the lease, or any shorter term, the lease of the lot in that person on such conditions as to the execution of any dealing or other document, payment of proper and reasonable rent, costs, expenses, damages, compensation, giving security or otherwise as that Court, having regard to all the circumstances of the case, thinks just and equitable.

(3) An order under subsection (2)—

- (a) may be made in proceedings for the purpose brought by the person claiming as mortgagee, chargee or covenant chargee; or
- (b) where the proceedings brought by the lessor are already in the Supreme Court, may be made in those proceedings.

DIVISION 4—*Conversion of leasehold strata scheme to freehold strata scheme*

**Procedure for converting leasehold strata scheme**

39. (1) Where—

- (a) under the leases of the lots the subject of a leasehold strata scheme, the lessees have rights to acquire the lessor's reversion in those lots; or
- (b) apart from those leases, the lessor confers on those lessees rights to acquire the lessor's reversion in those lots,

the body corporate may at a meeting duly convened for the purpose of ascertaining whether those rights are to be exercised, being a meeting held before the scheme is terminated (whether under section 37 or otherwise), pass a special resolution authorising the conversion of the leasehold strata scheme into a freehold strata scheme.

(2) Rights of the kind referred to in subsection (1) shall not be exercised unless or until a special resolution has been passed in accordance with that subsection.

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(3) Where a special resolution has been passed in accordance with subsection (1) at the meeting, the lessees may exercise their rights to acquire from the lessor under the scheme the reversion in their respective lots.

(4) If any lessee has not, within 6 weeks after the date of a meeting at which a special resolution is passed in accordance with subsection (1), acquired the reversion in the lessee's lot, the body corporate may, pursuant to a unanimous resolution and notwithstanding section 22, acquire the reversion in and the lease of the lot.

(5) If the reversion in any lot has not, within 3 months after the date of that meeting, been acquired by the lessee of the lot or the body corporate, the lessor under the scheme may acquire the lease of the lot.

(6) When there is no outstanding reversion in a lot the subject of the leasehold strata scheme concerned, the lessor under the scheme shall forthwith notify the Registrar-General in the approved form of—

- (a) the passing of the special resolution authorising the conversion of the scheme; and
- (b) the disposal of the reversionary estates in all lots the subject of that scheme.

(7) If the reversion in any lot has not, within the period of 6 months after the date of that meeting, been disposed of in accordance with this section, the lessor under the scheme shall, at the expiration of that period, notify the Registrar-General in the approved form of—

- (a) the passing of the special resolution authorising the conversion of the scheme;
- (b) the disposal of the reversionary estates in the lots the subject of that scheme, being lots the reversion in which has been acquired or the leases of which have been acquired in accordance with this section; and
- (c) the identity of any lot the reversion in which, or lease of which, has not been so acquired.

(8) Any notification required by this section to be given by the lessor under the scheme may be given by the body corporate or any lessee or other person and, if it is so given, shall be deemed to have been given by that lessor.

**Effect of merger of leasehold estate with lessor's reversion**

**40. (1)** On receipt of a notification given in accordance with section 39 and an application in the approved form before the leasehold strata scheme to which they relate is terminated (whether under section 37 or otherwise), the Registrar-General shall, if satisfied that the application has been duly made, make such recordings in the Register to effect the merger of leasehold and reversionary estates as the Registrar-General considers appropriate and, when those recordings are made—

- (a) the leasehold strata scheme shall become a strata scheme within the meaning of the Strata Titles Act 1973;
- (b) the strata plan relating to the scheme shall become a strata plan within the meaning of that Act;
- (c) each former lot shall become a lot within the meaning of that Act and, except as provided by paragraph (e), shall vest in the former lessee of the lot for an estate in fee simple;
- (d) the former common property (if any) shall become common property within the meaning of that Act and, except as regards any lease acquired by the body corporate under section 22, shall vest in the body corporate for an estate in fee simple;
- (e) the fee simple estate in any lot in relation to which a merger has not been recorded in the Register shall be held subject to the former lease of the lot;
- (f) any registered mortgage, charge, covenant charge, easement, restriction on the use of land or positive covenant conferring or imposing rights or obligations with respect to the former leases of lots or the former lots shall confer or impose equivalent rights or obligations with respect to the lots created;
- (g) any registered easement, restriction on the use of land or positive covenant conferring or imposing rights or obligations with respect to the former common property shall confer or impose equivalent rights or obligations with respect to the common property created; and
- (h) except as provided by paragraph (e), the former leases of each former lot and the former lease of the former common property (if any) are determined.

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(2) When lots and common property within the meaning of the Strata Titles Act 1973 are created by subsection (1), that Act applies to and in respect of those lots and that common property and the Registrar-General shall record in a folio of the Register for each lot particulars of all estates and interests affecting that lot by virtue of subsection (1).

DIVISION 5—*Development schemes***Approval of development statement (1973 Act, s. 28A)**

41. (1) Where the development proposed in an application for development consent lodged with a consent authority includes—

- (a) the registration of a strata plan; and
- (b) the subsequent subdivision, by a strata plan of subdivision, of a lot in the strata plan.

the development consent shall not be given by the consent authority unless—

- (c) the development application is accompanied by a proposed development statement;
- (d) no part of the lot intended for subsequent subdivision is superimposed on any part of another lot in the strata plan; and
- (e) the strata plan does not relate to a proposed stratum parcel.

(2) Where an application referred to in subsection (1) is determined by the granting of development consent—

- (a) the consent authority shall be deemed to have approved the proposed development statement that accompanied the application; and
- (b) the consent shall be deemed to have been granted subject to a condition (which shall be deemed to be a condition imposed by the consent authority on the grant of the consent) requiring the parcel to which the development statement relates to be developed as provided and represented by the development statement.

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(3) For the purposes of subsection (1), a proposed development statement shall be comprised of—

- (a) an instrument (which may consist of more than one document) that—
  - (i) describes the land that will comprise the parcel for the leasehold strata scheme to be created by registration of the strata plan;
  - (ii) describes, in the prescribed manner and by reference to the prescribed information, the stages by which the development of that land is proposed and the sequence in which it is proposed to implement those stages;
  - (iii) describes the proposed arrangements for the ingress, egress, movement and parking of vehicles to, from and on the parcel during the carrying out of the development;
  - (iv) describes the manner in which it is proposed to landscape the parcel;
  - (v) specifies the obligations to be imposed, and the rights to be conferred, in relation to the use (including erection of structures) of common property and, before subdivision, of development lots;
  - (vi) includes the proposed schedule of unit entitlements under section 7 (1) (g);
  - (vii) includes the proposed schedule of unit entitlements under section 10 (2) (c) for each lot in each proposed strata plan of subdivision;
  - (viii) specifies the dates by which it is proposed to commence and complete each stage of the development of the parcel;
  - (ix) contains the prescribed warning relating to possible amendments of the statement and the possibility that the development scheme concerned may not be completed; and
  - (x) includes such other matters as may be prescribed;
- (b) plans and drawings illustrating—
  - (i) the matters referred to in paragraph (a);
  - (ii) the location of buildings proposed to be erected or retained on the parcel;

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- (iii) elevations and sections of those buildings and their external finishes and heights;
  - (iv) perspectives of those buildings;
  - (v) the proposed finished levels of the land in relation to roads and those buildings; and
  - (vi) such other matters as may be prescribed;
- (c) illustrations of the proposed strata plan and each proposed strata plan of subdivision; and
- (d) such other instruments (including plans and drawings) as may be prescribed.

(4) On giving consent to a development application referred to in subsection (1), a consent authority shall provide the applicant for the consent with a copy of the development statement deemed by subsection (2) (a) to have been approved by the consent authority together with the prescribed certificate by the consent authority.

**Registration of development statement (1973 Act, s. 28B)**

42. (1) Where section 7 (1) (i) is complied with in relation to a plan lodged with the Registrar-General for registration as a strata plan, the Registrar-General may, on registration of the plan as a strata plan, register the accompanying development statement.

(2) Where—

- (a) a plan is lodged with the Registrar-General for registration as a strata plan;
- (b) the person or body who or which would be the original lessee on registration of the strata plan is a person who or which, but for section 3, would not be bound by this Act; and
- (c) the plan is accompanied by instruments, plans and drawings that, if deemed by section 41 (2) (a) to have been approved by a consent authority, would comprise a development statement,

the Registrar-General may, on registration of the strata plan, register the instruments, plans and drawings as a development statement.

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(3) Where a strata plan and a development statement have been registered as provided by subsection (1) or (2), the Registrar-General shall record in the folio of the Register created under section 8 (2) (a) or 25 (1)—

- (a) the existence of the development statement and of any subsequent amendment thereof registered from time to time; and
- (b) such information relating to the development statement and any amendment thereof as the Registrar-General considers appropriate.

**Amendment of development statement (1973 Act, s. 28c)**

43. (1) Except to the extent that this section and the regulations otherwise provide, an amendment of a registered development statement does not have effect unless—

- (a) where the development statement was registered under section 42 (1)—the consent authority concerned has given in relation to the amendment the certificate referred to in subsection (8) (b) and the amendment is registered as provided by section 44 or 45, whichever is applicable; or
- (b) where the development statement was registered under section 42 (2)—the amendment is registered as provided by section 44 or 45, whichever is applicable.

(2) Subsection (1) does not apply to an amendment of a registered development statement ordered under section 46 (4), 51 (1), 61 (4) or 79 (4), or consequential upon an order under section 155 (1), and such an amendment does not have effect unless—

- (a) in the case of an amendment ordered under section 46 (4) or 51 (1)—the amendment is recorded under section 53;
- (b) in the case of an amendment ordered under section 61 (4)—the amendment is recorded under section 77 (2);
- (c) in the case of an amendment ordered under section 79 (4)—the amendment is recorded under section 77 (2) or 82 (1), whichever is applicable; or
- (d) in the case of an amendment consequential upon an order under section 155 (1)—the amendment is recorded under section 179 (3) or (4).

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(3) Subsection (1) does not apply to an amendment of a registered development statement that is consequential upon the revocation or modification, under section 103 of the Environmental Planning and Assessment Act 1979, of a development consent.

(4) Notwithstanding subsection (1) (a), a certificate referred to in subsection (8) (b) is not required in relation to an amendment of a development statement if—

- (a) the amendment effects a reallocation of the proposed unit entitlements of the lots to be created upon subdivision of a development lot and—
  - (i) the reallocation does not result in a change to the unit entitlement of the development lot; and
  - (ii) the developer has given to the body corporate the prescribed period of notice of the reallocation in writing specifying the manner of reallocation; or
- (b) the amendment effects a change, for reasons beyond the control of the developer, in a date referred to in section 41 (3) (a) (viii) and—
  - (i) the change of date does not constitute a breach of a condition of a development consent; and
  - (ii) the developer has given to the body corporate the prescribed period of notice of the change in writing specifying the change and the reasons for the change.

(5) Where an application is made to a consent authority for a certificate referred to in subsection (8) (b) relating to an amendment of a development statement, the application shall be accompanied—

- (a) by such instruments, plans and drawings of the nature referred to in section 41 as describe and illustrate the effect of the proposed amendment;
- (b) by a certificate under the seal of the body corporate to the effect that the body corporate has consented to the amendment and—
  - (i) unless there is more than one member of the body corporate— that there is only one member of the body corporate; or
  - (ii) where there is more than one member of the body corporate— that the consent of the body corporate was given in accordance with subsection (6);

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- (c) by such other instruments (including plans and drawings) as may be prescribed; and
- (d) by evidence satisfactory to the Registrar-General that the lessor has consented to the amendment of the development statement.

(6) Consent to an amendment of a development statement is given by a body corporate in accordance with this subsection if it is given by means of a resolution passed at a duly convened general meeting of the body corporate at which—

- (a) where the amendment is not an amendment whereby a development lot is excluded wholly or partly from the development scheme or converted into common property—
  - (i) subsection (7) is applied in relation to the voting on the motion for the resolution; and
  - (ii) any votes cast against the motion for the resolution total not more than one-half in number of all the persons who were entitled to vote on the motion; or
- (b) where the amendment is an amendment whereby a development lot is excluded wholly or partly from the development scheme or converted into common property—the resolution is a unanimous resolution.

(7) For the purposes of voting on a motion for a resolution referred to in subsection (6) (a) and notwithstanding anything in section 86 (5)—

- (a) the developer (whether as a lessee of a lot or as a proxy or mortgagee) is not entitled to vote on the motion;
- (b) a mortgagee of the developer (whether as mortgagee or as a proxy) is not entitled to vote on the motion;
- (c) any vote cast by a person not entitled to vote on the motion shall not be counted; and
- (d) all votes cast for or against the motion by persons entitled to vote on the motion are of equal value,

but a person disqualified by this subsection from voting on a motion shall, for the purpose of moving the motion or requiring its inclusion in the agenda for a meeting, be deemed not to be so disqualified.

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(8) Where a consent authority is satisfied that an application for an amendment of a development statement made to the consent authority under subsection (5) complies with this Act and the regulations and the consent authority approves an amendment of the development statement, the consent authority shall provide the applicant for the amendment with—

- (a) a copy of the instruments, plans and drawings that describe and illustrate the approved amendment; and
- (b) a certificate by the consent authority to the effect—
  - (i) that the copy referred to in paragraph (a) describes and illustrates the amendment approved by the consent authority; and
  - (ii) that the development statement, if amended in the manner approved by the consent authority, would not be inconsistent with the related development consent.

**Registration of amendment that does not exclude or convert a development lot (1973 Act, s. 28D)**

44. (1) Where an amendment of a registered development statement is not an amendment whereby a development lot is excluded wholly or partly from the development scheme or is converted into common property, the Registrar-General may register the amendment if a request is made, in a form approved by the Registrar-General, for registration of the amendment and the request is accompanied by—

- (a) the prescribed fee in the case of an amendment of a development statement registered under section 42 (1);
- (b) the certificate of title for the lease of the common property;
- (c) where the leases of the parcel or of a part of the parcel are subject to a mortgage given by the developer or subject to a covenant charge and the amendment is not an amendment referred to in section 43 (2), (3) or (4)—the written consent of the mortgagee or covenant chargee to the amendment;
- (d) the documents prescribed by subsection (2) in relation to the amendment; and
- (e) such other instruments (including plans and drawings) as may be prescribed by the regulations.

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(2) The documents prescribed by this subsection in relation to an amendment are—

- (a) where section 43 (1) (a) applies to the amendment—
  - (i) the instruments, plans and drawings referred to in section 43 (8) (a) that relate to the amendment;
  - (ii) the certificate referred to in section 43 (8) (b) that relates to the amendment; and
  - (iii) a certificate by the developer to the effect that the amendment does not exclude a development lot wholly or partly from the development scheme or convert a development lot into common property;
- (b) where the amendment is an amendment referred to in section 43 (3)—
  - (i) a copy, certified by the developer to be a true copy, of the instrument under section 103 of the Environmental Planning and Assessment Act 1979 that effected the revocation or modification upon which the amendment is consequential; and
  - (ii) the certificate referred to in paragraph (a) (iii);
- (c) where the amendment is not an amendment to which section 43 (4) applies and relates to a development statement registered under section 42 (2)—
  - (i) such instruments, plans and drawings of the nature referred to in section 41 as describe and illustrate the effect of the proposed amendment; and
  - (ii) the certificate referred to in paragraph (a) (iii); or
- (d) where the amendment is an amendment to which section 43 (4) applies—
  - (i) such instruments as describe the effect of the proposed amendment;
  - (ii) a copy, certified by the developer to be a true copy, of the notice under section 43 (4) (a) (ii) or (b) (ii) that relates to the amendment; and
  - (iii) the certificate referred to in paragraph (a) (iii).

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**Registration of amendment whereby development lot excluded or converted (1973 Act, s. 28E)**

45. (1) Where an amendment of a registered development statement is an amendment whereby a development lot is excluded wholly or partly from the development scheme or is converted into common property, the Registrar-General may register the amendment if a request is made, in a form approved by the Registrar-General, for registration of the amendment and the request is accompanied by—

- (a) the prescribed fee in the case of an amendment of a development statement registered under section 42 (1);
- (b) the certificate of title for the lease of the common property;
- (c) where the leases of the parcel or of a part of the parcel are subject to a mortgage given by the developer or subject to a covenant charge and the amendment is not an amendment referred to in section 43 (2) or (3)—the written consent of the mortgagee or covenant chargee to the amendment; and
- (d) the documents prescribed by subsection (2) in relation to the amendment.

(2) The documents prescribed by this subsection in relation to an amendment are—

- (a) in the case of an amendment whereby a development lot is excluded wholly or partly from the development scheme—
  - (i) such instruments, plans and drawings as are prescribed for the purposes of this paragraph;
  - (ii) where section 43 (1) (a) applies to the amendment—the certificate referred to in section 43 (8) (b) that relates to the amendment; or
- (b) in the case of an amendment whereby a development lot is converted into common property—
  - (i) a notice of conversion that is in a form approved by the Registrar-General and is executed by the lessor under the scheme, the lessee of the lot and the body corporate; and
  - (ii) where section 43 (1) (a) applies to the amendment—the certificate referred to in section 43 (8) (b) that relates to the amendment.

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(3) A notice referred to in subsection (2) (b) (i) shall not be registered unless every mortgage, charge, covenant charge, sublease, caveat or writ recorded in the folio of the Register for the lease of the lot to which the notice relates has, in so far as it affects the lot, been discharged or surrendered, or withdrawn or disposed of, as the case may be.

**Amendment by order of Land and Environment Court (1973 Act, s. 28F)**

46. (1) Where, in relation to a development statement, a developer has failed to obtain a consent referred to in section 43 (5) (b), 44 (1) (c) or 45 (1) (c) because—

- (a) in the case of a consent referred to in section 43 (5) (b)—
  - (i) a motion for the giving of the consent has been defeated; or
  - (ii) the notice relating to such a motion has been given but a meeting of the body corporate to consider the motion has not been held within a reasonable time after the giving of the notice; or
- (b) in the case of a consent referred to in section 44 (1) (c) or 45 (1) (c)—the consent has been sought and refused,

the developer may apply to the Land and Environment Court for an order dispensing with any one or more of those consents.

(2) Notice of an application under subsection (1) shall be served—

- (a) where the application relates only to a mortgagee's consent—on the mortgagee; or
- (b) in any other case—
  - (i) on each lessee of a lot other than the applicant and on the lessor under the scheme;
  - (ii) on each first mortgagee of a lease of a lot;
  - (iii) on the consent authority by which the development statement is deemed to have been approved; and
  - (iv) where the application relates to a mortgagee's consent in addition to any other consent—on the mortgagee,

and on such other persons as the Land and Environment Court may direct.

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(3) The applicant and any person referred to in subsection (2) (whether or not that person has been served with notice of the application) are entitled to appear and be heard on the hearing of the application.

(4) Where an application is made under subsection (1), the Land and Environment Court—

- (a) may order that the only consent, or any one or more of the consents, to which the application relates be dispensed with and may make such other orders (including orders relating to the amendment of the development statement) as it considers to be appropriate; or
- (b) may dismiss the application.

(5) An order made under subsection (4) (a) has effect according to its tenor.

(6) Without limiting the generality of subsection (4), an order may be made under that subsection with respect to one or both of the following matters:

- (a) the payment of money to or by the body corporate or the lessees of lots or any one or more of them;
- (b) any matter in respect of which it is, in the opinion of the Land and Environment Court, just and equitable, in the circumstances of the case, to make provision in the order.

(7) Where the Land and Environment Court is of the opinion that an order should not be made under subsection (4) (a)—

- (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 49; and
- (b) where it gives such a direction—
  - (i) the application the subject of the direction shall be deemed to be made under section 49 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 49, is entitled to appear and be heard on the hearing of the application.

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(8) The Land and Environment Court may, from time to time, vary an order made under subsection (4) (a) on the application of any person who was entitled to appear and be heard on the hearing of the application for that order.

**Binding effect of development statement (1973 Act, s. 28G)**

47. (1) On and from the registration of a development statement, each person who for the time being is—

- (a) the developer;
- (b) a lessee of a lot (other than the developer), the lessor under the scheme or a sublessor of the lot;
- (c) a registered or enrolled mortgagee of a lease of a lot;
- (d) the occupier of a lot; or
- (e) the body corporate,

under the leasehold strata scheme proposed by the development statement shall be deemed to have entered into an agreement under seal containing the covenants referred to in subsection (2).

(2) The covenants referred to in this subsection are—

- (a) a covenant whereby the developer agrees with the other parties jointly and each of them severally that the developer will develop the parcel—
  - (i) in accordance with the related development consent, as modified from time to time; and
  - (ii) as provided and represented by the development statement, as from time to time amended in accordance with this Act; and
- (b) a covenant whereby the parties other than the developer jointly and severally agree with the developer that the developer will be permitted by them and each of them to develop the parcel as provided by paragraph (a).

(3) Subject to subsection (4), the agreement referred to in subsection (1) ceases to have effect—

- (a) in relation to a party thereto who is a person referred to in subsection (1) (a), (b), (c) or (d)—upon that person ceasing to be a person so referred to; and

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(b) in relation to all the parties thereto—upon the recording under section 49 (10) of the termination of the development scheme to which the agreement relates.

(4) Subsection (3) does not operate to prejudice or affect any obligation that was incurred by a person, or any right that accrued to a person, under the agreement referred to in subsection (1) before the agreement ceased to have effect in relation to the person.

(5) Except as may be otherwise provided by this Act, a provision in any instrument whereby the agreement referred to in subsection (1) is excluded, modified or restricted is void.

(6) A covenant entered into under an agreement referred to in subsection (1) does not merge in a transfer of a lease of a lot.

(7) Part 5 does not apply to or in relation to matters arising under an agreement referred to in subsection (1).

(8) Subject to subsection (7), nothing in this section affects any right or remedy that a person may have apart from a right or remedy under an agreement referred to in subsection (1).

**Use of common property, etc., by developer (1973 Act, s. 28H)**

48. (1) Where, pursuant to section 47, rights exercisable by a developer include rights to use and enjoy common property or a development lot, or both, for the purpose of discharging the obligations imposed on the developer by that section, those rights may be exercised notwithstanding any inconsistency between them and the other provisions of this Act, or the provisions of the by-laws, if the rights are exercised in a manner that does not cause unreasonable inconvenience to the occupier of any lot.

(2) The agreement referred to in section 47 shall be deemed to include a covenant by the developer to make good any damage to the common property or a development lot, or both, caused by the exercise of rights referred to in subsection (1), whether or not the development statement contemplates or authorises the damage.

(3) Section 157 does not authorise the making of an order that is inconsistent with the rights referred to in subsection (1).

**Termination of development scheme (1973 Act, s. 281)**

**49. (1)** A development scheme terminates—

- (a) if the related development consent is revoked;
- (b) upon performance of the obligations imposed on the developer by the agreement referred to in section 47;
- (c) if the Supreme Court makes an order under section 80 terminating the development scheme;
- (d) if the Land and Environment Court makes an order under subsection (5); or
- (e) if every lessee of a lot, the lessor under the leasehold strata scheme concerned and every registered or enrolled mortgagee and covenant chargee of a lot so agree in writing.

**(2)** Except where an application has been made to the Supreme Court under section 80 (1) for an order under section 80 (5), an application to the Land and Environment Court for an order terminating a development scheme may be made by—

- (a) the developer;
- (b) any lessee, the lessor under the leasehold strata scheme concerned and any registered or enrolled mortgagee or covenant chargee of a lease of a lot; or
- (c) the body corporate.

**(3)** Notice of an application under subsection (2) shall be served, in accordance with rules of court, on—

- (a) each person referred to in subsection (2), other than the applicant;
- (b) the consent authority by which the related development statement is deemed to have been approved;
- (c) the Registrar-General; and
- (d) such other persons (including creditors of the body corporate) as the Land and Environment Court may direct.

**(4)** The applicant and any person referred to in subsection (3) (whether or not that person has been served with notice of the application) are entitled to appear and be heard on the hearing of the application.

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(5) The Land and Environment Court may, on an application made under subsection (2), make an order terminating the development scheme concerned.

(6) An order made under subsection (5) shall take effect as provided in the order and the order shall have effect according to its tenor.

(7) An order under subsection (5) may make provision with respect to one or more of the following matters:

- (a) such provisions in relation to the leasehold strata scheme as are, in the opinion of the Land and Environment Court, necessary as a consequence of the termination of the development scheme;
- (b) the payment of money to or by the body corporate, the lessees of lots or the lessor under the scheme or any one or more of them in addition to, or instead of, any award of damages in the exercise of the jurisdiction conferred by section 20 (2) (d) of the Land and Environment Court Act 1979;
- (c) any matter in respect of which it is, in the opinion of the Land and Environment Court, just and equitable, in the circumstances of the case, to make provision in the order.

(8) Where the Land and Environment Court is of the opinion that an order should not be made under subsection (5)—

- (a) it may, upon application made by any person entitled to appear and be heard on the hearing of the application made under subsection (2) or of its own motion, direct that the application under that subsection be treated as an application for an order under section 46 (4); and
- (b) where it gives such a direction—
  - (i) the application the subject of the direction shall be deemed to be an application made under section 46 by a person entitled to make the application; and
  - (ii) the applicant under subsection (2), as well as any other person entitled to appear and be heard under section 46, is entitled to appear and be heard on the hearing of the application.

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(9) The Land and Environment Court may, from time to time, vary an order made under subsection (5) on the application of any person who was entitled to appear and be heard on the hearing of the application for that order.

(10) Upon application made as prescribed and supported by such evidence as the Registrar-General requires, the Registrar-General may record the termination of a development scheme by making such recordings in the Register as the Registrar-General thinks fit.

**Interchangeability of notices (1973 Act, s. 28J)**

50. Any notice served under section 46 or 49 shall, where it relates to an application which is required to be treated as an application under the other of those sections, be deemed to be a notice served under the other of those sections.

**Misleading development statement (1973 Act, s. 28k)**

51. (1) Where a development statement, as from time to time in force, is deficient by reason that—

- (a) it includes an untrue statement;
- (b) it fails to disclose material matter; or
- (c) it is inconsistent with the related development consent,

and the developer does not, within a reasonable time after becoming aware of the deficiency, obtain registration of an amendment of the development statement that rectifies the deficiency, the Land and Environment Court may, on application by the body corporate, a lessee of a lot, the lessor under the scheme or the Commissioner (whether or not pursuant to section 55)—

- (d) order an amendment of the development statement, being an amendment that rectifies the deficiency; and
- (e) make such other orders as it considers appropriate,

or it may dismiss the application.

(2) Notice of an application under subsection (1) shall be served on—

- (a) the developer;
- (b) the lessor under the scheme and each lessee of a lot other than the developer or an applicant lessee;

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- (c) where any lease of a lot is subject to a mortgage, charge or covenant charge, the first mortgagee, chargee or covenant chargee;
  - (d) the consent authority by which the development statement is deemed to have been approved; and
  - (e) such other persons as the Land and Environment Court may direct.
- (3) The applicant and any person referred to in subsection (2) (whether or not that person has been served with notice of the application) are entitled to appear and be heard on the hearing of the application.
- (4) Without prejudice to the generality of subsection (1), an order may be made under that subsection with respect to one or both of the following matters:
- (a) the payment of money by the developer to the body corporate, the lessor under the scheme or the lessees of lots or any one or more of them;
  - (b) any matter in respect of which it is, in the opinion of the Land and Environment Court, just and equitable, in the circumstances of the case, to make provision in the order.

**Remedy for departure from development statement (1973 Act, s. 28L)**

52. (1) Where proceedings are brought under section 123 of the Environmental Planning and Assessment Act 1979 by a body corporate, the lessor under the scheme or a lessee of a lot in relation to an act or omission that constitutes a breach of the condition referred to in section 41 (2) (b), the Land and Environment Court may—

- (a) instead of making an order under section 124 of that Act restraining the breach; or
- (b) instead of, or in addition to, making any order under that section other than an order restraining the breach,

make an award of damages pursuant to section 20 (2) (d) of the Land and Environment Court Act 1979 for a breach, constituted by that act or omission, of the agreement referred to in section 47.

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(2) Where proceedings are brought under section 20 (2) (d) of the Land and Environment Court Act 1979, in relation to an act or omission that constitutes a breach of the agreement referred to in section 47, the Land and Environment Court may, instead of, or in addition to, making an award of damages in relation to the breach, make an order under section 124 of the Environmental Planning and Assessment Act 1979.

**Duties of Registrar-General (1973 Act, s. 28M)**

53. Where an order is made under section 46 (4), 49 (5) or 51 (1) in relation to a development statement and there is lodged with the Registrar-General a request in a form approved by the Registrar-General accompanied by—

- (a) the prescribed fee in the case of a development statement registered under section 42 (1);
- (b) the certificate of title for the lease of the common property;
- (c) a certified or office copy of the order; and
- (d) such other documents as may be prescribed, the Registrar-General may make such recordings in the Register as the Registrar-General considers to be appropriate to give effect to the order.

**Investigation of application for assistance (1973 Act, s. 28N)**

54. (1) A body corporate or a lessee of a lot (other than the developer) may apply in writing to the Commissioner for assistance in the institution or defence of proceedings before the Land and Environment Court in relation to a development statement, an agreement referred to in section 47, a development consent granted pursuant to an application referred to in section 41 (1) or any amendment or modification of a development statement or of such a development consent.

(2) After receipt of an application under subsection (1), the Commissioner—

- (a) may require the applicant to provide the Commissioner with such further information in relation to the application as, in the opinion of the Commissioner, may assist the investigation of the application;
- (b) may refuse to proceed with the application until a requirement made by him pursuant to paragraph (a) has been complied with; or

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(c) shall determine whether to proceed with an investigation of the application or, having proceeded with such an investigation, whether to discontinue the investigation.

**(3)** In making a determination under subsection (2) (c), the Commissioner—

(a) shall have regard to whether, in the opinion of the Commissioner—

(i) the application is frivolous, vexatious, misconceived or lacking in substance;

(ii) the applicant has unreasonably delayed complying with a requirement under subsection (2) (a);

(iii) investigation, or further investigation, is a matter for a consent authority; or

(iv) the applicant has an alternative and better means of redress; and

(b) may have regard to such other matters as the Commissioner considers to be appropriate.

**(4)** Where the Commissioner determines to proceed with an investigation of an application under subsection (1), the Commissioner shall—

(a) inform the applicant of the determination;

(b) where the body corporate is not the applicant—inform the body corporate of the determination and of the subject-matter of the investigation;

(c) inform the developer and the relevant consent authority of the determination and of the subject-matter of the investigation; and

(d) invite each of those persons (other than the applicant) to make within a specified period a written submission with respect to that subject-matter.

**(5)** Where the Commissioner determines not to proceed with an investigation of an application under subsection (1) or determines to discontinue such an investigation, the Commissioner shall so inform the applicant and, in the case of a discontinuance, each other person who, pursuant to subsection (4), was notified of the original decision to proceed with the investigation.

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(6) For the purpose of investigating an application under subsection (1), the Commissioner, or a delegate of the Commissioner, may enter upon any lot the subject of the leasehold strata scheme concerned at any reasonable time on notice given to any occupier of that lot and may enter upon the common property.

(7) A person shall not obstruct or hinder the Commissioner, or a delegate of the Commissioner, in the exercise of the powers conferred by subsection (6).

Penalty: \$500.

(8) Sections 16C, 16D and 16E of the Consumer Protection Act 1969 apply to and in respect of an investigation under this section as if—

- (a) a reference in those sections to an investigation included a reference to an investigation under this section;
- (b) a reference in those sections to an investigating officer included a reference to—
  - (i) the Commissioner; and
  - (ii) a person to whom the Commissioner has, pursuant to section 98 of the Strata Titles Act 1973, delegated the functions conferred or imposed on the Commissioner by the operation of subparagraph (i); and
- (c) a reference in those sections to the Commissioner included a reference to the Strata Titles Commissioner.

