

# Strata Schemes Management Act 1996 No 138

[1996-138]



New South Wales

## Status Information

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### Provisions in force

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### Notes—

- **Does not include amendments by**  
[Property, Stock and Business Agents Act 2002 No 66](#) (amended by [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2002 No 112](#)) (not commenced — to commence on 1.9.2003)  
[Valuers Act 2003 No 4](#) (not commenced)

### Authorisation

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# Strata Schemes Management Act 1996 No 138



New South Wales

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# Strata Schemes Management Act 1996 No 138



New South Wales

An Act to provide for the management of strata schemes and the resolution of disputes in connection with strata schemes; and for other purposes.

## Chapter 1 Preliminary

### Introductory note—

This Chapter contains provisions that are helpful in understanding the Act as a whole, as well as some machinery provisions.

### 1 Name of Act

This Act is the *Strata Schemes Management Act 1996*.

### 2 Commencement

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

### 3 Objects of Act

The objects of this Act are:

- (a) to provide for the management of strata schemes created under the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*, and
- (b) to provide for the resolution of disputes arising in connection with the management of strata schemes.

### 4 Application of Act to strata schemes under the *Strata Schemes (Leasehold Development) Act 1986*

This Act applies to strata schemes established under the *Strata Schemes (Leasehold Development) Act 1986* in the same way as it applies to strata schemes established under the *Strata Schemes (Freehold Development) Act 1973* unless otherwise specified.

### 5 Act binds Crown

- (1) This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.



- (2) However, Parts 3, 4 and 4A of Chapter 2, Chapter 3 (sections 63–65 excepted) and Chapter 4 do not apply to or in respect of a strata scheme if the Crown is the owner of all lots in the scheme.

**Note—**

The Crown includes statutory bodies representing the Crown, such as the New South Wales Land and Housing Corporation.

## 6 Definitions

Expressions used in this Act that are defined in the dictionary at the end of this Act have the meanings set out in the dictionary.

**Note—**

Expressions used in this Act (or in a particular provision of this Act) that are defined in the [Interpretation Act 1987](#) have the meanings set out in that Act.

## 7 Notes

Introductory notes and other notes included in this Act are explanatory notes and do not form part of the Act.

# Chapter 2 Management of strata schemes

**Introductory note—**

This Chapter provides for who can be involved in the management of a strata scheme and for the rules that govern a strata scheme.

## Part 1 Introduction

**Introductory note—**

This Part provides an overview of the Chapter.

### 8 Who manages a strata scheme?

- (1) On the registration of a strata plan for a strata scheme, there is established an owners corporation for the strata scheme in accordance with Part 2.
- (2) An owners corporation for a strata scheme has the principal responsibility for the management of the scheme.

**Note—**

Strata plans for freehold strata schemes are registered under section 8 of the [Strata Schemes \(Freehold Development\) Act 1973](#) and strata plans for leasehold strata schemes are registered under section 7 of the [Strata Schemes \(Leasehold Development\) Act 1986](#).

An owners corporation for a strata scheme is the same as a body corporate for a strata scheme previously established under the [Strata Schemes \(Freehold Development\) Act 1973](#) or the [Strata Schemes \(Leasehold Development\) Act 1986](#).

## 9 Who else may be involved in managing a strata scheme?

The owners corporation may be assisted in the carrying out of its management functions under this Act by any one or more of the following:

- (a) the executive committee of the owners corporation established in accordance with Part 3,
- (b) a strata managing agent appointed in accordance with Part 4,
- (c) a caretaker appointed in accordance with Part 4A.

## 10 What rules govern a strata scheme?

On the registration of a strata plan for a strata scheme, a set of by-laws applies to the strata scheme as provided by Part 5.

## Part 2 The principal manager—the owners corporation

### Introductory note—

This Part provides for the establishment of an owners corporation for a strata scheme and for the procedure of an owners corporation.

### 11 Constitution of owners corporation

- (1) The owners of the lots from time to time in a strata scheme constitute a body corporate under the name “The Owners—Strata Plan No X” (X being the registered number of the strata plan to which that strata scheme relates).
- (2) An owners corporation is declared to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the whole of the Corporations legislation.

#### Note—

This subsection ensures that neither the *Corporations Act 2001* nor Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth will apply in relation to an owners corporation. Section 5F of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a matter to be an excluded matter in relation to those Acts, then the provisions of those Acts will not apply in relation to that matter in the State concerned.

### 12 Functions of owners corporation

An owners corporation has the functions conferred or imposed on it by or under this or any other Act.

### 13 Owners corporation may employ persons to assist in exercise of functions

- (1) An owners corporation may employ such persons as it thinks fit to assist it in the exercise of any of its functions.
- (2) An owners corporation must ensure that any person employed to assist it in the

exercise of a function has the qualifications (if any) required by this Act for the exercise of that function.

**Note—**

An owners corporation may employ such persons to assist it as, for example, caretakers and persons providing services to retirement villages. For example, a caretaker is required to be appointed under Part 4A. In addition, the Act requires certain functions to be performed by particular persons or persons having particular expertise. For example, section 24 places restrictions on the persons who can exercise functions relating to the finances and accounts of an owners corporation.

- (3) An owners corporation may not delegate any of its functions to a person unless the delegation is specifically authorised by this Act.

## **14 Meetings and procedure of owners corporation**

Schedule 2 applies to an owners corporation.

## **15 Termination of strata scheme**

- (1) An owners corporation for a strata scheme that is subject to an order of the Supreme Court under the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986* for its termination continues in existence until it is wound up in accordance with the order.
- (2) While it so continues in existence, the owners corporation is constituted of persons who the order specifies are liable to contribute money required for the discharge of the liabilities of the owners corporation and persons who the order specifies are entitled to share in a distribution of assets of the owners corporation.

**Note—**

A freehold strata scheme may be terminated under Part 3 of the *Strata Schemes (Freehold Development) Act 1973* and a leasehold strata scheme may be terminated under Part 3 of the *Strata Schemes (Leasehold Development) Act 1986*.

## **Part 3 Others involved in management—the executive committee**

**Introductory note—**

This Part requires an owners corporation for a strata scheme to appoint an executive committee to make decisions for the owners corporation. However, the owners corporation may limit the matters that the executive committee may decide and the Act contains various matters that must be decided by the owners corporation in general meeting.

The executive committee must appoint a chairperson, secretary and treasurer. This Part sets out the functions of those officers.

This Part gives effect to Schedule 3 which contains more detailed provisions about the constitution and procedure of executive committees.

## **Division 1 Constitution of the executive committee**

### **16 Owners corporation to appoint executive committee**

- (1) An owners corporation must appoint an executive committee of the owners

corporation in accordance with this Division.

- (2) The owners corporation may appoint an executive committee before the first annual general meeting of the owners corporation.
- (3) If an executive committee has not been appointed before the first annual general meeting of the owners corporation, the owners corporation must appoint an executive committee at that meeting.
- (4) If there is no executive committee of an owners corporation, the strata scheme must be administered by the owners corporation, but nothing in this subsection prevents a strata managing agent appointed under this Act from exercising any functions conferred on the agent.

#### **17 What happens if executive committee is not appointed?**

- (1) An Adjudicator may, on application, make an order appointing a person nominated by the applicant (and who has consented to that nomination) to convene a meeting of the owners corporation if no executive committee of the owners corporation exists after the first annual general meeting.
- (2) The meeting is to be convened and held within such time as is specified in the order.
- (3) A meeting held under this section is, for the purpose of the election of an executive committee, taken to be the first annual general meeting of the owners corporation.
- (4) An order made under this section may include such ancillary or consequential provisions as the Adjudicator thinks fit.
- (5) If an order made under this section so provides:
  - (a) the person appointed to convene a meeting of an owners corporation by the order is to preside at the meeting and, while the person so presides, is taken to be the chairperson of the owners corporation, and
  - (b) notice of that meeting may be given in the manner specified in the order.
- (6) An application under this section may be made only by an owner, mortgagee or covenant chargee of a lot in the relevant strata scheme.

#### **18 Executive committee to appoint chairperson, secretary and treasurer**

- (1) The members of an executive committee must, at the first meeting of the executive committee after they assume office as members, appoint a chairperson, secretary and treasurer of the executive committee.
- (2) The chairperson, secretary and treasurer of the executive committee are also, respectively, the chairperson, secretary and treasurer of the owners corporation.

- (3) One person may be appointed to more than one office under this section.

**19 What happens if chairperson, secretary and treasurer are not appointed?**

- (1) An Adjudicator may, on application, make an order appointing a person nominated by the applicant (and who has consented to that nomination) to convene a meeting of the executive committee of the owners corporation if there is not a chairperson, secretary and treasurer of the executive committee of the owners corporation after the first meeting of the executive committee has been held.
- (2) The meeting is to be convened and held within such time as is specified in the order.
- (3) A meeting held under this section is taken to have been held by the executive committee of the owners corporation.
- (4) An order made under this section may include such ancillary or consequential provisions as the Adjudicator thinks fit.
- (5) If an order made under this section so provides, notice of the meeting may be given in the manner specified in the order.
- (6) An application under this section may be made only by an owner, mortgagee or covenant chargee of a lot in the relevant strata scheme.

**20 Provisions relating to constitution of executive committee, appointment of office holders and meetings of executive committee**

- (1) Part 1 of Schedule 3 makes further provision with respect to the constitution of an executive committee and the appointment of the chairperson, secretary and treasurer.
- (2) Part 2 of Schedule 3 makes further provision with respect to meetings of an executive committee.

**21 Executive committee's decisions to be decisions of owners corporation**

- (1) A decision of an executive committee is taken to be the decision of the owners corporation.
- (2) However, the following decisions may not be made by the executive committee:
- (a) a decision that is required by or under any Act to be made by the owners corporation by unanimous resolution or special resolution or in general meeting,
  - (b) a decision on any matter or type of matter that the owners corporation has determined in general meeting is to be decided only by the owners corporation in general meeting.
- (3) An owners corporation may in general meeting continue to exercise all or any of the functions conferred on it by this Act or the by-laws even though an executive

committee holds office.

## **Division 2 Members and office holders of the executive committee**

### **22 What are the functions of the secretary of an owners corporation?**

The functions of a secretary of an owners corporation include the following:

- (a) to prepare and distribute minutes of meetings of the owners corporation and submit a motion for confirmation of the minutes of any meeting of the owners corporation at the next such meeting,
- (b) to give on behalf of the owners corporation and of the executive committee the notices required to be given under this Act,
- (c) to maintain the strata roll,
- (d) to enable the inspection of documents on behalf of the owners corporation in accordance with section 108,
- (e) to answer communications addressed to the owners corporation,
- (f) to convene meetings of the executive committee and (apart from its first annual general meeting) of the owners corporation,
- (g) to attend to matters of an administrative or secretarial nature in connection with the exercise, by the owners corporation or the executive committee, of its functions.

### **23 What are the functions of the treasurer of an owners corporation?**

(1) The functions of a treasurer of an owners corporation include the following:

- (a) to notify owners of any contributions levied in accordance with this Act,
- (b) to receive, acknowledge, bank and account for any money paid to the owners corporation,
- (c) to prepare any certificate applied for under Division 4 of Part 5 of Chapter 3,
- (d) to keep the accounting records and prepare the financial statements.

(2) The treasurer of an owners corporation may delegate the exercise of any of the treasurer's functions (other than this power of delegation) to another member of the executive committee if:

- (a) the delegation is specifically approved by the executive committee of the owners corporation, and
- (b) the executive committee specifically approves of the function being delegated to that member of the executive committee, and

(c) the delegation is subject to such limitations as to time or otherwise as the executive committee requires.

(3) While a delegate is acting in accordance with the terms of such a delegation, the delegate is taken to be the treasurer of the owners corporation.

(4) The executive committee of an owners corporation may, by a notice in writing served on the treasurer of the owners corporation, order the treasurer not to exercise any of the treasurer's functions that are specified in the notice unless the treasurer does so jointly with another person so specified.

#### **24 Who can exercise functions relating to the finances and accounts of the owners corporation?**

A person must not exercise any of the functions of an owners corporation or the treasurer of an owners corporation relating to the receipt or expenditure of, or the accounting for, money of the owners corporation or the keeping of the books of account of the owners corporation unless the person is:

- (a) a member of the owners corporation or of the executive committee and the treasurer of the owners corporation or of the executive committee, or
- (b) a strata managing agent who is empowered to exercise that function, or
- (c) a person with whom the treasurer of the owners corporation is required by an order of the executive committee to exercise that function jointly, and who is enabling the treasurer to comply with the order, or
- (d) a certified practising accountant authorised by the owners corporation to exercise the function, or
- (e) during the initial period only—a person authorised by the original owner to exercise the function.

Maximum penalty: 5 penalty units.

#### **25 Can members of the executive committee be paid?**

An owners corporation may pay to a person who is the chairperson, secretary, treasurer or a member of the executive committee such amount as the owners corporation determines at an annual general meeting in recognition of services performed by the person for the owners corporation in the period since the last annual general meeting.

### **Part 4 Others involved in management—strata managing agents**

#### **Introductory note—**

This Part allows an owners corporation for a strata scheme to appoint a person who is licensed as a strata managing agent under the *Property, Stock and Business Agents Act 1941* as a strata managing agent for the scheme. An owners corporation may

delegate its functions to its strata managing agent. However, an owners corporation may not delegate the making of certain decisions that this Act requires to be made by the owners corporation, such as decisions on the amount of contributions to the administrative and sinking funds to be levied on owners.

## **Division 1 Appointment of strata managing agent**

### **26 What is a strata managing agent?**

An owners corporation may appoint a person who is the holder of a strata managing agent's licence under the *Property, Stock and Business Agents Act 1941* to be the strata managing agent of the strata scheme.

**Note—**

The *Property, Stock and Business Agents Act 1941* defines strata managing agent as a person (whether or not such person carries on any other business) who, for reward (whether monetary or otherwise), exercises or performs any function of an owners corporation under this Act, not being:

- (a) a person who:
  - (i) is the owner of a lot to which the strata scheme for which the owners corporation is constituted relates, and
  - (ii) is the secretary or treasurer of the executive committee of the owners corporation, and
  - (iii) exercises only functions of the owners corporation required, by the by-laws in force in respect of the strata scheme for which the owners corporation is constituted, to be exercised by the secretary or treasurer of that executive committee or by the owners corporation, or
- (b) a person who maintains or repairs any property for the maintenance and repair of which the owners corporation is responsible.

### **27 How is a strata managing agent appointed?**

- (1) A strata managing agent is to be appointed by instrument in writing authorised by a resolution at a general meeting of the owners corporation.
- (2) An owners corporation may terminate the appointment of a strata managing agent in accordance with the instrument of appointment if authorised by a resolution at a general meeting of the owners corporation.

## **Division 2 Functions of strata managing agent**

### **28 What functions of an owners corporation can a strata managing agent exercise?**

- (1) An owners corporation may, by the instrument appointing a strata managing agent or some other instrument, delegate to the strata managing agent:
  - (a) all of its functions, or
  - (b) any one or more of its functions specified in the instrument, or
  - (c) all of its functions except those specified in the instrument,



but only if authorised to do so by a resolution at a general meeting and subject to subsection (3).

