

**STRATA TITLES (PART STRATA) AMENDMENT ACT 1992**  
**No. 11**

**NEW SOUTH WALES**



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**STRATA TITLES (PART STRATA) AMENDMENT ACT 1992**  
**No. 11**

NEW SOUTH WALES



**Act No. 11, 1992**

An Act to amend the Strata Titles Act 1973 so as to allow the strata subdivision of parts of buildings; and for related purposes. [Assented to 17 March 1992]

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See also Strata Titles (Leasehold Part Strata) Amendment Act 1992.

**The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Strata Titles (Part Strata) Amendment Act 1992.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendment of Strata Titles Act 1973 No. 68**

3. The Strata Titles Act 1973 is amended as set out in Schedule 1.

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**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

**(1) Section 5 (Definitions):**

- (a) In the definition of “development lot” in section 5 (1), after “lot in a strata plan”, insert “(not being a lot in a stratum parcel)”.
- (b) From section 5 (1), omit the definition of “location plan”, insert instead:

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

- (a) if the scheme does not relate to a proposed stratum parcel, which 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) if the scheme relates to a proposed stratum parcel, which 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:

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SCHEDULE 1—AMENDMENTS—*continued*

- (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 strata scheme; and
  - (iv) of any proposed lots or part of proposed lots not within the building,
- and which shows such other particulars as may be required by the regulations;
- (c) In section 5 (1), after the definition of “strata scheme”, insert:
- “stratum parcel”** means a parcel created by a subdivision permitted by section 7 (2A);
- (2) Section 6 (**Construction of Act**):
- After section 6 (2), insert:
- (3) The provisions of this Act, other than those relating to ownership and the certification of title, apply:
- (a) to so much of an encroachment (other than on a public place) shown on a proposed strata plan as is designated for use with a lot—~~as if~~ it were part of the lot; or
  - (b) to the remainder (if any) of such an encroachment and to any other encroachment (other than on a public place) shown on a proposed strata plan—as if it were common property.
- (3) Section 7 (**Subdivision**):
- (a) In the definition of “land” in section 7 (1), after “being”, insert “, except as provided by subsection (2A),”.
  - (b) Omit section 7 (2), insert instead:
    - (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.
    - (2A) 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; or

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SCHEDULE 1—AMENDMENT—*continued*

- (b) land to which section 327AA (2) of the Local Government Act 1919 does not apply by virtue of subsection (4) of that section; 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),

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 held in fee simple.

(2B) Land that is a development lot under this Act cannot be subdivided under this section.

(2C) Land that is a development lot under the Community Land Development Act 1989 can be subdivided under this section, but only into lots and common property under subsection (2).

(4) Section 8:

Omit the section, insert instead:

**Registration of strata plans**

8 (1) A plan intended to be registered as a strata plan must include, as sheets of the plan:

- (a) a location plan; and
  - (b) a floor plan; and
  - (c) a schedule of unit entitlement.
- (2) The location plan must be endorsed with:
- (a) the address at which documents may be served on the proposed body corporate; and
  - (b) a certificate issued by the local council under section 37 in the approved form, unless the plan is lodged by the Crown or a statutory body representing the Crown; and
  - (c) a certificate given by a registered surveyor in the approved form certifying that each applicable requirement of Schedule 1A has been met.

SCHEDULE 1—AMENDMENT—*continued*

The location plan must also identify any encroachment by the building (whether or not on to a public place) and any proposed development lot.

(3) The floor plan for a strata scheme that does not provide for common property must show that at least one (or part of one) of the proposed lots is superimposed on another (or part of another) of the proposed lots.

(4) The schedule of unit entitlement must show as whole numbers the proposed unit entitlement of each lot and the aggregate unit entitlement of all lots.

(5) A plan intended to be registered as a strata plan that creates a development lot must (unless the plan is lodged by the Crown or a statutory body representing the Crown) be accompanied by:

- (a) a copy of the relevant development statement; and
- (b) the certificate of the consent authority provided under section 28A (4).

(6) The Registrar-General may refuse to register a plan as a strata plan:

- (a) if a plan of survey, within the meaning of the Survey Practice Regulation 1990, of the proposed parcel requested by the Registrar-General and such number of copies of the plan of survey as have been so requested have not been lodged in the office of the Registrar-General; or
- (b) if any requisition made by the Registrar-General concerning the registration of a by-law that confers a right of exclusive use and enjoyment of, or special privileges in respect of, common property has not been complied with.