(9) Where, in accordance with subsection (8), section 16F of the Consumer Protection Act 1969 applies, subsections (2) and (4) of that section shall each be deemed to have been amended by inserting after the words "this Act" where firstly and secondly occurring the words "or the Strata Titles (Leasehold) Act 1986".

(10) On completion of an investigation under this section by the Commissioner or a delegate of the Commissioner, the Commissioner shall report to the Commissioner for Consumer Affairs on the results of the investigation.

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**Grant of legal assistance, etc. (1973 Act, s. 28o)**

55. (1) Division 3A (sections 16G and 16J (6) excepted) of Part II of the Consumer Protection Act 1969 applies to and in respect of an application under section 54 (1) in the same way as it applies to and in respect of an application under section 16G of that Act.

(2) Whether or not an investigation of an application under section 54 (1) has been completed, the Commissioner may, with the consent of the Minister administering the Consumer Protection Act 1969, seek an interim restraining order under section 124 of the Environmental Planning and Assessment Act 1979 in relation to the subject-matter of the application, and the interim order may be granted without any undertaking being given by the Commissioner as to damages.

(3) For the purposes of subsection (1), an interim restraining order sought under subsection (2) shall be deemed to have been sought by the person who made the application under section 54 (1) in relation to which the restraining order is sought, and that person shall be deemed to be an assisted person under Division 3A of Part II of the Consumer Protection Act 1969.

**Resolution for application by body corporate (1973 Act, s. 28p)**

56. (1) In relation to a development statement, or a development consent granted pursuant to an application referred to in section 41 (1), or any variation or modification of such a statement or consent, a body corporate may—

(a) make an application under section 51 or 54; or

(b) bring proceedings referred to in—

(i) section 123 of the Environmental Planning and Assessment Act 1979; or

(ii) section 20 (i) (e) of the Land and Environment Court Act 1979,

if authorised so to do by a resolution of the body corporate passed in accordance with subsection (2) at a duly convened general meeting of the body corporate.

(2) A resolution is passed in accordance with this subsection if it is passed after disregarding any vote cast by the developer (whether as lessee of a lot or as a mortgagee, covenant chargee or proxy) or by a mortgagee of the developer (whether as a mortgagee, covenant chargee or proxy).

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(3) For the purposes only of—

(a) enabling proceedings referred to in section 123 of the Environmental Planning and Assessment Act 1979 to be brought pursuant to subsection (1); and

(b) the application of that Act to and in respect of those proceedings,

the carrying out of development in contravention of a condition of a development consent granted under any other Act shall be deemed to be a breach of the Environmental Planning and Assessment Act 1979.

**Functions of Commissioner (1973 Act, s. 28Q)**

57. The Commissioner may—

(a) give advice as to the remedies available in relation to matters arising under this Division;

(b) endeavour to bring the interested parties to an agreement which will settle any question, dispute or difficulty that arises from the operation of this Division; and

(c) advise the appropriate consent authority of any departure from the terms of a development consent or development statement.

*DIVISION 6—Compulsory acquisition of lots and common property***Interpretation (1973 Act, s. 29)**

58. In this Division, “land” does not include an easement.

**Resumptions affecting parcels (1973 Act, s. 30)**

59. (1) Notwithstanding the provisions of any other Act, it shall not be competent for a resuming authority to resume land—

(a) comprising solely common property unless the resumed land is defined in the notice of resumption as a lot in a current plan;

(b) comprising or including the leasehold estate or leasehold estate and reversion in all the lots the subject of a leasehold strata scheme unless the resumed land also includes the leasehold estate or leasehold estate and reversion in all common property the subject of that scheme and the notice of resumption contains a statement referred to in subsection (2) (a) or (b) in respect of the resumed land and, where that notice contains a statement referred to in subsection (2) (a), unless the resumed land is defined in that notice as a lot in a current plan; or

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- (c) in a parcel where some part of the resumed land does not consist of common property and the resumed land does not comprise or include the leasehold estate or leasehold estate and reversion in all the lots and all the common property the subject of the strata scheme concerned unless the notice of resumption contains a statement referred to in subsection (2) (a) or (b) in respect of that part and—
- (i) where that notice contains a statement referred to in subsection (2) (a), unless the resumed land is defined in that notice as a lot in a current plan; or
  - (ii) where that notice contains a statement referred to in subsection (2) (b), unless any part of the resumed land that is common property is defined in that notice as a lot in a current plan and any part of the resumed land that is not common property is defined in that notice as one or more lots in a strata plan, a strata plan of subdivision or a strata plan of consolidation.

(2) For the purposes of subsection (1) (b) or (c), the statement to be included in a notice of resumption is a statement that the part of the resumed land that is not common property—

- (a) is excluded from the leasehold strata scheme concerned; or
- (b) remains subject to that strata scheme.

(3) A plan relating to a parcel and lodged by a resuming authority in the office of the Registrar-General for the purpose of effecting a resumption referred to in subsection (1) shall not be registered unless there is endorsed on it a statement that registration of the plan is required for that purpose and—

- (a) in the case of a plan lodged for registration as a strata plan of subdivision, it is accompanied by a statement that it is intended that any part of the land to be resumed which does not consist of common property will remain subject to the leasehold strata scheme concerned; or
- (b) in the case of a plan lodged for registration as a current plan which does not relate solely to common property, it is accompanied—
  - (i) by a statement that it is intended that the land to be resumed will be excluded from the leasehold strata scheme concerned; and

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- (ii) except in the case of a current plan relating to all the lots and all the common property the subject of a leasehold strata scheme, by a certified or office copy of the minute of an order made by the Supreme Court under section 61, 79 or 80 in respect of the resumption or of an order so made dismissing the application for the order in respect of the resumption or, in the case of a current plan relating to all the lots and all the common property the subject of a leasehold strata scheme, by a certified or office copy of the minute of an order made by the Supreme Court under section 80 in respect of the resumption.

(4) A plan lodged in the office of the Registrar-General for registration as—

- (a) a strata plan of subdivision, being a plan bearing a statement referred to in subsection (3) (a), may be registered notwithstanding section 19; or
- (b) a current plan, being a plan bearing a statement referred to in subsection (3) (b), may be registered notwithstanding section 195D (1) of the Conveyancing Act 1919.

if the plan has been signed or sealed by or on behalf of the resuming authority.

**Effect of resumption (1973 Act, s. 31)**

**60. (1)** Except in the case of a resumption referred to in section 59 (1) (b) the notice of which contained a statement referred to in section 59 (2) (b), upon the resumption of any land which immediately before the resumption was common property, that land ceases to be common property and the provisions of this Act cease to apply thereto.

**(2)** Where a notice of resumption referred to in section 59 (1) (b) contains a statement referred to in section 59 (2) (a) or a notice of resumption referred to in section 59 (1) (c) contains such a statement in respect of that part of the resumed land which does not consist of common property (either such statement corresponding to the statement referred to in section 59 (3) (b) (i)), the part of the resumed land that does not consist of common property ceases to be subject to the leasehold strata scheme concerned and the provisions of this Act cease to apply thereto.

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(3) Where a notice of resumption referred to in section 59 (1) (b) contains a statement referred to in section 59 (2) (b), the provisions of this Act apply, notwithstanding the provisions of any other Act, to and in respect of the resuming authority and the resumed land in all respects, except as to the recording by the Registrar-General of the resumption, as if the resuming authority had acquired the leasehold estate or leasehold estate and reversion in the lots subject to the resumption by registration under the Real Property Act 1900 of a transfer.

(4) Where a notice of resumption referred to in section 59 (1) (c) contains a statement referred to in section 59 (2) (b), the provisions of this Act apply, notwithstanding the provisions of any other Act, to and in respect of the resuming authority and any part of the resumed land which, immediately before the resumption, did not consist of common property in all respects, except as to the recording by the Registrar-General of the resumption, as if the resuming authority had acquired that part by registration under the Real Property Act 1900 of a transfer.

**Readjustment of leasehold strata scheme for purposes of resumption (1973 Act, s. 32)**

**61. (1) Where—**

- (a) a resuming authority proposes to resume land in a parcel and that land does not consist solely of common property or of the leasehold estate or leasehold estate and reversion in all the lots and all the common property comprised in that parcel; and
- (b) the resuming authority intends that that land will be excluded from the leasehold strata scheme concerned.

the resuming authority may make an application to the Supreme Court for an order under subsection (4).

(2) Notice of an application under subsection (1) shall be served, in accordance with the rules of court—

- (a) on the lessor under the scheme and every registered lessee, mortgagee and covenant chargee of a lease of a lot the subject of the leasehold strata scheme concerned;
- (b) on the body corporate;
- (c) where part of a lot is intended to be resumed and the local council has not approved of a plan referred to in section 59 (3) (b) relating to that part, on that local council;

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- (d) on the Registrar-General; and
- (e) on such other persons as the Supreme Court may direct.

**(3)** Any person referred to in subsection (2) (whether or not the person has been served with a notice of the application), the resuming authority, the lessor under the scheme and any lessee, mortgagee and covenant chargee shall be entitled to appear and be heard on the hearing of the application.

**(4)** The Supreme Court may, on application made under subsection (1), make an order for or with respect to any one or more of the following matters:

- (a) the substitution for the existing schedule of unit entitlement of a new schedule of unit entitlement;
- (b) where part of a lot is intended to be resumed and the resuming authority intends that that part will be excluded from the leasehold strata scheme concerned, the designation as a lot of the residue of any such lot;
- (c) the amendment of any development statement that relates to the parcel;
- (d) requiring the resuming authority, when resuming the land referred to in its application under subsection (1), also to resume any residue referred to in paragraph (b) so that that residue will either be excluded from the leasehold strata scheme concerned or remain subject to that scheme, according to the terms of the order;
- (e) with the consent of the lessor and the lessee of a lot part of which is intended to be resumed, the vesting, freed and discharged from any mortgage, charge, covenant charge or writ, of any other part of that lot in the body corporate as common property; and
- (f) any matter in respect of which it is, in the opinion of the Supreme Court, just and equitable, in the circumstances of the case, to make provision in the order.

**(5)** An order made under subsection (4) shall take effect upon the day on which the resumption referred to in the order takes effect.

**(6)** An order made under subsection (4) shall have effect according to its tenor.

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(7) Where, on an application made under subsection (1), the Supreme Court is of the opinion that an order should not be made under subsection (4)—

- (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 under subsection (1) be treated as an application for an order under section 79 or 80; and
- (b) where it makes such a direction—
  - (i) the application the subject of the direction shall be deemed to be an application made under section 79 (1) or 80 (1), as the case may be, 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 79 (1) or 80 (1), as the case may be, is entitled to appear and be heard on the hearing of the application.

(8) The costs of any proceedings under this section shall be payable by the resuming authority, unless the Supreme Court otherwise orders.

**Common property not to pass with lot or part of lot in certain circumstances (1973 Act, s. 33)**

62. A resuming authority does not acquire any interest in common property the subject of a leasehold strata scheme by reason only of its resuming the whole or part of a lot which immediately before the resumption was the subject of that scheme if the notice of resumption contains a statement referred to in section 59 (2) (a).

**Severance of lots by resumption (1973 Act, s. 34)**

63. For the purposes of any Act relating to the payment of compensation upon the resumption of land—

- (a) where any part of a lot is resumed that part shall be deemed to be severed from every other part of that lot, whether or not that part and any such other part are contiguous; and

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- (b) where the resumed land or any part of the resumed land is common property, the beneficial interests of the lessees under the scheme in that common property shall, for the purposes of any claim for or the payment of compensation in respect of the resumption of those interests, be deemed to be vested in the body corporate to the exclusion of those lessees.

**Resumptions where resuming authority not bound by this Act (1973 Act, s. 35)**

64. Where any part of a parcel is resumed by a resuming authority which is not bound by the provisions of this Act and does not comply with the provisions of this Division, the body corporate or a person affected by the resumption may apply to the Supreme Court for an order under section 79, as if the building had been damaged or destroyed, or under section 80.

*DIVISION 7—Certificates of approval of local councils***Other Acts not to apply to subdivisions under Division 1 (1973 Act, s. 36)**

65. Except as otherwise provided in this Act, any provision contained in the Local Government Act 1919, the Conveyancing Act 1919, the Environmental Planning and Assessment Act 1979 or any other Act, being a provision relating to the manner of dividing land or any matter incidental thereto, does not apply to a subdivision effected under Division 1.

**Approval of proposed strata plans, certain subdivisions and conversions of lots into common property (1973 Act, s. 37)**

66. (1) Subject to this Division, a local council shall, on application made to it for a certificate of approval of a proposed strata plan that does not include a development lot or development lots, issue to the applicant a certificate of approval of that plan if it is satisfied—

(a) that—

- (i) the provisions of section 306 of the Local Government Act 1919 have been complied with in respect of the erection of any building containing any proposed lots to which that plan relates or that any departure from those provisions is such as need not be rectified;

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- (ii) the proposed lots illustrated by that plan substantially correspond to parts of any such building shown in the building plans accompanying the application made to the local council for its approval of the erection of any such building and designated in those building plans as being intended for separate occupation; and
- (iii) any such building was completed not more than 12 months, or such longer period as the local council may in any particular case fix, before the application for the certificate of approval under this subsection was lodged with the local council,

or either—

- (b) except where an Act provides as referred to in paragraph (c), that—
  - (i) separate occupation of the proposed lots illustrated by that plan will not contravene the provisions of the Environmental Planning and Assessment Act 1979 or of any environmental planning instrument within the meaning of that Act;
  - (ii) any consent required under that Act or instrument has been given in relation to the separate occupation of the proposed lots illustrated by that plan; and
  - (iii) having regard to the circumstances of the case and the public interest, the subdivision to which the plan relates will not interfere with the existing or likely future amenity of the neighbourhood; or
- (c) where an Act provides that Part IV of the Environmental Planning and Assessment Act 1979 does not apply to the carrying out of development on the land to which that plan relates, that—
  - (i) separate occupation of the proposed lots illustrated by that plan will not contravene the provisions of the Act under which development consent to the carrying out of development on that land may be granted or of any instrument made under that Act;
  - (ii) any consent required under the Act referred to in subparagraph (i) or any such instrument has been given in relation to the separate occupation of the proposed lots illustrated by that plan; and
  - (iii) having regard to the circumstances of the case and the public interest, the subdivision to which the plan relates will not interfere with the existing or likely future amenity of the neighbourhood.

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(2) Subject to this Division, a local council shall, on application made to it for a certificate of approval of a proposed strata plan that includes a development lot or development lots, or of a proposed strata plan of subdivision of a development lot, issue to the applicant a certificate of approval of that plan if it is satisfied—

- (a) as to the matters referred to in subsection (1) (a), (b) or (c); and
- (b) that the plan and any building containing proposed lots to which the plan relates—
  - (i) satisfy any development consent conditions applicable thereto; and
  - (ii) give effect to the stage of the development statement to which they relate.

(3) A local council on application made to it for a certificate of approval of a plan illustrating a proposed subdivision (not being a proposed subdivision of a development lot) referred to in section 4 (7) (a) shall, unless the application was accompanied by a certificate under the seal of the body corporate certifying that by resolution passed at a general meeting it agrees to the proposed subdivision, send, by certified mail, notice of the proposed subdivision to the body corporate concerned inviting it to express its views upon the proposed subdivision within a time (being not less than 21 days after the notice was sent) specified in the notice.

(4) A local council may after the expiration of the time specified in the notice sent under subsection (3) and after taking into consideration—

- (a) any representations made to the local council by the body corporate to which the notice was sent;
- (b) whether the proposed subdivision would be likely—
  - (i) to detract from the external appearance of the building containing the lot the subject of the proposed subdivision;
  - (ii) to render inadequate existing services to other lots the subject of the leasehold strata scheme concerned; or
  - (iii) by increasing the number and decreasing the size of lots within that building, to detract from the amenity or value of any other lot the subject of the leasehold strata scheme concerned; and
- (c) the matters specified in subsection (1) (b) or (c), as if the reference in subsection (1) (b) or (c) to a proposed strata plan were a reference to the plan to which the notice relates.

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issue a certificate of approval of the plan to which the notice relates.

(5) A local council, on application made to it for a certificate of approval of a plan illustrating a proposed subdivision (not being a proposed subdivision of a development lot) referred to in section 4 (7) (b), (c) or (d), may—

- (a) if that plan, upon lodgment with the local council, was accompanied by a certificate under the seal of the body corporate concerned certifying that it has, by special resolution, consented to the proposed subdivision; and
- (b) after taking into consideration the matters specified in subsection (1) (b) or (c) as if the reference in subsection (1) (b) or (c) to a proposed strata plan were a reference to the plan illustrating the proposed subdivision,

issue the certificate of approval applied for.

(6) A local council, on application made to it for a certificate of approval of a proposed notice of conversion, may—

- (a) if that notice, upon lodgment with the local council, was accompanied by a certificate under the seal of the body corporate concerned certifying that it has, by special resolution, consented to the proposed conversion; and
- (b) if, having regard to the circumstances of the case and the public interest, it is satisfied that the proposed conversion will not interfere with the existing or likely future amenity of the neighbourhood,

issue the certificate applied for.

**Encroachments (1973 Act, s. 38)**

67. (1) The local council may refuse to approve of a proposed strata plan or strata plan of subdivision if any building illustrated by that plan encroaches on a public place but may approve of such a plan if it is satisfied that—

- (a) the plan clearly indicates the existence of the encroachment and its nature and extent;
- (b) the encroachment consists only of part of a roof or a wall or part of a wall, or of material attached externally thereto; and

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- (c) retention of the encroachment in its existing state will not endanger public safety or unreasonably interfere with the amenity of the neighbourhood.

(2) Where a proposed strata plan or strata plan of subdivision illustrating a building referred to in subsection (1) has been approved by the local council—

- (a) the local council shall not issue a certificate of approval under section 66 (1), (2), (4) or (5) unless the certificate refers to the existence of the encroachment and indicates that the local council does not object thereto; and
- (b) the provisions of this Act, other than those relating to ownership and certification of title, apply to the encroachment as if it were common property.

**Utility lots (1973 Act, s. 39)**

68. (1) Where the registration of a plan submitted to a local council for its approval would result in the creation of one or more utility lots (being lots designed to be used primarily for storage or accommodation of boats, motor vehicles or goods and not for human occupation as a residence, office, shop or the like), the local council may qualify any certificate of approval issued under section 66 in respect of that plan by attaching a condition restricting the use of that utility lot or those utility lots to use by a lessee or occupier of a lot or proposed lot, not being such a utility lot, the subject of the leasehold strata scheme concerned.

(2) A restriction on use imposed pursuant to subsection (1)—

- (a) shall designate each utility lot burdened by the restriction; and
- (b) shall describe the restriction by reference to this section.

(3) Section 88 of the Conveyancing Act 1919 does not apply to a restriction imposed pursuant to subsection (1).

(4) The local council, upon an application made by the lessor under the scheme and by the lessee of or a registered mortgagee of a lease of a utility lot the subject of a restriction referred to in subsection (1), may execute an instrument, in the form approved under the Real Property Act 1900, which provides that the lot is released from that restriction.

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**Appeal against refusal of approval (1973 Act, s. 40)**

**69. (1)** In this section "application" means an application to a prescribed authority for a certificate of approval of—

- (a) a proposed strata plan;
- (b) a proposed strata plan of subdivision;
- (c) a notice of conversion; or
- (d) a proposed amendment of a development statement.

**(2)** A prescribed authority to which an application is made shall cause notice of its decision on the application to be given to the applicant.

**(3)** A notice of refusal by a prescribed authority to approve of an application shall—

- (a) specify the grounds of refusal; and
- (b) indicate that the applicant has a right to appeal under subsection (4) against the refusal.

**(4)** Upon any refusal by a prescribed authority to approve of an application, upon approval by a prescribed authority of an application subject to a condition referred to in section 68 (1) or upon failure by a prescribed authority to notify its approval of an application to the applicant within a period of 40 days—

- (a) except as provided in paragraph (b), after receiving the application;  
or
- (b) in the case of an application for a certificate of approval referred to in section 66 (3) where a notice was sent under section 66 (3), after the expiration of the time referred to in the notice,

the applicant may, within 12 months after the date on which the applicant received notice of the authority's decision or after the expiration of that period of 40 days, as the case may be, appeal—

- (c) except as provided by paragraph (b), to the Land and Environment Court; or
- (d) where the prescribed authority is—
  - (i) the Sydney Cove Redevelopment Authority—to the Minister administering section 14 of the Sydney Cove Redevelopment Authority Act 1968; or

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- (ii) the Darling Harbour Authority—to the Minister administering section 48 of the Darling Harbour Authority Act 1984.

(5) An appeal may be made under subsection (4) to the Land and Environment Court or a Minister, as the case may require, even though the period for commencing the appeal has expired, but only if the Court or Minister allows the appeal to be so made because of special circumstances.

(6) The decision of the Land and Environment Court or a Minister upon any appeal under subsection (4) shall be deemed to be the final decision of the prescribed authority and shall be given effect to accordingly.

DIVISION 8—*Powers and duties of Registrar-General*

**Registration of plans and notices (1973 Act, s. 41)**

70. (1) The Registrar-General may, subject to and for the purposes of this Act, register under this Act a plan or other instrument lodged for registration.

(2) Except as provided by sections 8 (3) and 12 (3), a plan is registered as a strata plan, strata plan of subdivision, strata plan of consolidation or building alteration plan when the Registrar-General makes on the plan, in the Register or in another record, such recordings with respect to the plan as the Registrar-General considers appropriate.

(3) A development statement is registered when the Registrar-General makes in the Register such recordings with respect to the development statement as the Registrar-General considers appropriate.

(4) An amendment of a development statement is registered under section 44 when the Registrar-General makes in the Register such recordings with respect to the amendment as the Registrar-General considers appropriate.

(5) An amendment of a development statement is registered under section 45—

- (a) in the case of exclusion of a development lot from the development scheme—when the Registrar-General makes in the Register such recordings with respect to the amendment as the Registrar-General considers appropriate; or

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(b) in the case of conversion of a development lot into common property—by the registration under subsection (6) of the notice referred to in section 45 (2) (b) (i).

(6) A notice is registered as a notice of conversion when the Registrar-General makes in the Register such recordings with respect to the notice as the Registrar-General considers appropriate.

(7) Notwithstanding any other provision of this Act, a plan shall not be registered as a strata plan, strata plan of subdivision, strata plan of consolidation, building alteration plan, development statement or amendment of a development statement and a notice shall not be registered as a notice of conversion unless it is accompanied by such other plans and documents, if any, as may be prescribed.

**Provisions applying to strata plans, etc. (1973 Act, s. 42)**

71. (1) The provisions of sections 195F, 195H, 195J (2) and 196 (1) of the Conveyancing Act 1919 apply to and in respect of a plan lodged in the office of the Registrar-General for registration as a strata plan, strata plan of subdivision, strata plan of consolidation or building alteration plan in the same way as they apply to plans referred to in those provisions.

(2) The Registrar-General may cause a true copy of any plan, development statement or amendment of a development statement registered under this Act, or of a copy of such a plan, development statement or amendment prepared under this subsection, to be prepared and a copy so prepared and certified by the Registrar-General as a true copy shall, for all purposes, have the same validity and effect as the original plan to which it relates and shall be deemed to be an original document within the meaning of the Evidence (Reproductions) Act 1967.

(3) The Registrar-General may destroy any plan, development statement or amendment of a development statement, or copy of a plan, development statement or amendment, a copy of which has been made under subsection (2).

**Registrar-General's power to adjust unit entitlements (1973 Act, s. 43)**

72. (1) Where a quotient that is a whole number is obtained by dividing by a whole number the unit entitlements of the lots and proposed lots shown on a schedule referred to in section 7 (1) (g), 10 (2) (c), 13 (1) or 14 (a) which accompanies a plan lodged in the office of the Registrar-General for registration, the Registrar-General may, when registering the plan, record in the folio of the Register for the lease of the common property—

- (a) as the unit entitlement of each lot, the quotient obtained in respect of that lot; and
- (b) as the aggregate unit entitlement, the appropriate aggregate unit entitlement.

(2) Where a quotient that is a whole number is obtained by dividing by a whole number the unit entitlement of each lot the subject of a leasehold strata scheme, the Registrar-General may amend the schedule of unit entitlement recorded in the folio of the Register for the lease of the common property—

- (a) by substituting for the unit entitlement of each lot a unit entitlement equal to the quotient obtained in respect of that lot; and
- (b) by substituting for the aggregate unit entitlement the appropriate aggregate unit entitlement.

(3) The Registrar-General shall, upon making a recording pursuant to subsection (1) or an amendment pursuant to subsection (2), notify the body corporate concerned of the unit entitlement and aggregate unit entitlement recorded.

**Recording of condition restricting use imposed by local council (1973 Act, s. 44)**

73. (1) Where a certificate issued by a local council under section 66 is qualified by attaching, in accordance with section 68, a condition restricting use of a lot, the Registrar-General shall, when creating a folio of the Register for the lease of the lot, suitably record the condition therein.

(2) A condition recorded pursuant to subsection (1) is an interest within the meaning of section 42 of the Real Property Act 1900.

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(3) Upon lodgment in the office of the Registrar-General of an instrument referred to in section 68 (4), the Registrar-General shall make such recordings in the Register with respect to it as the Registrar-General considers appropriate and thereupon the utility lot to which the instrument relates is released from the restriction referred to in the instrument.

**Prohibition on recordings in the Register in certain circumstances (1973 Act, s. 45)**

74. Where the Registrar-General registers a strata plan of subdivision or a current plan relating to a parcel on which are endorsed or which is accompanied by the relevant statements referred to in section 59 (3), the Registrar-General shall not—

- (a) create a folio of the Register for the lease of any lot comprised in that strata plan of subdivision or the lease of any current plan lot, as defined in section 6 (1), in that current plan; or
- (b) make any recording in the Register by reference to any such lot or current plan lot,

until the Registrar-General makes a recording in the Register under section 31A (3) of the Real Property Act 1900 with respect to that lot or any other lot in that strata plan of subdivision or with respect to that current plan lot or any other such current plan lot in that current plan.

**Certain recordings to be made by Registrar-General (1973 Act, s. 46)**

75. (1) Where the Registrar-General registers a strata plan of subdivision that is not a plan referred to in section 74, or where the Registrar-General registers a strata plan of consolidation, the Registrar-General shall—

- (a) cancel the folio of the Register for the lease of any former lot subdivided or consolidated by the registration of the plan;
- (b) create a folio of the Register for the lease of each new lot created by the subdivision or consolidation; and
- (c) amend the schedule of unit entitlement recorded in the folio of the Register for the lease of the common property the subject of the leasehold strata scheme concerned by making such recordings in that folio as the Registrar-General thinks fit.

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(2) Where the Registrar-General registers a notice of conversion of a lot into common property, the Registrar-General shall—

- (a) cancel the folio of the Register for the lease of the converted lot; and
- (b) amend the schedule of unit entitlement recorded in the folio of the Register for the lease of the common property the subject of the leasehold strata scheme concerned by making such recordings in that folio as the Registrar-General thinks fit.

**Duties of Registrar-General where resumed land remains subject to strata scheme (1973 Act, s. 47)**

76. (1) Where the leasehold estate or leasehold estate and reversion in the whole of a lot (not being a lot in a strata plan of subdivision referred to in section 74) is resumed and the notice of resumption contains a statement referred to in section 59 (2) (b), any recording in the Register that the Registrar-General is, under section 31A (3) of the Real Property Act 1900, authorised or required to make with respect to the resumption shall be made in the folio of the Register relating to the resumed lot.

(2) Where the leasehold estate or leasehold estate and reversion in the whole of a lot in a strata plan of subdivision referred to in section 74 is resumed and the notice of resumption contains a statement referred to in section 59 (2) (b) corresponding to the statement referred to in section 59 (3) (a), the Registrar-General shall, after making a recording in the Register under section 31A (3) of the Real Property Act 1900 with respect to that resumption—

- (a) amend the schedule of unit entitlement recorded in the folio of the Register for the lease of the common property the subject of the leasehold strata scheme concerned by making such recordings in that folio as the Registrar-General thinks fit; and
- (b) make such other recordings in the Register and create such folios of the Register as appear to the Registrar-General to be appropriate.

**Duties of Registrar-General where resumed land is excluded from strata scheme (1973 Act, s. 48)**

77. (1) Where land consisting solely of common property is resumed, any recording in the Register that, under section 31A (3) of the Real Property Act 1900, the Registrar-General is authorised or required to make shall be made in the folios of the Register for the leasehold estate and reversion in the common property.

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(2) Where the whole of a parcel or any part of a parcel that does not consist of common property is resumed and the notice of resumption contains a statement referred to in section 59 (2) (a) corresponding to the statement referred to in section 59 (3) (b) (i), the Registrar-General shall, where the Registrar-General makes a recording in the Register under section 31A (3) of the Real Property Act 1900 with respect to the resumption, make such recordings in the Register and create such folios of the Register as appear to the Registrar-General to be necessary or proper to give effect to the order of the Supreme Court made under section 61, 79 or 80 with respect to the land resumed and the leasehold strata scheme concerned.

**Documents to be forwarded by Registrar-General to certain authorities (1973 Act, s. 49)**

78. (1) Upon registration of a strata plan, a strata plan of subdivision (not being a strata plan of subdivision referred to in section 74) or a strata plan of consolidation, the Registrar-General shall forward 2 copies of the plan to the valuing authority referred to in section 121, to each rating authority so referred to which is authorised to make and levy rates on the land the subject of the leasehold strata scheme concerned and to the Chief Commissioner of Land Tax.

(2) The Registrar-General shall, upon making a recording in the Register under section 31A (3) of the Real Property Act 1900 with respect to the resumption of a lot in a strata plan of subdivision referred to in section 74 forward 2 copies of the plan to each rating authority referred to in subsection (1) and to the Chief Commissioner of Land Tax.

(3) Upon recording a schedule of unit entitlement in a folio of the Register for the lease of the common property or upon amending any such schedule, the Registrar-General shall forward in duplicate to—

- (a) each rating authority referred to in subsection (1);
- (b) the Chief Commissioner of Land Tax; and
- (c) the body corporate,

particulars of the schedule of unit entitlement or of the amended schedule of unit entitlement, as the case may be.

(4) A copy of a plan forwarded under this section may be on a scale the same as or different from the original.

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## PART 3

VARIATION OR TERMINATION OF  
LEASEHOLD STRATA SCHEMES**Variation of leasehold strata scheme consequent upon damage to or destruction of building (1973 Act, s. 50)**

79. (1) Where a building is damaged or destroyed—

- (a) the lessor under the leasehold strata scheme concerned or any lessee of a lot the subject of the scheme;
- (b) where the lease of any such lot is subject to a mortgage or covenant charge—the mortgagee or covenant chargee; or
- (c) the body corporate.

may make an application to the Supreme Court for an order under subsection (4).

(2) Notice of the application shall be served, in accordance with the rules of court, on—

- (a) every person referred to in subsection (1), other than the applicant;
- (b) the local council;
- (c) the Registrar-General; and
- (d) such other persons as the Supreme Court may direct.

(3) The applicant and any person referred to in subsection (2) (whether or not served with notice of the application) shall be entitled to appear and be heard on the hearing of the application.

(4) The Supreme Court may, on an application made under subsection (1), make an order for or with respect to the variation of the existing leasehold strata scheme or the substitution for the existing scheme of a new scheme.

(5) An order made under subsection (4) shall take effect—

- (a) except as provided in paragraph (b), on such day as may be specified in the order; and

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(b) where it is made pursuant to—

(i) an application made under section 61 which, under section 61 (7) or under sections 61 (7) and 80 (11), is treated as an application for an order under this section; or

(ii) an application authorised by section 64,

on the day on which the resumption referred to in the order takes effect.