- (2) An owners corporation may, if authorised to do so by a resolution at a general meeting, revoke a delegation under this section.
- (3) An owners corporation cannot delegate to a strata managing agent its power to make:
  - (a) a delegation under this section, or
  - (b) a decision on a matter that is required to be decided by the owners corporation, or
  - (c) a determination relating to the levying or payment of contributions.
- (4) A function delegated under this section may, while the delegation remains unrevoked, be exercised from time to time in accordance with the delegation.
- (5) A delegation under this section 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) Despite any delegation made under this section, the owners corporation may continue to exercise all or any of the functions delegated.
- (7) Any act or thing done or suffered by a strata managing agent while acting in the exercise of a delegation under this section:
  - (a) has the same effect as if it had been done or suffered by the owners corporation, and
  - (b) is taken to have been done or suffered by the owners corporation.

**29 Can a strata managing agent exercise the functions of the chairperson, secretary and treasurer or the executive committee?**

- (1) The instrument of appointment of a strata managing agent may provide that the strata managing agent has and may exercise all the functions of the chairperson, secretary, treasurer or executive committee of an owners corporation or such of those functions as may be specified in the instrument.
- (2) However, the chairperson, secretary, treasurer and executive committee of an owners corporation may continue to exercise all or any of the functions that the strata managing agent is authorised to exercise.
- (3) Any act or thing done or suffered by a strata managing agent in the exercise of any function of the chairperson, secretary, treasurer or executive committee conferred on the strata managing agent in accordance with this section:
  - (a) has the same effect as it would have had if it had been done or suffered by the

chairperson, secretary, treasurer or executive committee, as the case may be, and

(b) is taken to have been done or suffered by the chairperson, secretary, treasurer or executive committee, as the case may be.

(4) This section is subject to section 32.

### **30 Breach of duty by strata managing agent**

If a strata managing agent has been delegated a duty by an owners corporation and a breach of the duty by the owners corporation would constitute an offence under a provision of this Act, the agent is guilty of an offence under that provision (instead of the owners corporation) for any breach of the duty by the agent occurring while the delegation remains in force.

### **31 Strata managing agent to record exercise of functions**

(1) A strata managing agent who exercises a function of an owners corporation must, immediately after its exercise, make a written record specifying the function and the manner in which it was exercised.

(2) The strata managing agent must serve a copy of the written record on the owners corporation.

### **32 Exercise of functions of strata managing agent appointed by an Adjudicator**

If a strata managing agent is appointed by an Adjudicator to exercise a function:

(a) the function cannot, while the strata managing agent holds office, be exercised by any other person, and

(b) anything done or suffered by the strata managing agent in the exercise of the function has the same effect as it would have if the function were exercised by the person who, but for paragraph (a), could have exercised it.

## **Division 3 Accountability of strata managing agent**

### **33 Information may be required relating to strata managing agent's trust account**

An owners corporation may require a strata managing agent to provide the following information relating to the trust account that the agent is required to operate under section 36 of the *Property, Stock and Business Agents Act 1941*:

(a) the name and number of the account,

(b) the name of the financial institution in which the account is current,

(c) the balance in the account standing to the credit of the owners corporation on a specified date,

- (d) particulars of all cheques drawn on the account on behalf of the owners corporation as at that date and not presented and duly paid.

**34 Information may be required relating to other accounts of the strata managing agent**

An owners corporation may require a strata managing agent to provide the following information relating to any other accounts on which the agent operates in the exercise of functions of the owners corporation:

- (a) the names and numbers of the accounts,
- (b) the names of the financial institutions in which the accounts are current,
- (c) the balance in each of the accounts standing to the credit of the owners corporation on a specified date,
- (d) particulars of all cheques drawn on each of the accounts as at that date and not presented and duly paid.

**35 Information may be required relating to money received by the strata managing agent from the owners corporation**

An owners corporation may require a strata managing agent to provide:

- (a) full particulars relating to the payment of money to, or the receipt of money by, the agent on behalf of the owners corporation, and
- (b) if the money is not still held by the agent, the manner and time of disposal of the money.

**36 Information may be required relating to transactions entered into by a strata managing agent for an owners corporation**

An owners corporation may require a strata managing agent to provide full particulars as to any specified transaction that has been entered into by the agent on behalf of the owners corporation.

**37 Procedure for requiring information from strata managing agent**

- (1) A requirement for information by an owners corporation under this Division must be made by notice in writing served on the strata managing agent.
- (2) The notice must specify a member of the executive committee to whom the information is to be delivered.
- (3) The strata managing agent must comply with the notice by providing a written statement, containing the information required, within 7 days after service of the notice.

Maximum penalty: 20 penalty units.

- (4) A person is not guilty of failing to comply with a notice under this section if reasonable cause for the failure is shown.
- (5) A strata managing agent must not knowingly provide information that is false or misleading in a material particular in a statement delivered in response to a notice under this section.

Maximum penalty (subsection (5)): 20 penalty units.

### **38 Who is responsible for providing information if a strata managing agent ceases to hold a licence or dies?**

If a strata managing agent ceases to hold a licence under the *Property, Stock and Business Agents Act 1941* to carry on business as a strata managing agent or dies:

- (a) this Division (except sections 35 and 36) applies to any person who is required by section 36 (6) of that Act to maintain a trust account in connection with the business of the former licensee, and
- (b) this Division (except section 33) applies to any person who is required by section 38 (2) of that Act to preserve records kept by the former licensee,

and so applies as if the person concerned were the strata managing agent.

### **39 Exemption for information relating to certain transactions**

A strata managing agent or other person is not required to provide information under this Division in relation to a transaction that took place more than 3 years before service of the notice requiring the information.

### **40 Certain provisions of other Acts requiring agents to provide information not to apply to affairs of owners corporation**

The provisions of section 38A (3), (4), (5), (6) and (7) of the *Property, Stock and Business Agents Act 1941* do not apply to or in respect of a transaction if information about the transaction may be required to be provided to an owners corporation under this Division.

**Note—**

The provisions of section 38A (3), (4), (5), (6) and (7) of the *Property, Stock and Business Agents Act 1941* enable a person directly concerned in a transaction with a licensee under that Act to require an itemised account of the transaction from the licensee.

## **Part 4A Others assisting in management—caretakers**

### **40A Who is a caretaker?**

- (1) A caretaker is a person who is entitled to exclusive possession (whether or not jointly with another person or other persons) of a lot or common property and assists in exercising any one or more of the following functions of the owners corporation for the strata scheme concerned:

- (a) managing common property,
  - (b) controlling the use of common property by persons other than the owners and occupiers of lots,
  - (c) maintaining and repairing common property.
- (2) However, a person is not a caretaker if the person exercises those functions only on a voluntary or casual basis or as a member of the executive committee.
- (3) A person may be both a caretaker and an on-site residential property manager.

**40B How is a caretaker appointed?**

- (1) A caretaker is required to be appointed by an instrument in writing (a **caretaker agreement**) executed before or after the strata scheme commenced by the caretaker and:
- (a) by the original owner, if executed before the strata scheme commenced, or
  - (b) under the authority of a resolution passed at a general meeting of the owners corporation of the strata scheme concerned, if executed after the strata scheme commenced.
- (2) Unless it expires or otherwise ceases to have effect earlier, a caretaker agreement (including any additional term under any option to renew it) expires:
- (a) at the conclusion of the first annual general meeting of the owners corporation, if the agreement was executed by the original owner, or
  - (b) when 10 years have expired after it commenced to authorise the caretaker to act under it, in any other case.
- (3) The functions of a caretaker under a caretaker agreement may be transferred to another person only with the approval of the owners corporation. A person to whom those functions are transferred is taken to be appointed as a caretaker by the caretaker agreement.
- (4) An owners corporation may terminate a caretaker agreement in accordance with its terms, and may approve a transfer of the functions of a caretaker, if authorised by a resolution at a general meeting of the owners corporation.

**40C With which functions of an owners corporation can a caretaker assist?**

- (1) A caretaker may, in accordance with the caretaker agreement appointing the caretaker, assist in exercising one or more of the functions of the owners corporation of managing and controlling the use of common property (otherwise than by the owners or occupiers of lots) and of maintaining and repairing common property.

- (2) However, the owners corporation may continue to exercise all or any of those functions, subject to the caretaker agreement.
- (3) A person is not a strata managing agent for the purposes of this or any other Act only because the person is a caretaker acting in accordance with a caretaker agreement.

## Part 5 By-laws

### Introductory note—

This Part deals with by-laws for a strata scheme governing such things as the behaviour of residents of the scheme and the use of common property. The Part provides that strata schemes in existence before the commencement of the Part are to have the by-laws set out in Schedule 1 together with additional by-laws that may previously have been added to those by-laws and any amendments that may previously have been made to those by-laws by the relevant owners corporation. A new strata scheme may, if it chooses, adopt model by-laws or register its own by-laws. The by-laws for both existing and new schemes can be amended or repealed by the owners corporation.

The Part places obligations on owners, mortgagees and covenant chargees in possession of a lot and lessees and occupiers of lots to comply with the by-laws.

The Part also contains procedural requirements for the making of certain by-laws and the amendment or repeal of by-laws.

## Division 1 What by-laws apply to a strata scheme?

### 41 What by-laws apply to new strata schemes?

- (1) This section applies to strata schemes that came into existence after the commencement of this section.
- (2) The by-laws in force for a strata scheme are the by-laws adopted by or lodged with the strata plan registered by the Registrar-General for the strata scheme, as in force at the date of lodgment, subject to any amendment, repeal or addition recorded by the Registrar-General under section 48.

### Note—

Section 8 of the *Strata Schemes (Freehold Development) Act 1973* and section 7 of the *Strata Schemes (Leasehold Development) Act 1986* require that when a strata plan is submitted for registration it must be accompanied by the proposed by-laws for the strata scheme. Those by-laws are registered with the strata plan.

### 42 What by-laws apply to old strata schemes?

- (1) This section applies to strata schemes in existence before the commencement of this section.
- (2) The by-laws set forth in Schedule 1 are the by-laws in force for a strata scheme, including any additional by-laws, or any amendments or repeals relating to those by-laws, that have been registered for the strata scheme in accordance with:
  - (a) Division 3 of this Part, or
  - (b) Division 1 of Part 4 of the *Strata Schemes (Freehold Development) Act 1973* as in

force immediately before its repeal, or

- (c) Division 1 of Part 4 of the *Strata Schemes (Leasehold Development) Act 1986* as in force immediately before its repeal.

#### **43 What can by-laws provide for?**

- (1) By-laws may be made in relation to any of the following:

safety and security measures

details of any common property of which the use is restricted

the keeping of pets

parking

floor coverings

garbage disposal

behaviour

architectural and landscaping guidelines to be observed by lot owners

matters appropriate to the type of strata scheme concerned.

- (2) This section does not limit the matters for which by-laws may be made.

- (3) The regulations may prescribe model by-laws which may be adopted as the by-laws for a strata scheme.

### **Division 2 How are the by-laws enforced?**

#### **44 Who is required to comply with the by-laws?**

- (1) The by-laws for a strata scheme bind the owners corporation and the owners and any mortgagee or covenant chargee in possession (whether in person or not), or lessee or occupier, of a lot to the same extent as if the by-laws:

(a) had been signed and sealed by the owners corporation and each owner and each such mortgagee, covenant chargee, lessee and occupier, and

(b) contained mutual covenants to observe and perform all the provisions of the by-laws.

- (2) There is an implied covenant by the lessee in a lease of a lot or common property to comply with the by-laws for the strata scheme.

- (3) In this section, **lessee** means, in relation to a lot in a strata leasehold scheme, a

sublessee of the lot.

#### **45 How can an owners corporation enforce the by-laws?**

An owners corporation may serve a notice, in a form approved by the Director-General, on the owner or occupier of a lot requiring the owner or occupier to comply with a specified by-law if the owners corporation is satisfied that the owner or occupier has contravened that by-law.

**Note—**

The Tribunal may impose a pecuniary penalty on a person for failing to comply with a notice under this section (see section 203).

#### **46 How does a lessee get information about the by-laws?**

(1) If a lot or common property in a freehold strata scheme is leased, the lessor must provide the lessee with a copy of the by-laws, and any strata management statement affecting the lot or common property, within the time and in the manner required by this section.

Maximum penalty: 1 penalty unit.

(2) If a lot or common property in a leasehold strata scheme is sublet, the sublessor must provide the sublessee with a copy of the by-laws, and any strata management statement affecting the lot or common property, within the time and in the manner required by this section.

Maximum penalty: 1 penalty unit.

(3) The copy of the by-laws or strata management statement must be provided to the lessee or sublessee within 7 days after the lessee or sublessee becomes entitled to possession of the lot or common property.

(3A) If a lot or common property in a freehold scheme is leased and the by-laws are amended, the lessor must provide the lessee with a further copy of the by-laws, within the time and in the manner required by this section.

Maximum penalty: 1 penalty unit.

(3B) If a lot or common property in a leasehold strata scheme is sublet and the by-laws are amended, the sublessor must provide the sublessee with a further copy of the by-laws, within the time and in the manner required by this section.

Maximum penalty: 1 penalty unit.

(3C) Any further copy of by-laws required to be provided under subsection (3A) or (3B) must be provided to the lessee or sublessee within 7 days after the amendment of the by-laws is recorded by the Registrar-General under section 48 (1) (b).



- (4) The copy of the by-laws or strata management statement (including any further copy of by-laws that have been amended) must be:
  - (a) served personally on the lessee or sublessee, or
  - (b) if the lease or sublease relates to a lot—served on the lessee or sublessee in any manner allowed by this Act for service of a document on the occupier of a lot, or
  - (c) if the lease or 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.
- (5) Subsections (1), (2), (3A) and (3B) do not apply if the strata scheme concerned is part of a community scheme or the lessee or sublessee is the owner of a lot in the strata scheme concerned.

### **Division 3 Amendment or repeal of by-laws**

#### **47 Can an owners corporation add to or amend the by-laws?**

An owners corporation, in accordance with a special resolution, may, for the purpose of the control, management, administration, use or enjoyment of the lots or the lots and common property for the strata scheme, make by-laws adding to, amending or repealing the by-laws for the strata scheme.

#### **48 What steps must an owners corporation take to make an amendment effective?**

- (1) An amendment or repeal of a by-law or, a new by-law, has no force or effect until:
  - (a) the owners corporation has lodged a notification, in the form approved under the [Real Property Act 1900](#), in the Registrar-General's office, and
  - (b) the Registrar-General has made an appropriate recording of the notification in the folio of the Register comprising the common property.
- (2) A notification cannot be lodged in the Registrar-General's office more than 2 years after the passing of the resolution for the amendment, repeal or new by-law.

#### **49 Restrictions on by-laws**

- (1) **By-law cannot prevent dealing relating to lot** No by-law is capable of operating to prohibit or restrict the devolution of a lot or a transfer, lease, mortgage, or other dealing relating to a lot.
- (2) **By-law resulting from order cannot be changed** If an order made under Chapter 5 has effect as if its terms were a by-law, that by-law is not capable of being amended or repealed except by a by-law made in accordance with a unanimous resolution and, in the case of a strata leasehold scheme, with the consent of the lessor of the scheme.