(7) The plan of survey must show, should the Registrar-General so request, the relationship by measurement of the building to the perimeter of the proposed parcel and, in the case of a proposed stratum parcel, to the perimeter of the site.

SCHEDULE 1—AMENDMENTS—*continued*

## (5) Sections 8AA, 8AB:

After section 8, insert:

**Effect of registration of a strata plan creating a stratum parcel**

8AA. (1) On registration of a plan as a strata plan that creates a stratum parcel, there is implied (despite section 88 of the Conveyancing Act 1919):

- (a) 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; and
- (b) 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; and
- (c) 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
- (d) 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.

(2) All ancillary rights and obligations reasonably necessary to make easements effective apply in respect of an easement created by this section.

(3) An easement for support or shelter created by this section:

- (a) entitles the owner of the dominant tenement to enter the servient tenement to replace, renew or restore any support or shelter; and
- (b) subsists until the strata scheme is terminated or the easement is otherwise extinguished.

(4) The Registrar-General must make in the Register such recordings in respect of the easements as the Registrar-General considers appropriate.

SCHEDULE 1—AMENDMENTS— *continued*

**Easements in certain strata schemes**

8AB. (1) In this section:

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

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

(2) If:

- (a) a stratum parcel is the subject of a strata scheme; and
- (b) an instrument has created or has had the effect of creating after the commencement of this section 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, or the land comprised in that 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 are as specified in Schedule 1B, except in so far as those rights or obligations may have been varied or negatived 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,



SCHEDULE 1—AMENDMENTS—*continued*

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.

(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), when registered as provided by subsection (8), is 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 must, on application made in the approved form, make all necessary recordings in the Register for giving effect to the order.

(6) Section 8A (**Subdivision of development lots**):

In section 8A (1), after “Land”, insert “(not being land within a stratum parcel)”.

(7) Section 28A (**Approval of development statement**):

In section 28A (1), after “statement”, insert “and registration of the proposed strata plan will not create a stratum parcel”.

SCHEDULE 1—AMENDMENT— *continued*

## (8) Part 2, Division 2B:

After section 28Q, insert:

**Division 2B—Strata management statements****Requirement for strata management statement**

28R. The Registrar-General must not register a plan as a strata plan creating a stratum parcel unless the Registrar-General also registers a strata management statement for the building and site concerned.

**Formal requirements**

28S. (1) A strata management statement and any amendment of such a statement must be in the approved form.

(2) A strata management statement as in force from time to time must comply with Schedule 1C and that Schedule applies to any such statement.

(3) The Registrar-General may register a strata management statement and an amendment of such a statement by making such recordings in the Register as the Registrar-General considers appropriate.

(4) The Registrar-General may refuse to register a strata management statement or any amendment of such a statement if the application for registration fails to comply with any requirement made by this Act or the regulations or is not accompanied by the prescribed fee.

**Registration of strata management statement**

28T. (1) If a strata management statement has been registered in accordance with this Division, the Registrar-General must record in the folio of the Register relating to the body corporate of the strata scheme concerned and the common property (if any):

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

SCHEDULE 1—AMENDMENTS— *continued*

(2) The Registrar-General must make a like record in the folio of the Register:

- (a) for each of the bodies corporate for a strata scheme for part of the building concerned; and
- (b) for each part of the building or site concerned that does not form part of a stratum parcel.

**Amendment of strata management statement**

28U. (1) A registered strata management statement may be amended only if the amendment is:

- (a) supported by a special resolution of the body corporate for each strata scheme for part of the building concerned and by each person in whom is vested an estate in fee simple in any part of that building or its site that is not included in a stratum parcel; or
- (b) ordered under Part 5 or under this or any other Act by a court; or
- (c) consequential on the revocation or modification, under section 103 of the Environmental Planning and Assessment Act 1979, of a development consent.

(2) An amendment of a strata management statement does not have effect under this Division unless it is recorded in the folio of the Register:

- (a) for each of the bodies corporate for a strata scheme for part of the building concerned; and
- (b) for each part of the building or site concerned that does not form part of a stratum parcel.