(6) Without limiting the generality of subsection (4), an order made under that subsection may include directions for or with respect to any one or more of the following matters:

- (a) the substitution for the existing schedule of unit entitlement of a new schedule of unit entitlement;
- (b) the reinstatement in whole or in part of the building or, in the case of a stratum parcel, of the part of the building subject to the scheme;
- (c) the amendment of any development statement that relates to the parcel;
- (d) the transfer to or vesting in the body corporate, free from mortgages, charges, covenant charges and writs, of the interests of lessees of lots which have been wholly or partly destroyed;
- (e) the application of any insurance money received by the body corporate in respect of damage to or the destruction of the building or, in the case of a stratum parcel, the part of the building subject to the scheme;
- (f) the payment of money to or by the body corporate, the lessor under the scheme or the lessees or any one or more of them;
- (g) any matter in respect of which it is, in the opinion of the Supreme Court, just and equitable, in the circumstances of the case, to make provision in the order;
- (h) where the order is made pursuant to an application made under section 61 which, under section 61 (7) or under sections 61 (7) and 80 (11), is treated as an application for an order under this section, any matter referred to in section 61 (4); and
- (i) where the application for the order is authorised by section 64, any matter referred to in section 61 (4) (a), (b) or (c).

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(7) An order made under subsection (4) shall have effect according to its tenor.

(8) Where the Supreme Court is of the opinion that an order should not be made under subsection (4)—

- (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 80: and
- (b) where it makes such a direction—
  - (i) the application the subject of the direction shall be deemed to be made under section 80 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 80, is entitled to appear and be heard on the hearing of the application.

(9) The costs of any proceedings under this section pursuant to an application made under section 61 which, under section 61 (7) or under sections 61 (7) and 80 (11), is treated as an application for an order under this section shall be payable by the resuming authority, unless the Supreme Court otherwise orders.

(10) The Supreme Court may, from time to time, vary any order made under subsection (4) on the application of any person entitled to appear and be heard on the hearing of the application for that order.

**Termination of leasehold strata scheme (1973 Act, s. 51)**

**80. (1)** An application to the Supreme Court for an order under subsection (5) may be made by—

- (a) the lessor under the scheme or any lessee of a lot the subject of the leasehold strata scheme concerned;
- (b) where the lease of any such lot is subject to a mortgage or covenant charge—the mortgagee or covenant chargee; or
- (c) the body corporate.

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(2) An application may be made by an authority having the benefit of a positive covenant only when the authority applies under section 88i of the Conveyancing Act 1919 for an order that the land the subject of the leasehold strata scheme concerned be transferred to the authority.

(3) Notice of the application shall be served, in accordance with the rules of court, on—

- (a) every person referred to in subsection (1), other than the applicant;
- (b) the local council;
- (c) the Registrar-General; and
- (d) such other persons (including creditors of the body corporate) as the Supreme Court may direct.

(4) The applicant and any person referred to in subsection (3) (whether or not served with notice of the application) shall be entitled to appear and be heard on the hearing of the application.

(5) The Supreme Court may, on an application made under subsection (1), make an order terminating the leasehold strata scheme concerned.

(6) An order made under subsection (5) shall take effect—

- (a) except as provided in paragraph (b), on such day as may be specified in the order; or
- (b) where it is made pursuant to—
  - (i) an application made under section 61 which, under section 61 (7) or under sections 61 (7) and 79 (8), is treated as an application for an order under this section;
  - (ii) an application under subsection (1) in relation to a proposed resumption of the leasehold estates or leasehold estates and reversion in all the lots and in all the common property the subject of a leasehold strata scheme; or
  - (iii) an application authorised by section 64,

on the day on which the resumption referred to in the order takes effect.

(7) An order made under subsection (5) shall include directions for or with respect to the following matters:

- (a) the sale or disposition of any property of the body corporate;

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- (b) the discharge of the liabilities of the body corporate;
- (c) the termination of any development scheme that relates to the parcel and the cancellation of the development statement concerned;
- (d) the persons liable to contribute money required for the discharge of the liabilities of the body corporate and the proportionate liability of each such person;
- (e) the distribution of the assets of the body corporate and the proportionate entitlement of each person under that distribution;
- (f) the administration and functions of the body corporate;
- (g) the voting power at meetings of the body corporate of persons referred to in paragraph (d) or (e);
- (h) any matter in respect of which it is, in the opinion of the Supreme Court, just and equitable, in the circumstances of the case, to make provision in the order; and
- (i) the winding up of the body corporate (including the appointment and functions of any person to carry out the winding up).

**(8)** Upon an order under this section taking effect—

- (a) the estate or interest of the former lessees in that part of the former parcel which consisted of common property vested in the body corporate as agent for the former lessees vests in the body corporate as principal, subject only to any estate or interest recorded in the folio of the Register, or on any registered sublease, evidencing the estate or interest of the body corporate in that common property or in the relevant folio of the Register created under section 25 (1);
- (b) the estates or interests of every lessee in that part of the former parcel which did not consist of common property vest in the body corporate as principal, subject only to any estate or interest recorded in—
  - (i) the folio of the Register evidencing the estate or interest of the body corporate in the common property comprised in that former parcel; or
  - (ii) the relevant folio of the Register created under section 25 (1).

to the extent that the estate or interest so recorded was capable of affecting the lease of any former lot;

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- (c) the persons who, immediately before the order took effect, were lessees of lots the subject of the leasehold strata scheme concerned cease to be lessees of lots subject to that scheme;
  - (d) the persons whose estates or interests are divested by paragraph (b) have instead such rights and liabilities as are conferred or imposed upon them by the order; and
  - (e) if the leases so provided or it is provided in any other agreement, the former lessor under the scheme is liable to pay to each former lessee such amount by way of compensation, determined in accordance with the formula set out in Schedule 2 or as otherwise agreed by the former lessor and former lessee, in respect of the value of the improvements comprised within the former parcel as is attributable to the lot leased by the former lessee.
- (9) The provisions of an order made under this section shall have effect notwithstanding any provision of this Act, other than this section.
- (10) An order made under subsection (5) shall have effect according to its tenor.
- (11) Where the Supreme Court is of the opinion that an order should not be made under subsection (5)—
- (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 79; and
  - (b) where it makes such a direction—
    - (i) the application the subject of the direction shall be deemed to be an application made under section 79 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 79, is entitled to appear and be heard on the hearing of the application.
- (12) The costs of any proceedings under this section—
- (a) pursuant to an application made under section 61 which, under section 61 (7) or under sections 61 (7) and 79 (8), is treated as an application for an order under this section; or

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- (b) pursuant to an application under subsection (1) in relation to a proposed resumption of the leasehold estate or the leasehold estate and reversion in all the lots and in all the common property the subject of a strata scheme.

shall be payable by the resuming authority, unless the Supreme Court otherwise orders.

**(13)** The Supreme Court may, from time to time, vary any order made under subsection (5) on the application of any person who was entitled to appear and be heard on the hearing of the application for that order.

**(14)** Where, in relation to a former lot that was comprised in a leasehold strata scheme that has been terminated by an order made under subsection (5), a dispute arises as to the amount to be paid in respect of the value of improvements under subsection (8) (e) to the former lessee of that lot, that dispute shall be resolved—

- (a) if the lease of the lot so provided or the parties to the dispute otherwise agree, by reference to arbitration under the Commercial Arbitration Act 1984; or
- (b) in any other case, by an order of the Supreme Court.

**(15)** An application for an order under subsection (14) (b) may be made by any party to the dispute concerned.

**(16)** Notice of an application for an order under subsection (14) shall be served, in accordance with rules of court, on such persons as the Supreme Court may direct.

**(17)** As far as practicable, all applications which relate to the same leasehold strata scheme shall be heard together.

**Interchangeability of notices (1973 Act, s. 52)**

**81.** Any notice served under section 61, 79 or 80 shall, where it relates to an application which is required to be treated as an application under another of those sections, be deemed to be a notice served under that other section.

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**Consequences of making an order under section 79 or 80 (1973 Act, s. 53)**

**82. (1)** Except as provided in section 77 (2), upon receipt of a certified or office copy of the minute of an order made under section 79 or 80, the Registrar-General shall make appropriate recordings in the Register (including orders relating to amendments of any development statement or, in the case of an order under section 80, orders relating to cancellation of a development statement) to give effect to the order.

**(2)** Where, by reason of receipt of a certified or office copy of the minute of an order made under section 80, the Registrar-General is required by subsection (1) to make recordings in the Register, the Registrar-General shall—

- (a) cancel the folios of the Register for the leases of the lots and common property the subject of the former leasehold strata scheme; and
- (b) record in the folio of the Register evidencing the lessor's reversion in the former parcel that the body corporate is the lessee of that part of the parcel which contained the former lots and common property that were comprised in the scheme, together with any other estates or interests to which the body corporate's leasehold estate in that part continues to be subject.

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**PART 4****MANAGEMENT****DIVISION 1—*Bodies corporate*****Constitution of bodies corporate (1973 Act, s. 54)**

**83. (1)** The lessees of the lots from time to time the subject of a leasehold strata scheme constitute a body corporate under the name "The Proprietors—Strata Plan No. " (the number to be specified being the registered number of the strata plan to which that scheme relates).

**(2)** The Companies (New South Wales) Code does not apply to or in respect of a body corporate constituted under this Act.

**(3)** In respect of any leasehold strata scheme, the body corporate shall have the functions conferred or imposed on it by or under this Act and the by-laws and, subject to this Act, shall have the control, management and administration of the common property.

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(4) Notwithstanding the provisions of section 80, a body corporate for a leasehold strata scheme which has been terminated under that section continues in existence until it is wound up in accordance with the order made under that section and, while it so continues in existence, is constituted of the persons referred to in section 80 (7) (d) and (e).

**Seal of body corporate (1973 Act, s. 55)**

84. (1) The common seal of a body corporate shall be kept—

- (a) where the body corporate is constituted by one lessee—by that lessee;  
or
- (b) where the body corporate is constituted by two or more lessees—by such lessee or member of the council as the body corporate determines or, in the absence of any such determination, by the secretary of the council.

(2) The common seal of the body corporate shall be affixed to an instrument or document only in the presence of—

- (a) where the body corporate is constituted by one or two lessees—that lessee or those lessees, as the case may be; or
- (b) where the body corporate is constituted by more than two lessees—such two persons, being lessees or members of the council, as the body corporate determines or, in the absence of any such determination—the secretary and any other member of the council,

who shall attest the fact and date of the affixing of the seal by their signatures.

(3) Notwithstanding subsections (1) and (2), a managing agent shall, for the purpose of exercising any of the functions of the managing agent, be entitled to have the custody of the common seal of the body corporate and to affix it to any instrument or document and, where it is so affixed, shall attest the fact and date of the affixing of the seal by signature.

(4) Where a managing agent has affixed the common seal of the body corporate to any instrument or document, the agent shall be deemed to have done so under the authority of a delegation made under section 108 (1) by the body corporate.

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(5) Subsection (4) shall not operate so as to enable a person to obtain fraudulently a benefit from its operation, but any benefit that accrues to a person from the operation of that subsection shall be deemed not to be fraudulently obtained if the benefit was first obtained by that person without any fraud by that person.

**Certain provisions of Interpretation Act 1897 not to apply to bodies corporate (1973 Act, s. 56)**

85. Section 38 (1) (d) and (2) of the Interpretation Act 1897 do not apply to a body corporate.

**Meetings of body corporate (1973 Act, s. 57)**

86. (1) A meeting of the body corporate shall be convened and held in the prescribed manner—

- (a) by the original lessee (if any), within the period of 2 months that next succeeds the expiration of the initial period, whether or not the original lessee is the lessee of a lot at the relevant time; or
- (b) if there is no original lessee, by the lessor under the scheme, within the period of 2 months that next succeeds registration of the strata plan.

Penalty: \$1,000.

(2) The agenda for a meeting convened under subsection (1) shall consist of the following items:

- (a) to decide whether insurances effected by the body corporate should be confirmed, varied or extended;
- (b) to decide whether any amounts determined under section 98 (1) (k) and (l) should be confirmed or varied;
- (c) where there are more than 3 lessees, to determine the number of members of the council and to elect the council;
- (d) to decide what matters, if any, shall be restricted matters for the purposes of section 105;
- (e) to decide whether the by-laws in force immediately before the holding of the meeting should be amended, added to or repealed;

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- (f) to decide whether a managing agent should be appointed under section 108 (1) by the body corporate and, if a managing agent is to be appointed, which functions of the body corporate should be delegated to the managing agent; and
  - (g) to consider the accounting records kept pursuant to section 98 (1) (g) and the last preceding financial statements prepared in accordance with section 98 (1) (h).
- (3) The meeting convened under subsection (1) shall be the first annual general meeting of the body corporate.
- (4) The original lessee or lessor required to convene the meeting shall not fail or neglect to deliver to the body corporate at its first annual general meeting—
- (a) all plans, specifications, certificates (other than certificates of title for leases of lots), diagrams and other documents (including policies of insurance) obtained or received by the lessee or lessor and relating to the parcel or the building or part of the building subject to the leasehold strata scheme;
  - (b) if they are in the possession or under the control of the lessee or lessor, the certificate of title for the lease of the common property, the strata roll and any notices or other records relating to the scheme; and
  - (c) the accounting records kept pursuant to section 98 (1) (g) and the last preceding financial statements prepared in accordance with section 98 (1) (h),

other than any such documents which exclusively evidence rights or obligations of the original lessee or lessor under the scheme and which are not capable of being used for the benefit of the body corporate or any of the lessees, other than the original lessee (if any).

Penalty: \$1,000.

(5) Part 1 of Schedule 4 applies to and in respect of meetings of, and voting at meetings of, the body corporate, other than the first annual general meeting and Part 2 of Schedule 4 applies to and in respect of the first annual general meeting, and voting at that meeting, of the body corporate.

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(6) If a meeting of the body corporate is not convened in accordance with subsection (1) or, having been so convened, is not held, the Commissioner may, pursuant to an application by the body corporate or a lessee or mortgagee of a lease of a lot, appoint by order a person to convene a meeting of the body corporate within such time as may be specified in the order and the meeting convened by that person shall for the purposes of subsection (3) be deemed to be the meeting convened under subsection (1).

(7) At any time after the meeting convened under subsection (1) has been held, the Commissioner may, pursuant to an application made to the Commissioner by a lessee of a lot or, where the lease of a lot is subject to a mortgage or covenant charge, the mortgagee or covenant chargee, appoint by order a person, nominated by the lessee, mortgagee or covenant chargee, who has consented to that nomination—

- (a) if there is not a council of the body corporate—to convene a meeting of the body corporate within such time as may be specified in the order and a meeting so convened shall, for the purpose of the election of a council, be deemed to be a first annual general meeting of the body corporate; or
- (b) if there is not a chairperson, secretary and treasurer of the council of the body corporate—to convene a meeting of the council of the body corporate within such time as may be specified in the order and a meeting so convened shall be deemed to have been convened by that council.

(8) An order made under subsection (6) or (7) may include such ancillary or consequential provisions as the Commissioner thinks fit.

(9) Notwithstanding Schedule 4, where an order made under subsection (6) or (7) so provides—

- (a) the person appointed to convene a meeting of a body corporate by the order shall preside at the meeting and, while so presiding, shall be deemed to be the chairperson of the body corporate; and
- (b) notice of that meeting may be given in the manner specified in the order.

(10) Where a meeting of the body corporate convened in accordance with this section is held after the time limited by or under this section for the holding of the meeting, it does not on that account fail to be the first annual general meeting of the body corporate.

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(11) An original lessee or a lessor who has failed to convene and hold a meeting of the body corporate in accordance with subsection (1) remains liable to the penalty provided by that subsection notwithstanding that an order has been made under subsection (6) or that a meeting has been convened and held pursuant to any such order.

**By-laws (1973 Act, s. 58)**

87. (1) Except as provided in this section, the by-laws set forth in Schedule 3 shall be the by-laws in force in respect of each leasehold strata scheme.

(2) Except as provided in subsection (7) or (13), a body corporate, pursuant to a special resolution, may, for the purpose of the control, management, administration, use or enjoyment of the lots or the lots and common property the subject of the leasehold strata scheme concerned, make by-laws amending, adding to or repealing the by-laws set forth in Schedule 3, other than by-laws 1-12 set forth in that Schedule, or any by-laws made under this subsection.

(3) An amendment of, addition to or repeal of the by-laws has no force or effect until the Registrar-General has, pursuant to a notification in the form approved under the Real Property Act 1900 lodged in the office of the Registrar-General by the body corporate not later than 2 years after the passing of the resolution for the amendment, addition or repeal, made an appropriate recording with respect to the notification in the folio of the Register for the lease of the common property.

(4) A sublease of a lot or common property shall be deemed to contain an agreement by the sublessee that the sublessee will comply with the by-laws for the time being in force.

(5) Without limiting the operation of any other provision of this Act, the by-laws for the time being in force bind the body corporate, the lessees and any mortgagee or covenant chargee in possession (whether in person or not), or sublessee or occupier, of a lot to the same extent as if the by-laws had been signed and sealed by the body corporate, each lessee and each such mortgagee, covenant chargee, sublessee and occupier respectively and as if they contained mutual covenants to observe and perform all the provisions of the by-laws.

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(6) No by-law or amendment of or addition to a by-law shall be capable of operating to prohibit or restrict the devolution of a leasehold estate in a lot or a transfer, sublease, mortgage or other dealing therewith.

(7) Without limiting the generality of any other provision of this section, a body corporate may, with the consent in writing of the lessor under the scheme and the lessee of a lot, pursuant to a unanimous resolution make a by-law in respect of that lot conferring on that lessee the exclusive use and enjoyment of, or special privileges in respect of, the common property or any part thereof upon such terms and conditions (including the proper maintaining and keeping in a state of good and serviceable repair of the common property or that part of the common property, as the case may be, and the payment of money by that lessee to the body corporate) as may be specified in the by-law and may, pursuant to a unanimous resolution, make a by-law amending, adding to or repealing any by-law made under this subsection if the lessee of the lot at the time the by-law is made to effect the amendment, addition or repeal has given written consent to its being made.

(8) After the expiration of the period of 2 years that next succeeds the making, or purported making, of a by-law referred to in subsection (7) (including a by-law so referred to that amends, adds to or repeals another by-law), it shall be conclusively presumed that all conditions and preliminary steps precedent to the making of the by-law have been complied with and performed.

(9) Any by-law referred to in subsection (7) shall, while it remains in force, apply as appurtenant to, and for the benefit of, the lot in respect of which it was made and the lessee and any occupier thereof for the time being.

(10) The lessee for the time being of a lot in respect of which a by-law referred to in subsection (7) is in force—

- (a) is, subject to section 100 (5), liable to pay to the body corporate any money referred to in the by-law in accordance with the by-law; and
- (b) is, unless excused by the by-law, responsible for the performance of the duty of the body corporate under section 98 (1) (b) (i) in respect of the common property, or the part of the common property, to which the by-law relates.

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(11) Where a person becomes lessee of a lot at a time when, pursuant to subsection (10) (a) or this subsection, another person is liable to pay money to the body corporate, the person who so becomes lessee is, subject to section 100 (5), jointly and severally liable with the other person to pay the money to the body corporate.

(12) Any money payable by a lessee to the body corporate under a by-law referred to in subsection (7) or pursuant to subsection (11) may be recovered, as a debt, by the body corporate in any court of competent jurisdiction.

(13) Where an order made under Division 3 of Part 5 has effect as if its terms were a by-law, that by-law shall not be capable of being amended, added to or repealed except by a by-law made pursuant to a unanimous resolution and with the consent in writing of the lessor under the scheme.

(14) To the extent to which a by-law purports to prohibit or restrict—

- (a) the keeping on a lot of a dog used as a guide by a completely or partially blind lessee or occupier of a lot; or
- (b) the use of a dog as a guide on a lot or common property by a completely or partially blind person,

the by-law has no force or effect.

**Copy of by-laws to be provided (1973 Act, s. 58A)**

88. (1) Where any lot or common property the subject of a leasehold strata scheme is sublet, otherwise than to a lessee of a lot the subject of the scheme, for the purpose of its being used as, or in connection with, a residence, the sublessor shall, within 7 days after the sublessee's becoming entitled under the sublease to possession of the lot or common property, provide the sublessee, in accordance with subsection (2), with a copy of the by-laws for the time being in force in respect of the scheme.

Penalty: \$100.

(2) A sublessee is provided with a copy of the by-laws in accordance with this subsection if the copy is—

- (a) served personally on the sublessee;
- (b) where the sublease relates to a lot or common property that is fully enclosed by walls or other structures—left in a conspicuous position at the lot or on the common property; or

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- (c) where the sublease relates to a lot—served in the manner provided by section 191 (3) (a) or (b).

**Levies by body corporate on lessees (1973 Act, s. 59)**

**89. (1)** A body corporate may levy the contributions determined by it in accordance with section 98 (1) (k) and (l) and contributions referred to in section 98 (1) (r) by serving on the lessees notice in writing of the contributions payable by them in respect of their respective lots.

**(2)** Contributions levied by a body corporate shall be levied in respect of each lot and shall be payable, subject to this section, by the lessees in shares proportional to the unit entitlements of their respective lots.

**(3)** In respect of any contribution levied under subsection (1) and any interest thereon, a lessee of a lot is, subject to section 100 (5), liable, jointly and severally with any person who was liable to pay that contribution and any interest thereon when that lessee became the lessee of that lot, to pay such part of that contribution and any interest thereon as was unpaid when the lessee became the lessee of that lot.

**(4)** Regular periodic contributions to the administrative fund and sinking fund of a body corporate referred to in section 98 (5) shall be deemed to have been duly levied on a lessee of a lot notwithstanding that notice levying the contributions was not served on the lessee.

**(5)** Without affecting the liability of a lessee of a lot in respect of any contribution levied under this section, where a mortgagee is in possession (whether in person or not) of a lot the mortgagee shall be liable jointly and severally with the lessee of the lot of which the mortgagee is in possession for any contribution levied on that lessee in accordance with this Act but shall not be so liable in respect of any such contribution (other than regular periodic contributions to the administrative fund and sinking fund referred to in section 98 (5)), unless notice in writing of the levy of the contribution has been served on the mortgagee.

**(6)** Any contribution levied under this section—

- (a) becomes due and payable to the body corporate in accordance with the decision of the body corporate to make the levy;

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- (b) if not paid when it becomes due and payable, bears until paid—
- (i) simple interest at an annual rate of 10 per cent during the next succeeding period of 3 months unless the body corporate by special resolution determines (either generally or in a particular case) that it shall bear no interest or interest at a specified lower rate; and
  - (ii) thereafter simple interest at an annual rate of 20 per cent unless the Commissioner in a particular case determines that it shall bear no interest or interest at a specified lower rate; and
- (c) together with any such interest, may be recovered, as a debt, by the body corporate in any court of competent jurisdiction,

and any interest so paid or recovered shall form part of the fund to which the contribution belongs.

**Power of body corporate to carry out work (1973 Act, s. 60)**

**90. (1)** Where a notice has been served on the lessee of a lot by a public authority or local council requiring that lessee to carry out any work on or in relation to that lot and the notice is not complied with, the body corporate may carry out the work.

**(2)** Where a person who is a lessee, mortgagee or covenant chargee in possession or a sublessee or occupier of a lot fails or neglects to carry out any work—

- (a) required to be carried out by the person under a term or condition of a by-law referred to in section 87 (7); or
- (b) necessary to remedy a breach of the duty imposed on the person by section 111 (1) (a).

the body corporate may carry out that work.

**(3)** Where the body corporate carries out any work on or in relation to a lot or common property pursuant to subsection (1) or (2), it may, subject to section 100 (5), recover the cost of so doing, as a debt—

- (a) from the lessee, mortgagee or covenant chargee in possession or the sublessee or occupier referred to in subsection (1) or (2); or

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(b) where the work is carried out pursuant to—

- (i) subsection (1) or (2) (b), from any person who, after the work is carried out, becomes the lessee of the lot on or in relation to which the work was carried out; or
- (ii) subsection (2) (a), from any person who, after the work is carried out, becomes the lessee of the lot in respect of which the by-law referred to in subsection (2) (a) was made.

(4) Where an order has been made under Part 5 and the order is not complied with, the body corporate may carry out any work specified in the order and recover from the person against whom the order was made the cost of so doing, as a debt, in any court of competent jurisdiction.

(5) Where—

- (a) any part of a building comprised in a lot contains any structural defect which affects or is likely to affect the support or shelter provided by that lot for another lot in that building or the common property; or
- (b) any defect occurs in any pipes, wires, cables or ducts referred to in section 111 (1) (a) (ii) within a lot, and the defect is not due to any breach of the duty imposed on any person by section 111 (1) (a).

the body corporate may, at its own expense, carry out such work as is necessary to rectify the defect.

**Change of body corporate's address (1973 Act, s. 61)**

**91. (1)** A body corporate may, in general meeting, decide that the address, as recorded in the folio of the Register for the lease of the common property, for the service of notices on the body corporate shall be changed.

(2) Where—

- (a) a body corporate has, under subsection (1), decided that the address for the service of notices on it shall be changed;
- (b) notice in the form approved under the Real Property Act 1900 of the change of address has been lodged in the office of the Registrar-General; and
- (c) the Registrar-General has made such recording in the folio of the Register for the lease of the common property as the Registrar-General considers appropriate,

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the address for service of notices on the body corporate shall, notwithstanding any other provision of this Act, be the address recorded in that folio.

**Distribution of surplus money in administrative fund or sinking fund (1973 Act, s. 62)**

**92. (1)** Subject to subsections (2) and (4), whenever a body corporate is of the opinion that the money standing to the credit of the administrative fund or the sinking fund exceeds the amount required for the purposes of either such fund, the body corporate may, pursuant to a unanimous resolution, distribute the surplus to the lessees in shares proportional to the unit entitlements of their respective lots.

**(2)** Where a lease of a lot is subject to a mortgage or covenant charge shown on the strata roll, any money that, but for this subsection, would be paid under subsection (1) to the lessee of that lot shall be paid—

- (a) where the mortgagee or covenant chargee furnishes to the body corporate a consent for the payment to be made to the mortgagee or covenant chargee in writing executed by the lessee and each other mortgagee and covenant chargee, if any, entered in the strata roll as having the benefit of a mortgage of or a covenant charge affecting that lease—to the firstmentioned mortgagee or covenant chargee; or
- (b) where the lessee furnishes to the body corporate a consent in writing executed by each mortgagee and covenant chargee, if any, entered in the strata roll as having the benefit of a mortgage of or a covenant charge affecting that lease for the payment to be made to the lessee—to the lessee.

**(3)** Where a body corporate has passed a unanimous resolution referred to in subsection (1) and no consent has been executed as referred to in subsection (2) (a) or (b), the lessee or any enrolled mortgagee or any covenant chargee entered in the strata roll may make an application to the appropriate court for an order under subsection (4).

**(4)** The appropriate court may, on an application made under subsection (3), make an order for the payment of the money referred to in the application—

- (a) to the lessee referred to in the application;
- (b) to any enrolled mortgagee or covenant chargee entered in the strata roll; or

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- (c) to the lessee so referred to, any enrolled mortgagee and any covenant chargee entered in the strata roll in such proportions as are specified in the order,

as to the court seems just, and the body corporate shall, upon receipt of a certified or office copy of the minute of the order, pay the money in accordance with the order of the court.

- (5) A reference in this section to an appropriate court is a reference—
- (a) in the case of an application where the amount of the payment does not exceed \$500 and except where the title to land is in question otherwise than incidentally—to such Local Court as may be agreed upon by the applicant and the respondent or, in the absence of any such agreement, the Local Court nearest to the parcel;
  - (b) in the case of an application where the amount of payment does not exceed \$500 and the title to land is in question otherwise than incidentally—to the District Court;
  - (c) in the case of an application where the amount of the payment exceeds \$500 but does not exceed \$10,000 and except where the title to land is in question otherwise than incidentally—to the District Court; and
  - (d) in any other case—to the Supreme Court.

**Agreement for payment to a lessee of consideration on transfer or sublease of common property (1973 Act, s. 63)**

93. A body corporate may, pursuant to a unanimous resolution, make an agreement with a lessee with respect to the payment to the lessee of the whole or any part of the consideration under any transaction proposed to be entered into by the body corporate under Division 2 of Part 2 or of any money payable to the body corporate under a by-law referred to in section 87 (7).

**Power of entry (1973 Act, s. 64)**

94. (1) For the purpose of carrying out—
- (a) pursuant to section 90 (1), (2), (4) or (5), any work;
  - (b) any work required to be carried out by a body corporate—
    - (i) by a notice served on it by a public authority or local council;
    - or

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(ii) by an order of the Commissioner or a Board;

(c) any work referred to in section 98 (1) (b) or (c); or

(d) any work necessary to repair or renew any pipes, wires, cables or ducts referred to in section 111 (1) (a) (ii),

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

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

(f) in any other case, at any reasonable time on notice given to any occupier of that part of the parcel.

(2) A person shall not obstruct or hinder a body corporate in the exercise of its power under subsection (1).

Penalty: \$200.

**Miscellaneous powers of body corporate (1973 Act, s. 65)**

95. (1) A body corporate may—

(a) invest any money in its administrative fund or sinking fund in any manner permitted by law for the investment of trust funds or in any prescribed investment;

(b) borrow money and secure the repayment thereof and of any interest in such manner as may be agreed upon by the body corporate and the lender, otherwise than by charging the repayment on the common property;

(c) enter into an agreement with a lessee or occupier of a lot for the provision of amenities or services by it to the lot or to the lessee or occupier thereof; and

(d) dispose of or otherwise deal with any lot vested in the body corporate as a result of a subdivision effected under section 11.

(2) Any interest received on an investment made under subsection (1) shall form part of the fund to which the investment belongs.

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**Statutory restrictions on powers of bodies corporate (1973 Act, s. 66)**

**96. (1)** Notwithstanding any other provision of this Act except subsection (4), a body corporate shall not, during the initial period (if any)—

- (a) amend, add to or repeal the by-laws in such a manner that a right is conferred or an obligation is imposed on one or more, but not all, lessees or in respect of one or more, but not all, lots;
- (b) except in accordance with a development statement, alter any common property or erect any structure on the common property;
- (c) incur a debt for an amount that exceeds the amount then available for repayment of the debt from its administrative fund or its sinking fund;
- (d) borrow money or give securities; or
- (e) appoint a managing agent to hold office as such for a period extending beyond the holding of the first annual general meeting of the body corporate,

unless the doing of that thing is authorised by an order under subsection (2) or section 97.

**(2)** A Board may, on an application made to it by a body corporate constituted of one lessee, make an order authorising the doing, during the initial period (if any), of anything referred to in subsection (1) by the body corporate.

**(3)** Without affecting any other remedy available against the original lessee (if any), if a body corporate contravenes subsection (1)—

- (a) the original lessee is liable for—
  - (i) the amount unpaid in respect of any debt incurred in contravention of subsection (1) (c); and
  - (ii) any loss suffered by the body corporate or a lessee as a result of any other contravention of subsection (1);
- (b) the body corporate may recover from the original lessee—
  - (i) as a debt—any amount for which the original lessee is liable under paragraph (a) (i), together with the expenses of the body corporate incurred in recovering that amount; and

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(ii) as damages for breach of statutory duty—any loss referred to in paragraph (a) (ii) that has been suffered by the body corporate; and

(c) there may be recovered from the original lessee by any other lessee, as damages for breach of statutory duty, any loss referred to in paragraph (a) (ii) that has been suffered by that other lessee,

unless—

(d) the contravention occurred without the knowledge of the original lessee;

(e) the original lessee was not in a position to influence the conduct of the body corporate in relation to the contravention; or

(f) the original lessee, being in such a position, used all due diligence to prevent the contravention.