- (3) **By-law cannot restrict children** A by-law for a residential strata scheme has no force or effect to the extent to which it purports to prohibit or restrict persons under 18 years of age occupying a lot. This subsection does not apply to a by-law for a strata scheme for a retirement village or housing exclusively for aged persons.
- (4) **By-law cannot prevent keeping of guide dog** A by-law has no force or effect to the extent to which it purports to prohibit or restrict the keeping on a lot of a dog used as a guide or hearing dog by an owner or occupier of the lot or the use of a dog as a guide or hearing dog on a lot or common property.

## **50 Restrictions on by-laws during initial period**

- (1) An owners corporation must not, during the initial period, make, amend or repeal a by-law in such a manner that a right is conferred or an obligation is imposed on one or more, but not all, owners or in respect of one or more, but not all, lots.
- (2) An owners corporation may recover from the original owner, as damages for breach of statutory duty, any loss suffered by the owners corporation as a result of a contravention of this section.
- (3) An owner may recover, as damages for breach of statutory duty, any loss that has been suffered by the owner as a result of a contravention of this section.
- (4) It is a defence to an action under this section for damages if it is proved that the original owner:
  - (a) did not know of the contravention on which the action is based, or
  - (b) was not in a position to influence the conduct of the owners corporation in relation to the contravention, or
  - (c) used due diligence to prevent the contravention.
- (5) A remedy available under this section does not affect any other remedy.

## **Division 4 Special provisions for by-laws conferring certain rights or privileges**

### **51 Application of Division**

- (1) This Division applies to a by-law conferring on the owner of a lot specified in the by-law, or the owners of several lots so specified:
  - (a) a right of exclusive use and enjoyment of the whole or any specified part of the common property, or
  - (b) special privileges in respect of the whole or any specified part of the common property,

and to a by-law that amends or repeals such a by-law.

- (2) This Division does not prevent an owners corporation making a by-law in accordance with section 54 of the *Community Land Management Act 1989*.

**52 How does an owners corporation make, amend or repeal by-laws conferring certain rights or privileges?**

- (1) An owners corporation may make, amend or repeal a by-law to which this Division applies, but only:
- (a) with the written consent of the owner or owners of the lot or lots concerned and, in the case of a strata leasehold scheme, the lessor of the scheme, and
  - (b) in accordance with a special resolution.
- (2) A by-law to which this Division applies may be made even though the person on whom the right of exclusive use and enjoyment or the special privileges are to be conferred had that exclusive use or enjoyment or enjoyed those special privileges before the making of the by-law.
- (3) After 2 years from the making, or purported making, of a by-law to which this Division applies, it is conclusively presumed that all conditions and preliminary steps precedent to the making of the by-law were complied with and performed.

**53 Can a by-law contain conditions?**

A by-law to which this Division applies may confer rights or special privileges subject to such conditions as may be specified in the by-law (for example, a condition requiring the payment of money by the owner or owners of the lot or lots concerned, at specified times or as determined by the owners corporation).

**54 By-law must provide for maintenance of property**

- (1) A by-law to which this Division applies must:
- (a) provide that the owners corporation is to continue to be responsible for the proper maintenance of, and keeping in a state of good and serviceable repair, the common property or the relevant part of it, or
  - (b) impose on the owner or owners concerned the responsibility for that maintenance and upkeep.
- (2) Any money payable under a by-law to which this Division applies by more than one owner to the owners corporation or to any person for or towards the maintenance or upkeep of any common property is payable by those owners proportionately according to the relative proportions of their respective unit entitlements unless the by-law otherwise provides.

- (3) To the extent to which a by-law to which this Division applies makes a person directly responsible for the proper maintenance, and keeping in a state of good and serviceable repair, of any common property, it discharges the owners corporation from its obligations to maintain and repair property under Chapter 3.

#### **55 What is the effect of a by-law?**

- (1) A by-law to which this Division applies, while it remains in force, continues to operate for the benefit of, and is binding on, the owner or owners for the time being of the lot or lots specified in the by-law.
- (2) If a person becomes owner of a lot at a time when, under a by-law or under this subsection, a former owner is liable to pay money to the owners corporation, the person who becomes owner is jointly and severally liable with the former owner to pay the money to the owners corporation.
- (3) Any money payable by an owner to the owners corporation under a by-law to which this Division applies or under subsection (2) may be recovered, as a debt, by the owners corporation.

#### **56 Certain by-laws relating to parking may be made during initial period**

- (1) Nothing in section 50 prevents an owners corporation, during the initial period, from making a by-law to which this Division applies if:
  - (a) the by-law is made for the purpose of authorising an owner to park a vehicle on part of the common property, and
  - (b) the local council has given written approval to the making of the by-law.
- (2) The provisions of section 40 of the *Strata Schemes (Freehold Development) Act 1973* apply to an application for an approval under this section in relation to a freehold strata scheme in the same way as they apply to an application referred to in that section.
- (3) The provisions of section 69 of the *Strata Schemes (Leasehold Development) Act 1986* apply to an application for an approval under this section in relation to a leasehold strata scheme in the same way as they apply to an application referred to in that section.
- (4) A by-law referred to in this section must not be recorded by the Registrar-General unless it bears a certificate, in the form prescribed by the regulations, of the general manager of the local council.

### **Division 5 Special provisions for strata schemes that are part of**

## **community schemes**

### **57 Application of Division**

This Division applies to a strata scheme that is part of a community scheme under the *Community Land Management Act 1989*.

### **58 What happens if by-laws are inconsistent with management statements?**

If the by-laws for a strata scheme to which this Division applies are inconsistent:

- (a) with the community management statement, or
  - (b) if the strata scheme is also part of a precinct scheme under the *Community Land Development Act 1989*—with the precinct management statement,
- the management statement prevails.

### **59 Obligation of lessee to comply with management statements**

(1) In a lease of a lot or common property in a strata scheme to which this Division applies there is implied an agreement by the lessee to comply with:

- (a) the community management statement, and
- (b) if the strata scheme is also part of a precinct scheme under the *Community Land Development Act 1989*—the precinct management statement.

(2) (Repealed)

### **60 How does a lessee get information about management statements?**

If it is proposed to grant a lease of a lot or common property in a strata scheme to which this Division applies, the lessor must annex the following to the copy of the lease submitted for execution by the lessee:

- (a) a copy of the community management statement,
- (b) if the strata scheme is also part of a precinct scheme under that Act—a copy of the precinct management statement.

Maximum penalty: 1 penalty unit.

## **Chapter 3 Key management areas**

### **Introductory note—**

This Chapter sets out the key areas of management for a strata scheme, that is, the main responsibilities of an owners corporation for a strata scheme.

## Part 1 Introduction

### Introductory note—

This Part provides an overview of the Chapter.

### 61 What are the key management areas for a strata scheme?

- (1) An owners corporation has, for the benefit of the owners:
  - (a) the management and control of the use of the common property of the strata scheme concerned, and
  - (b) the administration of the strata scheme concerned.
- (2) The owners corporation has responsibility for the following:
  - (a) maintaining and repairing the common property of the strata scheme as provided by Part 2,
  - (b) managing the finances of the strata scheme as provided by Part 3,
  - (c) taking out insurance for the strata scheme as provided by Part 4,
  - (d) keeping accounts and records for the strata scheme as provided by Part 5.
- (3) Other functions of an owners corporation are included in Part 6.

## Part 2 Maintenance and repairs

### Introductory note—

This Part sets out the duties of an owners corporation to maintain and repair the property of a strata scheme. Certain powers are given to an owners corporation to recover money for work required to be carried out and to enter property to carry out certain necessary work.

### 62 What are the duties of an owners corporation to maintain and repair property?

- (1) An owners corporation must properly maintain and keep in a state of good and serviceable repair the common property and any personal property vested in the owners corporation.
- (2) An owners corporation must renew or replace any fixtures or fittings comprised in the common property and any personal property vested in the owners corporation.
- (3) This clause does not apply to a particular item of property if the owners corporation determines by special resolution that:
  - (a) it is inappropriate to maintain, renew, replace or repair the property, and
  - (b) its decision will not affect the safety of any building, structure or common property in the strata scheme or detract from the appearance of any property in

the strata scheme.

**Note—**

The decision of an owners corporation under subsection (3) may be reviewed by an Adjudicator (see section 138).

**63 What power does an owners corporation have to carry out work and recover costs?**

- (1) **Application of section** This section applies if a person who is required to carry out work as referred to in this section fails to carry out the work.
- (2) **Work required by public authority** An owners corporation may carry out work that is required to be carried out by an owner of a lot under a notice served on the owner by a public authority and may recover the cost of carrying out the work from the owner or any person who, after the work is carried out, becomes the owner.
- (3) **Work required to be carried out under term or condition of by-law** An owners corporation may carry out work that is required to be carried out by a person who is the owner, mortgagee or covenant chargee in possession, lessee (or, in the case of a leasehold strata scheme, sublessee) or occupier of a lot under a term or condition of a by-law and may recover the cost of carrying out the work from that person or any person who, after the work is carried out, becomes the owner of that lot.
- (4) **Work that is duty of owner or occupier to carry out** An owners corporation may carry out work that is required to be carried out by a person who is the owner, mortgagee or covenant chargee in possession, lessee (or, in the case of a leasehold strata scheme, sublessee) or occupier of a lot in order to remedy a breach of a duty imposed by Chapter 4 and may recover the cost of the work from that person.
- (5) **Work required to be carried out under order** An owners corporation may carry out work required to be carried out under an order made under this Act and may recover the cost of carrying out the work from the person against whom the order was made.
- (6) **Recovery of costs as a debt** The costs incurred by an owners corporation in carrying out any work referred to in this section may be recovered by the owners corporation as a debt.

**64 What power does an owners corporation have to carry out work at its own expense?**

- (1) An owners corporation may carry out such work as is necessary to rectify any of the following defects:
  - (a) any structural defect in any part of a building comprised in a lot that affects or is likely to affect the support or shelter provided by that lot for another lot in the building or the common property,
  - (b) any defect in any pipe, wire, cable or duct that provides, or through which passes,

any water, sewage, drainage, gas, electricity, garbage, artificially heated or cooled air, heating oil or other service (including telephone, radio or television services) within a lot.

- (2) An owners corporation may carry out work referred to in this section at its own expense if the cost of the work cannot be recovered from some other person.

**65 Can an owners corporation enter property in order to carry out work?**

- (1) An owners corporation may, by its agents, employees or contractors, enter on any part of the parcel for the purpose of carrying out the following work:
- (a) work required to be carried out by the owners corporation in accordance with this Act,
  - (b) work required to be carried out by the owners corporation by a notice served on it by a public authority,
  - (c) work required to be carried out by the owners corporation by an order under this Act.
- (2) An owners corporation may, by its agents, employees or contractors, enter on any part of the parcel for the purpose of determining whether any work is required to be carried out by the owners corporation in accordance with this Act.
- (3) In an emergency, the owners corporation may enter any part of the parcel for those purposes at any time.
- (4) In a case that is not an emergency, the owners corporation, may enter any part of the parcel for those purposes with the consent of any occupier of that part of the parcel or, if the occupier does not consent, in accordance with an order of an Adjudicator under section 145.
- (5) A person must not obstruct or hinder an owners corporation in the exercise of its functions under this section.

Maximum penalty: 2 penalty units.

- (6) An owners corporation is liable for any damage to a lot or any of its contents caused by or arising out of the carrying out of any work, or the exercise of a power of entry, referred to in this section unless the damage arose because the owners corporation was obstructed or hindered.

### **Part 3 Finances of strata scheme**

**Introductory note—**

This Part requires an owners corporation for a strata scheme to establish an administrative fund and a sinking fund and to levy contributions to those funds from owners of lots in the scheme. The administrative fund is generally used to meet recurrent



expenses, such as expenses involved in maintaining the common property from day-to-day in good condition and insuring the property. The sinking fund is generally used to meet expenses of a capital nature, such as painting buildings or replacing fixtures or fittings.

## **Division 1 Administrative and sinking funds and account of owners corporation**

### **66 Administrative fund to be established**

An owners corporation must establish an administrative fund.

### **67 What money is to be paid into the administrative fund?**

- (1) An owners corporation must pay the following amounts into the administrative fund:
  - (a) the contributions levied on, and paid by, owners for payment into the fund,
  - (b) the proceeds of the disposal of any personal property of the owners corporation,
  - (c) any fees paid to the owners corporation for inspection of its records and the provision of information and certificates relating to its records.
- (2) An owners corporation may pay into the administrative fund any amounts paid to the owners corporation by way of discharge of insurance claims.

### **68 What money can be paid out of the administrative fund?**

- (1) An owners corporation must not pay any money from its administrative fund except for the purpose of:
  - (a) payments of the kind for which estimates have been made under section 75 (1),  
or
  - (b) payments made in accordance with this Division on a distribution of a surplus in the fund, or
  - (c) payments to a member of the executive committee in accordance with this Act, or
  - (d) other payments in connection with carrying out its functions under this Act or the by-laws, except payments of a kind referred to in section 71 (1).
- (2) However, an owners corporation may pay money 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 so long as the owners corporation complies with subsection (3).
- (3) The owners corporation must, not later than 3 months after the disbursement, make a determination under section 76 (1) of an amount sufficient to recoup the amount of the disbursement.

**69 Sinking fund to be established**

- (1) An owners corporation must establish a sinking fund.
- (2) However, an owners corporation for a strata scheme comprising 2 lots need not establish a sinking fund if:
  - (a) the owners corporation so determines by unanimous resolution, and
  - (b) the buildings comprised in one of those lots are physically detached from the buildings comprised in the other lot, and
  - (c) no building or part of a building in the strata scheme is situated outside those lots.

**70 What money is to be paid into the sinking fund?**

An owners corporation must pay the following amounts into its sinking fund:

- (a) the contributions levied on, and paid by, owners for payment into the fund,
- (b) any amounts paid to the owners corporation by way of discharge of insurance claims, unless those amounts have been paid into the administrative fund,
- (c) any amount received by the owners corporation that is not required or permitted to be paid into the administrative fund.

**71 What money can be paid out of the sinking fund?**

- (1) An owners corporation must not pay any money from its sinking fund except for the purpose of:
  - (a) payments of the kind for which estimates have been made under section 75 (2),  
or
  - (b) payments made in accordance with this Division on a distribution of a surplus in the fund.
- (2) However, an owners corporation may disburse money 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 if the owners corporation complies with subsection (3).
- (3) The owners corporation must, not later than 3 months after the disbursement, make a determination under section 76 (1) of an amount sufficient to recoup the amount of the disbursement.

**72 Distribution of surplus money in administrative fund or sinking fund**

- (1) An owners corporation may, in accordance with a unanimous resolution, distribute between the owners any money in its administrative fund or sinking fund that is not,

in the opinion of the owners corporation, required for the purposes of either fund.