**Signing of strata management statement**

28V. (1) The Registrar-General may register a strata management statement or any amendment of such a statement only if the statement or amendment is:

- (a) accompanied by a certificate given by the secretary of the body corporate for each strata scheme (if any) for a part of the building concerned certifying that the statement is supported by a special resolution of the body corporate; and

**SCHEDULE 1—AMENDMENTS—*continued***

- (b) signed by each person in whom is vested an estate in fee simple, recorded in a folio of the Register kept under the Real Property Act 1900, in a part of the building or its site that is not included in a stratum parcel (whether or not it is included in a proposed stratum parcel); and
- (c) signed by every mortgagee, chargee or covenant chargee under a mortgage, charge or covenant charge recorded in a folio of that Register recording such an estate.

(2) In addition, the Registrar-General may refuse to register a strata management statement or an amendment of such a statement unless there have been lodged in the office of the Registrar-General written consents to the registration of the statement or amendment signed by (or by an agent authorised by) such one or more of the following as the Registrar-General determines:

- (a) the lessee under any lease, or the judgment creditor under any writ, recorded in any such folio or in the folio of the Register relating to any common property affected by the statement or amendment;
- (b) the caveator under a caveat affecting any estate or interest of any such registered proprietor, mortgagee, chargee or covenant chargee or under a caveat affecting any such common property.

(3) The Registrar-General may, in a particular case, dispense with any signature required by or under this section without giving notice to any person.

**Effect of strata management Statement**

28W. (1) A registered strata management statement, as in force for the time being, relating to the management of a building has effect as an agreement under seal containing the covenants referred to in subsection (2) entered into by each person who for the time being is:

- (a) a body corporate of a strata scheme for part of the building; or
- (b) a proprietor, mortgagee in possession or lessee for the time being of any of the lots in such a strata scheme; and

SCHEDULE 1—AMENDMENTS— *continued*

- (c) any other person in whom the fee simple of any part of that building or its site (being a part affected by the statement) is vested for the time being, or the mortgagee in possession or lessee of any such part.
- (2) The covenants referred to in this section are:
  - (a) a covenant by which those persons jointly and severally agree to carry out their obligations under the registered strata management statement as from time to time in force; and
  - (b) a covenant by which those persons jointly and severally agree to permit the carrying out of those obligations.
- (3) The agreement ceases to have effect under this Division:
  - (a) in relation to a person who is described in subsection (1) (b) or (c), on that person ceasing to be a person so described; and
  - (b) in relation to all of the persons described in subsection (1), on termination of all strata schemes to which the strata management statement relates.
- (4) Subsection (3) does not prejudice or affect any obligation that was incurred by a person, or any right that accrued to a person, under the agreement while the agreement was in force.
- (5) A strata management statement has no effect to any extent to which it is inconsistent with any condition imposed on a development consent relating to the site of the building to which the statement relates, with a by-law or an order under Part 5 or with any other Act or other law.
- (6) Except as may be provided otherwise by this Act or the regulations, a provision in any instrument under which the agreement is excluded, modified or restricted is void.
- (7) A covenant entered into under the agreement does not merge in a transfer of a lot.
- (8) Part 5 applies to or in relation to matters arising under the agreement.

SCHEDULE 1—AMENDMENTS—*continued*

(9) Except as provided by subsection (8), nothing in this section affects any right or remedy that a person may have under a strata management statement apart from a right or remedy under this Division.

(9) Section 50 (**Variation of strata scheme consequent on damage to or destruction of building**):

Omit section 50 (6) (b), insert instead:

- (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;

(10) Section 51 (**Termination of strata scheme**):

After section 51 (6) (b1), insert:

- (b2) the termination or amendment of any strata management statement that relates to the parcel or the amendment of any other strata management statement that relates to the building concerned;

(11) Section 58A (**Copy of by-laws and strata management statement to be provided**):

(a) After section 58A (1), insert:

(1A) If the lot or common property is affected by a strata management statement, the lessor must, within that period of 7 days, also provide the lessee, in accordance with subsection (2), with a copy of the strata management statement as for the time being in force.

Maximum penalty: 1 penalty unit.

(b) In section 58A (2), after “by-laws” insert “or of a strata management statement”.