**(4)** Nothing in subsection (1) prevents a body corporate, during the initial period (if any), from making, with the approval in writing of the local council, a by-law in accordance with section 87 (7) conferring on any lessee the exclusive use and enjoyment of, or special privileges in respect of, any specified part of the common property for the purpose of authorising that lessee to park a vehicle on that part of the common property.

**(5)** The provisions of section 69 apply to an application for an approval referred to in subsection (4) in the same way as they apply to an application referred to in that section.

**(6)** A by-law referred to in subsection (4) shall not be recorded by the Registrar-General in accordance with section 87 (3) unless it bears a certificate, in the prescribed form, of the prescribed officer of the local council.

**Supreme Court's power to authorise certain acts during initial period (1973 Act, s. 67)**

**97. (1)** An application to the Supreme Court for an order under subsection (4) may be made by the body corporate or, where the application relates to a proposed subdivision of a lot, by the original lessee (if any).

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(2) Notice of an application under subsection (1) shall be served, in accordance with the rules of court, on—

- (a) the body corporate and the lessee of every lot the subject of the leasehold strata scheme concerned, not being the applicant;
- (b) each registered mortgagee and enrolled mortgagee, if any, of the leases of every such lot and any covenant chargee having the benefit of a covenant charge affecting the lease of any such lot; and
- (c) such other persons as the Supreme Court may direct.

(3) The applicant and any person referred to in subsection (2) (whether or not served with a notice of the application) shall be entitled to appear and be heard on the hearing of the application.

(4) The Supreme Court may, on an application made under subsection (1), make an order authorising—

- (a) the registration of—
  - (i) a plan as a strata plan of subdivision of a lot other than a development lot, notwithstanding that the certificate of the local council referred to in section 11 (2) (b) was given during the initial period (if any);
  - (ii) a notice as a notice of conversion, notwithstanding that the certificate of the local council referred to in section 16 (2) was given during the initial period; or
  - (iii) a dealing referred to in section 32 (3), notwithstanding that the resolution authorising the execution of the dealing was passed during the initial period; or
- (b) the doing of any thing referred to in section 96 (1), notwithstanding that the decision of the body corporate to do that thing was made during the initial period.

**Duties of body corporate (1973 Act, s. 68)**

**98. (1)** A body corporate shall, for the purposes of the leasehold strata scheme concerned, but subject to the provisions of any development statement affecting common property and to the operation of this Act in relation to the development statement—

- (a) control, manage and administer the common property for the benefit of the lessees;

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- (b) properly maintain and keep in a state of good and serviceable repair—
  - (i) the common property; and
  - (ii) any personal property vested in the body corporate;
- (c) where necessary, renew or replace any fixtures or fittings comprised in the common property and any personal property vested in the body corporate;
- (d) cause to be constructed and maintained at or near the street alignment of the parcel a receptacle suitable for the receipt of mail and other documents with the name of the body corporate clearly shown thereon;
- (e) effect insurance in accordance with Division 5;
- (f) cause to be recorded in a loose-leaf or bound book particulars of the purport of notices served on the body corporate under this or any other Act, orders under Part 5 served on the body corporate and orders made by a court and served on the body corporate and, in relation to each such notice or order—
  - (i) the date on which it was served and the manner of service;
  - (ii) the part of the parcel to which it relates;
  - (iii) the date by which compliance therewith is required; and
  - (iv) the date on which it is complied with;
- (g) cause to be kept—
  - (i) minutes of its meetings that include particulars of motions passed at those meetings; and
  - (ii) the prescribed accounting records;
- (h) cause to be prepared prescribed financial statements in respect of—
  - (i) the period that commences on the date of registration of the strata plan and ends on a date that is not earlier than 2 months before the date of the first annual general meeting; and
  - (ii) each period that commences on the date up to which those statements were last prepared under this paragraph and ends on a date that is not earlier than 2 months before the next succeeding annual general meeting;

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- (i) cause to be retained for the prescribed period—
  - (i) the records kept under, and the notices and orders referred to in, paragraph (f);
  - (ii) the minutes and accounting records referred to in paragraph (g);
  - (iii) the financial statements referred to in paragraph (h);
  - (iv) copies of correspondence received and sent by the body corporate;
  - (v) notices of meetings of the body corporate and its council;
  - (vi) proxies delivered to the body corporate;
  - (vii) voting papers relating to motions for resolutions by the body corporate and to the election of office holders and the council;
  - (viii) records served on it under section 108 (11) or 164 (6);
  - (ix) notices given under section 113; and
  - (x) such other documents as may be prescribed;
- (j) cause annual general meetings to be convened in accordance with clause 1 (1) of Part 1 of Schedule 4;
- (k) not later than 14 days after the constitution of the body corporate and from time to time thereafter, determine subject to subsection (4) the amounts necessary to be raised by way of contributions for the purpose of meeting its actual or expected liabilities incurred or to be incurred under paragraph (b) or for the payment of insurance premiums or any other liability of the body corporate, other than amounts referred to in paragraph (l) or (r);
- (l) from time to time after the expiration of one month after the constitution of the council or one year after the constitution of the body corporate, whichever first happens, determine subject to subsection (4) the amounts necessary to be raised by way of contribution for the purpose of meeting its actual or expected liabilities—
  - (i) for painting or repainting any part of the common property which is a building or a part of a building or other structure;
  - (ii) for the acquisition of any personal property;
  - (iii) under paragraph (c); and

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- (iv) for any other expenditure, other than expenditure to meet a liability referred to in paragraph (k) or (r);
- (m) upon determining the amounts referred to in paragraph (k), establish, as its administrative fund, a fund into which shall be paid those amounts, the proceeds of the sale or other disposal of any personal property of the body corporate and any fees received by it under section 100 and into which may be paid any amounts paid to the body corporate by way of discharge of insurance claims;
- (n) upon determining the amounts referred to in paragraph (l), establish a sinking fund into which those amounts and any amounts paid to the body corporate by way of discharge of insurance claims shall be paid, unless the latter amounts have been paid into the administrative fund under paragraph (m);
- (o) from time to time, levy, in accordance with section 89, on each person liable a contribution to raise the amounts referred to in paragraphs (k) and (l);
- (p) pay any money referred to in paragraphs (m), (n) and (q) that is received by it and is not otherwise invested in accordance with section 95 (1) (a) into an account established in a bank in the name of the body corporate;
- (q) whenever it receives any money, other than money referred to in paragraph (m) or (n), pay that money into the sinking fund;
- (r) if the body corporate—
  - (i) becomes liable to pay any money that it is unable to pay forthwith; and
  - (ii) is not required, under paragraph (o), to levy contributions to meet the liability,levy, in accordance with section 89, contributions to raise that money; and
- (s) implement the decisions of the body corporate.

(2) Subsection (1) (p) does not apply to a body corporate which has appointed a managing agent to whom the duty of the body corporate under subsection (1) (p) is delegated pursuant to section 108.

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**(3)** A body corporate shall not disburse any money—

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

(i) from its administrative fund, otherwise than for the purpose of meeting its liabilities referred to in subsection (1) (k) or in accordance with section 92; or

(ii) from its sinking fund, otherwise than for the purpose of meeting its liabilities referred to in subsection (1) (l) or in accordance with section 92; or

(b) from its administrative fund or its sinking fund, otherwise than for the purpose of carrying out its functions under this Act or the by-laws or meeting any liability referred to in subsection (1) (r).

**(4)** A body corporate shall not make a determination under subsection (1) (k) or (l) unless, at the meeting of the body corporate at which the determination is to be made, a statement of the existing financial situation and of estimated receipts and payments has first been presented in relation to the fund in respect of which the contributions are to be determined.

**(5)** A determination made by a body corporate under subsection (1) (k) or (l) may specify that the amounts to be raised for the purposes referred to in subsection (1) (k) or (l) shall be raised by such regular periodic contributions as may be specified in the determination.

**(6)** A body corporate that disburses money—

(a) by transfer from its administrative fund to its sinking fund or by meeting from its administrative fund expenditure that should have been met from its sinking fund; or

(b) by transfer from its sinking fund to its administrative fund or by meeting from its sinking fund expenditure that should have been met from its administrative fund,

shall, not later than 3 months after the transfer—

(c) in the case of a transfer or expenditure referred to in paragraph (a)—  
make a determination under subsection (1) (k); or

(d) in the case of a transfer or expenditure referred to in paragraph (b)—  
make a determination under subsection (1) (l),

of an amount sufficient to recoup the amount of the disbursement.

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(7) If a body corporate fails or neglects to convene an annual general meeting within the period required by subsection (1) (j), the annual general meeting held next after the expiration of that period shall be an annual general meeting of the body corporate.

(8) A body corporate that contravenes subsection (1) (f) or (g) is guilty of an offence against this Act and liable on conviction—

- (a) in the case of a contravention of subsection (1) (f)—to a penalty not exceeding \$200; or
- (b) in the case of a contravention of subsection (1) (g)—to a penalty not exceeding \$500.

(9) Notwithstanding subsection (8), a body corporate is not required to perform any duty imposed by subsection (1) to the extent, if any, that the lessor under the scheme has agreed to carry out the duty.

**Strata roll (1973 Act, s. 69)**

**99. (1)** A body corporate shall prepare and maintain a roll in accordance with this section.

Penalty: \$500.

(2) The roll shall be kept in the form of a book (either bound or loose-leaf) which shall contain one or more pages in respect of each lot, and one or more pages in respect of the common property, the subject of the leasehold strata scheme concerned.

(3) The body corporate shall record the following information on a page of the roll relating to the lot to which the information relates—

- (a) the unit entitlement of the lot, as shown from time to time on copies of schedules of unit entitlement forwarded under section 78 (3) and received by the body corporate;
- (b) the name of the original lessee (if any), as shown in the folio of the Register for the lease of the lot upon registration of the strata plan, and that lessee's address, and the name of and address for the service of notices on any other person who is the lessee for the time being of that lot as shown in notices given to the body corporate under section 113 (2), (3) and (11);

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- (c) the name of any mortgagee of, or covenant chargee having the benefit of a covenant charge affecting, the lease of the lot notice of whose mortgage or covenant charge has been given to the body corporate under section 113 (4) or (6), the address for the service of notices on the mortgagee or covenant chargee as shown in that notice and any other mortgages or covenant charges which are specified in that notice as having priority over that mortgage or covenant charge;
- (d) the name of the company nominee of any corporation that is a lessee or mortgagee of, or covenant chargee having the benefit of a covenant charge affecting, the lease of the lot as shown in notices given to the body corporate for the purpose of section 113 (14);
- (e) the discharge, transfer, assignment or sub-mortgage of any mortgage or covenant charge, referred to in paragraph (c), as shown in a notice given to the body corporate under section 113 (5) or (6) and, except in the case of a discharge, the address for the service of notices on the transferee, assignee or sub-mortgagee as shown in that notice;
- (f) the entry into possession of the lot by a mortgagee or covenant chargee as shown in a notice given to the body corporate under section 113 (8);
- (g) the name and address of any sublessee of the lot notice of the granting of whose sublease has been given to the body corporate under section 113 (9) and the address for the service of notices on the sublessor and sublessee as shown in that notice;
- (h) the termination or assignment of any sublease, referred to in paragraph (g), as shown in a notice given to the body corporate under section 113 (10) and, in the case of an assignment, the name of the assignee and the address for the service of notices on the assignee as shown in that notice;
- (i) the name of any person who has become entitled, otherwise than as a transferee, to the lease of the lot, and notice of whose entitlement has been given to the body corporate under section 113 (11), and the address for the service of notices on the person as shown in that notice; and
- (j) the address for the service of notices on any person as shown in a notice given to the body corporate under section 113 (1).

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(4) The body corporate shall record on a page of the roll relating to common property the following information relating to all insurance effected by the body corporate:

- (a) the name of the insurance company;
- (b) the number of the insurance policy;
- (c) the amount of the insurance;
- (d) the due date for payment of the premium;
- (e) the date on which the premium was last paid.

(5) The body corporate shall record and maintain in the strata roll a copy of the by-laws for the time being in force with respect to the leasehold strata scheme concerned.

**Supply of information and certificates by body corporate (1973 Act, s. 70)**

**100. (1)** A body corporate shall, upon application made to it in writing in respect of a lot the subject of the leasehold strata scheme concerned by the lessee of that lot, by a mortgagee of a lease of that lot or by a person authorised in writing by such a lessee or mortgagee and on payment of the prescribed fee, do such one or more of the following things as is or are required of it in the application:

- (a) inform the applicant of the name and address of each person who is a member of the council and of any person who has been appointed under section 108 or 164 as managing agent;
- (b) make available for inspection by the applicant or the applicant's agent and for the exercise of the rights conferred by subsection (4)—
  - (i) the strata roll;
  - (ii) the notices and orders referred to in, and the records kept under, section 98 (1) (f);
  - (iii) the plans, specifications, certificates, diagrams and other documents delivered under section 86 (4);
  - (iv) if in its custody or under its control, the certificate of title for the lease of the common property;
  - (v) the minutes of general meetings of the body corporate and of the council;
  - (vi) the accounting records kept under section 98 (1) (g) (ii);

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- (vii) the financial statements last prepared under section 98 (1) (h);
  - (viii) every current policy of insurance effected by the body corporate and the receipt for the premium last paid in respect of each such policy;
  - (ix) the copies of correspondence retained under section 98 (1) (i) (iv);
  - (x) notices of meetings retained under section 98 (1) (i) (v);
  - (xi) proxies retained under section 98 (1) (i) (vi);
  - (xii) voting papers retained under section 98 (1) (i) (vii);
  - (xiii) records retained under section 98 (1) (i) (viii);
  - (xiv) notices retained under section 98 (1) (i) (ix);
  - (xv) documents retained under section 98 (1) (i) (x);
  - (xvi) any other record or document in the custody or under the control of the body corporate; and
  - (xvii) where the duties of the body corporate under this paragraph have been delegated to a managing agent—such other records (including records of the managing agent) relating to the leasehold strata scheme as may be prescribed,
- at such time and place as may be agreed upon by the applicant or the applicant's agent and the body corporate and, failing agreement, at the parcel at a time and on a date fixed by the body corporate under subsection (2);
- (c) give, in the prescribed form, a certificate that, as at the date of the certificate, specifies in respect of the lot the subject of the application—
    - (i) the amount of any regular periodic contributions determined by the body corporate under section 98 (1) (k), (1) (l) and (5) and the periods in respect of which those contributions are payable;
    - (ii) whether there is any amount unpaid of any contributions determined under section 98 (1) (k) and (l), including any periodic contributions referred to in section 98 (5), and, if so, the amount thereof and, in the case of a contribution levied under section 98 (1) (l), the date on which any such contribution was levied;

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- (iii) whether there is any amount unpaid of any contribution levied under section 98 (1) (r) and, if so, the amount thereof and the date on which it was levied;
- (iv) whether there is any amount unpaid by a lessee under a by-law referred to in section 87 (7);
- (v) whether there is any amount unpaid of any contribution levied under section 188 (2) and, if so, the amount thereof and the date on which it was levied;
- (vi) whether there is any amount recoverable from the lessee of that lot under section 90 (3) or (4) and, if so, the amount thereof;
- (vii) any amount and rate of interest payable under section 89 (6) in respect of any unpaid contribution referred to in this paragraph; and
- (viii) such other information as is required to complete the certificate in the form prescribed.

Penalty: \$200.

(2) Where an applicant and a body corporate fail to reach an agreement referred to in subsection (1) (b) within 3 days after the receipt of the application by the body corporate, the body corporate shall forthwith send by post to the applicant a notice fixing a time, specified in the notice, between 9 o'clock in the morning and 8 o'clock in the night on a date so specified, being a date not later than 10 days after the receipt of the application by the body corporate for the making of the inspection referred to in subsection (1) (b).

(3) Information referred to in subsection (1) (a), and a certificate referred to in subsection (1) (c), shall be provided by the body corporate not later than 14 days after receipt by it of the application for the information.

Penalty: \$200.

(4) A person entitled to inspect a document made available under subsection (1) (b) may take extracts from, or make a copy of, the document but may not, without the consent of the body corporate, remove the document from the custody of the body corporate for the purpose of inspecting the document, taking extracts therefrom or making a copy thereof.

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(5) In favour of a person taking for valuable consideration an estate or interest in any lease of a lot a certificate given under subsection (1) (c) by the body corporate in respect of that lot is conclusive evidence, as at the date of the certificate, of the matters stated therein.

DIVISION 2—*Councils*

**Constitution of councils (1973 Act, s. 71)**

**101. (1)** After the first annual general meeting of a body corporate, there shall be a council.

(2) Where there are not more than 3 lessees, the council shall consist of each lessee, if any, who is an individual or the nominee of the lessee, together with the company nominee of each lessee, if any, which is a corporation.

(3) Where there are more than 3 lessees, the council shall consist of such number of persons, being not less than 3 nor more than the number of lessees or 9, whichever is the lesser, as is determined by the body corporate.

(4) The members of a council referred to in subsection (3) shall be elected at each annual general meeting of the body corporate or, if the number of lessees increases to more than 3, at an extraordinary general meeting convened for the purpose.

(5) A person is not eligible for election as a member of a council unless the person is—

- (a) an individual who is a lessee;
- (b) a company nominee of a corporation which is a lessee; or
- (c) an individual who is not a lessee but who is nominated for election by a lessee who is not a candidate for election.

(6) A person who is a co-lessee of a lot may not be a candidate for election as a member of the council unless the person is nominated for office—

- (a) by a lessee who is not a co-lessee of the lot; or
- (b) by a co-lessee of the lot who is not a candidate for election as such a member,

but a lessee of a lot who is not a co-lessee of the lot may nominate himself or herself for election as such a member.

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(7) A member of a council may, with the consent of the council, appoint a lessee or company nominee of a corporation which is a lessee to act in his or her place as a member of the council at any meeting of the council and any lessee or company nominee of a corporation which is a lessee so appointed shall, when he or she is so acting, be deemed to be a member of the council.

(8) A lessee or company nominee of a corporation may be appointed under subsection (7) whether or not he or she is a member of the council.

(9) If a person appointed under subsection (7) is a member of the council he or she may, at any meeting of the council, separately vote in his or her capacity as such a member and on behalf of the member in whose place he or she has been appointed to act.

(10) Notwithstanding any other provision of this section, a council may be constituted before the first annual general meeting of the body corporate.

(11) The members of a council constituted under subsection (10) shall be elected at a general meeting of the body corporate and the provisions of subsection (5) and such of the provisions of Part 2 of Schedule 4 as relate to the election of members of councils apply to and in respect of the election of members of a council to be so constituted.

(12) Part 1 of Schedule 4 (clause 16 (1) excepted) does not apply to or in respect of the election of the members of a council to be constituted under subsection (10).

(13) The provisions of this Division (subsections (1), (2) and (4) of this section excepted) apply to and in respect of a council constituted under subsection (10) and the members thereof.

(14) Without limiting the operation of section 102, a member of a council constituted under subsection (10) vacates his or her office as such a member upon another person being elected as a member in the place of that firstmentioned member at a general meeting of the body corporate.

(15) Where there is no council of a body corporate, the leasehold strata scheme shall be administered by the body corporate, but nothing in this subsection prevents a managing agent appointed under this Act from exercising any functions conferred or imposed upon him or her.

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**Vacation of office of member of council (1973 Act, s. 72)**

**102. (1)** A person elected as a member of a council vacates office as such a member—

- (a) if, where he or she was a lessee at the time of election, he or she ceases to be a lessee;
- (b) if, where he or she was not a lessee at the time of election or was a company nominee, the individual who nominated him or her for election or the corporation for which he or she is a company nominee, as the case may be—
  - (i) ceases to be a lessee; or
  - (ii) notifies the body corporate, in writing, that his or her office, as a member of the council, is vacated;
- (c) upon the receipt by the body corporate from him or her of notice in writing of his or her resignation as a member of the council;
- (d) upon the election of the members of the council at the annual general meeting next following his or her election as a member of the council;
- (e) where he or she is a member referred to in section 101 (2) and the number of lessees increases to more than 3, upon the election of the members of the council at the annual general meeting, or the extraordinary general meeting referred to in section 101 (4); or
- (f) if the body corporate, pursuant to a special resolution, determines that his or her office as a member of the council is vacated.

**(2)** Upon the occurrence of a vacancy in the office of a member of a council, otherwise than by reason of subsection (1) (d) or (e), the body corporate shall appoint a person eligible for election as a member of the council to fill the vacancy, and any person so appointed shall, subject to this section, hold office for the balance of his or her predecessor's term of office.

**Chairperson, secretary and treasurer of council (1973 Act, s. 73)**

**103. (1)** The members of a council shall, at the first meeting of the council after they assume office as such members, appoint a chairperson, a secretary and a treasurer of the council.

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(2) A person—

(a) shall not be appointed to an office referred to in subsection (1) unless he or she is a member of the council; and

(b) may be appointed to one or more of those offices.

(3) A person appointed to an office referred to in subsection (1) shall hold office until—

(a) he or she ceases to be a member of the council;

(b) the receipt by the body corporate from him or her of notice in writing of his or her resignation from that office; or

(c) another person is appointed by the council to hold that office,

whichever first happens.

(4) The chairperson shall preside at all meetings of the council at which he or she is present and, if he or she is absent from any such meeting, the members of the council present at that meeting shall appoint one of their number to preside at that meeting during the absence of the chairperson.

(5) A person shall not exercise any of the functions of the body corporate or the treasurer of the body corporate, being functions relating to the receipt or expenditure of, or accounting for, money, or the keeping of the books of account, of the body corporate, unless he or she is—

(a) a member of the body corporate or of the council and is the treasurer of the body corporate or of the council;

(b) a managing agent who is empowered to exercise that function;

(c) a person with whom the treasurer of the body corporate is required by an order of the council to exercise jointly that function, and who is enabling the treasurer to comply with the order;

(d) a registered public accountant authorised by the body corporate to exercise the function; or

(e) during the initial period only—a person authorised by the original lessee to exercise the function.

Penalty: \$500.

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(6) The treasurer of a body corporate may delegate the exercise of any of the treasurer's functions as treasurer (other than this power of delegation), the delegation of which is specifically approved by the council of the body corporate, to another member of the council so approved, subject to such limitations as to time or otherwise as are so approved and, while a delegate is acting in accordance with the terms of a delegation under this subsection, the delegate shall be deemed to be the treasurer of the body corporate.

(7) The council of a body corporate may, by a notice in writing served on the treasurer of the body corporate, order that the treasurer shall not exercise any of the functions of the treasurer that are specified in the notice, unless the treasurer does so jointly with another person so specified.

(8) A person who has possession or control of—

- (a) any records, books of account or keys belonging to a body corporate;
- (b) the strata roll kept by a body corporate; or
- (c) any other property of a body corporate,

shall, within 7 days after service of a notice of a resolution of the council—

- (d) requiring the person to do so; or
- (e) where the person is a managing agent, terminating the person's appointment as managing agent,

deliver those records, books of account and keys and that strata roll and other property to a member of the council specified in the notice.

Penalty: \$2,000.

(9) Nothing in subsection (8) shall be construed to take away or affect any just claim or lien which any managing agent may have against or upon any records, accounts or property of a body corporate.

(10) Nothing in subsection (8) affects the operation of section 38 of the Auctioneers and Agents Act 1941.

**Meetings of councils (1973 Act, s. 74)**

**104. (1)** At any meeting of a council a quorum consists, where there is only one member of a council, of that member or, where there are two or more members of a council, of the majority of the members of the council.

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(2) Subject to this Act, the decision on any matter, where there is only one member of a council, of that member or, where there are two or more members of a council, of the majority of the members voting on that matter shall be the decision of the council at any meeting at which a quorum is present.

(3) A decision of a council has no force or effect if, before that decision is made, notice in writing is given to the secretary of the council by one or more lessees, the sum of whose unit entitlements exceeds one-half of the aggregate unit entitlement, that the making of the decision is opposed by those lessees.

(4) A council shall cause a record of its decisions, of any notices given to its secretary under subsection (3) and full and accurate minutes of its meetings to be kept.

**Council's decisions to be decisions of body corporate (1973 Act, s. 75)**

**105. (1)** In this section, "restricted matter", in relation to a council, means—

- (a) any matter a decision on which may, in accordance with any provisions of this Act or the by-laws, be made by the body corporate only pursuant to a unanimous resolution or a special resolution or in general meeting of the body corporate; and
- (b) any matter referred to in section 107 and specified in a resolution of that body corporate passed for the purposes of that section.

(2) Subject to this Act, the decision of a council on any matter, other than a restricted matter, shall be the decision of the body corporate.

(3) Notwithstanding that a council holds office the body corporate may in general meeting continue to exercise all or any of the functions conferred or imposed on it by this Act or the by-laws.

**Statutory restrictions on powers of councils (1973 Act, s. 76)**

**106. (1)** Unless otherwise determined pursuant to a special resolution of the body corporate or, in an emergency, authorised by the Commissioner, the council shall not, in any one case, undertake expenditure exceeding the sum obtained by multiplying the prescribed amount by the number of lots the subject of the strata scheme.

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(2) Where proposed expenditure would exceed an amount calculated in accordance with subsection (1) the council shall—

- (a) submit the proposal for determination at an extraordinary general meeting of the body corporate 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.

(3) Subsection (1) does not apply to the expenditure of money—

- (a) in payment of any premium of insurance effected by or on behalf of the body corporate;
- (b) to comply with—
  - (i) a notice or order served on the body corporate by any public authority or local council; or
  - (ii) an order made with respect to the body corporate by the Commissioner or a Board; or
- (c) in discharge of any liability incurred in respect of an obligation of the body corporate authorised by the body corporate in general meeting.

**Restrictions imposed on council by body corporate (1973 Act, s. 77)**

107. The body corporate may in general meeting decide what matters or class of matters, if any, shall be determined only by the body corporate in general meeting.

*DIVISION 3—Managing agents***Managing agent (1973 Act, s. 78)**

108. (1) Subject to subsection (3), a body corporate may, in general meeting and by instrument in writing, appoint a managing agent and may, in like manner, delegate to the agent—

- (a) all of its functions;
- (b) any one or more of its functions specified in the instrument; or
- (c) all of its functions except those specified in the instrument,

and may, in like manner, revoke the appointment and delegation or revoke in part the delegation.

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(2) A body corporate shall not appoint a person as managing agent unless the person is the holder of a strata managing agent's licence issued pursuant to the Auctioneers and Agents Act 1941.

(3) A body corporate may not, under subsection (1), delegate to a managing agent its power to make—

(a) a delegation under that subsection;

(b) a decision on a restricted matter within the meaning of section 105;  
or

(c) a determination under section 98 (1) (k) or (l) (including such a determination made pursuant to section 98 (6)),

or to levy contributions under section 98 (1) (r).

(4) A function the exercise of which has been delegated under subsection (1) may, while the delegation remains unrevoked, be exercised from time to time in accordance with the delegation.

(5) A delegation under subsection (1) may be made subject to such conditions or such limitations as to the exercise of all or any of the functions, or as to time or circumstances, as may be specified in the instrument of delegation.

(6) Notwithstanding any delegation made under subsection (1), the body corporate may continue to exercise all or any of the functions delegated.

(7) Any act or thing done or suffered by a managing agent while acting in the exercise of a delegation under subsection (1) has the same force and effect as if it had been done or suffered by the body corporate and shall be deemed to have been done or suffered by the body corporate.

(8) Where the instrument of appointment so provides, a managing agent shall have and may exercise all the functions of the chairperson, secretary or treasurer of the body corporate and the council or such of those functions as may be specified in the instrument.

(9) Notwithstanding any provision referred to in subsection (8) made by the instrument of appointment of a managing agent, the chairperson, secretary and treasurer of the body corporate, and the council, may continue to exercise all or any of the functions that the managing agent is by that subsection authorised to exercise.

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(10) Any act or thing done or suffered by a managing agent in the exercise of any function of a chairperson, secretary, treasurer or council conferred or imposed on the managing agent pursuant to subsection (8) has the same force and effect as if it had been done or suffered, and shall be deemed to have been done or suffered, by the chairperson, secretary, treasurer or council, as the case may be.

(11) A managing agent who exercises a function pursuant to a delegation by a body corporate under subsection (1) shall, forthwith after its exercise—

- (a) make a written record specifying the function and the manner of its exercise; and
- (b) serve the record on the body corporate.

**Furnishing of particulars of trust account or transactions to body corporate (1973 Act, s. 79)**

**109. (1)** A body corporate may cause to be served on a managing agent appointed by it a notice of a resolution of the body corporate requiring the managing agent to deliver to a member of the council specified in the notice a statement in writing setting forth any one or more of the following:

- (a) the name of the trust account on which the managing agent operates in accordance with the provisions of section 36 of the Auctioneers and Agents Act 1941, the name of the bank on which that account is current, the balance of the money standing to the credit of the body corporate in that account as at a date specified in the notice and particulars of all cheques drawn on that account for or on behalf of the body corporate as at that date and not presented and duly paid;
- (b) the name of any other accounts on which the managing agent operates for or on behalf of the body corporate in accordance with section 98, the name of the bank on which those accounts are current, the balance of the money standing to the credit of those accounts as at a date specified in the notice and particulars of all cheques drawn on those accounts as at that date and not presented and duly paid;
- (c) full particulars as to any money paid by any person to the managing agent or received by the agent for or on behalf of the body corporate in connection with the agent's acting as a strata managing agent and, if it is not still held by the agent, the manner and time of disbursement of that money;

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(d) full particulars as to any specified transaction by or with the managing agent as managing agent acting for or on behalf of the body corporate.

(2) A managing agent shall not—

- (a) fail, without reasonable excuse, proof whereof shall lie on the agent, to deliver a statement in writing in accordance with subsection (1) within 7 days after service on the agent of a notice requiring the agent to do so; or
- (b) knowingly furnish false or misleading information in any such statement.

Penalty: \$2,000.

(3) A managing agent is not required to furnish to a body corporate any particulars with regard to any of the matters referred to in subsection (1) which relate to any transaction by or with the agent more than 3 years before the date of service of the notice.

(4) Without affecting the application of the other provisions of this section to managing agents, the provisions—

- (a) of this section, other than subsection (1) (c) or (d), apply to any person who is required by section 36 (6) of the Auctioneers and Agents Act 1941 to keep a trust account, and so apply while the person is required to keep that account; and
- (b) of this section, other than subsection (1) (a), apply to any person who is required by section 38 (2) of the Auctioneers and Agents Act 1941 to preserve any written record referred to in that subsection, and so apply while the person is required to preserve that written record.

(5) Subsections (3), (4), (5), (6) and (7) of section 38A of the Auctioneers and Agents Act 1941 do not apply to or in respect of a person to or in respect of whom any of the provisions of this section apply.

**Delegated duty—liability of managing agent (1973 Act, s. 79A)**

110. Where—

- (a) a contravention by a body corporate of a provision of this Act that imposes a duty on the body corporate is an offence against this Act; and

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(b) the performance of the duty has been delegated to a managing agent, the provision shall, while the delegation remains in force, be construed as if a reference therein to the body corporate were a reference to the managing agent.

**DIVISION 4—*Lessees and other occupiers of lots*****Duties of lessees and other occupiers of lots (1973 Act, s. 80)**

**111. (1)** A lessee, mortgagee or covenant chargee in possession (whether or not in person), sublessee or occupier of a lot shall not—

- (a) do anything or permit anything to be done on or in relation to that lot so that—
  - (i) any support or shelter provided by that lot for another lot or common property is interfered with; or
  - (ii) access to water, sewerage, drainage, gas, electricity, garbage services, artificially heated or cooled air, heating oil and other services (including telephone, radio and television services) through or by means of any pipes, wires, cables or ducts for the time being in the lot is interfered with;
- (b) use or enjoy that lot, or permit that lot to be used or enjoyed, in such a manner or for such a purpose as to cause a nuisance or hazard to the occupier of any other lot (whether that person is a lessee or not); or
- (c) use or enjoy the common property in such a manner or for such a purpose as to interfere unreasonably with the use or enjoyment of the common property by the lessee of any other lot (whether that person is a lessee or not) or by any other person entitled to the use and enjoyment of the common property.

