

Act 1992 No. 12

**STRATA TITLES (LEASEHOLD PART STRATA)
AMENDMENT BILL 1992**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

This Bill is cognate with the Strata Titles (Part Strata) Amendment Bill 1992.

The object of this Bill is to amend the Strata Titles (Leasehold) Act 1986 so as to make further provision relating to the subdivision under that Act of part only of a building. The amendments are aimed at providing uniformity, as far as is practicable, between that Act and the Strata Titles Act 1973 (after that Act has been amended by the proposed Strata Titles (Part Strata) Amendment Act 1992) in dealing with such subdivisions and their consequences.

The opportunity is taken to standardise certain other provisions in the 1986 Act with those intended to be inserted into the Strata Titles Act 1973 by the proposed Strata Titles (Part Strata) Amendment Act.

A subdivision of part of a building under the 1986 Act creates a leasehold strata scheme for a stratum parcel (consisting of lots, or lots and common property), and there is no limit on the number of such schemes that may be created for different parts of the same building and its site. It is not necessary for the whole of a building to be subject to leasehold strata schemes, but (as a consequence of the proposed amendments) a further such scheme will not be allowed in a building if the building has been substantially added to since the initial leasehold strata scheme for the building was created.

The lessor, lessees and other occupiers of a building in which a new stratum parcel is created will have certain aspects of their use of the building and its site regulated by a strata management statement entered into by the lessor and the lessees of the building, unless excepted from having such a statement by direction of the Minister. Strata management statements will also be able to be entered into by the lessors and lessees of buildings already containing stratum parcels.

Provisions of the 1986 Act relating to the resolution of disputes arising in the administration of leasehold strata schemes currently extend to schemes for stratum parcels that include parts of buildings. However, in appropriate cases, those provisions are varied to take into account more effectively the interests of, and to allow obligations to be imposed on, the lessor and lessees and occupiers of parts of those buildings that are not included in stratum parcels.

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be proclaimed

Clause 3 gives effect to the Schedule of amendments to the Principal Act.

SCHEDULE 1—AMENDMENTS
CONVEYANCING ISSUES

Requirements for strata subdivisions

Schedule 1 (3) amends section 7 (**Registration of strata plans**) to restate, in a simpler form, certain of the requirements that must be met by plans that are lodged for registration as strata plans.

Proposed Schedule 1A (**Requirements for strata plans**), to be inserted into the Act by Schedule 1 (24), sets out the matters that must be certified by a registered surveyor before a strata plan is registered, such as the existence of the proposed lots and the fact that a proposed stratum parcel is not in a part of a building added after an earlier stratum parcel was created for a part of the building.

Schedule 1 (2) amends section 6 (**Subdivision**) to declare that a development lot under the Act or under the Community Land Development Act 1989 cannot be subdivided under the section.

Schedule 1 (1) amends section 5 (**Construction of Act**) to declare that provisions of the Act, other than those relating to the ownership and certification of title, apply to encroachments (except on public places) shown on strata plans. This amendment is a restatement in a more appropriate place of part of section 7.

Easements

Schedule 1 (4) makes a minor amendment to section 9 (**Easements in certain leasehold strata schemes**) to correct a typographical error.

MANAGEMENT ISSUES

Strata management statements

Schedule 1 (5) inserts proposed sections 57A—57F as Division 5A of Part 2. Of the proposed sections:

Section 57A (**Requirement for strata management statement**) will prevent the creation of a stratum parcel unless such a statement is registered for the building and site concerned. This requirement will not apply if the Minister so directs.

A strata management statement may also be registered after the creation of the stratum parcel to which it relates.

Section 57B (**Formal requirements**) will require the statement to be in a form approved by the Registrar-General and to provide for the following, in accordance with proposed Schedule 2A (**Strata management statements**) to be inserted by Schedule 1 (25):

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- a building management committee
- management of the building and its site
- amendment of the statement
- resolution of disputes about management issues
- service of documents on the committee

Schedule 2A will also lay down minimum requirements for the composition of the committee and list some other matters for which the statement may provide, but is not exhaustive of the issues for which such a statement may provide.

Section 57C (**Registration of strata management statement**) will require particulars of such a statement to be recorded in relevant folios of the Register kept under the Real Property Act.

Section 57D (**Amendment of strata management statement**) will require any amendment of such a statement to be supported by all bodies corporate for stratum parcels and all other persons holding registered freehold or leasehold estates in other parts of the building concerned. An amendment may also be ordered by a court or be required because of a revocation or modification of development consent.

Section 57E (**Signing of strata management statement**) will require a strata management statement, or any amendment of such a statement, to be signed by the holders of specified estates or interests in the building concerned or its site. The Registrar-General may also require certain written consents before registering such a statement.

Section 57F (**Effect of strata management statement**) will make such a statement binding on all persons who are, for the time being, owners, mortgagees in possession and lessees of the building.

Schedule 1 (7) amends section 88 (**Copy of by-laws and strata management statement to be provided**) to require the sublessors of any parts of a building that are subject to a leasehold strata scheme to supply a copy of the strata management statement that affects the building to each of their sublessees.

Termination of leasehold strata schemes

Schedule 1 (6) amends section 80 (**Termination of leasehold strata scheme**) to provide that orders made by the Supreme Court on the winding up of a leasehold strata scheme may require the amendment of any strata management statement that affects a building part of which was subject to the leasehold strata scheme.