(12) Section 83:

Omit the section, insert instead:

**Insurance of buildings**

83. (1) The body corporate for a strata scheme for the whole of a building must insure the building and keep the building insured under a damage policy with an approved insurer in the name of the body corporate.

Maximum penalty: 5 penalty units.

SCHEDULE 1—AMENDMENTS—*continued*

(2) The body corporate for each strata scheme for part of a building and any other person in whom is vested an estate in fee simple in part of the building that is not included in a stratum parcel must insure the building and keep the building insured under a damage policy effected with an approved insurer in their joint names.

Maximum penalty: 5 penalty units.

(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 proportion of a premium for a damage policy in respect of a building referred to in subsection (2) payable by a body corporate or other person is the same proportion as the replacement value of the part (or parts) of the building subject to the strata scheme concerned or held in fee simple by the other person bears to the replacement value of the whole building.

(5) On application made to it by a body corporate or other person liable to pay such a proportion, a Board may determine any such replacement value and proportion payable and any such determination is binding on each such body corporate and other person.

(6) 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), but a body corporate may make such an application only pursuant to a unanimous resolution.

(7) If, on considering such an application, 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 (8)—(10), by order in writing:

(a) exempt the applicant from compliance with those provisions absolutely; or

SCHEDULE 1—AMENDMENTS—*continued*

(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) The Commissioner must not make an order under subsection (7) unless each other person 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.

(9) A consent for the purposes of this section may be given by a body corporate only pursuant to a unanimous resolution.

(10) If a body corporate is required by a positive covenant to insure the building, an order must 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 a requirement made by subsection (1) or (2) or any corresponding requirement of a positive covenant, 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.

(12) If a person fails to comply with a requirement made by 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 requiring the person failing to comply to join that other person in effecting a damage policy in respect of the building; or



SCHEDULE 1—AMENDMENTS—*continued*

- (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 proportion, if any, of the amount of the premium for which that person is liable.

(13) Section 88 (**Insurable interests**):

Omit section 88 (1), insert instead:

- (1) Any person (including a body corporate) is taken to have an insurable interest in the subject-matter of a contract of insurance entered into by the person pursuant to this Division.

(14) Section 101 (**Procedure after Commissioner receives application**):

At the end of section 101 (1) (g), insert:

; and

- (h) if the strata scheme concerned is for part of a building, may for that purpose enter any lot in any stratum parcel that includes part of the building concerned and any other part of the building or its site at any reasonable time on notice given to any occupier of that lot or other part and may enter any common property within the building or its site.

(15) Section 104 (**Orders by Commissioner**):

From section 104 (3), omit “a body corporate, a managing agent, a proprietor, any person having an estate or interest in a lot or an occupier of a lot”, insert instead “any interested person (within the meaning of section 105)”.

(16) Section 105 (**General powers of Commissioner to make orders**):

- (a) From section 105 (1), omit “a body corporate, a managing agent, a proprietor, any person having an estate or interest in a lot or an occupier of a lot”, insert instead “any interested person”.

SCHEDULE 1—AMENDMENTS—*continued*

- (b) After section 105 (1), insert:
- (1AA) In this section, **“interested person”**:
- (a) in relation to any strata scheme, means:
- (i) the body corporate of the strata scheme; or
  - (ii) the chairman, secretary or treasurer of the body corporate (or of the council of the body corporate) of the strata scheme; or
  - (iii) a managing agent for the strata scheme; or
  - (iv) a proprietor of a lot in, a person having an estate or interest in a lot in, or an occupier of a lot in, the strata scheme; and
- (b) in relation to a strata scheme for a stratum parcel, includes:
- (i) the body corporate of, a managing agent for, a proprietor of a lot in, a person having any other estate or an interest in a lot in, or an occupier of a lot in, any other strata scheme affecting the building; and
  - (ii) any other person for the time being bound by the strata management statement for the building.
- (c) In section 105 (2) and (2A), after “corporate” wherever occurring, insert “or building management committee”.
- (d) From section 105 (2), omit “or the by-laws”, insert instead “, the by-laws or a strata management statement”.
- (e) Section 105 (3A), (3B):
- After section 105 (3), insert:
- (3A) Before making my order relating to the management of a strata scheme for a stratum parcel or the management of the building concerned or its site, the Commissioner must have regard to the strata management statement for the building.
- (3B) Subsection (3A) does not prevent the Commissioner from making an order that is inconsistent with the provisions of a strata management statement, or that requires the amendment of such a statement.
- (f) At the end of section 105 (4) (c), insert:

SCHEDULE 1—AMENDMENT—*continued*

; or

- (d) for the settlement of a dispute, or the rectification of a complaint, arising out of any requirement made by a strata management statement, unless the statement provides for such disputes or complaints to be referred to the Commissioner for a decision or the order may be made under section 109A.