- (2) A distribution to an owner of a lot or a person entitled to receive it under subsection (3) must be made in the same proportion as is borne by the unit entitlement for the lot to the aggregate unit entitlement.
- (3) Any money payable under subsection (1) in relation to a lot that is subject to a mortgage or covenant charge shown on the strata roll is to be paid:
  - (a) in accordance with the joint directions of the owner of the lot and the mortgagee or covenant chargee, or
  - (b) if they cannot agree—in accordance with an order of the court that, under subsection (4), has jurisdiction in the matter.
- (4) An order to resolve a dispute under subsection (3) may be made:
  - (a) in the case of a dispute where the amount of the payment does not exceed \$500 and the title to land is not in question or is in question only incidentally—to such Local Court as may be agreed on by the applicant and the respondent or, in the absence of any such agreement, the Local Court nearest to the parcel, or
  - (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 of New South Wales, or
  - (c) in the case of an application where the amount of the payment exceeds \$500 but does not exceed \$10,000 and the title to land is not in question or is in question only incidentally—to the District Court of New South Wales, or
  - (d) in any other case—to the Supreme Court.

### **73 Can money in administrative fund or sinking fund be invested?**

- (1) An owners corporation may 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.
- (2) Any interest received on an investment made under this section forms part of the fund to which the investment belongs.

### **74 Account of owners corporation**

- (1) An owners corporation must pay any amounts that are received by it and are not otherwise invested in accordance with this Act into an account established in a financial institution in the name of the owners corporation.
- (2) This section does not apply to an owners corporation that has appointed a strata managing agent to whom the duty of the owners corporation under this section is

delegated in accordance with this Act.

## **Division 2 Levy of contributions**

### **75 Estimates to be prepared of contributions to administrative and sinking funds**

- (1) An owners corporation must, not later than 14 days after the constitution of the owners corporation and at each annual general meeting after that, estimate how much money it will need to credit to its administrative fund for actual and expected expenditure:
  - (a) to maintain in good condition on a day-to-day basis the common property and any personal property vested in the owners corporation, and
  - (b) to provide for insurance premiums, and
  - (c) to meet other recurrent expenses.

**Note—**

Recurrent expenses would include such regular expenses as insurance, water charges, electricity charges, carpet cleaning, lawnmowing services and the like and minor expenses relating to maintenance of the common property.

- (2) An owners corporation must, at each annual general meeting, estimate how much money it will need to credit to its sinking fund for actual and expected expenditure:
  - (a) for painting or repainting any part of the common property which is a building or other structure, and
  - (b) to acquire personal property, and
  - (c) to renew or replace personal property, and
  - (d) to renew or replace fixtures and fittings that are part of the common property, and
  - (e) to replace or repair the common property, and
  - (f) to meet other expenses of a capital nature.

**Note—**

Expenses of a capital nature would include expenses in relation to major repairs or improvements to the common property or personal property of the owners corporation, such as painting of a building or replacement of roofing, guttering or fences and the like.

- (3) When estimating amounts needed to be credited to the administrative fund or the sinking fund the owners corporation must have before it, and take into account, a statement of the existing financial situation of the strata scheme and an estimate of receipts and payments.

## **76 Owners corporation to set levy for contributions to administrative and sinking funds**

- (1) The owners corporation must determine the amounts to be levied as a contribution to the administrative fund and the sinking fund to raise the amounts estimated as needing to be credited to those funds.
- (2) That determination must be made at the same meeting at which those estimated amounts are determined.
- (3) The owners corporation must levy on each person liable for it such a contribution.
- (4) If the owners corporation is subsequently faced with other expenses it cannot at once meet from either fund, it must levy on each owner a contribution to the administrative fund, determined at a general meeting of the owners corporation, in order to meet the expenses.
- (5) A contribution is, if an owners corporation so determines, payable by such regular periodic instalments as are specified in the determination setting the amount of the contribution.

## **77 Effect of use of lot on insurance premiums**

If the use to which a lot is put causes an insurance premium for the strata scheme to be greater than it would be if it were not put to that use, so much of a contribution payable by the owner of the lot as is attributable to insurance premiums may, with the consent of the owner, be increased to reflect the extra amount of premium.

### **Note—**

An owners corporation may apply for an order under section 149 (2) for a variation of contributions if an owner unreasonably refuses consent under this subsection.

## **78 Manner of levying contributions**

- (1) An owners corporation levies a contribution required to be paid to the administrative fund or sinking fund by an owner of a lot by serving on the owner a written notice of the contribution payable.
- (2) Contributions levied by an owners corporation must be levied in respect of each lot and are payable (subject to this section and section 77) by the owners in shares proportional to the unit entitlements of their respective lots.
- (3) If, at the time a person becomes owner of a lot, another person is liable in respect of the lot to pay a contribution, the owner is jointly and severally liable with the other person for the payment of the contribution and interest on the contribution.
- (4) A mortgagee or covenant chargee in possession of a lot (whether in person or not) is jointly and severally liable with the owner of the lot:
  - (a) for any regular periodic contributions to the administrative fund or sinking fund

together with any interest on those contributions, and

(b) for any other contribution together with interest on that contribution if the mortgagee or covenant chargee has been given written notice of the levy of the contribution.

(5) Subsection (4) does not affect the liability of an owner of a lot for any contribution levied under this section.

(6) Regular periodic contributions to the administrative fund and sinking fund of an owners corporation are taken to have been duly levied on an owner of a lot even though notice levying the contributions was not served on the owner.

### **79 Interest and discounts on contributions**

(1) Any contribution levied by an owners corporation becomes due and payable to the owners corporation in accordance with the decision of the owners corporation to make the levy.

(2) A contribution, if not paid at the end of one month after it becomes due and payable, bears until paid simple interest at an annual rate of 10 per cent or, if the regulations provide for another rate, that other rate.

(3) However, an owners corporation may by special resolution determine (either generally or in a particular case) that a contribution is to bear no interest.

(4) An owners corporation may, by special resolution, determine (either generally or in a particular case) that a person may pay 10 per cent less of a contribution levied if the person pays the contribution before the date on which it becomes due and payable.

### **80 How does an owners corporation recover unpaid contributions and interest?**

(1) An owners corporation may recover as a debt a contribution not paid at the end of one month after it becomes due and payable, together with any interest payable and the expenses of the owners corporation incurred in recovering those amounts.

(2) Interest paid or recovered forms part of the fund to which the relevant contribution belongs.

## **Part 4 Insurance**

### **Introductory note—**

This Part requires an owners corporation for a strata scheme for a building to take out insurance on the building. In the case of a strata scheme for a part of a building, the obligation to insure is placed on the owners corporation and the owner or owners of the rest of the building.

The Part provides specific exceptions to the insurance requirements and enables an owners corporation to apply to an Adjudicator for an exemption from those requirements.

The Part also deals with other types of insurance that must or may be taken out by an owners corporation and contains

miscellaneous provisions as to the taking out of insurance by an owners corporation or an owner of a lot.

## **Division 1 Definitions**

### **81 Building**

In this Part, **building** includes:

- (a) owners' improvements and owners' fixtures forming part of the building other than paint, wallpaper and temporary wall, floor and ceiling coverings, and
- (b) a building consisting entirely of common property, and
- (c) anything prescribed by the regulations as forming part of a building for the purposes of this definition,

but does not include:

- (d) fixtures removable by a lessee or sublessee at the expiration of a tenancy, or
- (e) anything prescribed by the regulations as not forming part of a building for the purposes of this definition.

### **82 Damage policy**

- (1) In this Part, a **damage policy** for a building means a contract of insurance providing for the matters referred to in this section in the event of the building being destroyed or damaged by fire, lightning, explosion or any other occurrence specified in the policy.
- (2) A damage policy is to provide for the rebuilding of the building or its replacement by a similar building in the event of its destruction so that every part of the rebuilt building or the replacement building is in a condition no worse or no less extensive than that part or its condition when that part was new.
- (3) A damage policy is to provide for 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 the repaired or restored portion, is in a condition no worse or no less extensive than that portion or its condition when that portion was new.
- (4) A damage policy is to provide for the payment of expenses incurred in the removal of debris.
- (5) A damage policy is to provide for the remuneration of architects and other persons whose services are necessary as an incident to the rebuilding, replacement, repair or restoration.
- (6) A damage policy may provide that, instead of the work and the payments being carried out or made on the occurrence of any of the events specified in subsection (1),

the liability of the insurer is, on the occurrence of any such event, limited to an amount specified in the policy that is not less than an amount calculated in the manner prescribed by the regulations.

## **Division 2 Insurance of buildings**

### **83 Owners corporation to insure building**

- (1) The owners corporation 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 accordance with this section.
- (2) The building is to be insured for at least the value of the building indicated by the last valuation obtained for the building in accordance with this Division.
- (3) The damage policy is to be in the name of the owners corporation.
- (4) This section does not apply to an owners corporation for a strata scheme comprising 2 lots if:
  - (a) the owners corporation so determines by unanimous resolution, and
  - (b) the buildings comprised in one of those lots are physically detached from the buildings comprised in the other lot, and
  - (c) no building or part of a building in the strata scheme is situated outside those lots.
- (5) An owners corporation that breaches subsection (1) is guilty of an offence.

Maximum penalty (subsection (5)): 5 penalty units.

### **84 Responsibility of owners corporation to insure where strata scheme is for part only of building**

- (1) **Owners corporation and other owners of building to insure** The owners corporation 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 with an approved insurer in accordance with this section.
- (2) **Building to be insured in accordance with last valuation** The building is to be insured for at least the value of the building indicated by the last valuation obtained for the building in accordance with this Division.
- (3) **Damage policy to be in joint names** The damage policy is to be taken out in the joint names of the owners corporation and the other persons required to insure.
- (4) **Calculation of proportions of premium for which each owner liable** The proportion of a premium for a damage policy for a building payable by the owners corporation 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) **Adjudicator may determine proportions of premium payable** On application made to it by an owners corporation or other person liable to pay such a proportion, an Adjudicator may determine the replacement value and proportion payable. The determination is binding on each person liable to pay such a proportion.
- (6) **Action that may be taken if person fails to insure** If a person fails to comply with a requirement made by this section to insure a building or keep a building insured, any other person who has an obligation to comply with that requirement may:
- (a) apply to an Adjudicator for an order requiring the person who has failed to comply to join the applicant in taking out a damage policy for the building, or
  - (b) take out a damage policy for the building in their joint names and recover as a debt from the person who has failed to comply the appropriate proportion, if any, of the amount of the premium for which that person is liable.
- (7) **Proportions may be adjusted by Adjudicator in certain circumstances** If the use to which a part of a building is put causes an insurance premium under this section to be greater than it would be if it were not put to that use, a person liable to pay a proportion of the insurance premium may apply to an Adjudicator for an order adjusting the proportions payable so that the proportion payable by the person in whom is vested the estate in fee simple for that part of the building reflects the extra amount of premium.
- (8) **Offence to breach insurance requirements** A person who breaches subsection (1) is guilty of an offence.
- Maximum penalty: 5 penalty units.
- (9) **Defence to offence of not insuring** In any proceedings for an offence under subsection (8), 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 taken out because another person specified in subsection (1) was unwilling to join in the application for that policy.

## **85 Valuations to be obtained for the purposes of insurance**

- (1) A valuation of a building that is required to be insured under this Division must be obtained at least once every 5 years by:
- (a) if the whole building is the subject of one strata scheme, the owners corporation for that strata scheme, or
  - (b) in any other case, the owners corporation for each strata scheme for part of the

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.

- (2) The valuation must be carried out by a person who has the qualifications prescribed by the regulations.
- (3) The proportion of the cost of a valuation that is payable by an owners corporation or other person referred to in subsection (1) (b) is the same as the proportion of the premium for the damage policy that is payable by the owners corporation or person in respect of the building concerned.

#### **86 Can a person be exempted from the requirement to insure?**

- (1) A person required by this Division to insure a building may make an application to an Adjudicator for an order of exemption under this section, but an owners corporation may make such an application only in accordance with a unanimous resolution.
- (2) An Adjudicator may, on application and if of the opinion that compliance with the requirements to insure is unnecessary or impracticable, by order in writing:
  - (a) exempt the applicant from compliance with those requirements unconditionally, or
  - (b) with the consent in writing of the applicant, exempt the applicant from compliance with those requirements subject to a condition that the applicant takes out such insurance for the building concerned as may be specified in the order.
- (3) An Adjudicator must not make an order under this section unless each other person required to insure the building has consented in writing to the making of the order or has, before the making of the order, been given an opportunity to make representations to an Adjudicator with respect to the application for the order.
- (4) A consent for the purposes of this section may be given by an owners corporation only in accordance with a unanimous resolution.
- (5) If an owners corporation is required by a positive covenant to insure the building, an order must not be made under this section until:
  - (a) at least 21 days after an Adjudicator has served notice on the authority having the benefit of the covenant of the intention to make the order, and
  - (b) the Adjudicator has considered any representations made during the 21-day period to an Adjudicator by the authority in relation to the intended order.
- (6) A person to whom an exemption has been granted under this section is not under a duty to comply with a requirement to insure under this Division or any corresponding requirement of a positive covenant.
- (7) However, if the exemption was granted subject to a condition referred to in subsection

(2) (b), the person is under the duty, if in breach of that condition.

### **Division 3 Other insurance**

#### **87 What other insurance must an owners corporation take out?**

- (1) In addition to insurance taken out by an owners corporation in accordance with Division 2, the owners corporation must take out insurance:
  - (a) in respect of any occurrence against which it is required by law to insure, including any insurance required by the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998* to be taken out, and
  - (b) in respect of damage to property, death or bodily injury for which the owners corporation could become liable in damages, and
  - (c) against the possibility of the owners becoming jointly liable by reason of a claim arising in respect of any other occurrence against which the owners corporation, in accordance with a special resolution, decides to insure, and
  - (d) against any damages for which the owners corporation could become liable by reason that, without fee or reward or any expectation of fee or reward, a person acting on behalf of the owners corporation does work in a building or on the common property in the strata scheme, and
  - (e) of any other class prescribed by the regulations for the purposes of this subsection.

Maximum penalty: 5 penalty units.

- (2) Insurance taken out in accordance with subsection (1) (b) must be taken out with an approved insurer and must be for a cover of not less than \$10,000,000 for each event in respect of which any claim or claims may be made or, if the regulations provide for another amount, that other amount.
- (3) Regulations made for the purposes of subsection (2) may provide that the amount is to be calculated or determined in the prescribed manner.

#### **88 What other insurance may an owners corporation take out?**

- (1) An owners corporation may insure any property that it is not required to insure by this Part and in which it has an insurable interest.
- (2) An owners corporation may take out insurance, at its own expense, in respect of either or both of the following:
  - (a) damage to property, death or bodily injury for which a person holding the office of chairperson, secretary, treasurer or member of the executive committee of the

owners corporation could become liable in damages because of an act or omission, committed or omitted in good faith, in performing the functions of that office,

(b) misappropriation of money or other property of the owners corporation.