**(2)** The provisions of subsection (1) (b) and (c) do not operate to prevent the due exercise of rights conferred on a developer by the operation of section 48.

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**Power for individuals to act for corporate lessees and mortgagees of lots (1973 Act, s. 80A)**

**112. (1)** A corporation may, and shall be deemed always to have been able to, authorise an individual to exercise on its behalf any function conferred by or under this Act on the corporation as lessee of a lot, as mortgagee of a lease of a lot or as covenant chargee having the benefit of a covenant charge affecting the lease of a lot and may revoke the authority of any individual so authorised.

(2) Where an individual exercises a function with respect to a lot which the individual is authorised under subsection (1) to exercise by a lessee, mortgagee or covenant chargee, the function shall be deemed to have been exercised with respect to the lot by the lessee, mortgagee or covenant chargee.

(3) Nothing in subsection (1) or (2) affects any liability or obligation imposed by or under this Act on a corporation which is a lessee of a lot, a mortgagee of a lease of a lot or a covenant chargee having the benefit of a covenant charge affecting the lease of the lot.

(4) A document under the seal of a corporation purporting to be an authorisation under subsection (1) or to be a revocation of such an authorisation is admissible in evidence and shall, unless the contrary is proved, be deemed to be such an authorisation or revocation, as the case may be.

**Notices to be given by lessees and mortgagees (1973 Act, s. 81)**

**113. (1)** An original lessee, a developer and any other person who, under this section, has given notice of an address for the service of notices on the person may give notice in writing to the body corporate of an address or change of address for the service of notices on the person.

(2) Not later than 14 days after the delivery to a transferee of an executed transfer of a lease of a lot, the transferor and the transferee shall each give to the body corporate written notice of the transfer, specifying in the notice the full names of the transferor and the transferee, the date of delivery of the transfer to the transferee and, in the case of the notice given by the transferee, the address for the service of notices on the transferee.

Penalty: \$100.

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(3) Not later than 14 days after becoming entitled to immediate possession of a lot because of the determination of a lease of a lot, a prescribed authority which is, by section 35, deemed to be the lessee of the lot shall give to the body corporate written notice of the determination of the lease which shall identify the lot and specify the date on which the authority became so entitled.

Penalty: \$100.

(4) After the delivery to a mortgagee of an executed mortgage of a lease of a lot, the mortgagee may give to the body corporate written notice of the mortgage which shall identify the lot and—

- (a) specify the name of the mortgagee in full and the address for the service of notices on the mortgagee and the date on which the mortgage was so delivered;
- (b) specify any mortgages of the lease of the lot or covenant charges affecting the lease of the lot which have priority over the mortgage referred to in the notice; and
- (c) bear written confirmation by the mortgagor of the accuracy of the information contained in the notice.

(5) After the delivery to a mortgagor of a discharge of a mortgage of a lease of a lot or a discharge of a sub-mortgage of a mortgage of a lease of a lot, the mortgagor may give to the body corporate written notice of the discharge which shall identify the lot and the mortgage that has been discharged and—

- (a) specify the date on which the discharge was so delivered; and
- (b) bear written confirmation by the mortgagee of the discharge of the mortgage.

(6) After the registration of—

- (a) a covenant charge affecting a lease of a lot, the covenant chargee may give to the body corporate written notice which shall identify the lot and—
  - (i) specify the name of the covenant chargee in full, the address for service of notices on the covenant chargee and the date of registration of the covenant charge; and

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- (ii) specify any mortgages of the lot or other covenant charges affecting the lease of the lot which have priority over the covenant charge referred to in the notice; or
  - (b) a discharge of a covenant charge affecting a lease of a lot, the lessee of the lot may give to the body corporate written notice of the discharge which shall identify the lot and—
    - (i) specify the date of registration of the discharge; and
    - (ii) bear written confirmation by the covenant chargee of the discharge.
- (7) After the delivery by a mortgagee of a dealing, being a transfer or sub-mortgage of a mortgage of a lease of a lot, the transferee or sub-mortgagee may give to the body corporate written notice of the dealing which shall identify the lot and—
- (a) specify the name of the transferee or sub-mortgagee in full and the address for the service of notices on the transferee or sub-mortgagee and the date on which the transfer or sub-mortgage was so delivered; and
  - (b) bear written confirmation by the transferor or sub-mortgagor of the information contained in the notice.
- (8) After the entry into possession of a lot by a mortgagee or covenant chargee, the mortgagee or covenant chargee may give to the body corporate written notice which shall identify the lot and specify the date on which the mortgagee or covenant chargee entered into possession.
- (9) After granting a sublease of a lot or part of a lot, the sublessor may give to the body corporate written notice of the granting of the sublease which shall identify the lot, specify the name of the sublessee in full and the address for the service of notices on the sublessee and the address for the service of notices on the sublessor.
- (10) After the termination or assignment of any sublease of a lot or part of a lot, the sublessor may give to the body corporate written notice of the termination or assignment which shall identify the lot and the sublease that has been terminated or assigned and—
- (a) specify the date of the termination or assignment; and
  - (b) in the case of an assignment, specify the name of the assignee in full and the address for the service of notices on the assignee.

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(11) After a person has become entitled, otherwise than as a transferee, to be registered under the Real Property Act 1900 as the lessee of a lot, the person may give to the body corporate written notice, in the form of a statutory declaration, which shall identify the lot and specify—

- (a) by what right the lessee became entitled to a lease of the lot; and
- (b) the name of that person, in full, the address for the service of notices on that person and the date upon which that person became entitled to a lease of the lot.

(12) Where—

- (a) a body corporate believes that a person may or must, under this section, give a notice to it; and
- (b) the body corporate has not received that notice,

the body corporate may serve a notice on that person specifying the capacity in which it believes the person is entitled or required to give the notice and requiring the person—

- (c) to state, within 14 days, whether or not the person is entitled or required to give a notice in that capacity; and
- (d) if so, to give that notice.

(13) Where a body corporate has served a notice under subsection (12) on a person whom it believes to be a person entitled or required to give a notice to the body corporate under this section and that person has not complied with the firstmentioned notice, that person is not entitled to cast a vote at any meeting of the body corporate until after compliance with the firstmentioned notice.

(14) A vote cast at a meeting of the body corporate by or on behalf of a corporation has no effect unless the body corporate has been given notice in writing specifying the company nominee of the corporation.

(15) A notice referred to in subsection (12) may be included in any other notice that the corporation to which it relates or any other person is entitled under this section to give to the body corporate.

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DIVISION 5—*Insurance***Interpretation (1973 Act, s. 82)**

**114. (1)** In this Division—

“building” includes—

- (a) lessees’ improvements and lessees’ fixtures forming part of the building, other than paint, wallpaper and temporary wall, floor and ceiling coverings;
- (b) a building consisting entirely of common property; and
- (c) anything prescribed as forming part of a building for the purposes of this definition.

but does not include—

- (d) fixtures removable by a sublessee of a lot at the expiration of a tenancy; or
- (e) anything prescribed as not forming part of a building for the purposes of this definition;

“damage policy”, in relation to a building, means a contract of insurance providing, in the event of the building being destroyed or damaged by fire, lightning, explosion or any other occurrence specified in the policy—

(a) for—

- (i) the rebuilding of the building or its replacement by a similar building in the event of its destruction; and
- (ii) the repair of damage to, or the restoration of the damaged portion of, the building in the event of its being damaged but not destroyed.

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

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

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(2) A damage policy may provide that, instead of the work and the payments specified in the definition of "damage policy" in subsection (1) being carried out or made upon the occurrence of any of the events specified in that definition, the liability of the insurer shall, upon the occurrence of any such event, be limited to an amount specified in the policy that is not less than an amount calculated in the prescribed manner.

**Insurance of buildings (1973 Act, s. 83)**

115. (1) Where the parcel the subject of a leasehold strata scheme is not a stratum parcel, the body corporate shall insure the building and keep the building insured under a damage policy with an approved insurer in the joint names of the body corporate and the lessor.

Penalty: \$500.

(2) Where the parcel the subject of a leasehold strata scheme is a stratum parcel—

- (a) the body corporate and any other lessee of part of the building, not being a lot or common property subject to the scheme; and
- (b) the lessor under the scheme and any other person holding a fee simple estate in part of the building.

shall insure the building and keep the building insured under a damage policy effected with an approved insurer in their joint names.

Penalty: \$500.

(3) In any proceedings for an offence under subsection (2), it is a defence to establish that the defendant was willing to join in the insurance of a building under a damage policy but that the policy could not be effected because another person specified in that subsection was unwilling to join in the application for that policy.

(4) The cost of a premium for a damage policy in respect of a building referred to in subsection (2) shall be apportioned in accordance with the regulations.

(5) Any person required by this section to insure a building may make an application in writing to the Commissioner for an order under subsection (7).

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**(6)** A body corporate may make an application under subsection (5) only pursuant to a unanimous resolution.

**(7)** If on considering an application made under subsection (5) the Commissioner is of the opinion that compliance with the provisions of subsection (1) or (2) is unnecessary or impracticable, the Commissioner may, subject to subsections (9) and (10), by order in writing—

- (a) exempt the applicant from compliance with those provisions absolutely; or
- (b) with the consent in writing of the applicant, exempt the applicant from compliance with those provisions subject to a condition that the applicant effects such insurance in respect of the building concerned as may be specified in the order.

**(8)** A consent referred to in subsection (7) (b) may be given by a body corporate only pursuant to a unanimous resolution.

**(9)** The Commissioner shall not make an order under subsection (7) in relation to a building which is, or part of which is, the subject of a leasehold strata scheme unless the lessor under the scheme and any other person who is or would be required to insure the building—

- (a) has consented in writing to the making of the order; or
- (b) has, before the making of the order, been given an opportunity to make representations to the Commissioner with respect to the application for the order.

**(10)** Where a body corporate is required by a positive covenant to insure the building, an order shall not be made under subsection (7) until—

- (a) at least 21 days after the Commissioner has served notice on the authority having the benefit of the covenant of the intention to make the order; and
- (b) the Commissioner has considered any representations made during those 21 days to the Commissioner by the authority with respect to the intended order.

**(11)** A person to whom an exemption has been granted under subsection (7) is not under a duty to comply with subsection (1) or (2), as the case may be, but, if the exemption was granted subject to a condition referred to in subsection (7) (b), is under the duty, if in breach of that condition.

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(12) If a person fails to comply with a requirement under subsection (2) to insure or keep insured a building, any other person who has an obligation to comply with that requirement may either—

- (a) apply to the Board for an order directing the person failing to comply to join that other person in effecting a damage policy in respect of the building; or
- (b) effect a damage policy in respect of the building in the joint names and, in a court of competent jurisdiction, recover as a debt from the person failing to comply the appropriate portion, if any, of the amount of the premium for which that person is liable in accordance with the regulations.

**Further insurance by body corporate (1973 Act, s. 84)**

**116. (1)** In addition to insurance effected (whether jointly or not) by a body corporate pursuant to section 115, the body corporate shall effect insurance—

- (a) in respect of any occurrence against which it is required by law to insure, including any insurance required to be effected by reason of the provisions of the Workers' Compensation Act 1926;
- (b) in respect of damage to property, death or bodily injury for which the body corporate could become liable in damages;
- (c) against the possibility of the lessees becoming jointly liable by reason of a claim arising in respect of any other occurrence against which the body corporate, pursuant to a special resolution, decides to insure; and
- (d) of any other class prescribed for the purposes of this subsection.

Penalty: \$500.

(2) Insurance effected pursuant to subsection (1) shall be so effected with an approved insurer and shall be for a cover of not less than the prescribed amount or an amount calculated or determined in the prescribed manner.

(3) The body corporate may insure any property which it is not required to insure pursuant to this Division and in which it has an insurable interest.

(4) A lessee may bring against the body corporate of which the lessee is a member any action that the lessee might have brought against the body corporate if the lessee had not been a member of the body corporate.

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(5) Where an insurer of a body corporate admits a claim by the body corporate based on an act or omission by a lessee who is a member of the body corporate, the insurer has no right of subrogation in relation to the lessee based on the act or omission unless it is proved that the act or omission was wilful.

**Insurance by lessee (1973 Act, s. 85)**

117. (1) Nothing in this Division limits any right of a lessee to effect insurance.

(2) Insurance effected by a lessee does not affect, and shall not be taken into consideration in determining, the amount payable to a body corporate under a contract of insurance entered into between it and an insurer pursuant to this Division, notwithstanding anything contained in that contract of insurance.

**Insurance of mortgaged lot (1973 Act, s. 86)**

118. (1) A contract of insurance may be entered into by a lessee of a lot in respect of damage to the lot in a sum equal to the amount secured at the date of the contract by mortgages of and any covenant charges affecting the lease of the lot and, where such a contract is in force—

- (a) subject to the terms and conditions of the contract—
  - (i) any payment to be made under that contract by the insurer in respect of damage shall be made to the mortgagees and any covenant chargees whose interests are noted thereon in order of their respective priorities; and
  - (ii) the amount of the payment shall be the amount stated in the contract, the amount of the loss, or an amount sufficient, at the date of the loss, to discharge mortgages of and covenant charges affecting the lease of the lot, whichever is the least amount;
- (b) where the amount so paid by the insurer equals the amount necessary to discharge a mortgage of the lease of the lot, the insurer shall be entitled to an assignment of that mortgage; and
- (c) where the amount so paid by the insurer is less than the amount necessary to discharge a mortgage of the lease of the lot, the insurer shall be entitled to a sub-mortgage of that mortgage to secure the amount so paid on terms and conditions agreed upon as provided in subsection (2) or, failing agreement, on the same terms and conditions as those contained in the mortgage.

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(2) For the purposes of subsection (1) (c), any insurer and mortgagee may at any time, whether before or after a contract of insurance referred to in subsection (1) has been entered into by a lessee, agree upon the terms and conditions of the sub-mortgage.

(3) A contract of insurance entered into as referred to in subsection (1) shall not be liable to be brought into contribution with any other such contract of insurance except another such contract of insurance which—

- (a) is in respect of damage to the same lot; and
- (b) relates to the same debt,

as that referred to in the contract of insurance firstmentioned in this subsection.

**Rebuilding (1973 Act, s. 87)**

119. Subject to any order made under section 79 or 80, where a person receives under a damage policy a payment of money from an insurer in respect of the destruction of, or damage to, a building or a part of a building, that is the subject of a leasehold strata scheme, that person shall forthwith apply that money in rebuilding, replacing, repairing or restoring that building or part, as the case requires.

**Insurable interest of body corporate (1973 Act, s. 88)**

120. (1) The body corporate, the lessees and the lessor under the leasehold strata scheme concerned shall each be deemed to have an insurable interest in the subject-matter of any contract of insurance entered into by them pursuant to this Division.

(2) This section applies notwithstanding the provisions of section 23 of the Imperial Acts Application Act 1969 or any other law relating to insurance.

*DIVISION 6—Rating and taxation***Rates and taxes (1973 Act, s. 89)**

121. In this Division—

“appropriate valuing Act”, in relation to a parcel, means—

- (a) where the Valuer-General is the valuing authority in respect of the parcel—the Valuation of Land Act 1916;

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- (b) where the Metropolitan Water Sewerage and Drainage Board is the valuing authority in respect of the parcel—the Metropolitan Water, Sewerage, and Drainage Act 1924;
- (c) where the Hunter District Water Board is the valuing authority in respect of the parcel—the Hunter District Water, Sewerage and Drainage Act 1938;
- (d) where the Broken Hill Water Board is the valuing authority in respect of the parcel—the Broken Hill Water and Sewerage Act 1938; and
- (e) where the Western Lands Commissioner is the valuing authority in respect of the parcel—the Land Tax Management Act 1956;

“area” has the meaning ascribed thereto in the Local Government Act 1919;

“rating authority” means an authority empowered to make and levy rates on land;

“value”, in relation to a parcel or a lot, means land value, improved value, improved capital value or assessed annual value, as the case may be;

“valuing authority” means the Valuer-General, and includes—

- (a) the Metropolitan Water Sewerage and Drainage Board, the Hunter District Water Board or the Broken Hill Water Board, for the purposes of rates levied by it on a valuation of a lot made by it pursuant to the Act under which it was constituted; or
- (b) the Western Lands Commissioner, for the purposes of land tax levied on a valuation of a lot made by that Commissioner.

**Valuation of parcel (1973 Act, s. 90)**

**122. (1)** Where a valuing authority causes a parcel to be valued under and subject to the appropriate valuing Act, the parcel shall, notwithstanding the provisions of that or any other Act, be valued as a single parcel of land and as if it were owned by a single owner and, for the purposes of any such valuation and all purposes incidental thereto (including objection to a valuation) but not otherwise, the parcel and all improvements thereon shall be deemed to be owned by the body corporate and by no other person.

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(2) During the period from the registration of a strata plan and until a valuation of the parcel showing the body corporate as owner becomes effective for rating and taxing purposes the valuation in force during that period shall be deemed to be a valuation of the parcel made by the valuing authority as if the body corporate were shown thereon as owner.

(3) A valuing authority is not, for the purposes of the making, levying, imposition, assessment or recovery of rates or taxes referred to in this Division, required to make separate valuations of any parts of a parcel otherwise than as if the parcel were owned by a single owner.

**Particulars of unit entitlements furnished to rating or taxing authority to be conclusive (1973 Act, s. 91)**

123. For all purposes in relation to the making, levying, imposition, assessment or recovery of rates or taxes referred to in this Division in relation to the parcel or any part thereof, the particulars of the unit entitlements of the lots the subject of a leasehold strata scheme shown on any copy of a schedule last furnished to a rating authority and the Chief Commissioner of Land Tax under section 78 (3) shall be conclusive evidence of those particulars.

**Rating of lots (1973 Act, s. 92)**

124. (1) A reference in this section to a ratable parcel, or a ratable part of a parcel, in relation to any rate, is a reference respectively to a parcel or a part of a parcel that is ratable as to that rate or would be so ratable but for any exemption or concession applicable to any portion of that parcel or part, as the case may be (not being, in the case of a rate for water, sewerage or drainage services, an exemption or concession applicable to that portion by reason of its situation in relation to any such services).

(2) A rate on a ratable parcel or a ratable part of a parcel shall not be made or levied on the body corporate but, subject to this section, shall (if the rate is not made or levied in respect of the lessor under the scheme concerned) be made and levied in respect of each lot comprised in the parcel as if—

- (a) the lessee of each such lot were the owner in fee simple in possession of the lot and it were a separate parcel of land having a value equal to the appropriate value apportioned to it under paragraph (c);
- (b) that lessee were, subject to any exemptions or concessions that may be applicable to the lessee or to the lessee's lot, liable for any rate made and levied by the rating authority on the owners of land; and

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- (c) the value of any such lot were an amount that bears to the corresponding value ascertained in accordance with section 122 of the ratable parcel or the ratable part of the parcel, as the case may be (after deducting therefrom any allowance applicable under section 58 or 58A of the Valuation of Land Act 1916) the same proportion as the unit entitlement of that lot bears to the aggregate unit entitlement.

(3) Where part only of a lot is ratable for any rate, the rate in respect of that lot shall be made and levied on the ratable part as if the value of that part were an amount that bears to the appropriate value of the lot, as ascertained under subsection (2) (c), the same proportion as the rental value of the ratable part bears to the rental value of the lot.

**Charges for water, sewerage or drainage services (1973 Act, s. 93)**

125. Charges or fees for water, sewerage or drainage services rendered in respect of a parcel or part of a parcel (otherwise than exclusively for the use and benefit of a particular lot) shall be calculated as if any rates payable in respect of the lots comprised in that parcel were payable by the body corporate as the ratable person in respect of the parcel and shall be payable by the body corporate.

**Certain lots not ratable (1973 Act, s. 94)**

126. Where—

- (a) a strata plan of subdivision has been registered; or  
 (b) a plan has been registered in the office of the Registrar-General under the Conveyancing Act 1919,

for the purpose of effecting a resumption as referred to in Division 6 of Part 2, a rate shall not be made or levied on—

- (c) a lot in that strata plan of subdivision; or  
 (d) a lot in the plan so registered,

unless that resumption has been effected, but nothing in this section prevents a rate from being made or levied on land of which such a lot forms part.

**Land tax (1973 Act, s. 95)**

127. (1) In this section, "land tax year" means any period of 12 months in respect of which land tax is leviable and payable under the Land Tax Act 1956 and the Land Tax Management Act 1956.

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(2) For the purpose of assessing and levying land tax under the Land Tax Act 1956 and the Land Tax Management Act 1956 in respect of any land tax year, a reference in this section to—

(a) a residential lot is a reference to—

- (i) a lot designed and intended for occupation or use for the purposes of residence;
- (ii) a lot designed and intended for occupation or use for the purpose of accommodating not more than 2 motor vehicles in conjunction with the occupation or use of a lot referred to in subparagraph (i); and
- (iii) a lot designed and intended for occupation or use for both of the purposes referred to in subparagraphs (i) and (ii),

which lot has not at any time during the next preceding land tax year been occupied or used otherwise than as referred to in subparagraph (i), (ii) or (iii); and

(b) a non-residential lot is a reference to a lot other than a lot referred to in paragraph (a).

(3) Land tax is not leviable or payable in respect of a parcel or any part thereof except in accordance with this section.

(4) The Chief Commissioner of Land Tax may require the lessee of a lot or any person who occupied or used a lot during any land tax year to furnish to the Chief Commissioner within the time and in the manner specified in the requirement a statutory declaration specifying particulars as to the purposes for which the lot was occupied or used by that lessee or person during that year and the periods during which it was occupied or used.

(5) Any person who fails to furnish particulars in accordance with the requirements of subsection (4) shall, for the purposes of the Land Tax Management Act 1956, be deemed to have failed or neglected duly to furnish information as and when required by the Chief Commissioner under that Act and to have committed a breach of that Act.

(6) Land tax shall be levied and paid—

- (a) subject to subsection (7) but otherwise under and in accordance with the Land Tax Act 1956 and the Land Tax Management Act 1956, in respect of each residential lot comprised in a parcel;

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- (b) subject to subsection (7) and this paragraph but otherwise under and in accordance with the Land Tax Act 1956 and the Land Tax Management Act 1956, in respect of each non-residential lot comprised in a parcel (other than a lot referred to in paragraph (c)) in an amount which bears to the land tax that would be payable in respect of the parcel if the parcel were the only land owned by one person the same proportion as the adjusted value of that lot bears to the adjusted value of that parcel; and
- (c) subject to subsection (7) but otherwise under and in accordance with the Land Tax Act 1956 and the Land Tax Management Act 1956, in respect of each non-residential lot—
  - (i) of which the lessee is a non-concessional company within the meaning of those Acts; or
  - (ii) that is subject to a special trust within the meaning of those Acts,

and, in each case, as if the lessee of the lot were the owner of the lot.

(7) For the purposes of subsection (6), the adjusted value of a lot, whether residential or non-residential, comprised in a parcel is an amount that bears to the adjusted value (within the meaning of section 3 (1) of the Land Tax Management Act 1956) of that parcel the same proportion as the unit entitlement of that lot bears to the aggregate unit entitlement.

(8) Nothing in subsection (6) precludes the lessee of a non-residential lot from being in addition separately assessed and liable in respect of—

- (a) the lessee's individual interest in the lot, together with any other land owned by the lessee in severalty; and
- (b) the lessee's individual interests in any other land,

under and in accordance with the Land Tax Act 1956 and the Land Tax Management Act 1956.

(9) For the purposes of section 33 of the Land Tax Management Act 1956—

- (a) the taxpayer, in respect of the assessment referred to in subsection (8), shall be deemed to be a secondary taxpayer;
- (b) the taxpayer, in respect of liability under subsection (6) (b) in relation to a non-residential lot, shall be deemed to be a primary taxpayer; and

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(c) there shall be deducted from the land tax payable by the secondary taxpayer such amount (if any) as is necessary to prevent double taxation.

(10) A calculation of the land tax payable upon a non-residential lot under subsection (6) (b) shall be deemed to be an assessment within the meaning of section 14 of the Land Tax Management Act 1956.

**Certain valuations of interests in parcel not to be used for purposes of this Division (1973 Act, s. 96)**

128. Where a parcel is situated in an area or part of an area in respect of which area or part the Valuer-General has furnished a valuation list to the local council in accordance with the Valuation of Land Act 1916, nothing in this Division prevents the Valuer-General from making and entering on the valuation roll a valuation of any estate or interest in the parcel and the improvements thereon, but the valuation shall not be included in a valuation list or supplementary list and shall not be used for any purpose of this Division.

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PART 5

## DISPUTES

DIVISION 1—*Applications for orders***Commissioner may inspect certain records (1973 Act, s. 99)**

129. (1) Where application is made for an order under this Part in relation to a leasehold strata scheme, the body corporate for the scheme has, in relation to the Commissioner, the same duties under section 100 (1) and (2) as it has under that section in relation to a lessee who is subject to the scheme.

(2) A body corporate shall not neglect or fail to perform any duty owed by it to the Commissioner under subsection (1).

Penalty: \$500.

**Applications for orders to be made to Commissioner (1973 Act, s. 100)**

**130. (1)** Application for an order under this Part shall be made to the Commissioner in writing specifying the grounds on which it is made, shall specify the order sought and shall be accompanied by the fee prescribed in respect of the application and the prescribed deposit, if any.

**(2)** The Commissioner may refer to a Board any application made for an order under Division 2 if the Commissioner is of the opinion—

- (a)** that the application raises matters of legal complexity;
- (b)** that the importance of the subject-matter of the application or the possibility of the frequent recurrence of like applications warrants its reference to a Board; or
- (c)** that for any other reason it should properly be referred to a Board.

**(3)** The Commissioner shall refer to a Board any application made for an order under Division 3.

**(4)** The Board to which, pursuant to this section, the Commissioner is required or entitled to refer an application for an order under this Part is the Board that, in the opinion of the Commissioner, is situated nearest to the parcel that is subject to the leasehold strata scheme in respect of which the order is sought.

**(5)** Nothing in this section shall be construed as conferring on an applicant for an order under Division 2 any right to have an application referred to a Board.

**Procedure after Commissioner receives application (1973 Act, s. 101)**

**131. (1)** Subject to subsection (3), after receipt of an application for an order under this Part, the Commissioner—

- (a)** may require the applicant to provide the Commissioner with such further information in relation to the application as, in the Commissioner's opinion, may assist the investigation of the application;
- (b)** may refuse to proceed with the application until a requirement made pursuant to paragraph (a) has been complied with;

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- (c) shall give written notice of the application to the body corporate for the leasehold strata scheme to which the application relates, to the lessor under the scheme and to any other person, not being the applicant, who, in the Commissioner's opinion, would be affected if the order sought were made;
  - (d) shall, in a notice referred to in paragraph (c), specify the order sought and invite the body corporate and any member thereof, the lessor under the scheme and any other person to whom the notice is given to make to the Commissioner, within a time specified in the notice, or within a longer time specified in any further notice given by the Commissioner to the body corporate, that lessor and each of the persons to whom the notice referred to in paragraph (c) was given (which further notice the Commissioner is hereby authorised to give), a written submission in respect of the matter to which the application relates;
  - (e) may make such other investigations with respect to the application as the Commissioner thinks fit, including investigations requested by a Board; and
  - (f) may enter upon any lot the subject of the leasehold strata scheme concerned for the purpose of carrying out any investigation with respect to the application at any reasonable time on notice given to any occupier of that lot and may enter upon the common property.
- (2) A person shall not obstruct or hinder the Commissioner or a delegate of the Commissioner in the exercise of his or her powers under subsection (1) (e) or (f).

Penalty: \$500.

- (3) The Commissioner may, without being obliged to comply with subsection (1) (c) or (d) and notwithstanding that a time specified under subsection (1) (d) may not have expired, by order dismiss an application for an order under this Part if—
- (a) the application is frivolous, vexatious, misconceived or lacking in substance;
  - (b) a decision in favour of the applicant is not within the jurisdiction of the Commissioner; or
  - (c) the applicant has unreasonably delayed complying with a requirement under subsection (1) (a).

**Reference of application to Board (1973 Act, s. 102)**

**132. (1)** Where the Commissioner proposes, or is required, to refer an application to a Board, the Commissioner shall, after the expiration of the time limited for the making of written submissions with respect to the application and whether or not the Commissioner has made an order under section 135 (2) pursuant to a request stated in the application, forward to the Board determined by the Commissioner under section 130 (4)—

- (a) the application;
- (b) a copy of the notice given under section 131 (1) (c) or of each such notice and a copy of any further notice given under section 131 (1) (d);
- (c) a list of the names and addresses of the persons to whom the notice or notices was or were given;
- (d) any further information provided by the applicant under section 131 (1) (a);
- (e) any written submissions received by the Commissioner with respect to the application;
- (f) a written report on any investigations made by the Commissioner under section 131 (1) (e) with respect to the application;
- (g) a copy of any order made by the Commissioner under section 135 (2) pursuant to a request stated in the application and of any further request made to the Commissioner by the applicant to renew that order, if any; and
- (h) the notices referred to in subsection (2).

**(2)** The notices that the Commissioner is required by subsection (1) (h) to forward are notices that—

- (a) are addressed to—
  - (i) the applicant for the order;
  - (ii) each person who made written submissions to the Commissioner in respect of the matter to which the application relates;
  - (iii) the body corporate for the leasehold strata scheme concerned; and
  - (iv) the lessor under the scheme; and

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- (b) state that the matter to which the application relates will be heard by a specified Board.
- (3) The clerk of a Board to which documents are forwarded under subsection (1) shall—
- (a) complete the notices referred to in subsection (1) (h) by specifying therein—
    - (i) the place at which the Board specified in the notices is to determine the matter to which the documents relate; and
    - (ii) a time and day for the determination of that matter; and
  - (b) send each notice by posting it by prepaid registered post or by prepaid certified mail to the addressee thereof so that it would, in the ordinary course of post, be received by the addressee not less than 7 days before the day specified in the notice pursuant to paragraph (a) (ii).

**Body corporate to display and give certain notices (1973 Act, s. 103)**

133. A body corporate given a notice under section 131 (1) (c) or (d) shall—
- (a) forthwith cause the notice or a copy thereof to be prominently displayed on the notice board maintained under the by-laws on some part of the common property;
  - (b) keep the notice so displayed until the expiration of the time limited by the notice for the making of submissions; and
  - (c) forthwith serve a copy of the notice on each person whose name appears on its strata roll.

*DIVISION 2—Orders by Commissioner***Orders under this Division generally (1973 Act, s. 104)**

134. (1) The Commissioner shall not make an order under this Division, other than an order under section 135 (2), until after—
- (a) the expiration of the time specified in the notice given under section 131 (1) (c); or
  - (b) where a further notice has been given under section 131 (1) (d)—the expiration of the longer time specified in that notice,

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for the making of written submissions with respect to the application seeking the order.

(2) An order made under this Division may include such ancillary or consequential provisions as the Commissioner thinks fit.

(3) For the purposes of this Division, the Commissioner may order a body corporate, a managing agent, a lessee, any person having an estate or interest in a lot or an occupier of a lot to do, or to refrain from doing, a specified act with respect to a leasehold strata scheme.

(4) The Commissioner may, by order, dismiss an application for an order under this Division.

(5) The Commissioner may not, in connection with an application for an order under this Division, make any order for the payment of costs.

(6) Subject to subsection (7) and section 135 (5), an order made by the Commissioner shall not be capable of being varied or revoked by the Commissioner but this subsection does not prevent a subsequent order being made under this Division.

(7) Subsection (6) does not operate to prevent the Commissioner from varying an order for the purpose of correcting or clarifying it or extending a time and the order as so varied shall be deemed to be the order instead of the original order.