## (17) Section 109A:

Omit the section, insert instead:

**Order to make or pursue insurance claim**

109A. (1) The Commissioner may order any person who is entitled to the benefit of insurance effected under this Act to make or pursue an insurance claim in respect of damage to the building or any other property to which the insurance relates.

(2) The Commissioner may make an order only if the Commissioner considers the person has unreasonably refused to make or pursue the claim.

(3) An application for an order under this section may be made:

- (a) by any proprietor of a lot in a strata scheme for the building or part of the building concerned; or
- (b) if part of the building is included in a stratum parcel, by any person in whom is vested an estate in fee simple in any part of the building or its site that is not included in a stratum parcel.

(18) Section 112 (**Order relating to keeping of animals**):

Omit section 112 (3), insert instead:

(3) Whether or not an order under this section is consistent with any by-law, such an order binds:

- (a) each proprietor and occupier of a lot in and the body corporate of the strata scheme concerned; or
- (b) if the strata scheme concerned is for a stratum parcel, each person who is bound by the strata management statement for the building and its site.

SCHEDULE 1—AMENDMENT—*continued*

## (19) Part 5, Division 3A:

After section 115, insert:

**Division 3A—Resolution of certain building  
management disputes by commissioner**

**Resolution of certain building management disputes**

115A. (1) The Commissioner may attempt to resolve by conciliation any dispute or complaint relating to the management of a building or its site if any part of the building is included in a stratum parcel.

(2) A dispute or complaint may be referred to the Commissioner by any person who is bound for the time being by the strata management statement relating to the management of the building, whether or not the statement provides for conciliation of the dispute or complaint by the Commissioner.

(3) The Commissioner may attempt conciliation under this section only with the consent of all parties to the dispute or complaint, but (except where section 105 (4) (d) requires the Commissioner to do so) is not required to attempt conciliation before exercising any other function under this Act, by-laws or a strata management statement.

(4) The Commissioner may exercise any function conferred on the Commissioner by a strata management statement with respect to the settlement of disputes or the rectification of complaints concerning the management of the building to which the statement relates or its site, but only if the Commissioner considers that the function is appropriate.

## (20) Section 125:

Omit the section, insert instead:

**Orders relating to insurance**

125. (1) A Board may order that insurance must be effected under section 83 for a specified amount, if the Board is satisfied that there is a dispute about the amount for which any such insurance should be effected or the proportions in which the premium should be paid.

SCHEDULE 1—AMENDMENT—*continued*

(2) Any such order may require insurance to be effected in accordance with the order for a period of up to 90 days, but does not affect the requirement made by section 83 to keep the building insured after that period.

(3) A Board may order that the amount of any insurance effected under section 83 or 84 (1) (c) must be varied to a specified amount, if the Board considers that the amount for which the insurance is currently effected is unreasonable.

(4) An order under this section must specify by whom the insurance is to be effected or varied and (if the building concerned contains a stratum parcel) the proportions in which the premium is to be paid.

(5) An application for an order under this section may be made:

- (a) by a proprietor or an enrolled mortgagee of a lot, or a person having an interest in a lot, in a strata scheme for the whole or any part of the building concerned; or
- (b) if part of the building is included in a stratum parcel, by any person in whom is vested (or who has an interest in) an estate in fee simple in any part of that building or its site that is not included in a stratum parcel or by any mortgagee under a mortgage registered under the Real Property Act 1900 of any such estate; or
- (c) by an authority having the benefit of a positive covenant affecting that building or its site.

**(21) Section 133 (General provisions relating to orders under Division 4 and on appeal):**

From section 133 (2), omit “a body corporate, the chainman, secretary or treasurer of a body corporate or its council, a managing agent or a proprietor or other person having an estate or interest in a lot or an occupier of a lot”, insert instead “any interested person (within the meaning of section 105)”.