## **Division 4 Insurance claims and other matters affecting insurance**

### **89 Can an owner take out insurance?**

- (1) Nothing in this Part limits any right of an owner to take out insurance.
- (2) Insurance taken out by an owner does not affect, and is not to be taken into consideration in determining, the amount payable to an owners corporation under a contract of insurance entered into between it and an insurer in accordance with this Part.
- (3) Subsection (2) has effect despite anything contained in the relevant contract of insurance.

### **90 Insurable interests**

- (1) A person (including an owners corporation) is taken to have an insurable interest in the subject-matter of a contract of insurance entered into by the person in accordance with this Part.
- (2) The owner of a lot is taken to have an insurable interest in a building comprised in the lot while the building is subject to a determination referred to in section 83 (4).
- (3) This section applies despite the provisions of section 23 of the *Imperial Acts Application Act 1969* or any other law relating to insurance.

### **91 Insurance of mortgaged lot**

- (1) Insurance may be taken out by an owner of a lot in respect of damage to the lot in a sum equal to the amount secured at the date of the contract of insurance by mortgages of and any covenant charges affecting the lot.
- (2) Subject to the terms and conditions of the contract:
  - (a) any payment to be made under the contract by the insurer in respect of damage must be made to the mortgagees and any covenant chargees whose interests are noted in the contract in order of their respective priorities, and
  - (b) the amount of the payment must 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 any covenant charges affecting the lot, whichever is the least amount, and

- (c) if the amount so paid by the insurer equals the amount necessary to discharge a mortgage of the lot, the insurer is entitled to an assignment of that mortgage, and
  - (d) if the amount so paid by the insurer is less than the amount necessary to discharge a mortgage of the lot, the insurer is entitled to a sub-mortgage of that mortgage to secure the amount so paid on terms and conditions agreed on as provided by subsection (3) or, failing agreement, on the same terms and conditions as those contained in the mortgage by the owner.
- (3) For the purposes of subsection (2) (d), 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 an owner of a lot, agree on the terms and conditions of the sub-mortgage.
- (4) The contract of insurance is not liable to be brought into contribution with any other such contract of insurance except another contract of insurance that is in respect of damage to the same lot and relates to the same debt.

## **92 Insurance claim where owner at fault**

If an insurer of an owners corporation accepts a claim by the owners corporation based on an act or omission by an owner of a lot, the insurer has no right of subrogation in relation to the owner based on that act or omission unless it is proved that the act or omission was wilful.

## **93 Action against owners corporation by owner**

An owner of a lot may bring any action against the owners corporation of which the owner is a member that the owner might have brought against the owners corporation if the owner had not been such a member.

## **94 Owners corporation to rebuild**

- (1) If an owners corporation receives payment of money from an insurer in respect of destruction of or damage to a building, that money must be immediately applied by the owners corporation in rebuilding, replacing, repairing or restoring the building.
- (2) This section is subject to:
- (a) in the case of a freehold strata scheme, any order made under section 50 or 51 of the *Strata Schemes (Freehold Development) Act 1973*, or
  - (b) in the case of a leasehold strata scheme, any order made under section 79 or 80 of the *Strata Schemes (Leasehold Development) Act 1986*.

## **95 Approved insurers**

- (1) The Minister may, by order in writing, approve of any person or class of persons as an

approved insurer for the purposes of this Part.

- (2) The Director-General must maintain a record of approved insurers.

## **Part 5 Records and accounts**

### **Introductory note—**

This Part requires an owners corporation for a strata scheme to keep certain records and accounts in relation to a strata scheme. The Part also provides for certain persons to inspect those records and to obtain a certificate of an owners corporation in relation to certain matters affecting a lot in the strata scheme.

## **Division 1 The strata roll**

### **96 Owners corporation must keep a strata roll**

The owners corporation must prepare and maintain a strata roll in accordance with this Division.

Maximum penalty: 5 penalty units.

### **97 What is the form of the strata roll?**

- (1) The strata roll must be kept in a form that contains entries for each lot and entries for the common property and the strata scheme in general.
- (2) The information required to be entered in the strata roll may be recorded or stored by mechanical, electronic or other means.

### **98 What must be recorded in the strata roll?**

- (1) There must be recorded in the strata roll in relation to a particular lot:
  - (a) the owner's name and an Australian address for service of notices or the name of the owner's agent appointed in accordance with Part 3 of Chapter 4 and the agent's Australian address for service of notices, and
  - (b) information provided under section 118 or obtained from the Register in connection with the lot, and
  - (c) information provided under section 119.
- (2) There must be recorded in the strata roll in relation to the common property and the strata scheme in general the following:
  - (a) the strata plan number and the address of the strata scheme building,
  - (b) the names of the original owner and any strata managing agent of the owners corporation and their Australian addresses for service of notices,
  - (c) the total unit entitlement of the scheme and the unit entitlement of each lot,

(d) particulars of insurance taken out by the owners corporation, including the following:

- the name of the insurance company
- the number of the insurance policy
- the nature of the risk insured
- the amount of the insurance
- the due date for payment of the premium
- the date on which the premium was last paid

(e) the by-laws for the time being in force for the strata scheme.

**99 What information can the owners corporation rely on when making entries in the strata roll?**

- (1) The owners corporation may make or amend the entries in the strata roll on the basis of information contained in the Register or provided under section 118 (to the extent that information so provided is not inconsistent with information contained in the Register).
- (2) Information provided under section 118 may be presumed to be consistent with information contained in the Register until the contrary is evident.

**Division 2 Other records and accounts required to be kept by owners corporation**

**100 What are the duties of an owners corporation to keep other records and documents?**

- (1) It is the duty of an owners corporation to keep records and documents in accordance with this Division.
- (2) The information required to be kept may be recorded or stored by mechanical, electronic or other means.

**101 Notices and orders to be kept**

An owners corporation must cause the following to be recorded:

- (a) particulars of any notice served on the owners corporation under this or any other Act, any order under this Act served on the owners corporation and any order made by a court or tribunal and served on the owners corporation,
- (b) the date on which it was served and the manner of service,
- (c) the part of the parcel to which it relates,

- (d) the date by which compliance is required,
- (e) the date on which it is complied with.

Maximum penalty: 2 penalty units.

### **102 Minutes of meetings**

An owners corporation must keep minutes of its meetings that include particulars of motions passed at those meetings.

Maximum penalty: 2 penalty units.

### **103 Accounting records**

An owners corporation must keep the accounting records prescribed by the regulations.

Maximum penalty: 2 penalty units.

### **104 Certain records to be retained for prescribed period**

An owners corporation must cause the following to be retained for the period prescribed by the regulations:

- (a) the records, notices, orders, minutes of meetings and accounting records required to be kept under this Division,
- (b) its financial statements,
- (c) copies of correspondence received and sent by the owners corporation,
- (d) notices of meetings of the owners corporation and its executive committee,
- (e) proxies delivered to the owners corporation,
- (f) voting papers relating to motions for resolutions by the owners corporation and to the election of office holders and the executive committee,
- (g) records served on the owners corporation by the strata managing agent relating to the exercise of functions by the agent,
- (h) such other documents as may be prescribed by the regulations.

Maximum penalty: 5 penalty units.

### **105 Owners corporation may require certain persons to produce records, accounts and property of the owners corporation**

- (1) If the executive committee of an owners corporation gives a notice to a person who has possession or control of property (including records) of the owners corporation requiring the person to deliver the property to the executive committee, the person



must, within 7 days after receiving the notice, deliver that property to a member of the executive committee specified in the notice.

Maximum penalty: 20 penalty units.

- (2) If the executive committee of an owners corporation gives a notice to a person who has possession or control of property (including records) of the owners corporation advising of the decision of the owners corporation to terminate the person's appointment as strata managing agent, the person must, within 7 days after receiving the notice, deliver that property to a member of the executive committee specified in the notice.

Maximum penalty: 20 penalty units.

- (3) This section does not take away or affect any just claim or lien which a strata managing agent may have against or on any records or other property of an owners corporation.
- (4) This section does not affect the operation of section 38 of the *Property, Stock and Business Agents Act 1941*.

**Note—**

Section 38 of the *Property, Stock and Business Agents Act 1941* contains requirements relating to the keeping of records under that Act.

## **Division 3 Preparation and auditing of financial statements**

### **106 Owners corporation must prepare financial statements**

- (1) An owners corporation must cause to be prepared financial statements for:
- (a) 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
  - (b) 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.
- (2) The financial statements are to comprise only the following matters:
- (a) a statement of income and expenditure for the administrative fund,
  - (b) a statement of income and expenditure for the sinking fund.
- (3) Each financial statement must specify the fund, and the period, for which it is prepared.
- (4) If the period is a period referred to in subsection (1), the financial statement for a fund must also specify the following:

- (a) the balance carried forward in the fund from the previous period,
- (b) the particulars and amount of each item of income of the fund received during the current period,
- (c) the particulars and amount of each item of expenditure from the fund during the current period,
- (d) the amount of the contribution to the fund determined for each person liable to make such a contribution,
- (e) the balance outstanding for each such contribution,
- (f) the cash in the fund at the end of the current period,
- (g) the balance of the fund,
- (h) in respect of each liability to contribute to the fund—any unpaid arrears and any balance outstanding,
- (i) the extent to which, at the end of the current period, the fund is in debit or credit.

**Note—**

The financial statements of an owners corporation prepared under this section can deal only with income and expenditure from the administrative and sinking funds and are therefore separate from any other financial statements that might be prepared in relation to the strata scheme, for example, financial statements in relation to the provision of services for a retirement village.

### **107 Auditing of accounts and financial statements**

If an owners corporation determines that the accounts and financial statements of the owners corporation are to be audited, the audit must be carried out in accordance with Australian Auditing Standards.

## **Division 4 Inspection of records and issue of certificates**

### **108 Inspection of records of owners corporation**

- (1) **Who may inspect records?** An owner, mortgagee or covenant chargee of a lot, or a person authorised in writing by the owner, mortgagee or covenant chargee, may request the owners corporation to allow an inspection to be carried out under this section.
- (2) **Form of request** The request must be in writing and be accompanied by the fee prescribed by the regulations.
- (3) **Items to be made available for inspection** The owners corporation must make the following items available for inspection by the person who makes the request or the person's agent:

- (a) the strata roll,
- (b) any records or documents required to be kept under Division 2,
- (c) the plans, specifications, certificates, diagrams and other documents required to be delivered to the owners corporation at its first annual general meeting by the original owner or lessor,
- (d) if in its custody or under its control, the certificate of title comprising the common property or, in the case of a leasehold strata scheme, the certificate of title for the lease of the common property,
- (e) the last financial statements prepared,
- (f) every current policy of insurance taken out by the owners corporation and the receipt for the premium last paid for each such policy,
- (g) any other record or document in the custody or under the control of the owners corporation,
- (h) if the duties of the owners corporation under this subsection have been delegated to a strata managing agent, such other records (including records of the strata managing agent) relating to the strata scheme as may be prescribed by the regulations,
- (i) if a caretaker agreement is in force or has been entered into but has not yet commenced, a copy of the caretaker agreement.

Maximum penalty: 2 penalty units.

- (4) **Inspection to take place at agreed place and time** The inspection is to take place at such time and place as may be agreed on and, failing agreement, at the parcel at a time and on a date fixed by the owners corporation under subsection (5).
- (5) **Time and place of inspection if agreement not reached** If an applicant and the owners corporation fail to reach an agreement within 3 days after the owners corporation receives the application, the owners corporation must immediately send by post to the applicant a notice fixing a specified time (between 9 am and 8 pm) on a specified date (not later than 10 days after the owners corporation receives the application).
- (6) **Copies of documents may be taken** A person entitled to inspect a document under this section may take extracts from, or make a copy of, the document but must not, without the consent of the owners corporation, remove the document from the custody of the owners corporation.

## **109 Certificate by owners corporation as to financial and other matters relating to lot**

- (1) **Who may request certificate?** An owner, mortgagee or covenant chargee of a lot or a

person authorised in writing by the owner, mortgagee or covenant chargee may request the owners corporation to give a certificate under this section in relation to a particular lot.

- (2) **Form of request** The request must be in writing and accompanied by the fee prescribed by the regulations.
- (3) **Information relating to lot to be included in certificate** The certificate must specify the following information in respect of the relevant lot:
  - (a) the amount of any regular periodic contributions determined by the owners corporation under Part 3, the periods for which those contributions are payable and any discounts applicable for early payment,
  - (b) whether there is any amount unpaid of any other contributions determined under Part 3 and, if so, the amount unpaid and, in the case of a contribution levied in respect of the sinking fund, the date on which any such contribution was levied,
  - (c) whether there is any amount unpaid by an owner under a by-law to which Division 4 of Part 5 of Chapter 2 applies,
  - (d) whether there is any amount unpaid of any contribution levied under section 76 (4) and, if so, the amount unpaid and the date on which it was levied,
  - (e) whether there is any amount recoverable from the owner of that lot for work carried out by the owners corporation,
  - (f) any amount and rate of interest payable in relation to any unpaid contribution referred to in this subsection,
  - (g) whether there is any fine unpaid under this Act that is a charge on the lot,
  - (h) such other information as is required to complete the certificate.
- (4) **Information relating to management of strata scheme to be included in certificate** The certificate must state, as at the date of the certificate, the name and address of each member of the executive committee and of any strata managing agent and caretaker appointed under this Act for the strata scheme.
- (5) **Extra information required in relation to community schemes** If the strata scheme is part of a community scheme, the certificate must also include:
  - (a) the amount of any regular periodic contributions required to be made to the administrative fund, and the sinking fund, of the community association and the respective periods to which they relate, and
  - (b) the amount of any such contribution that has not been paid, and

(c) the date on which any regular periodic contribution to the administrative fund, and the sinking fund, of the association was levied, and

(d) if the strata scheme is also part of a precinct scheme—the same information in relation to the precinct scheme as is required by paragraphs (a), (b) and (c) in relation to the community scheme.

(6) **Form of certificate** The certificate must be in the form prescribed by the regulations.

(7) **When must certificate be given** An owners corporation must give a certificate under this section not later than 14 days after receipt by it of an application for the certificate.

Maximum penalty: 2 penalty units.

(8) **Certificate is evidence of matters stated in it** A certificate given under this section is conclusive evidence, as at the date of the certificate, of the matters stated in it in favour of a person (whether or not the applicant for the certificate or a person referred to in the certificate) taking for valuable consideration:

(a) an estate or interest in a lot in a freehold strata scheme to which the certificate relates, or

(b) an estate or interest in a lease of a lot in a leasehold strata scheme to which the certificate relates.

## Part 6 Other provisions relating to functions of the owners corporation

### Introductory note—

This Part sets out miscellaneous matters relating to the carrying out of the functions of an owners corporation.

### 110 What powers does an owners corporation have to borrow money and otherwise deal with property?

(1) An owners corporation may borrow money and secure the repayment of the money and of any interest in such manner as may be agreed on by the owners corporation and the lender, otherwise than by charging the repayment on the common property.

(2) An owners corporation may dispose of or otherwise deal with any lot vested in the owners corporation as a result of a subdivision effected under section 9 of the *Strata Schemes (Freehold Development) Act 1973* or section 11 of the *Strata Schemes (Leasehold Development) Act 1986*.