(8) Except to the extent that the order otherwise provides, an order under this Division (not being an order for payment of damages referred to in section 136 (2)) ceases to have any force or effect upon the expiration of the period of 2 years that next succeeds the making of the order.

(9) Notwithstanding section 89, where an order against a body corporate is made under this Division on the application of the lessee of a lot, the body corporate may not levy in respect of that lot a contribution towards the expenses of the body corporate in relation to the application.

**Interim orders (1973 Act, s. 104A)**

**135. (1)** In this section, "interim order" means an order made under subsection (2).

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(2) Where an applicant for an order under this Division states in the application that the applicant requests an interim order, the Commissioner may, if the Commissioner is satisfied on reasonable grounds that, by reason of the urgent circumstances of the case, the Commissioner should do so—

- (a) make, under this subsection, any order that may be made under this Division with respect to the application; and
- (b) before the expiration of 3 months from the date on which it takes effect and upon a further request made by the applicant, renew an interim order that is in force by serving notice in accordance with section 151 that the order is renewed.

(3) An interim order may be made or renewed notwithstanding—

- (a) that the Commissioner is of the opinion that the application in which the interim order is requested should be referred to a Board under section 130 (2);
- (b) that any function of the Commissioner under section 131 (1) has not been exercised with respect to the application;
- (c) where the Commissioner has given written notice of the application under section 131 (1) (c), that any time specified under section 131 (1) (d) in that or any further notice has not expired; or
- (d) that any right conferred on the applicant or any other person by section 172 has not been exercised with respect to the application.

(4) An interim order made pursuant to an application for an order under this Division ceases to have effect—

- (a) at the expiration of 3 months from the date on which it takes effect or, where the Commissioner has renewed the interim order, at the expiration of 6 months from that date;
- (b) where the interim order is revoked by a Board under section 166 (1) (c) or by the Commissioner under subsection (5), when it is so revoked; or
- (c) where—
  - (i) a Board, pursuant to section 154 (1), or the Commissioner makes an order under this Division with respect to the application; or
  - (ii) a Board or the Commissioner dismisses the application.

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before the interim order ceases to have effect under paragraph (a) or (b)—when the order is made under this Division or the application is dismissed, as the case may be.

(5) The Commissioner may revoke an interim order and, if the Commissioner does so, the Commissioner shall serve notice in accordance with section 151 that the order has been revoked.

(6) A person shall not in, or in connection with, a request for an interim order or for the renewal of any such order, make a statement knowing it is false or misleading in a material respect.

Penalty—subsection (6): \$500.

**General powers of Commissioner to make orders (1973 Act, s. 105)**

**136. (1)** Except in the case of a dispute or complaint to be settled or rectified by an order under Division 3, the Commissioner may, pursuant to an application made by a body corporate, a managing agent, the lessor under the scheme, the lessee or an occupier of a lot or any other person who has any other estate or interest in a lot subject to a leasehold strata scheme or, in the case of any such scheme the subject of which is a stratum parcel, any person who has the benefit of an easement over, or who has the burden of an easement in favour of, that parcel or any part of it, make an order for or with respect to—

- (a) the settlement of a dispute; or
- (b) the rectification of a complaint,

with respect to the exercise of, or the failure to exercise, a function conferred or imposed by this Act or the by-laws relating to the scheme, or arising from or relating to the operation or application of a provision of a lease of a lot, or the common property, under the scheme, being an order imposing obligations on—

- (c) any person entitled to make an application under this subsection; or
- (d) the chairperson, secretary or treasurer of the body corporate or the council.

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(2) Where a dispute or complaint arises from or relates to the operation or application of a provision of a lease of a lot, or of the common property, that is comprised in a leasehold strata scheme and—

- (a) the lessor under the scheme has made an application under subsection (1) for or in connection with the settlement of the dispute, or the rectification of the complaint; or
- (b) that lessor has commenced any other proceedings for or in connection with the settlement of the dispute, or the rectification of the complaint,

then that lessor shall not—

- (c) where paragraph (a) applies, commence any other proceedings; or
- (d) where paragraph (b) applies,

make an application under subsection (1), for or in connection with the settlement of the dispute, or the rectification of the complaint.

(3) An order made by the Commissioner under subsection (1) may be an order for, or an order that includes provision for, the payment by a person to another person of damages not exceeding \$500.

(4) Where, pursuant to subsection (3), damages are ordered to be paid, the order operates, and may be entered up, as a judgment for the amount of the damages under the Local Courts (Civil Claims) Act 1970 against the person ordered to pay the damages and in favour of the person to whom the damages are ordered to be paid.

(5) For the purposes of this Division, where a body corporate has a discretion as to whether or not it exercises a function conferred or imposed on it by this Act or the by-laws, it shall be deemed to have refused or failed to exercise that function only if it has decided not to exercise that function.

(6) For the purposes of subsection (5), where—

- (a) application is made to a body corporate to exercise a discretion referred to in that subsection; and
- (b) the body corporate does not, before the expiration of the period of 2 months that next succeeds the making of the application—
  - (i) exercise a function in accordance with the application; or

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

the body corporate shall be deemed to have decided not to exercise the function.

(7) Nothing in subsection (1) empowers the Commissioner to make an order under that subsection for the settlement of a dispute, or the rectification of a complaint, with respect to the exercise of, or the failure to exercise, a function conferred or imposed on the body corporate by this Act or the by-laws where that function may, in accordance with any provision of this Act or the by-laws, be exercised only pursuant to a unanimous resolution or a special resolution.

(8) Nothing in this Division authorises the Commissioner to make an order—

- (a) of the kind that may be made by the Supreme Court under section 61, 79, 80 or 97;
- (b) of the kind that may be made under section 124 of the Environmental Planning and Assessment Act 1979 in relation to a condition referred to in section 41 (2) (b); or
- (c) for the settlement of a dispute, or the rectification of a complaint, arising out of the agreement referred to in section 47 (1).

(9) Nothing in this Division affects the generality of subsection (1), but an order in respect of any matter dealt with in any other section of this Division shall not be made under this section.

**Applications for legal assistance (1973 Act, s. 28N)**

**137. (1)** In relation to a leasehold strata scheme, the lessee of a lot (not being also the lessor under the scheme) or the body corporate as the lessee of the common property may apply in writing to the Commissioner for assistance in connection with the institution or defence of legal proceedings before any court or tribunal in relation to any matter arising from or connected with the operation or application of a provision of the lease of that lot or common property.

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(2) After receipt of an application under subsection (1), the Commissioner—

- (a) may require the applicant to provide the Commissioner with such further information in relation to the application as, in the opinion of the Commissioner, may assist the investigation of the application;
- (b) may refuse to proceed with the application until a requirement made by the Commissioner pursuant to paragraph (a) has been complied with; or
- (c) shall determine whether to proceed with an investigation of the application or, having proceeded with such an investigation, whether to discontinue the investigation.

(3) In making a determination under subsection (2) (c), the Commissioner—

- (a) shall have regard to whether, in the opinion of the Commissioner—
  - (i) the application is frivolous, vexatious, misconceived or lacking in substance;
  - (ii) the applicant has unreasonably delayed complying with a requirement under subsection (2) (a); or
  - (iii) the applicant has an alternative and better means of redress; and
- (b) may have regard to such other matters as the Commissioner considers to be appropriate.

(4) Where the Commissioner decides to proceed with an investigation of an application under subsection (1), the Commissioner shall—

- (a) inform the applicant of the decision;
- (b) inform the lessor of the decision and of the subject-matter of the investigation; and
- (c) invite the lessor to make within a specified period a written submission with respect to that subject-matter.

(5) Where the Commissioner decides not to proceed with an investigation of an application under subsection (1) or decides to discontinue such an investigation, the Commissioner shall so inform the applicant and, if in the case of a discontinuance the lessor was notified under subsection (4) of the decision to proceed with the investigation, the lessor.

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(6) For the purpose of investigating an application under subsection (1), the Commissioner, or a delegate of the Commissioner, may enter on the lot concerned at any reasonable time on notice given to the occupier of that lot and may at any time enter on the common property.

(7) A person shall not obstruct or hinder the Commissioner, or the delegate of the Commissioner, in the exercise of the powers conferred by subsection (6).

Penalty: \$500.

(8) On completion of an investigation under this section by the Commissioner or a delegate of the Commissioner, the Commissioner shall report to the Commissioner for Consumer Affairs on the results of the investigation.

**Grant of legal assistance (1973 Act, s. 280)**

**138.** (1) Division 3A (sections 16G and 16J (6) excepted) of Part II of the Consumer Protection Act 1969 applies to and in respect of an application under section 137 (1) in the same way as it applies to and in respect of an application under section 16G of that Act.

(2) Whether or not an investigation of an application under section 137 (1) has been completed, the Commissioner may, with the consent of the Minister administering the Consumer Protection Act 1969, seek an injunction in the Supreme Court in relation to the subject-matter of the application, and an injunction may be granted without any undertaking being given by the Commissioner as to damages.

(3) For the purposes of subsection (1), an injunction sought under subsection (2) shall be deemed to have been sought by the person who made the application under section 137 (1) in relation to which the injunction is sought, and that person shall be deemed to be an assisted person under Division 3A of Part II of the Consumer Protection Act 1969.

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**Order with respect to certain consents affecting common property (1973 Act, s. 106)**

139. Where, pursuant to an application by the lessor under the scheme or a lessee for an order under this section, the Commissioner considers that the body corporate for the leasehold strata scheme to which the application relates has unreasonably refused to consent to a proposal by the lessor or that lessee—

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

the Commissioner may make an order that the body corporate consent to the proposal.

**Order consequent upon alteration of building (1973 Act, s. 107)**

140. The Commissioner may, pursuant to an application for an order under this section made by the body corporate for the leasehold strata scheme to which the application relates, the lessor under the scheme or a lessee, make an order directing any lessee who has failed or neglected to comply with the provisions of section 17 (1) to lodge in the office of the Registrar-General within such time as may be specified in the order the plan and certificate referred to in section 17 (1).

**Order with respect to acquisition of personal property (1973 Act, s. 108)**

141. Where, pursuant to an application by a lessee for an order under this section, the Commissioner considers that an acquisition or a proposed acquisition, by the body corporate for the leasehold strata scheme to which the application relates, of personal property is unreasonable, the Commissioner may order—

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

**Order to acquire personal property (1973 Act, s. 109)**

142. Where, pursuant to an application by a lessee for an order under this section, the Commissioner considers that the body corporate for the leasehold strata scheme to which the application relates has unreasonably refused to acquire personal property, the Commissioner may order the body corporate to acquire the personal property.

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**Order to make or pursue insurance claim (1973 Act, s. 109A)**

143. Where, pursuant to an application by a lessee for an order under this section, the Commissioner considers that the body corporate for the leasehold strata scheme to which the application relates has unreasonably refused to make or pursue an insurance claim in respect of damage to the building or any other property insured by the body corporate under Division 5 of Part 4, the Commissioner may order the body corporate to make or pursue the claim.

**Order varying certain rates of interest (1973 Act, s. 110)**

144. Where, pursuant to an application by a lessee for an order under this section, the Commissioner considers that the body corporate for the leasehold strata scheme to which the application relates has determined an unreasonable rate as the rate of interest chargeable for the late payment of a contribution levied under section 89, the Commissioner may, in respect of such contributions as are specified in the order, order that no interest be so chargeable or that the rate so chargeable be a rate specified by the Commissioner in the order instead of the rate so determined.

**Order to supply information or documents (1973 Act, s. 111)**

145. Where, pursuant to an application for an order under this section, the Commissioner considers that the body corporate for the leasehold strata scheme to which the application relates, or a managing agent for that scheme, or the chairperson, secretary or treasurer of that body corporate has wrongfully—

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

the Commissioner may order that body corporate, managing agent, chairperson, secretary or treasurer to supply or make available the information or to make so available the record or document, as the case may require, to the applicant.

*Strata Titles (Leasehold) 1986***Order relating to animal kept contrary to by-laws (1973 Act, s. 112)**

**146.** Where, pursuant to an application by a body corporate, a managing agent, the lessor under the scheme, a lessee, any person having an estate or interest in a lot or an occupier of a lot for an order under this section, the Commissioner considers that a person is keeping an animal on a lot or common property in contravention of the by-laws, the Commissioner may order that person to cause the animal to be removed from the parcel within a specified time, and thereafter to be kept away from the parcel, unless the keeping of the animal on the lot or common property, as the case may be, is subsequently authorised pursuant to the by-laws.

**Order relating to animal kept pursuant to by-laws (1973 Act, s. 113)**

**147.** Where, pursuant to an application by a body corporate, a managing agent, the lessor under the scheme, a lessee, any person having an estate or interest in a lot or an occupier of a lot for an order under this section, the Commissioner considers that an animal kept on a lot or the common property in accordance with the by-laws causes a nuisance or hazard to the lessee or an occupier of another lot or unreasonably interferes with the use and enjoyment of another lot or of the common property, the Commissioner may—

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

**Commissioner may make certain by-laws (1973 Act, s. 113A)**

**148. (1)** Where, pursuant to an application made by the lessor under the scheme or a lessee for an order under this section, the Commissioner considers that the body corporate has unreasonably refused to make a by-law under section 87 (7) with respect to any fixture or fitting to be attached to the common property, the Commissioner may—

- (a) by order, exercise the powers conferred on the body corporate under section 87 (7) with respect to the making of a by-law in relation to the fixture or fitting; and
- (b) include among the terms and conditions specified in the by-law terms and conditions relating to insurance of the fixture or fitting.

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(2) In making a by-law under subsection (1), the Commissioner shall specify in the order whether or not section 87 (8) is to apply to the by-law and section 87 (8) shall, or shall not, apply accordingly.

**Order confirming information for strata roll (1973 Act, s. 114)**

149. (1) Where a person fails to provide written confirmation of a notice under section 113 that is required to bear that confirmation and a body corporate, a managing agent, the lessor under the scheme, a lessee or any other person having or acquiring an estate or interest in a lot applies for an order under this section, the Commissioner may, subject to subsection (2), order the body corporate for the leasehold strata scheme concerned to enter the information in the notice in the strata roll notwithstanding that it does not bear that confirmation.

(2) In making an order under subsection (1) the Commissioner may amend in any manner the Commissioner thinks fit the information in the notice to which the order relates.

(3) The Commissioner shall dismiss an application for an order under this section if the Commissioner considers that the rights of any person would be prejudiced if the Commissioner makes the order.

(4) A copy of an order under subsection (1) served on a body corporate shall be deemed to be a notice given to the body corporate under section 113 and information entered on a strata roll pursuant to such an order shall be deemed to have been entered from a notice bearing written confirmation required by that section.

**Order enforcing positive covenant (1973 Act, s. 114A)**

150. (1) Where, pursuant to an application by an authority having the benefit of a positive covenant for an order under this section, the Commissioner considers that the body corporate for the leasehold strata scheme to which the application relates or any lessee has failed to comply with an obligation imposed by the covenant and relating to the maintenance, repair or insurance of the building, the Commissioner may order the body corporate or lessee to comply with that obligation.

(2) Where an authority has been refused an injunction under section 88H of the Conveyancing Act 1919, the Commissioner may not make an order under this section to the same effect as the injunction refused.

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**Copy of order to be served (1973 Act, s. 115)**

**151. (1)** An order by the Commissioner shall be made in writing and a copy thereof, certified by the Commissioner to be a true copy, shall be served by the Commissioner on

- (a) the body corporate for the leasehold strata scheme to which the order relates and the lessor under the scheme;
- (b) the applicant for the order;
- (c) any person who duly made a written submission to the Commissioner in connection with the application; and
- (d) any person against whom the order was sought and any other person who, by the order, is required to do, or to refrain from doing, a specified act.

**(2)** In subsection (1), "order" includes a variation of an order, an interim order and a renewal or revocation of an interim order.

*DIVISION 3—Orders by Boards***Board may not order costs (1973 Act, s. 116)**

**152. (1)** A Board may not, in making an order under this Division, make any order for the payment of costs.

**(2)** Notwithstanding section 89, where an order against a body corporate is made under this Division on the application of the lessee of a lot, the body corporate may not levy in respect of that lot a contribution towards the expenses of the body corporate in relation to the application.

**Variation or revocation of orders of Boards (1973 Act, s. 117)**

**153. (1)** An order made by a Board under this Division, except this section, may be varied or revoked by a subsequent order made by that or any other Board on an application made by the body corporate, the applicant for the firstmentioned order, any person who made a written submission with respect to the application for the firstmentioned order pursuant to the invitation in a notice given under section 131 (1) (c), the lessor under the scheme or any other person who is required by the firstmentioned order to do or refrain from doing a specified act.

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(2) An application under subsection (1) shall be made in writing, specifying the grounds on which it is made, shall specify the order sought and shall be accompanied by the prescribed fee and the prescribed deposit, if any.

(3) An application under subsection (1) shall be dealt with in all respects as if it were an application for an order under this Part required by section 130 (3) to be referred to a Board.

(4) An order made under subsection (1) has effect, and the provisions of this Act except subsection (1) apply to it, in all respects as if it were an order made under the provision of this Act under which the order which was varied or revoked was made.

**Board's jurisdiction to deal with applications referred by Commissioner (1973 Act, s. 118)**

**154. (1)** A Board to which, pursuant to section 130 (2), an application is referred shall have the same functions, other than under section 135, with respect to the application as the Commissioner would have had if the application had not been so referred in addition to the functions conferred on it by Division 5.

(2) An order made by a Board pursuant to an application referred to in subsection (1) has effect, and the provisions of this Act except section 165 apply to it in all respects, as if it were an order made under the provision of this Act under which the Commissioner could have made an order on that application if that application had not been referred to that Board.

**Order for reallocation of unit entitlements (1973 Act, s. 119)**

**155. (1)** Where, pursuant to an application by the lessor under the scheme, a lessee or a body corporate for an order under this section, a Board considers that the allocation of unit entitlements among the lots the subject of the leasehold scheme concerned was, at the time the strata plan was registered or at the time any strata plan of subdivision was registered, as the case may be, unreasonably made, having regard to the respective values of the lots at that time and, if a development statement is in force in relation to the scheme, such other matters as the Board considers to be relevant, the Board may make an order allocating unit entitlements among the lots in the manner specified in the order.

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(2) An application under subsection (1) shall be accompanied by a certificate specifying the valuation at the time of registration of the strata plan or, as the case may be, the strata plan of subdivision, of each of the lots to which the application relates, being a certificate given by the holder of a current certificate of registration under the Valuers Registration Act 1975 as a practising real estate valuer.

**Order revoking amendment of by-law or reviving repealed by-law (1973 Act, s. 120)**

**156. (1)** Where, pursuant to an application by any person entitled to vote at a meeting of the body corporate (including both a first mortgagee and a mortgagor of a lease of a lot) or the lessor under the leasehold strata scheme concerned for an order under this section, the Board considers that, having regard to the interests of all lessees in the use and enjoyment of their lots or the common property, an amendment or repeal of a by-law or addition of a new by-law should not have been made or given effect to, the Board may order that the amendment be revoked, that the repealed by-law be revived or that the new by-law be repealed.

(2) An order under subsection (1), when recorded under section 179, has effect, subject to any order with respect thereto made by a superior court, as if its terms were a by-law.

(3) When making an order under subsection (1) in respect of a by-law referred to in section 87 (7), the Board may direct the payment by the body corporate of compensation to the lessee of the lot referred to in the by-law.

(4) A payment ordered to be made pursuant to subsection (3) is recoverable by the lessee as a debt in a court of competent jurisdiction.

**Order granting certain licence (1973 Act, s. 121)**

**157. (1)** Pursuant to an application by a lessee for an order under this section, a Board may, subject to this section, order that the applicant, and any occupier of the lot of which the applicant is the lessee, may use specified common property in such a manner, for such purposes, and upon such terms and conditions, if any, as are specified in the order.

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(2) A Board shall not make an order under subsection (1) unless it is satisfied—

- (a) that the lot of which the applicant is lessee is incapable of reasonable use and enjoyment by the lessee or an occupier of the lot unless the order is made;
- (b) that the body corporate has refused to grant a licence to use common property in such a manner, for such purposes and upon such terms and conditions as would enable that lessee or such an occupier reasonably to use and enjoy that lot; and
- (c) that the lessor under the scheme has, before the making of the order, been given an opportunity to make representations to the Board with respect to the application for the order.

(3) An order under subsection (1), when recorded under section 179, has effect, subject to any order with respect thereto made by a superior court, as if its terms were a by-law.

**Order invalidating purported by-law (1973 Act, s. 122)**

158. (1) Where, pursuant to an application by any person entitled to vote at a meeting of the body corporate (including both a first mortgagee and a mortgagor of a lease of a lot) or the lessor under the scheme for an order under this section, a Board considers that a body corporate did not have the power to make a by-law purporting to have been made by it, the Board may make an order declaring the by-law to be invalid.

(2) An order under subsection (1), when recorded under section 179, has effect, subject to any order with respect thereto made by a superior court, as if its terms were a by-law repealing the by-law to which the order relates.

**Power of Board to invalidate proceedings (1973 Act, s. 122A)**

159. (1) Where, pursuant to an application by a lessee or first mortgagee of a lease of a lot for an order under this section, a Board considers that the provisions of this Act have not been complied with in relation to a meeting of the body corporate, the Board may, by order—

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

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(2) A Board shall not make an order under subsection (1) refusing to invalidate a resolution or election unless it considers—

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

**Order for variation of contributions levied or manner of payment thereof (1973 Act, s. 123)**

**160. (1)** Where, pursuant to an application by the lessor under the scheme, a lessee or a mortgagee in possession (whether in person or not) for an order under this section, a Board considers that any amount levied or proposed to be levied by way of contributions under section 89 is inadequate or excessive, or that the manner of payment of contributions is unreasonable, the Board may—

- (a) order payment of a different amount;
- (b) order payment of contributions in a different manner; or
- (c) make both such orders.

(2) Where an order of a Board under subsection (1) takes effect in relation to a contribution levied by a body corporate that has been wholly or partly paid in respect of a lot, the body corporate shall—

- (a) where the contribution required to be paid in respect of the lot pursuant to the order of the Board is greater than the amount already paid in respect of the lot—be deemed to have determined to make a levy under section 89 of an amount equal to the difference between the amount already paid in respect of the lot and the amount of the contribution required to be paid in respect of the lot pursuant to the order of the Board; or
- (b) where the contribution required to be paid in respect of the lot pursuant to the order of the Board is less than the amount already paid in respect of the lot—refund to the lessee by whom, or on whose behalf, the payment had already been made an amount equal to the difference between the amount already paid in respect of the lot and the amount of the contribution required to be paid in respect of the lot pursuant to the order of the Board.

**Order where voting rights denied or due notice of item of business not given (1973 Act, s. 124)**

**161. (1)** Where, pursuant to an application by a person under this section, a Board is satisfied that a particular resolution would not have been passed at a general meeting of a body corporate but for the fact that the applicant—

- (a) was improperly denied a vote on the motion for the resolution; or
- (b) was not given due notice of the item of business pursuant to which the resolution was passed.

the Board may order that the resolution be treated as a nullity on and from the date of the order.

**(2)** An application for an order under subsection (1) may not be made more than 14 days after the date of the meeting at which the resolution was passed.

**(3)** Where—

- (a) an order under subsection (1) is made in respect of a resolution making a by-law amending, adding to or repealing another by-law;
- (b) the by-law made pursuant to that resolution is in force; and
- (c) the order is recorded as provided by section 179,

the by-laws shall, subject to their having been or being amended, added to or repealed under section 87 and to any order with respect to the order under subsection (1) made by a superior court, have force and effect on and from the date the order is so recorded to the same extent as they would have had if the resolution had not been passed.

**Order with respect to insurance (1973 Act, s. 125)**

**162. (1)** Where, pursuant to an application by the lessor under the scheme, the lessee or an enrolled mortgagee of a lease of a lot or by an authority having the benefit of a positive covenant for an order under this subsection, a Board considers that the amount for which the person or persons referred to in section 115 (1) or (2) has or have insured a building which is, or part of which is, subject to a leasehold strata scheme is not reasonable, the Board may order that person or those persons to vary that amount to a specified amount.

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(2) Where, pursuant to an application by the lessor under the scheme, a lessee or an enrolled mortgagee of a lease of a lot for an order under this subsection, a Board considers that the amount for which the body corporate constituted for the leasehold strata scheme concerned has insured under section 116 (1) (c) is not reasonable, the Board may order the body corporate to vary that amount to a specified amount.

(3) Where the persons required by section 115 (2) to insure a building are unable to agree on its replacement value for insurance purposes or on any other matter relating to the apportionment of the premium payable for insuring the building, a Board may, on the application of any of those persons, make an order determining that value or matter.

(4) A Board may, pursuant to an application under section 115 (12), make an order requiring a person referred to in section 115 (2) to join with the applicant in insuring the building to which the application relates.

(5) An order under subsection (4) may be made against a person even though that person is not the body corporate constituted for, a lessee of a lot comprised in or a lessor under a leasehold strata scheme.

**Enforcement of restriction on use of utility lot (1973 Act, s. 126)**

163. Where—

- (a) pursuant to an application by a body corporate, the lessor under the scheme or a lessee or occupier of a lot for an order under this section, a Board considers there has been a breach of a restriction imposed under section 68 on the use of a utility lot the subject of the leasehold strata scheme concerned; or
- (b) pursuant to an application for such an order by the local council, a Board considers there has been a breach of such a restriction so imposed on the use of a utility lot,

the Board may order the lessee of the lot and any other person to refrain from committing a breach of the restriction.

**Order appointing managing agent to exercise certain functions (1973 Act, s. 127)**

164. (1) Where—

- (a) in consequence of the making of an order under this Part a duty is imposed on a body corporate;

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- (b) a duty is otherwise imposed by this Act or the by-laws on a body corporate;
- (c) a duty is imposed on a body corporate by a positive covenant;
- (d) a duty is imposed by this Act or the by-laws on the chairperson, secretary or treasurer of a body corporate or of the council of a body corporate; or
- (e) a judgment debt is owed by a body corporate,

a Board may—

- (f) in the case referred to in paragraph (a)—on the application of the person who obtained the order so referred to;
- (g) in the case referred to in paragraph (b) or (d)—on the application of a person having an estate or interest in a lease of a lot the subject of the leasehold strata scheme concerned;
- (h) in the case referred to in paragraph (c)—on the application of the authority having the benefit of the positive covenant; or
- (i) in the case referred to in paragraph (e)—on the application of the judgment creditor,

by order appoint a person, being a person who is the holder of a strata managing agent's licence issued pursuant to the Auctioneers and Agents Act 1941 and who has consented in writing to the appointment, as a managing agent to perform that duty and any other duty specified in the order or to pay that judgment debt, as the case may require.

(2) Where—

- (a) in the course of investigations made under section 131 (1) (e) in relation to an application that the Commissioner proposes to refer to a Board; or
- (b) pursuant to an application by a body corporate, the lessor under the scheme, a lessee, another person having an estate or interest in a lease of a lot or an occupier of a lot made to the Commissioner under this subsection for referral to a Board,

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the Commissioner is satisfied that the management structure of the leasehold strata scheme to which the application relates is not functioning, or is not functioning satisfactorily, the Board to which the Commissioner refers the application may, by order, appoint a managing agent (being a person eligible for appointment under subsection (1) who is selected by the Board from a panel of nominees of prescribed persons or bodies) to exercise functions conferred and imposed on the managing agent by an order under subsection (3).

(3) Where a Board appoints a managing agent under subsection (1) or (2), the Board may also order that the managing agent shall have and may exercise—

- (a) all the functions of the body corporate for the leasehold strata scheme to which the order relates or of the chairperson, secretary or treasurer of that body corporate or of the council of that body corporate;
- (b) any one or more of those functions specified in the order; or
- (c) all of those functions except those specified in the order.

(4) An order made under subsection (2) may be revoked or varied by a Board on the application of a person entitled to make an application under subsection (2) (b) and, if not sooner revoked, ceases to have effect at the expiration of such period (not exceeding 12 months) that next succeeds the making of the order as is specified by the Board in the order.

(5) Where a Board makes an order under subsection (1) or (2)—

- (a) no person other than the managing agent appointed by the order may, while that managing agent holds office as such, exercise any function which the managing agent is authorised to exercise by that order or an order under subsection (3); and
- (b) any act or thing done or suffered by that managing agent in the exercise of such a function has the same effect as it would have had if the order had not been made and it had been done or suffered by the person or body who, but for the order, would have been entitled or required to exercise the function.

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(6) A managing agent appointed under subsection (1) or (2) who exercises a function pursuant to an order under subsection (1) or (3) shall, forthwith after its exercise—

- (a) make a written record specifying the function and the manner of its exercise; and
- (b) serve the record on the body corporate for the leasehold strata scheme to which the order relates.

(7) The appointment of a managing agent under this section may be made upon such terms and conditions (including terms and conditions relating to remuneration by the body corporate and the duration of the appointment) as the Board specifies in the order making the appointment.

DIVISION 4—*Appeals*

**Appeal against order of Commissioner (1973 Act, s. 128)**

**165. (1)** Where the Commissioner makes an order under Division 2—

- (a) the applicant for the order;
- (b) a person who, in connection with the application for the order, duly made written submissions to the Commissioner;
- (c) being an order requiring a person to do or refrain from doing a specified act, that person; or
- (d) the lessor under the leasehold strata scheme concerned,

may appeal to a Board against the order of the Commissioner by lodging a written notice of appeal with the Commissioner, accompanied by the prescribed fee, not later than 21 days after the order takes effect.

(2) A person may appeal under this section against an order made by the Commissioner under section 135 (2) only on the grounds that the Commissioner acted unreasonably by making the order.

(3) Where the Commissioner makes an order under section 131 (3) dismissing an application, a person aggrieved by the order may appeal to a Board against the order by lodging a written notice of appeal with the Commissioner, accompanied by the prescribed fee, not later than 21 days after the order takes effect.

(4) A notice of appeal lodged under subsection (1) shall specify—

- (a) the name and address of the applicant;

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- (b) the order appealed against;
- (c) the grounds of the appeal; and
- (d) any other matter prescribed.

(5) The Board to which an appeal lies under this section is the Board to which, pursuant to subsection (6), the Commissioner forwards the notice of appeal.

(6) Where a notice of appeal is lodged under subsection (1), the Commissioner shall forward to the Board that, in the Commissioner's opinion, is nearest to the parcel the subject of the leasehold strata scheme to which the order appealed against relates—

- (a) the notice of appeal;
- (b) the records of the Commissioner relating to the order appealed against; and
- (c) the notices referred to in subsection (7).

(7) The notices that the Commissioner is required by subsection (6) (c) to forward are notices that—

- (a) are addressed to—
  - (i) the appellant, the person against whom the order was sought and any other person entitled under subsection (1) to appeal against the order; and
  - (ii) the body corporate for the leasehold strata scheme to which the order appealed against relates, unless it is the appellant;
- (b) are each accompanied by a copy of the notice of appeal; and
- (c) state that the appeal will be heard by a specified Board.

(8) The clerk of a Board to which documents are forwarded under subsection (6) shall—

- (a) complete the notices referred to in subsection (7) by specifying therein—
  - (i) the place at which the Board specified in the notices is to determine the appeal; and
  - (ii) a time and day for the determination of the appeal to which the documents relate; and

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- (b) send notice by posting it by prepaid registered post or by prepaid certified mail to the addressee thereof so that it would, in the ordinary course of post, be received by the addressee not less than 7 days before the day specified in the notice pursuant to paragraph (a) (ii).

**(9)** Where a notice of appeal is accompanied by an application for an order under this subsection—

- (a) the Commissioner, before forwarding to a Board the documents referred to in subsection (6); or
- (b) the Board to which those documents were sent by the Commissioner,

may, by order, stay, until the appeal is determined, the operation of the order appealed against and, where that is done, forward notice of the order made under this subsection to the persons referred to in subsection (7).