**(22) Section 140 (Effect of certain orders):**

From section 140 (1), omit “be deemed to be a resolution passed by the body corporate for the strata scheme to which the order relates”, insert instead “, to the extent that they

SCHEDULE 1—AMENDMENTS—*continued*

impose a requirement on a body corporate, be taken to have effect as a resolution of the body corporate to do what is needed to comply with the requirement”.

(23) Section 142 (**Penalty for contravention of certain orders**):

Omit section 142 (3), insert instead:

(3) Proceedings for an offence under this section may be taken only:

- (a) in any case, by the applicant for the order; or
- (b) if the order relates to a parcel that is not a stratum parcel, by the body corporate for the parcel; or
- (c) if the order relates to a stratum parcel, by each body corporate for a stratum parcel including part of the building or by any person in whom is vested an estate in fee simple in a part of the building that is not included in a stratum parcel.

## (24) Sections 148, 149:

Omit the sections, insert instead:

**Structural defects—proceedings as agent**

148. (1) An interested person may take proceedings, under the Building Services Corporation Act 1989 or otherwise, for the rectification of the condition of a part of a building, or a part of the site of a building, if that condition affects or is likely to affect the support or shelter provided by that part to any other part of the building or its site.

(2) Any such proceedings may be taken only if

- (a) they could have been taken by a proprietor of a lot or by another person in whom is vested an estate in fee simple in a part of the building or its site; and
- (b) they have not been taken by the proprietor or other person within a reasonable time.

(3) Any such proceedings are taken by an interested person as agent for the person who might have taken the proceedings and at the cost of the interested person.

SCHEDULE 1—AMENDMENTS— *continued*

(4) In this section, “**interested person**” means:

- (a) the body corporate of the strata scheme for the building or, if part of the building is included in a stratum parcel, of any strata scheme for part of the building; or
- (b) any person in whom is vested an estate in fee simple in any part of the building or its site that is not included in a parcel.

**Dividing fences**

149. (1) For the purposes of the Dividing Fences Act 1991:

- (a) the body corporate of a strata scheme for a parcel that is not a stratum parcel is taken to be the owner of the land constituting the parcel; and
- (b) the body corporate of each strata scheme for a stratum parcel including part of a building and each person in whom is vested an estate in fee simple in a part of the building or its site that is not included in such a parcel (for the purposes of that part) are taken to be the owners of the land constituting the building and its site.

(2) Subsection (1) does not apply to land that is part of a community scheme under the Community Land Management Act 1989 or to any part of a parcel that is the subject of a lease accepted or acquired by a body corporate under section 19.

(3) A strata management statement may apportion liability arising under the Dividing Fences Act 1991, but only between persons bound by the statement.

(25) Section 153 (**Service of documents on body corporate etc.**):

After section 153 (4), insert:

(5) A document may be served on a person in whom is vested an estate in fee simple in part of a building or its site, another part of which is included in a stratum parcel, in any manner provided by section 170 of the Conveyancing Act 1919.

SCHEDULE 1—AMENDMENTS—*continued*(26) Section 154 (**Powers of entry by public authority or local council**):

After “that parcel”, insert “(and, if it is a stratum parcel, any other part of the building concerned or its site, whether or not it is part of a parcel)”.

(27) Section 154A (**Powers of entry of Commissioner in certain cases**):

(a) From section 154A (1), omit “enter upon that part”, insert instead “and of any other part of the building concerned or its site, whether or not it is part of a parcel, enter that part of the parcel”.

(b) After section 154A (2) (a), insert:

(a1) a member of the building management committee, if any, for the building concerned; or

## (28) Schedules 1A–1C:

Before Schedule 1, insert:

**SCHEDULE 1A—REQUIREMENTS FOR STRATA PLANS**

(Sec. 8)

**Floor plans**

1. (1) Each wall, the inner surface or any part of which corresponds substantially to a line shown on the floor plan as a boundary of a proposed lot, must exist.

(2) Each floor or ceiling, the upper or under surface or any part of which forms a boundary of a proposed lot, must exist,

(3) Each wall, floor, ceiling or structural cubic space, by reference to which any boundary of a proposed lot is determined, must exist.

**Location plans—no stratum parcel**

2. (1) This clause applies if the proposed parcel will not be a stratum parcel.