(3) Section 50 (1) (d) of the *Interpretation Act 1987* does not apply to an owners corporation.

### Note—

Section 50 (1) (d) of the *Interpretation Act 1987* provides that a statutory corporation may, for the purpose

of enabling it to exercise its functions, purchase, exchange, take on lease, hold, dispose of and otherwise deal with property.

**111 Can an owners corporation provide amenities and services to a lot?**

An owners corporation may enter into an agreement with an owner or occupier of a lot for the provision of amenities or services by it to the lot or to the owner or occupier of the lot.

**112 Agreement for payment to owner of consideration on transfer or lease of common property**

An owners corporation may, in accordance with a special resolution, make an agreement with an owner for the payment to the owner of:

- (a) the whole or any part of the consideration under any transaction proposed to be entered into by the owners corporation under Division 2 of Part 2 of the *Strata Schemes (Freehold Development) Act 1973* or of the *Strata Schemes (Leasehold Development) Act 1986*, or
- (b) any money payable to the owners corporation under a by-law to which Division 4 of Part 5 of Chapter 2 applies.

**113 Restrictions on powers of owners corporation during initial period**

- (1) An owners corporation must not, during the initial period, do any of the following things unless the owners corporation is authorised to do so by an order of the Tribunal under section 182:
  - (a) alter any common property or erect any structure on the common property otherwise than in accordance with a strata development contract,
  - (b) 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,
  - (c) appoint a strata managing agent or a caretaker or other person to assist it in the management or control of use of the common property, or the maintenance or repair of the common property, for a period extending beyond the holding of the first annual general meeting of the owners corporation,
  - (d) borrow money or give securities.
- (2) An owners corporation may recover from the original owner:
  - (a) as a debt, any amount for which the owners corporation is liable because of a contravention of subsection (1) (b), together with the expenses of the owners corporation incurred in recovering that amount, and
  - (b) as damages for breach of statutory duty, any loss suffered by the owners corporation as a result of any other contravention of subsection (1).

- (3) An owner may recover, as damages for breach of statutory duty, any loss that has been suffered by the owner as a result of a contravention of subsection (1) (other than paragraph (b)).
- (4) It is a defence to an action under this section in debt or for damages if it is proved that the original owner:
  - (a) did not know of the contravention on which the action is based, or
  - (b) was not in a position to influence the conduct of the owners corporation in relation to the contravention, or
  - (c) used due diligence to prevent the contravention.
- (5) A remedy available under this section does not affect any other remedy.

**Note—**

Section 50 places restrictions on the making, amendment and repeal of by-laws during the initial period.

**114 Owners corporation to construct and maintain letterbox**

- (1) An owners corporation must construct and maintain at or near the street alignment of the parcel a letterbox suitable to receive mail and other documents.
- (2) The name of the owners corporation is to be clearly shown on the letterbox.

**115 What effect does a strata development contract have on the functions of an owners corporation?**

The exercise by an owners corporation of functions under this Act is subject to the provisions of any strata development contract affecting common property for the strata scheme concerned and to the operation of this Act in relation to the strata development contract.

## **Chapter 4 Owners, occupiers and other persons with interests in lots**

**Introductory note—**

This Part contains provisions relating to the powers and duties of owners, mortgagees or covenant chargees in possession of lots, lessees, sublessees and occupiers of lots in strata schemes. The provisions prevent such persons from interfering with other lots or from creating nuisances or hazards to other lots. The Part also contains requirements as to the giving of certain notices to the owners corporation and enables an owner to appoint an agent, in special circumstances, to receive notices.

### **Part 1 Responsibilities of owners, occupiers and other persons relating to lots**

**116 Owners, occupiers and other persons not to interfere with structure of lot or services to lot**

- (1) An owner, mortgagee or covenant chargee in possession (whether in person or not),

lessee or occupier of a lot must not do anything or permit anything to be done on or in relation to that lot so that:

- (a) any support or shelter provided by that lot for another lot or common property is interfered with, or
  - (b) the passage or provision of water, sewage, drainage, gas, electricity, garbage, artificially heated or cooled air, heating oil and other services (including telephone, radio and television services) through or by means of any pipes, wires, cables or ducts for the time being in the lot is interfered with.
- (2) The owner of a lot must not alter the structure of the lot without giving to the owners corporation, not later than 14 days before commencement of the alteration, a written notice describing the proposed alteration.
- (3) In this section, **lessee** of a lot in a strata leasehold scheme means a sublessee of the lot.

#### **117 Owners, occupiers and other persons not to create nuisance**

- (1) An owner, mortgagee or covenant chargee in possession (whether in person or not), lessee or occupier of a lot must not:
- (a) use or enjoy the lot, or permit the 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 an owner or not), or
  - (b) 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 occupier of any other lot (whether that person is an owner or not) or by any other person entitled to the use and enjoyment of the common property, 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 any other lot by the occupier of the lot (whether that person is an owner or not) or by any other person entitled to the use and enjoyment of the lot.
- (2) This section does not operate to prevent the due exercise of rights conferred on a developer by the operation of:
- (a) in the case of a freehold strata scheme, section 28L of the [Strata Schemes \(Freehold Development\) Act 1973](#), or
  - (b) in the case of a leasehold strata scheme, section 52 of the [Strata Schemes \(Leasehold Development\) Act 1986](#).
- (3) In this section, **lessee** of a lot in a strata leasehold scheme means a sublessee of the lot.



## **Part 2 Notices required to be given by owners, occupiers and other persons**

### **118 Notice to be given to owners corporation of right to cast vote at meeting**

- (1) **Person with right to vote at meetings must notify owners corporation** A person who has an interest in a lot that, subject to this Act, gives the person a right to cast a vote either personally or by nominee at meetings of the owners corporation must notify the owners corporation in writing of that interest.
- (2) **Contents of notice** The notice must specify the following information and, if the interest is a mortgage, include confirmation by the mortgagor or be verified by statutory declaration of the mortgagee:
  - (a) the person's full name and an Australian address for service of notices,
  - (b) the lot concerned and the exact nature of the person's interest in it,
  - (c) the date on which the person acquired the interest,
  - (d) if the voting entitlement conferred by the interest is one that, according to Schedule 2, is to be exercised by a nominee, the nominee's full name and address for service of notices.
- (3) **Other matters to be specified in notice** The notice must specify the manner in which the interest arose and be verified by statutory declaration if any of the following applies to the interest:
  - (a) the interest is that of the executor or administrator of the estate of a deceased person,
  - (b) the interest is that of the liquidator or receiver in bankruptcy of any person,
  - (c) the interest has arisen by operation of law or the order of any court,
  - (d) the interest has arisen in any manner otherwise than by transfer of the interest from some other person or the discharge of a mortgage.
- (4) **Owners corporation may require notice to be given** The secretary of the owners corporation, if of the opinion that a person obliged to give notice under this section has not done so, may by a requisition in writing served on the person, require the person:
  - (a) to state, within 14 days, whether or not the person is a person required to give notice under this section, and
  - (b) if the person is such a person, to give that notice.
- (5) **Person prevented from casting vote if certain requirements not met** A person is not

entitled to cast a vote at a meeting of the owners corporation if the person has not complied with a requisition served on the person under subsection (4) or, in the case of a vote to be tendered through a nominee, if the nominee's full name and address for service of notices have not been notified under this section.

- (6) **Changes in certain information to be notified** A person who has given notice under this section may by further notice advise any change of nominee or of the person's or any nominee's address for service.

### **119 Notice to be given to owners corporation of leases or subleases**

- (1) If a lot is leased, the lessor must give notice of the lease, in accordance with this section, to the owners corporation within 14 days after the commencement of the lease.

Maximum penalty: 5 penalty units.

- (2) If a lot is subleased, the sublessor must give notice of the sublease, in accordance with this section, to the owners corporation within 14 days after the commencement of the sublease.

Maximum penalty: 5 penalty units.

- (3) If a lease or sublease of a lot is assigned, the assignor must give notice of the assignment, in accordance with this section, to the owners corporation within 14 days after the execution of the assignment.

Maximum penalty: 5 penalty units.

- (4) The notice must specify:

- (a) the name of the lessee, sublessee or assignee, and
- (b) the date of commencement or assignment of the lease or sublease, as the case requires, and
- (c) the name of any agent acting for the owner in respect of the lease or sublease.

### **120 Notice to be given to owners corporation of mortgagee taking possession of lot**

If a mortgagee of a lot takes possession of the lot, the mortgagee must give notice of that fact to the owners corporation within 14 days of taking possession of the lot.

Maximum penalty: 5 penalty units.

## **Part 3 Representatives of owners and other persons**

### **121 Can an owner of a lot appoint an agent for dealings with the owners corporation?**

- (1) An owner of a lot may appoint an agent to receive notices and other documents under

this Act if the owner is unable to deal with those notices because of intellectual impairment or physical impairment, illiteracy or an inability to read or write English sufficiently well or absence from the lot.

- (2) A person must not be appointed as an agent unless the person is a resident of Australia.
- (3) An appointment of an agent may be made at any time and may be revoked at any time.
- (4) However, the appointment or revocation has no effect until communicated to the owners corporation and recorded in the strata roll.
- (5) If an agent for an owner has been so appointed and the name and address for service of the agent is recorded on the strata roll, notices or other documents required to be given to the owner under this Act are to be given to the agent.

#### **122 How can a corporation exercise functions in relation to a lot?**

- (1) A corporation may authorise an individual to exercise on its behalf any function conferred by or under this Act on the corporation as owner or mortgagee of a lot or as a covenant chargee having the benefit of a covenant charge affecting a lot and may revoke the authority of any individual so authorised.
- (2) A function exercised with respect to a lot by an individual authorised under this section by the owner, mortgagee or covenant chargee is taken to have been exercised with respect to the lot by the owner, mortgagee or covenant chargee.
- (3) Nothing in this section affects any liability or obligation imposed by or under this Act on a corporation which is an owner or mortgagee of a lot or a covenant chargee.
- (4) A document under the seal of a corporation purporting to be an authorisation under this section or to be a revocation of such an authorisation is admissible in evidence and is, unless the contrary is proved, taken to be such an authorisation or revocation.

## **Chapter 5 Disputes and orders of Adjudicators and Tribunal**

### **Introductory note—**

This Part gives power to Adjudicators and the Tribunal to make orders to settle disputes about certain matters relating to the operation and management of a strata scheme.

Initially, an application for an order is processed by the Registrar. The Registrar must refuse to deal with a matter if satisfied that mediation was appropriate and was not attempted.

A person may either apply under Part 2 for mediation of a matter or make other arrangements for mediation. If mediation of a matter is unsuccessful or a matter is not appropriate for mediation, the Registrar may accept the application for the order. Depending on the nature of the order requested, the application will be dealt with by either an Adjudicator or the Tribunal.

The Tribunal has power to require a person to pay a pecuniary penalty for a contravention of an order made by an Adjudicator or the Tribunal or for a contravention of a notice served on the person by an owners corporation requiring the person to comply

with a particular by-law that the person has previously contravened.

An appeal may be made to the Tribunal against an order of an Adjudicator and an appeal may be made to the Supreme Court against an order of the Tribunal.

The following table describes the types of orders that may be made and who may apply for them.

To do what?	Who may apply?	Section
<b>General orders for settlement of disputes</b>		
To resolve dispute or complaint about an exercise of, or a failure to exercise, a function conferred or imposed by or under this Act or the by-laws in relation to a strata scheme	Interested person	138
To resolve dispute or complaint about the operation, administration or management of a strata scheme under this Act	Interested person	138
To resolve dispute or complaint between contiguous strata schemes	Owners corporation	139
<b>Orders relating to property</b>		
To get consent to existing or proposed alterations or repair of common property	Owner Lessor of leasehold strata scheme	140
To direct owner to lodge documents under section 14 (1) of <i>Strata Schemes (Freehold Development) Act 1973</i> or section 17 (1) of <i>Strata Schemes (Leasehold Development) Act 1986</i>	Owner Lessor of leasehold strata scheme	141
To require owners corporation to dispose of personal property	Owner	142
To prevent owners corporation acquiring personal property	Owner	142
To require owners corporation to acquire personal property	Owner	143
To use specified common property for specified purposes	Owner	144
To require occupier of lot to allow owners corporation to enter lot	Owners corporation	145
To reallocate unit entitlements	Owners corporation Lessor of leasehold strata scheme Owner of lot (whether or not development lot) Local council Public authority or statutory body representing the Crown, that is empowered to impose a rate, tax or other charge by reference to a valuation of land	183

<b>Orders relating to insurance</b>		
To require person to make or pursue insurance claim	Owner Lessor of a leasehold strata scheme Sublessee in a leasehold strata scheme Person in whom is vested estate in fee simple or a leasehold estate (in case where part of building is included in stratum parcel) of part of building not included in stratum parcel	146
To require insurance to be taken out	Owner Enrolled mortgagee or person having interest in lot Owners corporation Lessor of leasehold strata scheme Sublessee of common property in a leasehold strata scheme Sublessee of lot in leasehold strata scheme Person in whom is vested estate in fee simple or a leasehold estate (in case where part of building is included in stratum parcel) of part of building not included in stratum parcel Authority having benefit of a positive covenant affecting building or site	147
<b>Orders relating to contributions</b>		
To prevent owners corporation charging interest for late payment of contribution	Owner	148
To alter amount of contributions	Owners corporation Lessor of leasehold strata scheme Owner Mortgagee in possession	149
To alter manner of payment of contributions	Owners corporation Lessor of leasehold strata scheme Owner Mortgagee in possession	149
<b>Order relating to keeping of animals</b>		
To require removal of animal wrongly kept on lot	Owners corporation Strata managing agent Lessor of leasehold strata scheme Owner Person having estate or interest in lot Occupier of lot	150
To allow person to keep animal on lot	Person wanting to keep animal on lot	150

To remove animal causing nuisance or hazard	Owners corporation Lessor of leasehold strata scheme Strata managing agent Owner Person having estate or interest in lot Occupier of lot	151
To terminate nuisance, hazard or unreasonable nuisance caused by animal	Owners corporation Lessor of leasehold strata scheme Strata managing agent Owner Person having estate or interest in lot Occupier of lot	151
<b>Orders relating to meetings and decisions of owners corporation</b>		
To vary time at which annual general meeting required to be held	Owners corporation Strata managing agent Owner	152
To invalidate resolution of owners corporation	Owner First mortgagee of lot	153
To nullify resolution of owners corporation on ground that person was denied vote or notice was not given	Person entitled to vote on resolution	154
<b>Orders relating to records of owners corporation</b>		
To allow owners corporation to enter information on strata roll	Owners corporation Strata managing agent Owner Person having or acquiring estate or interest in lot	155
To require owners corporation, strata managing agent or office holder of executive committee to supply records or documents for inspection	Person entitled to inspect records or documents	156
<b>Orders relating to by-laws</b>		
To revoke amendment to by-laws, revive repealed by-law or repeal new by-law	Person entitled to vote on motion relating to by-law Lessor of leasehold strata scheme	157
To make, amend or repeal by-law conferring exclusive rights or privileges over common property	Owners corporation Lessor of leasehold strata scheme Owner Interested person	158
To invalidate by-law	Person entitled to vote on motion relating to by-law Lessor of leasehold strata scheme	159

<b>Orders relating to covenants and other restrictions</b>		
To comply with obligation imposed by positive covenant	Authority having benefit of positive covenant	160
To refrain from breaching restriction on use of utility lot	Owners corporation Lessor of leasehold strata scheme Owner Occupier of lot	161
To refrain from breaching restriction on use of utility lot within area of local council	Relevant local council	161
To waive, vary or extinguish restriction relating to initial period or to authorise any matter to be done in relation to the waiving, varying or extinguishing of such a restriction	Owners corporation—in any case Original owner—if application relates to proposed subdivision of lot Owner—if application relates to making, amendment or repeal of by-law	182
<b>Orders appointing strata managing agents</b>		
To appoint strata managing agent	Person who obtained order under this Act that imposed duty on owners corporation or office holder of executive committee that has not been complied with Person having estate or interest in lot or, in the case of leasehold strata scheme, lease of lot Authority having benefit of positive covenant that imposes duty on owners corporation Judgment creditor to whom owners corporation owes judgment debt	162
<b>Orders for imposition of fines</b>		
To impose pecuniary penalty for contravention of order under this Act	Applicant for original order Owners corporation—if order relates to parcel that is not stratum parcel In the case of a stratum parcel—each owners corporation for a stratum parcel including part of the building, lessor of a leasehold strata scheme, person in whom is vested an estate in fee simple (or in the case of a leasehold strata scheme, a leasehold estate) in a part of a building that is not included in a stratum parcel	202
To impose pecuniary penalty for contravention of by-laws	Owners corporation	203

## **Part 1 Application for order to resolve issue relating to strata scheme**

### **Introductory note—**

This Part sets out the way in which an application for an order under this Chapter must be made. Before accepting an application, the Registrar must be satisfied that mediation has been attempted or that the matter is not appropriate for mediation.