**Determination of appeal from order of Commissioner (1973 Act, s. 129)**

**166. (1)** In the determination of an appeal from an order of the Commissioner, a Board—

- (a) may, if it thinks it is proper to do so, admit evidence other than the evidence before the Commissioner when the Commissioner made the order;
- (b) where the order was made otherwise than under section 135 (2)—may, by order, affirm, vary or revoke the order appealed against or substitute its own order for the order appealed against;
- (c) where the order was made under section 135 (2)—may dismiss the appeal or, by order, revoke the order appealed against; and
- (d) shall not make any order as to costs.

**(2)** An order made under subsection (1) (b) has effect, and the provisions of this Act except section 165 apply to it, in all respects as if it were an order made under the provision of this Act under which the order appealed against was made.

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**Appeal to Supreme Court on question of law (1973 Act, s. 130)**

**167. (1)** An appeal lies to the Supreme Court from an order made by a Board under Division 3 or on an application referred to it under section 130 (2) or under section 166 in the same cases and in the same way as it would lie under sections 101–110 of the Justices Act 1902 if the order of the Board were a determination, by a Justice or Justices in the exercise of summary jurisdiction, of an information or complaint made at the time the order takes effect under section 182.

**(2)** The persons who may appeal under subsection (1) are—

- (a) where the appeal is against the order of a Board made under Division 3, except section 153—
  - (i) the applicant for the order appealed against;
  - (ii) a person who, in connection with the application for the order, duly made written submissions to the Commissioner; and
  - (iii) being an order requiring a person to do or refrain from doing any act, that person;
- (b) where the appeal is against the order of a Board made under section 166—
  - (i) the appellant to the Board;
  - (ii) where the applicant was not the appellant to the Board, the applicant for the original order made by the Commissioner;
  - (iii) any person who, in connection with the application to the Commissioner for the original order, duly made written submissions to the Commissioner; and
  - (iv) being an order requiring a person to do or refrain from doing any act, that person;
- (c) where the appeal is against the order of a Board made under section 153—
  - (i) the applicant for that order; or
  - (ii) any person who under paragraph (a) was entitled to appeal against the order which has been varied or revoked; and
- (d) in any case where the body corporate for the leasehold strata scheme to which the appeal relates or the lessor under the scheme is not included in paragraph (a), (b) or (c), that body corporate or lessor.

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**Appeal does not lie from Board except as provided in this Division (1973 Act, s. 131)**

168. Except as provided by this Division, an appeal does not lie from an order made by a Board.

**Expenses of body corporate on appeal to Board (1973 Act, s. 131A)**

169. Notwithstanding section 89, where the body corporate is the respondent to a successful appeal to a Board under this Division by the lessee of a lot, the body corporate may not levy in respect of that lot a contribution towards the expenses of the body corporate in relation to the appeal.

*DIVISION 5—Functions of Boards***Board may investigate in any manner it thinks fit (1973 Act, s. 132)**

170. (1) Before making an order under this Part, except section 165 (9), a Board shall make a thorough investigation without regard to legal forms or solemnities.

(2) A Board is not bound to apply the rules of evidence and, after informing itself in such manner as it thinks fit, may make an order under this Part with or without any hearing and, where a hearing is held, whether or not it is conducted formally.

(3) Notwithstanding subsection (2), a Board shall conduct a hearing where any person entitled or required to appear before the Board on the hearing of the application or appeal so appears.

**General provisions relating to orders under Division 3 and on appeal (1973 Act, s. 133)**

171. (1) An order made by a Board may include such ancillary or consequential provisions as the Board thinks fit.

(2) For the purpose of securing compliance with an order under Division 3 or on appeal, a Board may order a body corporate, the chairperson, secretary or treasurer of a body corporate or its council, a managing agent, the lessor under the scheme or a lessee or another person having an estate or interest in a lease of a lot or an occupier of a lot to do or refrain from doing a specified act with respect to a leasehold strata scheme.

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(3) A Board may, by order, dismiss an application for an order under Division 3 and may dismiss an appeal.

**Representation before a Board (1973 Act, s. 134)**

172. (1) An applicant for an order under Division 2 or 3 may appear before any Board dealing with the application for the order or be represented by counsel or a solicitor, or by an agent authorised in writing, who may examine witnesses and address the Board on behalf of the applicant.

(2) Where—

- (a) an application for an order under Division 2 or 3 has been referred to a Board, a person has made a written submission with respect to the application pursuant to the invitation in a notice given under section 131 (1) (c); or
- (b) a person has been given notice under section 165 (8), that person may appear before the Board in connection with the application or, as the case may be, on the hearing of the appeal, or be represented by counsel or a solicitor, or by an agent authorised in writing, who may examine witnesses and address the Board on behalf of that person.

**Copy of order to be served (1973 Act, s. 135)**

173. (1) An order made by a Board under this Part shall be made in writing and the clerk of that Board shall send to the Commissioner—

- (a) the order; and
- (b) the records of the Board relating to the application for the order, or to the appeal, as the case may be, including records forwarded to it by the Commissioner when referring that application or appeal to the Board.

(2) Where an order has been sent to the Commissioner under subsection (1), the Commissioner shall serve a copy of the order, certified by the Commissioner to be a true copy, on—

- (a) the body corporate for the leasehold strata scheme to which the order relates and the lessor under the scheme;
- (b) the applicant for the order and the appellant, if any;

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- (c) any person who, in connection with the application for the order, made a written submission pursuant to the invitation in a notice under section 131 (1) (c) or who, in the case of an order on appeal, was given notice under section 165 (8) of the time and place for the determination of the appeal; and
- (d) any person who, by the order, is required to do, or to refrain from doing, a specified act.

**Witness may be summoned before Board (1973 Act, s. 136)**

**174. (1)** The Magistrate who constitutes a Board or the clerk of a Board authorised by such a Magistrate either generally or in a particular case may, upon the request of an applicant whose application is or is to be dealt with under Division 3 or a person to whom a notice has been given under section 131 (1) (c) or 165 (8), or the agent of any such applicant or person, under the hand of the Magistrate or that clerk, summon any person to attend the Board at the time and place specified in the summons and then and there to give evidence and to produce books, documents or writings in the person's custody or control which the person is required by the summons to produce.

**(2)** The fee payable for the issue of a summons is such amount as may be prescribed.

**(3)** A person served with a summons under subsection (1) shall not, without reasonable excuse, disobey the summons.

Penalty: In the case of a corporation, \$1,000 and, in any other case, \$500 or imprisonment for 6 months or both.

**(4)** A person is not bound to produce any books, documents or writings not specified or otherwise sufficiently described in the summons or which the person would not be bound to produce upon a subpoena for production in the Supreme Court.

**(5)** A summons under subsection (1) need not be obeyed by a person unless the person is tendered reasonable expenses for attending the Board in accordance with the summons.

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**Board may administer oath (1973 Act, s. 137)**

**175. (1)** A Board may administer an oath or affirmation to a person appearing as a witness before a Board, whether or not the person has appeared in answer to a summons, and may examine the witness upon oath or affirmation.

(2) A person appearing as a witness before a Board—

- (a) shall not refuse to be sworn or to make an affirmation;
- (b) shall not refuse to answer any question relevant to any proceedings before the Board put to the person by the Board or by any person entitled to appear before the Board in those proceedings; and
- (c) shall not knowingly give false testimony in any evidence given by the person to the Board.

Penalty: \$500 or imprisonment for 6 months or both.

(3) A witness before a Board has—

- (a) the same protection; and
- (b) in addition to the penalties provided by this Act, the same liabilities,

as the person would have had if that person had been a witness before the Supreme Court instead of the Board.

**Contempt of Board (1973 Act, s. 138)**

**176. (1)** A person shall not wilfully insult or disturb a Board, or interrupt the proceedings of a Board, or by writing or speech use words which are false or defamatory of a Board or otherwise commit any wilful contempt of a Board.

Penalty: \$500 or imprisonment for 6 months or both.

(2) The Magistrate who constitutes a Board has, in relation to a contravention of subsection (1) committed in the face of the Board, all the powers of a court of summary jurisdiction sitting in open court in relation to a contempt committed in the face of the court.

*Strata Titles (Leasehold) 1986*DIVISION 6—*Miscellaneous***Refund of prescribed deposit (1973 Act, s. 139)**

177. Upon the final determination of an application made under this Part, the prescribed deposit which accompanied the application shall, unless the Commissioner, the Board or the Supreme Court making that determination otherwise directs on the ground that the application was vexatious or frivolous in its nature, be refunded to the applicant.

**Effect of certain orders (1973 Act, s. 140)**

178. (1) The terms of an order—

- (a) made under section 139, 141, 142, 144, 160 or 161 (not being an order referred to in section 161 (3) (a)) or under section 162 or an order made under section 136 in which the Commissioner declares that it is to have effect as a decision of a body corporate; or
- (b) made under section 153 varying or revoking an order referred to in paragraph (a).

shall be deemed to be a resolution passed by the body corporate for the leasehold strata scheme to which the order relates.

(2) Upon service upon it by the Commissioner of a copy of an order referred to in subsection (1), the body corporate shall cause the terms of the order to be recorded in its minute book.

(3) Except in the case of a unanimous resolution, a resolution passed by a body corporate has no force or effect if it purports to rescind or amend a resolution deemed by subsection (1) to have been passed by the body corporate.

(4) Where an order referred to in subsection (1) specifies a period during which a resolution passed by the body corporate has no force or effect if it purports to alter the effect of that order, such a resolution has no force or effect if it is passed during that period—

- (a) unless it is a unanimous resolution; or
- (b) unless, upon an application made as referred to in subsection (5), a Board makes an order under this paragraph authorising the submission to a general meeting of the body corporate of a motion for that resolution.

(5) An application for an order under subsection (4) (b)—

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- (a) may be made by any person who, if the application for the order referred to in subsection (1) were made at the time the application referred to in this subsection is made, would be entitled to make the application for the order referred to in subsection (1);
- (b) shall specify the order sought;
- (c) shall be made to the Commissioner in writing specifying the grounds on which it is made; and
- (d) shall be accompanied by the prescribed fee and the prescribed deposit, if any.

(6) An application referred to in subsection (5) shall be dealt with in all respects as if it were an application for an order under Division 3 required by section 130 (3) to be referred to a Board.

**Recording in Register of effect of certain orders (1973 Act, s. 141)**

**179. (1) Where—**

- (a) an order is made under section 148, 155, 156, 157 or 158 or under section 161 (being an order referred to in section 161 (3) (a));
- (b) a copy of the order, certified by the Commissioner as a true copy is lodged in the office of the Registrar-General; and
- (c) the prescribed fee is paid,

the Registrar-General shall make such recordings in the Register with respect to the order as appear to the Registrar-General to be necessary or proper to give effect to the order.

**(2) Where a copy of an order has been lodged as referred to in subsection (1) (b) and the body corporate either—**

- (a) has not within a period of 21 days after notice in writing served on it by the person so lodging the copy of the order lodged the certificate of title for the lease of the common property; or
- (b) has not, within that period, made due application under section 111 of the Real Property Act 1900 and does not thereafter duly prosecute that application,

the certificate of title for the lease of the common property shall, for the purposes of Part XV of that Act, be deemed to be wrongfully retained.

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(3) The Registrar-General shall, upon lodgment in the office of the Registrar-General pursuant to subsection (1) of a copy of an order under section 155, amend the schedule of unit entitlement recorded in the folio of the Register for the lease of the common property to which the order relates, to the extent necessary to give effect to the order.

(4) The Registrar-General shall, upon lodgment in the office of the Registrar-General of a copy of an order made by a superior court with respect to an order under section 155, which copy is certified by the appropriate officer of that court to be a true copy, amend the schedule of unit entitlement recorded in the folio of the Register for the lease of the common property to which that order relates to the extent necessary to give effect to that order.

(5) The Registrar-General may refuse to make recordings in the Register under subsection (1) or (4) with respect to a copy of an order unless the copy is accompanied by—

- (a) the certificate of title for the lease of the common property; or
- (b) evidence to the satisfaction of the Registrar-General of the service of the notice referred to in subsection (2) (a).

**Penalty for contravention of certain orders (1973 Act, s. 142)**

**180.** (1) A person shall not contravene an order under this Part, not being an order under section 135 (2), to do or refrain from doing a specified act.

Penalty: \$100 and, subject to subsection (2), a further penalty not exceeding \$10 for every day during which the contravention continues.

(2) The maximum amount that may be recovered in any prosecution for an offence under subsection (1) is \$500.

(3) A person shall not contravene an order under section 135 (2) to do or refrain from doing a specified act.

Penalty: \$500.

(4) Proceedings for an offence under subsection (1) or (3) of contravening an order may be taken only by the applicant for the order or body corporate concerned.

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(5) In proceedings under this section—

- (a) the imposition of a penalty operates as a judgment under the Local Courts (Civil Claims) Act 1970 against the defendant and in favour of the prosecutor for the amount of the penalty; and
- (b) an order for a person to pay an amount of costs operates as a judgment for that amount under that Act against that person and in favour of the person whose costs are ordered to be paid.

(6) A penalty imposed under this section or costs referred to in subsection (5) (b) shall not be enforceable or recoverable except as provided in subsection (5).

(7) Any costs awarded against a defendant in proceedings under this section shall include the amount of the fee paid on filing the application for the order contravened.

(8) A document purporting to be a copy of an order made by the Commissioner or a Board shall be admissible in evidence and shall, until the contrary is proved, be deemed to be an order made by the Commissioner or a Board, as the case may be.

**Protection of Commissioner and Board (1973 Act, s. 143)**

181. The Commissioner, in the exercise of the Commissioner's functions under this Part, and a Board, in the exercise of its functions under this Part, have the same protection and immunities as a justice of the peace.

**Time at which order takes effect (1973 Act, s. 144)**

182. Except—

- (a) where express provision is otherwise made by this Act; or
- (b) to the extent that the Commissioner specifies in an order under Division 2 or a Board specifies in an order under Division 3 or 4,

an order takes effect when a copy of the order, certified by the Commissioner to be a true copy, is served—

- (c) except as provided in paragraph (d), on the body corporate for the leasehold strata scheme to which the order relates; or
- (d) where the order requires a person to do or refrain from doing a specified act, on that person.

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**Commissioner or Board not to have jurisdiction where title to land in question (1973 Act, s. 145)**

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

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**PART 6****GENERAL****Other rights and remedies not affected by this Act (1973 Act, s. 146)**

184. (1) Nothing in this Act derogates from any rights or remedies that the lessor under the leasehold strata scheme concerned, a lessee or a chargee, covenant chargee or mortgagee of a lease of a lot or a body corporate may have in relation to any lot or the common property apart from this Act.

(2) Where the court in which any proceedings to enforce any rights or remedies referred to in subsection (1) is of the opinion that, having regard to the subject-matter of the proceedings, the taking of the proceedings was not, in the circumstances of the case, warranted by reason that Part 5 makes adequate provision for the enforcement of those rights or remedies, the court shall order the plaintiff to pay the defendant's costs in such amount as may be determined by the court.

(3) The determination or partial determination of a lease by the operation of Part 2 does not affect any right or remedy that may be exercised otherwise than in relation to a lot or common property by the mortgagee, chargee, covenant chargee or judgment creditor under a mortgage, charge, covenant charge or writ affecting the lease before it was determined or partially determined or by a caveator claiming an estate or interest in that lease.

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**Body corporate is representative of lessees in proceedings (1973 Act, s. 147)**

**185. (1)** Where the lessees of the lots the subject of a leasehold strata scheme are jointly entitled to take proceedings against any person or are liable to have proceedings taken against them jointly (any such proceedings being proceedings for or with respect to common property), the proceedings may be taken by or against the body corporate and any judgment or order given or made in favour of or against the body corporate in any such proceedings shall have effect as if it were a judgment or order given or made in favour of or against the lessees.

**(2)** Where a lessee is liable to make a contribution to another lessee in respect of a judgment debt arising under a judgment referred to in subsection (1), the amount of the contribution shall bear to the judgment debt the same proportion as the unit entitlement of the lot leased by the firstmentioned lessee bears to the aggregate unit entitlement.

**Body corporate's power to take proceedings as agent for lessee in case of structural defects (1973 Act, s. 148)**

**186. (1)** Where—

- (a) the condition of any lot in a parcel affects or is likely to affect the support or shelter provided by that lot for another lot in the same building or the common property; and
- (b) the lessee of the lot in that condition has neglected or refused within a reasonable time to take any proceedings under the Builders Licensing Act 1971 or for the purpose of exercising any other right or enforcing any other remedy available to the lessee to have that condition rectified,

the lessor under the leasehold strata scheme concerned or the body corporate may, as agent for the lessee of the lot in that condition but at the lessor's or body corporate's own expense, take any of the proceedings referred to in paragraph (b).

**(2)** A person proposing to take proceedings under subsection (1) shall, before taking those proceedings, notify in writing the other person entitled to take the same proceedings that the person proposes to take those proceedings and shall specify in the notice the circumstances that have given rise to that intention.

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**Dividing fences (1973 Act, s. 149)**

187. For the purposes of the Dividing Fences Act 1951, the body corporate for a leasehold strata scheme shall be deemed to be the owner of the parcel the subject of that scheme, other than such part, if any, of that parcel as is the subject of a lease accepted or acquired by the body corporate under section 22.

**Costs in proceedings by lessees against body corporate (1973 Act, s. 150)**

188. (1) In any proceedings brought by one or more lessees against the body corporate, or by the body corporate against one or more lessees (including one or more lessees joined in third party proceedings), the court may order that any money (including costs) payable by the body corporate pursuant to an order of the court made in those proceedings shall be paid, only in respect of such lots as are specified in the order and in such proportions as may be so specified, by the body corporate out of contributions levied for the purpose.

(2) Where a court makes an order under subsection (1) the body corporate shall, for the purpose of paying the money ordered to be paid by it, levy contributions in accordance with the terms of the order and shall pay the moneys out of the contributions paid pursuant to that levy, and section 89 (subsection (2) excepted) applies to and in respect of contributions levied under this subsection in the same way as it applies to contributions levied under that section.

**Apportionment of statutory charges (1973 Act, s. 151)**

189. (1) Where, by reason of any Act or of anything done under the authority of any Act (including the registration of a covenant charge), any expenditure by a public authority would, if the parcel were not the subject of a leasehold strata scheme, be a charge on the land comprised in that parcel, that expenditure is a charge on the lease of each lot for an amount bearing to the whole of that expenditure the same proportion as the unit entitlement of that lot bears to the aggregate unit entitlement.

(2) The lessee or mortgagee of a lease of a lot the subject of a charge referred to in subsection (1) may pay to the authority entitled to the charge the amount thereof and thereupon—

- (a) the lease and the appurtenant beneficial interest in the common property are freed from the charge; and

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- (b) the authority has no legal rights against the lessee, the lease or the lot or appurtenant beneficial interest in common property in respect of the subject-matter of the charge.

**Notice of application for order under section 61, 79, 80 or 97 (1973 Act, s. 152)**

**190. (1)** The Supreme Court may, in respect of any proceedings on an application for an order under section 61, 79, 80 or 97, make either or both of the following orders:

- (a) order that public notice, by advertisement or otherwise, be given of the proceedings;
- (b) order that service of notice of the application upon any person be dispensed with.

**(2)** Subject to the Supreme Court Act 1970, the Supreme Court shall not make an order referred to in subsection (1) (b) in respect of any person unless the Supreme Court is satisfied that—

- (a) that person cannot be found in New South Wales;
- (b) it is uncertain whether that person is living; or
- (c) service cannot be effected upon that person without expense disproportional to the value, if any, of the person's interest.

**Service of documents on body corporate, lessees and others (1973 Act, s. 153)**

**191. (1)** A summons or other legal process may be served on a body corporate by leaving it with the chairperson or secretary of the body corporate or of the council or with any member of the council.

**(2)** A document other than a document referred to in subsection (1) may be served on a body corporate—

- (a) by leaving it with any person referred to in subsection (1) or in the receptacle provided by the body corporate in accordance with section 98 (1) (d); or
- (b) by posting it, by prepaid mail, to the body corporate at its address recorded in the folio of the Register comprising the common property.

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(3) Subject to this Act, a notice or other document required or authorised by this Act or the by-laws to be served by the Commissioner, a Board, a body corporate, a council or the secretary of a council on a lessee, sublessee, mortgagee of a lease of a lot or an occupier of a lot or on a covenant chargee having the benefit of a covenant charge affecting a lease of a lot may be served—

(a) by leaving it with some person apparently of or above the age of 16 years—

(i) where the person to be served is an occupier of the lot, at the address of the lot; or

(ii) where an address for the service of notices on the person to be served is recorded in the strata roll, at the address so recorded;

(b) by posting it, by prepaid mail, to the person to be served, where an address for the service of notices on that person is recorded in the strata roll, at the address so recorded; or

(c) in the case of a lessee—

(i) personally;

(ii) by post to the address of the lessee's lot;

(iii) by leaving it on the lot (otherwise than on a part of the lot provided for the accommodation of a vehicle or as a storeroom);

(iv) by leaving it in any place provided on the parcel or the site of the building part of which is subject to the leasehold strata scheme concerned for the receipt of articles posted to the address of the lot; or

(v) in any manner authorised by the by-laws for the service of notices on lessees.

(4) Notice under section 103 (8) may be served on a person—

(a) personally or by post; or

(b) by leaving it with a person apparently of or above the age of 16 years at the place of residence or place of business of the firstmentioned person.

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**Powers of entry by public authority or local council (1973 Act, s. 154)**

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

**Powers of entry of Commissioner in certain cases (1973 Act, s. 154A)**

**193. (1)** Where the Commissioner believes on reasonable grounds that—

- (a) an offence against any provision of this Act; or
- (b) a breach of the by-laws,

has been or is being committed upon any part of a parcel, the Commissioner may, at any reasonable time on reasonable notice given to any occupier of that part of the parcel enter upon that part for the purpose of ascertaining whether that offence or breach has been or is being committed.

**(2)** When exercising a function under subsection (1), the Commissioner may, if the Commissioner thinks fit, be accompanied by—

- (a) a member of the council of the body corporate; or
- (b) the managing agent, if any, of the leasehold strata scheme concerned.

**(3)** A person shall not obstruct or hinder—

- (a) the Commissioner, in the exercise of the Commissioner's power under subsection (1); or
- (b) a person accompanying the Commissioner in pursuance of subsection (2).

Penalty—subsection (3): \$200.

**Notices under Real Property Act 1900 to body corporate deemed to be notices to lessees (1973 Act, s. 155)**

**194.** A notice given to a body corporate under Part II, IV or XV of the Real Property Act 1900 shall be deemed to have been given to each lessee of a lot the subject of the leasehold strata scheme concerned in the absence of evidence that the contents of any such notice were not communicated by the body corporate to any lessee of such a lot.

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**Proceedings for offences (1973 Act, s. 157)**

**195.** Proceedings for an offence against any provision of this Act may be taken only before a Local Court held before a Magistrate.

**Regulations—general (1973 Act, s. 158)**

**196. (1)** The Governor may make regulations not inconsistent with this Act for or with respect to—

- (a) the preparation of plans and documents for the purposes of this Act;
- (b) the plans and documents to be lodged in the office of the Registrar-General for the purposes of this Act;
- (c) the registration in that office of plans and documents;
- (d) the fees to be paid in respect of the lodgment and registration in that office of plans and documents;
- (e) the forms to be used for the purposes of this Act;
- (f) the giving of notices by or to the body corporate, lessees of lots, the lessor under the leasehold strata scheme concerned and other persons;
- (g) the fees to be paid in respect of applications made to the Commissioner or a Board under this Act and the remission of any such fees;
- (h) the nomination and election of members of councils; and
- (i) any matter which by this Act is required or permitted to be prescribed or is necessary or convenient to be prescribed for carrying out or giving effect to any provision of this Act.

**(2)** A regulation made under subsection (1) may impose a penalty not exceeding \$200 for an offence against the regulation.

**(3)** A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by a specified person or body,

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or may do any combination of those things.

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## SCHEDULE 1

(Sec. 9)

## RIGHTS AND OBLIGATIONS IMPLIED IN CERTAIN EASEMENTS

**Interpretation**

1. (1) In this Schedule—

“pipes” includes cables, tubes, wires and conduits of all kinds;

“service” has the same meaning as in section 9.

(2) For the purposes of this Schedule, a reference to a person entitled to the benefit of a right of vehicular or personal access or of an easement for a specified service—

(a) where a stratum parcel or former stratum parcel is the dominant tenement, is a reference to—

(i) a lessee of a lot within the parcel or a proprietor of a lot, within the meaning of the Strata Titles Act 1973, which was a lot within the former parcel;

(ii) the body corporate of the leasehold strata scheme or strata scheme concerned;

(iii) any person authorised by either of them; or

(iv) any person who is, under any Act, entitled to immediate possession of the lot or former lot; or

(b) where a stratum parcel or former stratum parcel is the servient tenement, is a reference to—

(i) the lessor under the leasehold strata scheme concerned (if any);

(ii) any person entitled to an estate or interest in possession in the dominant tenement; or

(iii) any person authorised by either of them.

**Right of vehicular access**

2. Each person entitled to the benefit of a right of vehicular access has at all times an unrestricted right—

(a) to pass and repass, with or without vehicles, machinery, implements and other equipment of every kind, over the roadways, ramps and land over which the right of access is created; and

(b) to carry out an inspection of those roadways and ramps and that land.

*Strata Titles (Leasehold) 1986*SCHEDULE 1—*continued*RIGHTS AND OBLIGATIONS IMPLIED IN CERTAIN EASEMENTS—*continued***Right of personal access**

3. Each person entitled to the benefit of a right of personal access has at all times an unrestricted right—

- (a) to pass and repass, without vehicles but with or without hand tools, hand implements and other equipment capable of being carried by hand, over the stairs, escalators, lifts, passages, corridors, shafts and other areas over which the right of access is created; and
- (b) to carry out an inspection of those stairs, escalators, lifts, passages, corridors, shafts and other areas.

**Obligations relating to rights of access**

4. (1) Where a right of vehicular or personal access is created over or appurtenant to a stratum parcel or former stratum parcel, the roadways, ramps, land, stairs, escalators, lifts, passages, corridors, shafts and other areas to which the right relates shall be maintained in good order and repaired—

- (a) by the body corporate concerned, the lessor (if any) or another person indicated, in the instrument by which the right is created or in any instrument in an approved form by which the instrument is varied, as having responsibility for those matters; or
- (b) where any such instrument does not indicate who is responsible for those matters, by the person or, if more than one, jointly by the persons entitled to an estate or interest in possession in the dominant tenement.

(2) Where a body corporate, lessor or other person—

- (a) has failed to carry out a responsibility imposed by subclause (1); and
- (b) at least 7 days have passed since that failure first arose,

any other of them may take all lawful steps necessary to ensure that the responsibility is carried out.

**Easements for services**

5. (1) Each person entitled to the benefit of an easement for a specified service has at all times an unrestricted right—

- (a) (except when it is necessary to halt the service for any essential maintenance or repairs relating to the service) to the passage of the service, to any extent consistent with the rights of other persons having the same or similar rights, along or through any existing line of pipes or any existing apparatus that is for the time being within the burdened land;
- (b) to carry out an inspection of the pipes or apparatus to which the easement relates; and
- (c) in order to maintain the efficiency of any such pipes or apparatus—

*Strata Titles (Leasehold) 1986*SCHEDULE 1—*continued*RIGHTS AND OBLIGATIONS IMPLIED IN CERTAIN EASEMENTS—*continued*

- (i) to enter the part of the burdened land in respect of which the easement is created by such route as is reasonable in the circumstances; and
- (ii) to remain there for such reasonable time as may be necessary for the purpose of replacing, inspecting, cleaning, repairing, maintaining or renewing the pipes or apparatus or any part of the pipes or apparatus and of making such excavations as may be reasonably necessary,

subject to the conditions that—

- (iii) the burdened land is disturbed as little as possible;
- (iv) any excavated surface is restored as nearly as possible to its original state; and
- (v) any other damage attributable to the operations referred to in this clause is repaired.

(2) In this clause, a reference to burdened land—

- (a) where a stratum parcel or former stratum parcel is the dominant tenement, is a reference to so much of—
  - (i) the building, part of which is subject to the leasehold strata scheme or strata scheme concerned; and
  - (ii) the site of that building,
 as is not part of the parcel or former parcel; or
- (b) where a stratum parcel or former stratum parcel is the servient tenement, is a reference to the parcel or former parcel.

**Obligations relating to an easement for the provision of services**

6. (1) Where an easement for services is created over or appurtenant to a stratum parcel or former stratum parcel, the pipes or apparatus to which the easement relates shall be maintained in good order and repaired—

- (a) by the body corporate concerned, the lessor (if any), or another person, indicated in the instrument by which the easement is created or in any instrument in the approved form by which that easement is varied, as having responsibility for those matters; or
- (b) where any such instrument fails to indicate who is responsible for those matters, by the person or, if more than one, jointly by the persons entitled to an estate or interest in possession in the dominant tenement.

(2) Where a body corporate, lessor or other person—

- (a) has failed to carry out a responsibility imposed by subclause (1); and
- (b) at least 7 days have passed since that failure first arose,

*Strata Titles (Leasehold) 1986*SCHEDULE 1—*continued*RIGHTS AND OBLIGATIONS IMPLIED IN CERTAIN EASEMENTS—*continued*

any other of them may take all lawful steps necessary to ensure that the responsibility is carried out.

**Sharing of costs of maintenance and repair**

7. (1) The costs of maintenance and repair in respect of a right of vehicular or personal access or an easement for services to which this Schedule applies shall be borne by the lessor (if any), body corporate or other person concerned—

- (a) in the proportions specified in the instrument by which the easement was created or, where the proportions so specified have been varied, those proportions as varied; or
- (b) where no such proportions are so specified—in equal proportions.

(2) Where a person (whether or not the body corporate or a lessor) incurs costs referred to in subclause (1), the person may demand in writing the amount that the body corporate, lessor (if any) or other person referred to in that subclause is liable to contribute to those costs.

(3) A demand made under subclause (2) must be accompanied by receipts or invoices or copies of receipts or invoices which evidence the expenditure to which the demand relates.

(4) Where the body corporate, lessor (if any) or other person fails to comply with any such demand within 7 days after it has been made, the amount demanded may be recovered in a court of competent jurisdiction as a debt due to the body corporate, lessor or other person.

**Ancillary rights and powers**

8. All easements to which this Schedule applies shall carry with them such ancillary rights and powers as may be necessary to render them effective.

## SCHEDULE 2

(Secs. 37 (1) (c), 80 (8) (e))

## COMPENSATION PAYABLE ON TERMINATION OF LEASEHOLD STRATA SCHEME

For the purposes of sections 37 (1) (c) and 80 (8) (e), the formula is—

$$A = B - (C - D)$$

where—

A represents the value, at the date of termination of the leasehold strata scheme concerned, of the improvements attributable to a lot;

*Strata Titles (Leasehold) 1986*SCHEDULE 2—*continued*COMPENSATION PAYABLE ON TERMINATION OF LEASEHOLD STRATA  
SCHEME—*continued*

B represents the market value, at that date, of the lot, being the value of the lot at that date calculated on the basis that the lot—

- (a) is held for an estate in fee simple in possession; and
- (b) may be used, whether or not only with development consent, for any purpose the use of the lot for which is not at that date prohibited;

$$C = E \times \frac{U_1}{U_n}$$

where—

E represents the site value, at that date, of the parcel the subject of that leasehold strata scheme, being the value of the land included in that parcel at that date calculated on the basis that the land—

- (a) is held for an estate in fee simple in possession; and
- (b) may be used for the purpose of a site for the building or part of the building subject to the scheme,

but excluding the value at that date of all improvements within the parcel;

$U_1$  represents the unit entitlement of the lot; and

$U_n$  represents the aggregate unit entitlement for that leasehold strata scheme; and

D represents the part of factor “B”, if any, attributable to the value, at that date, of improvements to the lot effected by the lessor.