(2) The building erected on the land comprising the proposed parcel and each proposed lot shown on the location plan must be wholly within the perimeter of that land.



SCHEDULE 1—AMENDMENT— *continued*

(3) This clause does not apply to so much of any encroachment as is an encroachment referred to in section 38 or an encroachment by the building on to land other than a public place.

**Location plans for stratum parcels**

3. (1) This clause applies if the proposed parcel will be a stratum parcel.

(2) The proposed parcel must include part of a building and another part of the building must be outside the proposed parcel.

(3) The proposed parcel and that building must be wholly within the perimeter of the site of the building.

(4) Each part of that building and so much (if any) of the site as constitute the proposed lots and common property (if any) must be wholly within the proposed parcel.

(5) Subclauses (3) and (4) do not apply to so much of any encroachment as is an encroachment referred to in section 38 or an encroachment by the building on to land other than a public place.

**Location plans—encroachments on private land**

4. If the building encroaches on to land other than a public place, an appropriate easement must exist or be created in accordance with section 88B of the Conveyancing Act 1919 on registration of the proposed strata plan.

**Stratum parcels in certain buildings prohibited**

5. A proposed stratum parcel must not include part of a building if

- (a) a stratum parcel has already been created in respect of the building under this Act or the Strata Titles (Leasehold Act) 1986; and
- (b) the whole or a substantial portion of the part did not form part of the building when the initial stratum parcel for the building was created.

SCHEDULE 1—AMENDMENTS—*continued***SCHEDULE 1B—RIGHTS AND OBLIGATIONS  
IMPLIED IN CERTAIN EASEMENTS**

(Sec. 8AB)

**Definitions**

1. (1) In this Schedule:

“**pipes**” includes cables, tubes, wires and conduits of all kinds;

“**service**” has the same meaning as in section 8AB.

(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) if a stratum parcel is the dominant tenement, is a reference to:

- (i) a proprietor of a lot within the parcel; or
- (ii) the body corporate of the strata scheme concerned; or
- (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

(b) if a stratum parcel is the servient tenement, is a reference to:

- (i) any person entitled to an estate or interest in possession in the dominant tenement; or
- (ii) any person authorised by such a person.

**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.

**Right of personal access**

3. Each person entitled to the benefit of a right of personal access has at all times an unrestricted right:

SCHEDULE 1—AMENDMENTS—*continued*

- (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) If a right of vehicular or personal access is created over or appurtenant to a 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, or by 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) if 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) If a body corporate 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

SCHEDULE 1—AMENDMENTS—*continued*

- pipes or any existing apparatus that is for the time being within the burdened land; and
- (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:
- (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<sup>9</sup>
- subject to the conditions that:
- (iii) the burdened land is disturbed as little as possible; and
- (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) if a stratum parcel is the dominant tenement, is a reference to so much of
- (i) the building, part of which is subject to the strata scheme concerned; and
- (ii) the site of that building,  
as is not part of the parcel; or
- (b) if a stratum parcel is the servient tenement, is a reference to the parcel.

**Obligations relating to an easement for the provision of services**

6. (1) If an easement for services is created over or appurtenant to a stratum parcel, the pipes or apparatus to which the easement relates shall be maintained in good order and repaired:

SCHEDULE 1—AMENDMENTS—*continued*

- (a) by the body corporate concerned, or by 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) if 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 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.

**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 are to be borne by the body corporate or other person concerned:

- (a) in the proportions specified in the instrument by which the easement was created or, if the proportions so specified have been varied, those proportions as varied; or
  - (b) where no such proportions are so specified—~~in~~ unequal proportions.
- (2) If a person (whether or not the body corporate) incurs costs referred to in subclause (1), the person may demand in writing the amount that the body corporate 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) If the body corporate or other person fails to comply with any such demand within 7 days after it has been made,

SCHEDULE 1—AMENDMENTS—*continued*

the amount demanded may be recovered in a court of competent jurisdiction as a debt due to the body corporate or other person.

**Ancillary rights and powers**

8. All easements to which this Schedule applies carry with them such ancillary rights and powers as may be necessary to render them effective.

**SCHEDULE 1—STRATA MANAGEMENT STATEMENTS**

(Sec. 28S)

**Form of strata management statement**

1. A strata management statement must include any information required by the regulations and must not be inconsistent with:

- (a) the conditions imposed on a development consent relating to the site of the building to which the statement relates; or
- (b) with this or any other Act or any other law.