Insurance

Schedule 1 (8) substitutes section 115 (**Insurance of buildings**) to restate, with appropriate changes, the obligations for the insurance of buildings subject to leasehold strata schemes.

Provision is made for the joint insurance of a building containing a stratum parcel by the body corporate for the parcel and all other persons holding registered freehold or leasehold estates in other parts of the building and for apportionment of the premium.

Schedule 1 (9) amends section 120 (**Insurable interests**) to expand the class of persons declared to have an insurable interest in the whole of a building that includes a stratum parcel so as to include registered owners and lessees of a part of the building that is not included in such a parcel.

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Schedule 1 (13) substitutes section 143 (**Order to make or pursue insurance claim**) to restate the power of the Commissioner to make such orders and to allow any person who is a registered owner or lessee of a part of a building that contains a stratum parcel or its site to apply for such an order.

The class of possible applicants for such an order is expanded.

Schedule 1 (16) substitutes section 162 (**Orders relating to insurance**) to restate the power to make orders requiring the insurance, or variation of the insurance, of a building containing a leasehold strata scheme. If the building concerned contains a stratum parcel, such an order may require the insurance premium to be paid in specified proportions.

The class of possible applicants for such an order is expanded.

Dispute resolution—conciliation

Schedule 1 (15) inserts proposed section 151A (**Resolution of certain building management disputes**) as Division 2A of Part 5. The proposed section allows the Commissioner to conciliate such disputes in buildings in which stratum parcels are situated, but only with the consent of all parties to the dispute.

Dispute resolution—orders

Schedule 1 (11) amends section 134 (**Orders by Commissioner**) to allow the Commissioner to make orders under Division 2 of Part 5 (including interim orders) with respect to a leasehold strata scheme for a part of a building that will bind not only persons whose interests arise directly from that scheme but also specified other “interested persons”.

(Other “interested persons” include bodies corporate or managing agents of leasehold strata schemes for, or owners, lessees, sublessees or occupiers of, other parts of the building.)

Schedule 1 (12) amends section 136 (**General powers of Commissioner to make orders**) to allow orders under that section to be made with respect to a leasehold strata scheme for a part of a building on the application of other interested persons. The Commissioner is required to have regard to any strata management statement for the building concerned before making any order relating to the management of a stratum parcel.

Schedule 1 (14) amends section 146 (**Order relating to keeping of animals**) to ensure that such orders will bind the occupiers of, and all other persons who are or would be bound by a strata management statement for, a building that contains a stratum parcel.

Schedule 1 (17) amends section 171 (**General provisions relating to orders under Division 4 and on appeal**) to extend the class of persons on whom a Strata Titles Board may impose ancillary requirements in an order made by the Board. If such an order relates to a stratum parcel, requirements may be imposed on any “interested person”.

Schedule 1 (18) amends section 178 (**Effect of certain orders**) to restate that certain orders have effect, to such extent as is necessary, as resolutions of the body corporate concerned.

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Schedule 1 (19) amends section 180 (**Penalty for contravention of certain orders**) to allow the body corporate for each stratum parcel situated in a part of the same building to take proceedings for an offence when an order made under Part 5 is contravened, as well as other registered owners and lessees of parts of the building or its site that are not included in a stratum parcel.

Rectification of building defects

Schedule 1 (20) substitutes section 186 (**Structural defects—proceedings as agent**) to restate the current powers of a body corporate to act as agent in:

- ensuring that parts of a building continue to provide support and shelter to other parts of the building; and
- arranging for related building defects to be rectified,

and extend those powers to other “interested persons” where the building concerned contains a stratum parcel.

Dividing fences

Schedule 1 (20) also substitutes section 187 (**Dividing fences**) to restate the current requirement that the body corporate is taken to be the owner of a parcel for the purposes of the Dividing Fences Act and to provide that each body corporate for a stratum parcel that includes part of the building and each other holder of a fee simple interest in a part of the building or its site that is not included in such a parcel are taken to be joint owners, if the building concerned contains a stratum parcel.

Service of documents

Schedule 1 (21) amends section 191 (**Service of documents on body corporate etc.**) to allow service of documents on persons who own parts of buildings that contain stratum parcels (but are not within such a parcel) in any manner authorised by section 170 of the Conveyancing Act. (The manner of service of documents on a building management committee is required to be set out in the relevant strata management statement.)

Power of entry

Schedule 1 (10) amends section 131 (**Procedure after Commissioner receives application**) to allow the Strata Titles Commissioner, on giving notice, to enter any part of a building a part of which is subject to a leasehold strata scheme to look into the issues raised by an application for an order to be made by the Commissioner or a Strata Titles Board under the Act.

Schedule 1 (22) amends section 192 (**Powers of entry by public authority or local council**) to ensure that power to enter part of a building contained in a stratum parcel implies a power to enter another part of the building or its site if it is necessary to effect the authorised entry.

Schedule 1 (23) amends section 193 (**Powers of entry of Commissioner in certain cases**) to confer a similar power of entry on the commissioner while investigating a possible offence against the Act or by-laws if the alleged offence is related to a stratum parcel.

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SAVINGS

Savings

Schedule 1 (26) inserts proposed Schedule 5 (**Transitional and savings provisions**) to preserve the effect of exemption orders made under section 115 (**Insurance of buildings**) immediately before the substitution of that section and of orders, or applications for orders, made under Part 5 (**Disputes**) immediately before the amendment of that Part.

Amendments made by the proposed Act are applied to existing leasehold strata schemes for stratum parcels, but it will not be necessary for them to have strata management statements.