**123 What action can be taken if there is a dispute, complaint or problem concerning a strata scheme?**

A person may apply for an order under this Chapter if the person is eligible to make an application in accordance with the provision under which the order may be made.

**124 Applications for order to be made to Registrar**

An application for an order under this Chapter must be made to the Registrar and must:

- (a) be in writing stating the grounds on which it is based, and
- (b) specify the order sought, and
- (c) be accompanied by the prescribed fee.

**125 Registrar to be satisfied mediation has been attempted before accepting application**

- (1) The Registrar must not accept an application for an order under this Chapter (other than an order under Part 6) unless satisfied that:
  - (a) mediation under Part 2 or otherwise has been attempted but was unsuccessful, or
  - (b) the matter the subject of the application is not appropriate for mediation.
- (2) A matter to which an application relates is not appropriate for mediation unless:
  - (a) it involves a dispute or complaint, and
  - (b) each person (other than the applicant) involved in the dispute or against whom the complaint is made agrees to have the matter mediated.
- (3) If a matter is appropriate for mediation and mediation has not been attempted, the Registrar must inform the applicant that the applicant should arrange for mediation of the matter.
- (4) The applicant may apply to the Director-General for mediation of the matter in accordance with Part 2 or may make other arrangements for the mediation of the matter.
- (5) If the Registrar accepts an application for an order, the Registrar must deal with the application under Part 3.

**126 Mediation may be arranged for disputes or complaints concerning stratum parcels**

- (1) A person may apply to the Director-General in accordance with Part 2 for mediation of any dispute or complaint relating to the management of a building or its site where a



part of the building is included in a stratum parcel.

- (2) The application may be made 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 Director-General.

## **Part 2 Mediation and resolution of disputes by Director-General**

### **Introductory note—**

This Part allows a person or owners corporation to apply to the Director-General to have a dispute concerning a strata scheme mediated.

The Part also provides for the mediation of disputes relating to the management of a building or its site if any part of the building is part of a strata scheme.

### **127 Definitions**

In this Part:

**mediation** means a structured negotiation process in which the mediator, as a neutral and independent party, assists the parties to a dispute to achieve their own resolution of the dispute.

**mediation session** means a meeting arranged for the mediation of a matter under this Part.

**mediator** means the Director-General or any person approved by the Director-General in writing to be a mediator for the purposes of this Part.

### **128 Mediation of disputes relating to strata schemes**

- (1) A person may apply to the Director-General for mediation of any matter for which the person may apply for an order under this Chapter.
- (2) On receipt of an application for mediation, the Director-General must, if the Director-General thinks the circumstances of the case are appropriate, arrange for the mediation of the matter in accordance with the regulations.

### **129 Mediation of certain building management disputes**

- (1) The Director-General may arrange mediation under this Part on an application made under section 126 only with the consent of all parties to the dispute or complaint, but is not required to arrange mediation before exercising any other function under this Act, the by-laws or a strata management statement.
- (2) The Director-General may exercise any function conferred on the Director-General by a strata management statement in relation 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 Director-General considers that the function is appropriate.

### **130 Director-General may dismiss certain applications**

The Director-General may dismiss an application for mediation under this Part if the Director-General believes that the application is frivolous, vexatious, misconceived or lacking in substance.

### **131 Agreements and arrangements arising from mediation sessions**

- (1) An Adjudicator may make orders to give effect to any agreement or arrangement arising out of a mediation session.
- (2) An order referred to in subsection (1) may be made whether or not the mediation was carried out in accordance with this Part or by a mediator within the meaning of this Part.
- (3) This Part does not affect the enforceability of any other agreement or arrangement that may be made, whether or not arising out of a mediation session, in relation to the matters the subject of a mediation session.

### **132 Privilege**

- (1) In this section, **mediation session** includes any steps taken in the course of making arrangements for the session or in the course of the follow-up of a session.
- (2) Subject to subsection (3), the same privilege with respect to defamation as exists with respect to judicial proceedings and a document produced in judicial proceedings exists with respect to:
  - (a) a mediation session, or
  - (b) a document or other material sent to, or produced at an office of, the Director-General for the purpose of enabling a mediation session to be arranged.
- (3) The privilege conferred by subsection (2) only extends to a publication made:
  - (a) at a mediation session, or
  - (b) as provided by subsection (2) (b), or
  - (c) as provided by section 133.
- (4) Evidence of anything said or of any admission made in a mediation session is not admissible in any proceedings before any court, tribunal or body.
- (5) A document prepared for the purposes of, or in the course of, or as a result of, a mediation session, or any copy of such a document, is not admissible in evidence in

any proceedings before any court, tribunal or body.

- (6) Subsections (4) and (5) do not apply with respect to any evidence or document:
- (a) if the persons in attendance at, or identified during, the mediation session and, in the case of a document, all persons identified in the document, consent to the admission of the evidence or document, or
  - (b) in proceedings instituted with respect to any act or omission in connection with which a disclosure has been made under section 133 (c).

### **133 Secrecy**

A mediator may disclose information obtained in connection with the administration or execution of this Part only in one or more of the following circumstances:

- (a) with the consent of the person from whom the information was obtained,
- (b) in connection with the administration or execution of this Part,
- (c) if there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to any person or damage to any property,
- (d) if the disclosure is reasonably required for the purpose of referring any party or parties to a mediation session to any person, agency, organisation or other body and the disclosure is made with the consent of the parties to the mediation session for the purpose of aiding in the resolution of a dispute between those parties or assisting the parties in any other manner,
- (e) in accordance with a requirement imposed by or under a law of the State (other than a requirement imposed by a subpoena or other compulsory process) or the Commonwealth.

### **134 Exoneration from liability for mediators**

No matter or thing done or omitted to be done by a mediator subjects the mediator to any action, liability, claim or demand if the matter or thing was done in good faith for the purposes of a mediation session under this Part.

## **Part 3 Procedure after Registrar receives application**

### **135 Notice of application to be given**

- (1) The Registrar must give a copy of an application for an order under this Chapter to the owners corporation for the strata scheme to which the application relates and to any other person, not being the applicant, who, in the Registrar's opinion, would be affected if the order sought were made.
- (2) The copy of the application must be accompanied by a notice stating that the person

to whom the notice is given may make a written submission to the Registrar within a time specified in the notice, or within a longer time specified in any further notice given by the Registrar.

- (3) The Registrar must give a notice to the applicant for the order stating that the applicant may make further written submissions to the Registrar within a time specified in the notice, or within a longer time specified in any further notice given by the Registrar.
- (4) The Registrar may extend the time for the making of submissions by a further notice given to each of the persons to whom the original notice was given.
- (5) Subsections (2)–(4) do not apply to an application for an order under Part 6 (Enforcement of orders of Adjudicators and Tribunal and certain notices).

### **136 Owners corporation to display and give certain notices**

- (1) An owners corporation given a copy of an application for an order under this Chapter accompanied by the relevant notice must:
  - (a) immediately cause the application and notice or a copy of the application and notice to be prominently displayed on any notice board required to be maintained by or under the by-laws on some part of the common property, and
  - (b) keep the application and notice so displayed until the expiration of the time specified in the notice for the making of submissions, and
  - (c) immediately serve a copy of the application and notice on each person whose name appears on its strata roll.
- (2) This section does not apply to an application for an order under Part 6 (Enforcement of orders of Adjudicators and Tribunal and certain notices).

### **137 Procedure after time for making submissions has expired**

- (1) This section operates after the time for making submissions concerning an application expires.
- (2) The Registrar must refer an application for an order referred to in Part 4 to an Adjudicator.
- (3) The Registrar must refer an application for an order referred to in Part 5 to the Tribunal.
- (4) If an application is referred to the Tribunal, whether by the Registrar or by an Adjudicator under Part 4, the Registrar must complete a notice containing the time and place at which, and the date on which, the Tribunal will determine the application.
- (5) The Registrar must send a copy of that notice to the following persons so that the

copy would, in the ordinary course of post, be received by the addressee not less than 7 days before the day specified in the notice for the determination of the application:

- (a) the applicant,
  - (b) the owners corporation for the strata scheme to which the application relates (if the owners corporation is not the applicant),
  - (c) any person against whom the order is sought,
  - (d) any person who made a submission concerning the application.
- (6) This section does not apply to an application for an order under Part 6 (Enforcement of orders of Adjudicators and Tribunal and certain notices).

#### **137A Procedure for orders under Part 6**

- (1) The Registrar must refer to the Tribunal an application for an order under Part 6 (Enforcement of orders of Adjudicators and Tribunal and certain notices).
- (2) If such an application is referred to the Tribunal, the Registrar must complete a notice containing the time and place at which, and the date on which, the Tribunal will determine the application.
- (3) The Registrar must send a copy of that notice to the following persons so that the copy would, in the ordinary course of post, be received by the addressee not less than 7 days before the day specified in the notice of the determination of the application:
  - (a) the applicant,
  - (b) the owners corporation for the strata scheme to which the application relates (if the owners corporation is not the applicant),
  - (c) any person against whom the order is sought.

### **Part 4 Orders of Adjudicator**

#### **Division 1 General power of Adjudicator to make orders**

##### **138 General power of Adjudicator to make orders to settle disputes or rectify complaints**

- (1) An Adjudicator may make an order to settle a dispute or complaint about:
  - (a) an exercise of, or a failure to exercise, a function conferred or imposed by or under this Act or the by-laws in relation to a strata scheme, or
  - (b) the operation, administration or management of a strata scheme under this Act.
- (2) For the purposes of subsection (1), an owners corporation or building management committee is taken to have failed to exercise a function if:

- (a) it decides not to exercise the function, or
  - (b) application is made to it to exercise the function and it fails for 2 months after the making of the application to exercise the function in accordance with the application or to inform the applicant that it has decided not to exercise the function in accordance with the application.
- (3) An Adjudicator may not make an order under subsection (1) for the settlement of a dispute or complaint:
- (a) dealt with in another section of this Chapter, or
  - (b) referred to the Tribunal or only within the jurisdiction of the Tribunal, or
  - (c) relating to the exercise, or the failure to exercise, a function conferred on an owners corporation by this Act or the by-laws if that function may be exercised only in accordance with a unanimous resolution or a special resolution (other than a special resolution under section 62 (3)), or
  - (d) that includes the payment by a person to another person of damages.
- (4) If 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, in a leasehold strata scheme, the lessor of the strata scheme must not:
- (a) commence other proceedings in connection with the settlement of the dispute or complaint after having made an application under this section for the settlement of the dispute or complaint, or
  - (b) make an application under this section for the settlement of the dispute or complaint after having commenced other proceedings in connection with the settlement of the dispute or complaint.
- (5) An application for an order under this section may be made only by an interested person.

### **139 Order for settlement of dispute between adjoining strata schemes**

- (1) An Adjudicator may make an order to settle a dispute between 2 strata schemes if:
- (a) the strata schemes concerned are contiguous, and
  - (b) the matter in dispute is not regulated by or under any other Act.
- (2) An application for an order under this section may be made only by an owners corporation for a strata scheme involved in the dispute.
- (3) An order must not be made under this section unless the owners corporation for the other strata scheme involved in the dispute consented to the making of the

application for the order.

## **Division 2 Orders relating to property**

### **140 Order relating to alterations and repairs to common property and other property**

- (1) An Adjudicator may order an owners corporation to consent to work proposed to be carried out by an owner if the Adjudicator considers that the owners corporation has unreasonably refused its consent and the work relates to any of the following:
  - (a) alterations to common property directly affecting the owner's lot,
  - (b) carrying out repairs to common property or any other property of the owners corporation directly affecting the owner's lot.
- (2) An Adjudicator may make an order approving of alterations or repairs already made by an owner to common property or any other property of an owners corporation directly affecting the owner's lot if the Adjudicator considers that the owners corporation unreasonably refused its consent to the alteration or repairs.
- (3) An order under subsection (2) is taken to be the consent of the owners corporation to the alterations or repairs concerned and may be expressed as having effect from a day specified in the order that occurred before the order was made.
- (4) An Adjudicator may specify in an order under this section whether the owners corporation or the owner of the lot concerned has the ongoing responsibility for the repair and maintenance of any additional property arising out of an alteration or repair to common property approved under the order.
- (5) If an order makes provision for the owner of a lot to have the ongoing responsibility for the repair and maintenance of any such additional property, the order also has effect in relation to any subsequent owner of the lot.
- (6) In deciding whether to grant an order under subsection (2) or to provide for the order to have effect from a day that occurred before the date of the order, an Adjudicator may take into account the conduct of the parties in the proceedings, for example, if an owner did not first seek the consent of the owners corporation before carrying out the alterations or repairs.
- (7) An application for an order under this section may be made only by a lessor of a leasehold strata scheme or an owner.

### **141 Order consequent on alteration of building**

- (1) An Adjudicator may make an order directing an owner to lodge in the office of the Registrar-General the plan and certificate referred to in section 14 (1) of the *Strata Schemes (Freehold Development) Act 1973* or section 17 (1) of the *Strata Schemes (Leasehold Development) Act 1986* if the Adjudicator is satisfied that the owner has

failed or neglected to comply with that subsection.

- (2) The order must specify the time within which the plan and certificate must be lodged.
- (3) An application for an order under this section may be made only by a lessor of a leasehold strata scheme, a lessee of a lot in such a scheme, an owners corporation or an owner.