Matters that must be included

- 2. (1) A strata management statement must provide for:
  - (a) the establishment and composition of a building management committee and its office bearers; and
  - (b) the functions of that committee and those office bearers in managing the building and its site; and
  - (c) the manner in which the statement may be amended; and
  - (d) the settlement of disputes, or the rectification of complaints, concerning the management of the building or its site, whether by requiring reference of disputes or complaints to the Commissioner or a Board or (with the consent of the person) to any other person for a recommendation or decision or otherwise; and
  - (e) the manner in which notices and other documents may be served on the committee.

(2) Each body corporate for a strata scheme for part of the building and any other person in whom is vested an estate in

SCHEDULE 1—AMENDMENTS—*continued*

fee simple in any part of the building or its site that does not form part of a stratum parcel must be members of the building management committee.

(3) Despite subclause (2), any such body corporate or other person may be excluded from membership, but only with the consent of the body corporate supported by a special resolution or with the written consent of the other person.

(4) A body corporate or other corporation that is a member of a building management committee may be represented for the purposes of the committee by a person appointed by, or selected in accordance with, a special resolution or by-law made by the body corporate or a resolution made by the other corporation.

(5) A person who has been so appointed or selected and whose term of office as such a representative has not expired or been terminated by the body corporate or other corporation is, while representing the body corporate or other corporation for those purposes, taken to be the body corporate or other Corporation.

(6) Nothing in a strata management statement requires the Commissioner or a Board to do anything without the consent of the Commissioner or the Board.

**Other matters**

3. (1) A strata management statement may include provisions regulating (or providing for the regulation of) any one or more of the following:

- (a) the location, control, management, use and maintenance of any part of the building or its site that is a means of access;
- (b) the storage and collection of garbage on and from the various parts of the building;
- (c) meetings of the building management Committee;
- (d) the keeping of records of proceedings of the committee.

(2) A strata management statement may include particulars relating to any one or more of the following:

- (a) safety and security measures;
- (b) the appointment of a managing agent;

SCHEDULE 1—AMENDMENTS—*continued*

- (c) the control of unacceptable noise levels;
- (d) prohibiting or regulating trading activities;
- (e) service contracts;
- (f) an architectural code to preserve the appearance of the building.

(3) This clause does not limit the matters that may be included in a strata management statement.

(4) A strata management statement may incorporate plans and other instruments as part of the statement.

**Implied provisions**

4. Each strata management statement is taken to include the following provisions, except to the extent that it provides otherwise:

- (a) The building management committee must meet at least once each year.
- (b) At least 7 days' notice of a meeting must be given to each person who is a member of the committee. Notice may be given personally or by post or in any way any other notice may be given to the person under this Act.
- (c) The quorum for a meeting of the committee is a majority of the members.
- (d) The decision of a majority of the members present and voting at a meeting of the committee is the decision of the committee.

(29) Schedule 4 (**Transitional and savings provisions**):

- (a) After the heading, insert:

PART 1—PROVISIONS RELATING TO REPEAL OF  
THE FORMER ACT

- (b) At the end of Schedule 4, insert:

PART 2—PROVISIONS RELATING TO THE STRATA  
TITLES (PART STRATA) AMENDMENT ACT 1992

**Definition**

- 1. In this Part, “**amending Act**” means the Strata Titles (Part Strata) Amendment Act 1992.



SCHEDULE 1—AMENDMENTS—*continued***Exemption from insurance**

2. An order that exempted a body corporate from any requirement of section 83 immediately before the substitution of that section by the amending Act is, on that substitution:

- (a) taken to have been made under that section, as so substituted; and
- (b) taken to exempt the body corporate from the corresponding requirement of that section, as so substituted.

**Orders under Part 5**

3. (1) An order that was in force under Part 5 immediately before the commencement of any amendment of that Part made by the amending Act is, on the commencement of the amendment, taken to have been made under that Part, as so amended.

(2) An application for an order under Part 5 that was pending immediately before the commencement of any such amendment is, on the commencement of the amendment, taken to have been made under that Part, as so amended.

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*[Minister's second reading speech made in—  
Legislative Assembly on 26 February 1992  
Legislative Council on 4 March 1992]*