## SCHEDULE 3

(Sec. 87)

## BY-LAWS

**Chairperson, secretary and treasurer of body corporate**

1. (1) The chairperson, secretary and treasurer of the council shall also be respectively the chairperson, secretary and treasurer of the body corporate.

(2) The chairperson may be referred to as the chairman or chairwoman, as the case may require.

*Strata Titles (Leasehold) 1986*

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SCHEDULE 3—*continued*BY-LAWS—*continued***Council's power to employ agents and servants**

2. A council may employ for and on behalf of the body corporate such agents and servants as it thinks fit in connection with the exercise of the functions of the body corporate.

**Notice-board**

3. A council shall cause a notice-board to be affixed to some part of the common property.

**Notice of council meetings**

4. For not less than 72 hours ending immediately before a council holds a meeting, it shall cause a notice of its intention to hold the meeting, containing a detailed agenda for the meeting, to be displayed on the notice-board.

**Council meetings may be required to be convened**

5. The secretary of a body corporate or, in the secretary's absence, any member of the council shall convene a meeting of the council if the secretary or member is requested so to do by not less than one-third of the members of the council, within the period of time, if any, specified in the request, and, where a member of the council other than the secretary is requested to convene a meeting of the council under this by-law, the member may give, on behalf of the council, the notice required to be given under by-law 4.

**Voting in writing by members of council**

6. Where—

- (a) by-law 4 has been complied with in relation to any meeting;
- (b) the council has caused to be served on each member of the council a copy of any motion for a proposed resolution to be submitted at that meeting; and
- (c) any such resolution has been approved in writing by a majority of the members of the council,

the resolution shall, subject to section 104 (3), be as valid as if it had been duly passed at a duly convened meeting of the council, notwithstanding that the meeting was not held.

**Lessees' attendance at council meetings**

7. A lessee of a lot or, where that lessee is a corporation, any company nominee of the corporation is entitled to attend a meeting of the council but may not address the meeting unless authorised by resolution of the council.

**Minute of certain resolutions to be included in council's minutes**

8. The council shall cause to be included in its minutes a minute of all resolutions passed pursuant to by-law 6.

*Strata Titles (Leasehold) 1986*SCHEDULE 3—*continued*BY-LAWS—*continued***Display of minutes**

9. Unless each lessee of a lot under a leasehold strata scheme has previously been provided with copies of the minutes referred to in paragraphs (a) and (b), a council shall cause—

- (a) a copy of the minutes of a meeting of the council to be displayed on the notice-board within 7 days after that meeting; and
- (b) a copy of a minute of any resolution passed pursuant to by-law 6 to be so displayed within 7 days after the passing of the resolution,

and to be displayed for a period of not less than 14 days.

**Acts, etc., of council valid notwithstanding vacancy, etc.**

10. Any act or proceeding of a council done in good faith is, notwithstanding that at the time when the act or proceeding was done, taken or commenced there was—

- (a) a vacancy in the office of a member of the council; or
- (b) any defect in the appointment, or any disqualification, of any such member.

as valid as if the vacancy, defect or disqualification did not exist and the council were fully and properly constituted.

**Functions of secretary of body corporate**

11. The functions of a secretary of a body corporate include—

- (a) the preparation and distribution of minutes of meetings of the body corporate and the submission of a motion for confirmation of the minutes of any meeting of the body corporate at the next meeting;
- (b) the giving on behalf of the body corporate and of the council of the notices required to be given under this Act;
- (c) the maintenance of the strata roll;
- (d) the supply of information on behalf of the body corporate in accordance with section 100 (1) (a) and (b);
- (e) the answering of communications addressed to the body corporate;
- (f) the calling of nominations of candidates for election as members of the council; and
- (g) subject to section 86 (1), (6) and (7), the convening of meetings of the body corporate and of the council.

**Functions of treasurer of body corporate**

12. The functions of a treasurer of a body corporate include—

- (a) the notifying of lessees of any contributions levied pursuant to this Act;

*Strata Titles (Leasehold) 1986*SCHEDULE 3—*continued*BY-LAWS—*continued*

- (b) the receipt, acknowledgment and banking of, and the accounting for, any money paid to the body corporate;
- (c) the preparation of any certificate applied for under section 100 (1) (c); and
- (d) the keeping of the accounting records referred to in section 98 (1) (g) and the preparation of the financial statements referred to in section 98 (1) (h).

**Noise**

13. A lessee or occupier of a lot shall not on the parcel create any noise likely to interfere with the peaceful enjoyment of the lessee or occupier of another lot or of any person lawfully using common property.

**Vehicles**

14. A lessee or occupier of a lot shall not park or stand any motor or other vehicle on common property except with the written approval of the body corporate.

**Obstruction of common property**

15. A lessee or occupier of a lot shall not obstruct lawful use of common property by any person.

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

16. A lessee or occupier of a lot shall not—

- (a) damage any lawn, garden, tree, shrub, plant or flower being part of or situated on common property; or
- (b) use for the lessee's or occupier's own purposes as a garden any portion of the common property.

**Damage to common property**

17. (1) A lessee or occupier of a lot shall not mark, paint, drive nails or screws or the like into, or otherwise damage or deface, any structure that forms part of the common property without the approval in writing of the body corporate, but this by-law does not prevent a lessee or person authorised by a lessee from installing—

- (a) any locking or other safety device for protection of the lot against intruders; or
- (b) any screen or other device to prevent entry of animals or insects on the lot,

subject to the locking or safety device or the screen or other device, as the case may be, being installed in a workmanlike manner and subject to its appearance, after it has been installed, being in keeping with the appearance of the rest of the building.

(2) Notwithstanding section 98 (1) (b), the lessee of a lot shall maintain and keep in a state of good and serviceable repair any installation referred to in subclause (1) that services the lot.

*Strata Titles (Leasehold) 1986*SCHEDULE 3—*continued*BY-LAWS—*continued***Behaviour of lessees and occupiers**

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

**Children playing on common property in building**

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

**Behaviour of invitees**

20. A lessee or occupier of a lot shall take all reasonable steps to ensure that any invitee of the lessee or occupier does not behave in a manner likely to interfere with the peaceful enjoyment of the lessee or occupier of another lot or any person lawfully using common property.

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

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

**Drying of laundry items**

22. A lessee or occupier of a lot shall not, except with the consent in writing of the body corporate, hang any washing, towel, bedding, clothing or other article on any part of the parcel in such a way as to be visible from outside the building otherwise than on any lines provided by the body corporate for that purpose and there only for a reasonable period.

**Cleaning windows, etc.**

23. A lessee or occupier of a lot shall keep clean all glass in windows and all doors on the boundary of the lessee's or occupier's lot, including so much of it as is common property.

**Storage of inflammable liquids, etc.**

24. A lessee or occupier of a lot shall not, except with the approval in writing of the body corporate, use or store on the lessee's or occupier's lot or on the common property any inflammable chemical, liquid or gas or other inflammable material, other than chemicals, liquids, gases or other material used or intended to be used for domestic purposes, or any such chemical, liquid, gas or other material in a fuel tank of a motor vehicle or internal combustion engine.

*Strata Titles (Leasehold) 1986*SCHEDULE 3—*continued*BY-LAWS—*continued***Moving furniture, etc., on or through common property**

25. A lessee or occupier of a lot shall not transport any furniture or large object through or on common property within the building unless the lessee or occupier has first given to the council notice of his or her intention to do so sufficient in the circumstances to enable the council to arrange for its nominee to be present at the time of the transporting.

**Floor coverings**

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

**Garbage disposal**

27. A lessee or occupier of a lot—

- (a) shall maintain within the lessee's or occupier's lot, or on such part of the common property as may be authorised by the body corporate, in clean and dry condition and adequately covered a receptacle for garbage;
- (b) shall ensure that before refuse is placed in the receptacle it is securely wrapped or, in the case of tins or other containers, completely drained;
- (c) for the purpose of having the garbage collected, shall, not more than 12 hours before the time at which garbage is normally collected, place the receptacle within an area designated for that purpose by the body corporate;
- (d) when the garbage has been collected, shall promptly return the receptacle to the lessee's or occupier's lot or other area referred to in paragraph (a);
- (e) shall not place anything in the receptacle of the lessee or occupier of any other lot except with the permission of that lessee or occupier; and
- (f) shall promptly remove anything which the lessee, occupier or garbage collector may have spilled from the receptacle and shall take such action as may be necessary to clean the area where the thing was spilled.

**Keeping of animals**

28. Subject to section 87 (14), a lessee or occupier of a lot shall not, without the approval in writing of the body corporate, keep any animal on the lessee's or occupier's lot or on the common property.

**Notice of alteration to lot**

29. The lessee of a lot shall not alter the structure of the lot without giving to the body corporate, not later than 14 days before commencement of the alteration, a written notice describing the proposed alteration.

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SCHEDULE 3—*continued*BY-LAWS—*continued***Appearance of lot**

30. The lessee or occupier of a lot shall not, without the written consent of the body corporate, 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.

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## SCHEDULE 4

(Secs. 86, 101)

## MEETINGS, AND VOTING AT MEETINGS, OF BODY CORPORATE

*Part 1*

## MEETINGS OTHER THAN FIRST ANNUAL GENERAL MEETING

**General meetings of body corporate**

1. (1) An annual general meeting of a body corporate shall be held in each year on a date not earlier than 1 month before nor later than 1 month after each anniversary of the first annual general meeting.

(2) A general meeting of a body corporate (in this clause referred to as an "extraordinary general meeting"), which is not an annual general meeting, shall be held whenever it is convened by the council.

(3) Without limiting the power of a council under subclause (2)—

(a) the secretary of a council or, in the secretary's absence, any member of the council shall convene an extraordinary general meeting of the body corporate as soon as practicable after the secretary or member receives a requisition for an extraordinary general meeting signed by one or more persons entitled to vote in respect of one or more lots, the unit entitlement or the sum of the unit entitlements of which is at least one-quarter of the aggregate unit entitlements; and

(b) where a member of the council other than the secretary receives a requisition to convene an extraordinary general meeting of the body corporate under this subclause, the member may give, on behalf of the council, the notice required to be given under subclause (4).

*Strata Titles (Leasehold) 1986*SCHEDULE 4—*continued*MEETINGS, AND VOTING AT MEETINGS, OF BODY CORPORATE—*continued*

- (4) Notice of a general meeting of a body corporate shall—
- (a) be served on each lessee of a lot and, where the strata roll shows that the lease of the lot is subject to a mortgage or covenant charge, each first mortgagee and covenant chargee, as ascertained from the strata roll, at least 7 days before the meeting;
  - (b) where it is so served on a first mortgagee or covenant chargee, include the name of the lessee of the lot and the addresses of the lot and the place where the meeting is to be held; and
  - (c) where it is so served pursuant to a requisition referred to in subclause (3) (a), specify a date for the convening of the extraordinary general meeting to which it relates that is not later than 1 month after the date on which the secretary or member, as the case may be, of the council received the requisition.
- (5) Nothing in subclause (4) (a) requires a lessee to serve on himself or herself a notice referred to in that subclause.
- (6) Every such notice for an annual general meeting shall—
- (a) be accompanied by a copy of the financial statements of the body corporate last prepared by the body corporate in accordance with section 98 (1) (h);
  - (b) include a form of motion for adoption of those financial statements; and
  - (c) include the information referred to in section 99 in relation to each current insurance policy held by the body corporate.
- (7) Every such notice for an annual general meeting or an extraordinary general meeting shall—
- (a) include—
    - (i) a form of motion to confirm the minutes of the last general meeting;
    - (ii) where the notice is for a meeting required to be convened by a person appointed under section 86 (7) by reason of there not being a council of the body corporate, a form of motion for the election of a council of the body corporate; and
    - (iii) a form of each other motion to be considered at the meeting;
  - (b) clearly indicate which, if any, of the motions referred to in paragraph (a) requires for its passing a special resolution and which, if any, of them requires for its passing a unanimous resolution;
  - (c) be accompanied by a copy of the minutes of the last general meeting if the notice is to—
    - (i) a lessee of a lot who has not previously been given a copy of those minutes; or

*Strata Titles (Leasehold) 1986*SCHEDULE 4—*continued*MEETINGS, AND VOTING AT MEETINGS, OF BODY CORPORATE—*continued*

- (ii) a lessee of a lot who, before the notice is given, makes a request for a copy of those minutes that has not been complied with; and
- (d) inform each person to whom the notice is addressed that the person or, where the notice is addressed to a corporation, that a company nominee of the corporation may vote in respect of each motion and, where relevant, on election of members of the council—
  - (i) in the case of a lessee of a lot the lease of which is subject to a first mortgage or a covenant charge shown on the strata roll, or, if a covenant charge is shown on the strata roll as having priority to the mortgage or there is no mortgage, only if the covenant chargee refuses or neglects to exercise the voting power conferred by this Part;
  - (ii) except in the case of a motion requiring a unanimous resolution, only if all contributions levied and payable on the lot, and any other money recoverable under this Act by the body corporate from the person to whom the notice is addressed at the date of the notice (being contributions levied on the person, or money recoverable from the person, in respect of the lot of which the person is the lessee or first mortgagee or in respect of which the person is a covenant chargee) have been duly paid before the commencement of the meeting; and
  - (iii) either in person at the meeting or by duly appointed proxy whose instrument of appointment is given to the secretary of the body corporate at or before the meeting.

(8) A motion shall not be submitted at a general meeting unless notice of the motion has been given in accordance with this clause or the motion is a motion to amend a motion of which notice has so been given.

**Restriction on moving a motion or nominating candidate**

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

**Persons entitled to vote at general meetings**

3. (1) A person is entitled to vote in respect of any lot on any motion submitted at a general meeting of a body corporate or on any election of members of the council only if the person is the lessee of that lot as shown on the strata roll or, where the lessee so shown is a corporation, the company nominee of that corporation as shown on that roll.

(2) Notwithstanding any other provision of this clause, where the lease of a lot is subject to a mortgage or covenant charge, or to both, shown on the strata roll—

- (a) the mortgagee or, if the mortgagee is a corporation, the company nominee, as shown on that roll, of the corporation; or
- (b) the company nominee, as shown on that roll, of the covenant chargee,

*Strata Titles (Leasehold) 1986*SCHEDULE 4—*continued*MEETINGS, AND VOTING AT MEETINGS, OF BODY CORPORATE—*continued*

under the mortgage or covenant charge shown on that roll as being first in priority is entitled to vote in respect of that leasehold lot on any motion submitted at a general meeting of a body corporate or on any election of members of the council and, if the first mortgagee or covenant chargee votes on that motion, any vote cast by the lessee of that leasehold lot or, where that lessee is a corporation, by the company nominee of that corporation, on the motion shall not be counted.

(3) Notwithstanding section 113 (14), co-lessees or co-mortgagees shall be entitled to cast a vote only by a person duly appointed as a proxy by them jointly and if notice of the person's appointment has been given to the secretary of the body corporate before the commencement of the meeting at which the vote is cast.

(4) Only the lessee entitled to the first of two or more successive estates in a lot is, subject to this Part, entitled to cast a vote on a motion submitted at a general meeting of a body corporate or on any election of members of the council.

(5) A lessee of a lot who is a trustee is, subject to this Part, entitled to cast a vote on a motion submitted at a general meeting of a body corporate or on any election of members of the council and the persons beneficially interested in the trust are not entitled to cast such a vote.

(6) A person who, but for this subclause, would be entitled to vote on a motion submitted at a general meeting of a body corporate or on any election of members of the council is not, except where the motion is for a resolution which, if it is to be effective, is required by this Act to be a unanimous resolution, entitled so to vote unless all contributions levied and payable in respect of the lot in respect of which the person is entitled to vote, and any other money recoverable under this Act by the body corporate from the person, at the date of the notice given under clause 1 (4) have been duly paid before the commencement of the meeting.

(7) The voting rights conferred by this clause are subject to section 113 (13) and (14).

**Quorum**

4. (1) A motion submitted at a general meeting of a body corporate shall not be considered at that meeting and an election of the members of the council shall not be held at a meeting of the body corporate unless the number of persons present at the meeting either personally or by duly appointed proxy and entitled to vote, together with the number of voters whose votes are cast in writing on that motion or election, constitutes a quorum for considering that motion or holding that election.

(2) Except as provided by subclause (3), the quorum for considering a motion or holding an election is constituted by—

- (a) one-half of the number of persons entitled to vote on the motion or at the election; or
- (b) lessees whose unit entitlements total not less than one-half of the aggregate unit entitlement.

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SCHEDULE 4—*continued*MEETINGS, AND VOTING AT MEETINGS, OF BODY CORPORATE—*continued*

(3) Where there is no quorum, as provided in subclause (2), for considering any motion or holding an election of members of the council at a general meeting of a body corporate within one-half hour after that motion or business arises for consideration at that meeting, the meeting shall stand adjourned to the same day in the next week at the same place and time and if there is no quorum, as provided in subclause (2), for considering that motion or holding that election at the adjourned meeting within one-half hour after that motion or business arises for consideration, the number of persons present personally or by duly appointed proxy and entitled to vote, together with the number of voters whose votes are cast in writing on that motion or on that election, constitute a quorum for considering that motion or business.

**Motions out of order**

5. At a general meeting of a body corporate the chairperson may rule that a motion submitted at the meeting is out of order if—

- (a) the chairperson considers that the motion, if carried, would conflict with this Act or the by-laws or would otherwise be unlawful or unenforceable; or
- (b) except in respect of a motion to amend a motion, clause 1 (8) has not been complied with with respect to the motion.

**Method of casting votes**

6. Except as provided by clause 3 (3), a vote on a motion submitted at a general meeting of a body corporate or on any election of members of the council may be cast personally or by duly appointed proxy.

**Chairperson to preside**

7. The chairperson of the body corporate shall preside at any general meeting of the body corporate at which the chairperson is present and, in the chairperson's absence from any such meeting, the persons present at that meeting and entitled to vote on motions submitted at that meeting may elect one of their number to preside at that meeting and the person so elected shall, while the person is so presiding, be deemed to be the chairperson of the body corporate.

**Chairperson to announce names of persons entitled to vote**

8. If requested so to do by a person present and entitled to vote at a general meeting of the body corporate, the chairperson shall, before submitting a motion to the meeting or the holding of the election of members of the council, announce the names of the persons who are entitled to vote on that motion or at that election.

**Counting of votes on election of council**

9. (1) Subject to subclause (2), each person entitled to vote on an election of members of the council has one vote in respect of each lot in respect of which the person is entitled to vote.

*Strata Titles (Leasehold) 1986*SCHEDULE 4—*continued*MEETINGS, AND VOTING AT MEETINGS, OF BODY CORPORATE—*continued*

(2) Where the original lessee (if any) of a lot is, at the time of any annual general meeting, the lessee of not less than one-half of the lots, the original lessee or, where the original lessee is a corporation, a company nominee of the corporation has, on an election of the council at that meeting, one vote in respect of each 3 lots in respect of which the original lessee is entitled to vote, ignoring any fraction.

**Counting of votes on motions**

10. (1) Subject to this clause, a motion submitted at a general meeting of a body corporate shall be decided according to the number of votes cast for and against the motion, whether personally or by duly appointed proxy, each person entitled to vote having one vote in respect of each lot in respect of which the person is entitled to vote.

(2) If—

- (a) a poll is demanded by any person entitled to vote at a general meeting of a body corporate on a motion submitted at that meeting, whether or not the motion has been decided in accordance with subclause (1), and the demand is made by that person personally at the meeting; or
- (b) a motion submitted at such a meeting is for a resolution which, if it is to be effective, is required by this Act to be a special resolution,

the motion shall be decided according to the value, ascertained in accordance with subclauses (3) and (4), of the votes cast for and against the motion, whether personally or by duly appointed proxy.

(3) Subject to subclause (4), for the purposes of subclause (2) the value of a vote cast on a motion submitted at a general meeting of a body corporate by a person entitled to vote in respect of a lot is equal to the unit entitlement of that lot.

(4) For the purposes of subclause (2), the value of the vote cast by the original lessee (if any) who at the time of the meeting is the lessee of lots the sum of whose unit entitlements is not less than one-half of the aggregate unit entitlement shall be one-third of the value that, but for this subclause, the lessee's vote would have under subclause (3), ignoring any fraction.

(5) A poll shall be taken in such manner as the chairperson thinks fit.

(6) A demand for a poll may be withdrawn by the person who made it.

**Chairperson's declaration of vote**

11. The declaration of the chairperson of the result of the voting on any motion submitted at a general meeting of the body corporate, otherwise than on a poll, shall be conclusive without proof of the votes recorded for or against the motion.

*Strata Titles (Leasehold) 1986*SCHEDULE 4—*continued*MEETINGS, AND VOTING AT MEETINGS, OF BODY CORPORATE—*continued***General meetings valid if attended only by chairperson**

12. A general meeting of a body corporate is, subject to clause 4, validly held notwithstanding that the only person present at the meeting is the chairperson of the body corporate.

**Requisition for motion to be included on agenda for general meeting**

13. (1) Any person entitled to vote at a general meeting of a body corporate may by notice in writing served on the secretary of the council require inclusion in the agenda of the next general meeting of the body corporate (other than a meeting in respect of which notices have already been given under clause 1 (4)) of a motion set out in the firstmentioned notice and the secretary shall comply with the notice.

(2) For the purposes of subclause (1), a lessee of a lot who, but for the fact that the lease of the lot is subject to a mortgage or covenant charge, would be entitled to vote at a general meeting of the body corporate shall be deemed to be entitled to vote at that meeting.

**Amendment or revocation of unanimous or special resolutions**

14. A unanimous resolution or special resolution of a body corporate may not be amended or revoked except by a subsequent unanimous resolution or special resolution, as the case may be.

**Duties of original lessee until council elected**

15. Until the offices of chairperson, secretary and treasurer of the body corporate are filled or until the expiration of the first annual general meeting, whichever first happens, the functions conferred or imposed on the holders of those offices shall be exercised by the original lessee or, if there is no original lessee, by the lessor under the leasehold strata scheme concerned or by that lessee's or lessor's agent duly authorised in writing.

**Meetings of body corporate before first annual general meeting**

16. (1) Until the first annual general meeting of the body corporate, the secretary of the body corporate may convene an extraordinary general meeting and shall do so on receipt of a requisition signed by one or more persons entitled to vote in respect of one or more lots, the unit entitlement or the sum of the unit entitlements of which is at least one-quarter of the aggregate unit entitlement.

(2) The provisions of this Part (clause 1 (1), (2), (3) and (6) excepted) apply to and in respect of a meeting referred to in subclause (1) so far as those provisions are not inconsistent with, or incapable of applying to, such a meeting.

**Interpretation**

17. In this Part, a reference to a duly appointed proxy is a reference to a person appointed as a proxy by an instrument in the prescribed form.

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SCHEDULE 4—*continued*

MEETINGS, AND VOTING AT MEETINGS, OF BODY CORPORATE—*continued*

*Part 2*

FIRST ANNUAL GENERAL MEETING

**Interpretation**

1. (1) In this Part—

“business” means the items in the agenda referred to in section 86 (2);

“meeting”, in relation to a body corporate, means the first annual general meeting of the body corporate.

(2) In this Part, a reference to a duly appointed proxy is a reference to a person appointed as a proxy by an instrument in the form prescribed for the purposes of clause 17 of Part 1.

**Inspection of strata roll by original lessee**

2. For the purpose of preparing the notices referred to in clause 3, an original lessee, whether or not having ceased to be a lessee of a lot or, if there is no original lessee, the lessor under the leasehold strata scheme concerned or the authorised agent of that lessee or lessor, is entitled to inspect the strata roll without making payment or written application.

**Notice of meeting and contents of meeting**

3. (1) Notice of the meeting shall be served on each lessee of a lot and, where the strata roll shows that the lease of the lot is subject to a mortgage or covenant charge, each first mortgagee and covenant chargee, as ascertained from the strata roll, at least 14 days before the meeting and shall—

(a) set forth as the agenda of the meeting the items referred to in section 86 (2) and no other business; and

(b) inform each person to whom the notice is addressed that the person or, where the notice is addressed to a corporation, that a company nominee of the corporation may vote at the meeting—

(i) in the case of a lessee of a lot the lease of which is subject to a first mortgage or a covenant charge shown on the strata roll, only if the mortgagee or, if the covenant charge is shown on the strata roll as having priority to the mortgage or there is no mortgage, only if the covenant chargee refuses or neglects to exercise the voting power conferred by this Part;

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- (ii) except in the case of a motion requiring a unanimous resolution, only if all contributions levied and payable on the lot, and any other money recoverable under this Act by the body corporate from the person to whom the notice is addressed at the date of the notice (being contributions levied on the person, or money recoverable from the person, in respect of the lot of which the person is the lessee or first mortgagee or in respect of which the person is a covenant chargee) have been duly paid before the commencement of the meeting; and
- (iii) either in person at the meeting or by duly appointed proxy whose instrument of appointment is given to the secretary of the body corporate before a time specified in the notice (being a time not later than the time for the holding of the meeting).

(2) Where the lease of the lot to which the notice relates is subject to a mortgage or covenant charge and the notice is served on the mortgagee or covenant chargee, notice of the meeting shall include the name of the lessee of the lot and the addresses of the lot and the place where the meeting is to be held.

(3) Nothing in this clause requires an original lessee or the lessor under the scheme to serve on himself or herself notice of the meeting.

**Restrictions on submitting motions**

4. (1) A motion shall not be submitted to the meeting unless it relates to the business of the meeting.

(2) A person is not entitled to move a motion at a meeting or to nominate a person for election as a member of the council unless that person is entitled to vote on that motion or in that election.

(3) For the purposes of subclause (2), a lessee of a lot who, but for the fact that the lease of the lot is subject to a mortgage or covenant charge, would be entitled to vote on a motion or in an election or a company nominee of any such lessee that is a corporation shall be deemed to be entitled to vote on that motion or in that election.

**Persons entitled to vote at meeting**

5. (1) A person is entitled to vote at a meeting in respect of any lot only if the person is the lessee of that lot as shown on the strata roll or, where the lessee so shown is a corporation, the company nominee of that corporation as shown on that roll.

(2) Notwithstanding any other provision of this clause, where a lease of a lot is subject to a mortgage or a covenant charge, or both, shown on the strata roll—

- (a) the mortgagee or, if the mortgagee is a corporation, the company nominee, as shown on that roll, of that corporation; or
- (b) the company nominee, as shown on that roll, of the covenant chargee,

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under the mortgage or covenant charge shown on that roll as being first in priority is entitled to cast a vote at a meeting in respect of that lot and, if the mortgagee or covenant chargee casts a vote, any vote cast on the same matter by the lessee of that lot or, where that lessee is a corporation, by the company nominee of that corporation, shall not be counted.

(3) Notwithstanding section 113 (14), co-lessees or co-mortgagees shall be entitled to cast a vote only by a person duly appointed as a proxy by them jointly and if the instrument of appointment of the proxy has been given to the secretary of the body corporate before the commencement of the meeting.

(4) Only the lessee entitled to the first of two or more successive estates in a lot is, subject to this Part, entitled to cast a vote at a meeting.

(5) A lessee of a lot who is a trustee is, subject to this Part, entitled to cast a vote at a meeting and the persons beneficially interested in the trust are not entitled to cast a vote.

(6) A person who, but for this subclause, would be entitled to cast a vote at a meeting is not, except in respect of a motion for a resolution which, if it is to be effective, is required by this Act to be a unanimous resolution, entitled to cast a vote at a meeting unless all contributions levied in respect of the lot in respect of which the person is entitled to vote, and any other money recoverable under this Act by the body corporate from the person at the date of the notice given under clause 3 (1) have been duly paid before the commencement of the meeting.

(7) The voting rights conferred by this clause are subject to section 113 (13) and (14).

**Quorum**

6. (1) Business shall not be considered at a meeting unless the number of persons present at that meeting either personally or by duly appointed proxy and entitled to vote constitute a quorum.

(2) Except as provided by subclause (3), the quorum for considering a matter at a meeting is constituted by—

(a) one-half of the number of persons entitled to vote on the matter; or

(b) lessees whose unit entitlements total not less than one-half of the aggregate unit entitlement.

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(3) Where there is no quorum, as provided in subclause (2), for considering any matter at a meeting within one-half hour after that matter arises for consideration at that meeting, that meeting shall stand adjourned to the same day in the next week at the same place and time and if there is no quorum, as provided in subclause (2), for considering that matter at the adjourned meeting within one-half hour after that matter arises for consideration, the number of persons present personally or by duly appointed proxy and entitled to vote constitute a quorum for considering that matter.

**Motions out of order**

7. The chairperson of a meeting may rule a motion out of order if the chairperson considers that the motion, if carried, would conflict with this Act or the by-laws or would otherwise be unlawful or unenforceable.

**Method of casting votes**

8. Except as provided in clause 5 (3), a vote may be cast at a meeting by a person entitled to vote, either personally or by the person's duly appointed proxy.

**Chairperson to preside**

9. The chairperson of the body corporate, if present, shall preside at the meeting and, in the chairperson's absence, the persons present and entitled to vote at the meeting may elect one of their number to preside at the meeting and the person so elected shall, while that person is so presiding, be deemed to be the chairperson of the body corporate.

**Chairperson to announce names of persons entitled to vote**

10. If requested so to do by a person present and entitled to vote at a meeting, the chairperson shall, before submitting a matter to a vote at the meeting, announce the names of the persons who are entitled to vote on the matter.

**Counting of votes on election of council**

11. (1) Subject to subclause (2), each person entitled to vote on an election of members of the council has one vote in respect of each lot in respect of which the person is entitled to vote.

(2) Where there is an original lessee who is, at the time of the meeting, the lessee of not less than one-half of the lots, the original lessee or, where the original lessee is a corporation, a company nominee of the corporation has, on an election of the council at the meeting, one vote in respect of each 3 lots in respect of which the original lessee is entitled to vote, ignoring any fraction.

**Counting of votes**

12. (1) Subject to this clause, a motion submitted at a meeting shall be decided according to the number of votes cast for and against the motion, whether personally or by duly appointed proxy, each person entitled to vote having one vote in respect of each lot in respect of which the person is entitled to vote.

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SCHEDULE 4—*continued*MEETINGS, AND VOTING AT MEETINGS, OF BODY CORPORATE—*continued*

## (2) If—

- (a) a poll is demanded by any person entitled to vote at a meeting on a motion submitted at that meeting, whether or not the motion has been decided in accordance with subclause (1), and the demand is made by that person personally at the meeting; or
- (b) a motion submitted at the meeting is for a resolution which, if it is to be effective, is required by this Act to be a special resolution,

the motion shall be decided according to the value, ascertained in accordance with subclauses (3) and (4), of the votes cast for and against the motion, whether personally or by duly appointed proxy.

(3) Subject to subclause (4), for the purposes of subclause (2) the value of a vote cast on a motion submitted at a meeting by a person entitled to vote in respect of a lot is equal to the unit entitlement of that lot.

(4) For the purposes of subclause (2), the value of the vote cast by an original lessee who at the time of a meeting is the lessee of lots the sum of whose unit entitlements is not less than one-half of the aggregate unit entitlement shall be one-third of the value that, but for this subclause, the original lessee's vote would have under subclause (3), ignoring any fraction.

(5) A poll shall be taken in such manner as the chairperson thinks fit.

(6) A demand for a poll may be withdrawn by the person who made it.

**Chairperson's declaration of vote**

13. The declaration of the chairperson of the result of the voting on any motion submitted at a meeting, otherwise than on a poll, shall be conclusive without proof of the votes recorded for or against the motion.

**Amendment or revocation of unanimous or special resolution**

14. A unanimous or special resolution of a body corporate may not be amended or revoked at a meeting except by a subsequent unanimous resolution or special resolution, as the case may be.

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