#### **142 Order relating to personal property acquired or to be acquired by owners corporation**

- (1) An Adjudicator may make one of the following orders if the Adjudicator considers that an acquisition, or a proposed acquisition, by an owners corporation of personal property is unreasonable:
  - (a) that the personal property acquired be sold or otherwise disposed of by the owners corporation within a specified time,
  - (b) that the personal property not be acquired.
- (2) An application for an order under this section may be made only by an owner.

#### **143 Order requiring owners corporation to acquire personal property**

- (1) An Adjudicator may order an owners corporation to acquire personal property if the Adjudicator considers that the owners corporation has unreasonably refused to acquire the personal property.
- (2) An application for an order under this section may be made only by an owner.

#### **144 Order granting certain licences**

- (1) An Adjudicator may order that the applicant for the order, and any occupier of the lot of which the applicant is the owner, may use specified common property in the manner, for the purposes, and on the terms and conditions (if any), that are specified in the order.
- (2) An Adjudicator must not make an order under this section unless satisfied:
  - (a) that the lot of which the applicant is owner would otherwise be incapable of reasonable use and enjoyment by the current owner or occupier of the lot or generally by an owner or occupier of the lot, and
  - (b) that the owners corporation has refused to grant a licence to use common property in a manner, for purposes, and on terms and conditions as would enable the current owner or occupier, or generally any owner or occupier, reasonably to use and enjoy that lot, and
  - (c) in the case of a leasehold strata scheme, that the lessor of the scheme has, before the making of the order, been given an opportunity to make representations to the



Adjudicator with respect to the application for the order.

- (3) An order under this section, when recorded under section 209, has effect as if its terms were a by-law (but subject to any relevant order made by a superior court).
- (4) An application for an order under this section may be made only by an owner.

#### **145 Order for entry to lot**

- (1) An Adjudicator may make an order requiring the occupier of a lot or part of a lot to allow the owners corporation access to the lot or part for the purpose of carrying out any work referred to in section 65 (1) or determining whether such work needs to be carried out.
- (2) This section does not limit the power of an owners corporation to enter a lot under section 65 (3) without applying for an order under this section.
- (3) An application for an order under this section may be made only by an owners corporation.

### **Division 3 Orders relating to insurance**

#### **146 Order to make or pursue insurance claim**

- (1) An Adjudicator may order any person who is entitled to the benefit of insurance taken out under this Act to make or pursue an insurance claim in relation to damage to the building or any other property to which the insurance relates.
- (2) The Adjudicator may make the order only if the Adjudicator considers the person has unreasonably refused to make or pursue the claim.
- (3) An application for an order under this section in relation to a freehold strata scheme may be made only by:
  - (a) an owner of a lot in the strata scheme for the building or part of the building concerned, or
  - (b) if part of the building is included in a stratum parcel, 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.
- (4) An application for an order under this section in relation to a leasehold strata scheme may be made only by:
  - (a) any owner of a lot in the strata scheme for the building or part of the building concerned, or
  - (b) the lessor of the strata scheme, or

- (c) a sublessee of a lot in the strata scheme, or
- (d) if part of the building is included in a stratum parcel, any person in whom is vested an estate in fee simple or a leasehold estate, registered under the *Real Property Act 1900*, in any part of the building or its site that is not included in a stratum parcel.

#### **147 Order relating to insurance**

- (1) An Adjudicator may order that insurance must be taken out under Division 2 of Part 4 of Chapter 3 for a specified amount, if the Adjudicator is satisfied that there is a dispute about the amount for which any such insurance should be taken out or the proportions in which the premium should be paid.
- (2) The order may require insurance to be taken out in accordance with the order for a period of up to 90 days, but does not affect the requirement made by Chapter 3 to keep the building insured after that period.
- (3) An Adjudicator may order that the amount of any insurance taken out under Division 2 of Part 4 of Chapter 3 or section 87 (1) (c) must be varied to a specified amount, if the Adjudicator considers that the amount of the current insurance is unreasonable.
- (4) An order under this section must specify by whom the insurance is to be taken out 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 an owner or an enrolled mortgagee of a lot, or a person having an interest in a lot, in a freehold strata scheme for the whole or any part of the building concerned, or
  - (b) by the lessor of a leasehold strata scheme for the building or any part of the building concerned, by any owner or sublessee of the common property or by any owner, sublessee or an enrolled mortgagee of, or person having an interest in, a lot in the scheme, or
  - (c) 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 the 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 interest, or
  - (d) by an authority having the benefit of a positive covenant affecting the building or its site.

## **Division 4 Orders relating to contributions**

### **148 Order varying rates of interest on contribution**

- (1) An Adjudicator may order that no interest is chargeable on a contribution specified in the order if the Adjudicator considers that the owners corporation should reasonably have made a determination under section 79 not to charge interest for the late payment of the contribution.
- (2) An application for an order under this section may be made only by an owner.

### **149 Order for variation of contributions levied or manner of payment of contributions**

- (1) An Adjudicator may make either or both of the following orders if the Adjudicator considers that any amount levied or proposed to be levied by way of contributions is inadequate or excessive or that the manner of payment of contributions is unreasonable:
  - (a) an order for payment of contributions of a different amount,
  - (b) an order for payment of contributions in a different manner.
- (2) If an Adjudicator considers that the consent of an owner referred to in section 77 has been unreasonably refused, the Adjudicator may make an order for payment of a different amount of one or more contributions levied or proposed to be levied by the owners corporation.
- (3) If a contribution which is the subject of an order under this section has been wholly or partly paid:
  - (a) an order to pay more has effect as if the owners corporation had decided to levy a contribution equal to the difference, and
  - (b) an order to pay less imposes a duty on the owners corporation to refund the difference.
- (4) An application for an order under this section may be made only by the lessor of a leasehold strata scheme, an owners corporation, an owner or by a mortgagee in possession (whether in person or not).

## **Division 5 Orders relating to keeping of animals**

### **150 Order relating to keeping of animals**

- (1) An Adjudicator may order a person who the Adjudicator considers is keeping an animal on a lot or common property in contravention of the by-laws to cause the animal to be removed from the parcel within a specified time, and to be kept away from the parcel.

- (2) An order under subsection (1) ceases to have effect if the keeping of the animal on the lot or common property is subsequently authorised in accordance with the by-laws.
- (3) An application for an order under subsection (1) may be made only by an owners corporation, a strata managing agent, the lessor of a leasehold strata scheme, an owner, any person having an estate or interest in a lot or an occupier of a lot.
- (4) An Adjudicator may, by order, declare that the applicant for the order may keep an animal on a lot or common property in such manner as is specified in the order if the Adjudicator is satisfied that:
  - (a) subclause (2) of by-law 16 in Schedule 1 (or a provision to the like effect in any by-laws) is in force in relation to the strata scheme, and
  - (b) the application is made with the consent of the owner of the applicant's lot (if the applicant is not the owner), and
  - (c) the owners corporation has unreasonably withheld its consent to the keeping by the applicant of the animal on the lot or the common property.
- (4A) An application for an order under subsection (4) may be made only by:
  - (a) an owner of a lot in the strata scheme, or
  - (b) an occupant of a lot in the strata scheme, with the consent of the owner of the lot.
- (5) Whether or not an order under this section is consistent with any by-law, the order binds:
  - (a) in the case of a freehold strata scheme, each owner and occupier of a lot in and the owners corporation for the strata scheme, or
  - (b) in the case of a leasehold strata scheme, the lessor of the scheme and each owner, sublessee and occupier of a lot in and the owners corporation for the strata scheme, or
  - (c) 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.

#### **151 Order relating to animal kept in accordance with by-laws**

- (1) An Adjudicator may make one of the following orders if the Adjudicator 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 owner or an occupier of another lot or unreasonably interferes with the use and enjoyment of another lot or of the common property:
  - (a) an order that the person keeping the animal cause the animal to be removed from

the parcel within a specified time, and to be kept away from the parcel,

(b) an order that the person keeping the animal take, within a time specified in the order, such action so specified as, in the opinion of the Adjudicator, will terminate the nuisance, hazard or unreasonable interference.

(2) An application for an order under this section may be made only by an owners corporation, lessor of a leasehold strata scheme, strata managing agent, an owner, any person having an estate or interest in a lot or an occupier of a lot.

## **Division 6 Orders relating to meetings and decisions of owners corporation**

### **152 Order for variation of time at which annual general meeting must be held**

(1) An Adjudicator may make an order varying the time at which the annual general meeting for an owners corporation must be held.

(2) An application for an order under this section may be made only by an owners corporation, a strata managing agent or an owner.

### **153 Order invalidating resolution of owners corporation**

(1) An Adjudicator may make an order invalidating any resolution of, or election held by, the persons present at a meeting of an owners corporation if the Adjudicator considers that the provisions of this Act have not been complied with in relation to the meeting.

(2) An Adjudicator may refuse to make an order under this section but only if the Adjudicator considers:

(a) that the failure to comply with the provisions of this Act did not adversely 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.

(3) An application for an order under this section may be made only by an owner or first mortgagee of a lot.

### **154 Order where voting rights denied or due notice of item of business not given**

(1) An Adjudicator may order that a resolution passed at a general meeting of an owners corporation be treated as a nullity on and from the date of the order if satisfied that the resolution would not have been passed but for the fact that the applicant for the order:

(a) was improperly denied a vote on the motion for the resolution, or

(b) was not given due notice of the item of business in relation to which the resolution

was passed.

- (2) An application for an order under this section may not be made after 28 days after the date of the meeting at which the resolution was passed.
- (3) If an order under this section is made in relation to a resolution making a by-law or amending or repealing another by-law and the order has been recorded as provided by section 209, the by-laws 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.
- (4) Subsection (3) is subject to the by-laws having been or being amended or repealed in accordance with this Act and to any relevant order made by a superior court.
- (5) An application for an order under this section may be made only by a person entitled to vote on the motion for the resolution concerned.

## **Division 7 Orders relating to records of owners corporation**

### **155 Order confirming information for strata roll**

- (1) If a person fails to provide written confirmation of a notice under section 118 that is required to bear that confirmation, an Adjudicator may order an owners corporation to enter the information in the notice in the strata roll even though it does not bear that confirmation.
- (2) In making an order under this section, an Adjudicator may amend in any manner the Adjudicator thinks fit the information in the notice to which the order relates.
- (3) An Adjudicator must dismiss an application for an order under this section if the Adjudicator considers that the rights of any person would be prejudiced if the order were made.
- (4) A copy of an order under this section served on an owners corporation is taken to be a notice given to the owners corporation under section 118 and information entered on a strata roll in accordance with the order is taken to have been entered from a notice bearing written confirmation required by that section.
- (5) An application for an order under this section may be made only by an owners corporation, strata managing agent, owner or other person having or acquiring an estate or interest in a lot.

### **156 Order to supply information or documents**

- (1) An Adjudicator may order an owners corporation, strata managing agent or office holder of an executive committee to supply to the applicant for the order information that the Adjudicator considers that the owners corporation, strata managing agent or office holder has wrongfully withheld from the applicant and to which the applicant is

entitled under this Act.

- (2) An Adjudicator may order an owners corporation, strata managing agent or office holder of an executive committee to supply or make available to the applicant for the order a record or document if:
  - (a) the Adjudicator considers that the owners corporation, strata managing agent or office holder has wrongfully failed to make the record or document available for inspection by the applicant or the applicant's agent, and
  - (b) the applicant is entitled under this Act to inspect the record or document.

## **Division 8 Orders relating to by-laws**

### **157 Order revoking amendment of by-law or reviving repealed by-law**

- (1) An Adjudicator may make one of the following orders if the Adjudicator considers that, having regard to the interest of all owners of lots in a strata scheme 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 effected by the owners corporation:
  - (a) an order that the amendment be revoked,
  - (b) an order that the repealed by-law be revived,
  - (c) an order that the additional by-law be repealed.
- (2) An order under this section, when recorded under section 209, has effect as if its terms were a by-law (but subject to any relevant order made by a superior court).
- (3) When making an order under this section in relation to a by-law referred to in section 51, an Adjudicator may direct the payment by the owners corporation of compensation to the owner of the lot, or owners of the lots, referred to in the by-law.
- (4) A payment ordered to be made in accordance with subsection (3) is recoverable by the owner or owners as a debt.
- (5) An application for an order under this section may be made only by a person entitled to vote on the motion to amend or repeal the by-law, or make the additional by-law, that is the subject of the application or the lessor of a leasehold strata scheme.

### **158 Order with respect to by-laws conferring exclusive rights or privileges over common property**

- (1) An Adjudicator may make an order prescribing the making, amendment or repeal, in terms of the order, of a by-law if the Adjudicator finds:
  - (a) on application made by an owner, that the owners corporation has unreasonably

refused to make a by-law of the kind referred to in section 51, or

- (b) on application made by an owner or owners corporation, that an owner of a lot, or the lessor of a leasehold strata scheme, has unreasonably refused to consent to the terms of a proposed by-law of that kind, or to the proposed amendment or repeal of such a by-law, or
  - (c) on application made by any interested person, that the conditions of such a by-law relating to the maintenance or upkeep of any common property are unjust.
- (2) In considering whether to make an order under this section, an Adjudicator must have regard to:
- (a) the interests of all owners in the use and enjoyment of their lots and common property, and
  - (b) the rights and reasonable expectations of any owner deriving or anticipating a benefit under a by-law of the kind referred to in section 51.
- (3) An Adjudicator must not determine an application referred to in subsection (1) (a) by an order prescribing the making of a by-law in terms to which the applicant or, in the case of a leasehold strata scheme, the lessor of the scheme is not prepared to consent.
- (4) For the purposes of subsection (1), an Adjudicator may determine that an owner has unreasonably refused consent even though the owner already has the exclusive use or privileges that are the subject of the proposed by-law.
- (5) An order under this section, when recorded under section 209, has effect as if its terms were a by-law (but subject to any relevant order of a superior court).

### **159 Order invalidating by-law**

- (1) An Adjudicator may make an order declaring a by-law to be invalid if the Adjudicator considers that an owners corporation did not have the power to make the by-law.
- (2) An order under this section, when recorded under section 209, has effect as if its terms were a by-law repealing the by-law declared invalid by the order (but subject to any relevant order of a superior court).
- (3) An order under this section operates on and from the date on which it is so recorded or from an earlier date specified in the order.
- (4) An application for an order under this section may be made only by a person entitled to vote on the motion to make the by-law or the lessor of a leasehold strata scheme.



## **Division 9 Orders relating to covenants and other restrictions**

### **160 Order enforcing positive covenant**

- (1) An Adjudicator may order an owners corporation or owner to comply with an obligation imposed by a positive covenant and relating to the maintenance, repair or insurance of a building in the strata scheme if the Adjudicator considers that the owners corporation or the owner has failed to comply with the obligation.
- (2) If an authority has been refused an injunction under section 88H of the *Conveyancing Act 1919*, an Adjudicator must not make an order under this section to the same effect as the injunction refused.
- (3) An application for an order under this section may be made only by an authority having the benefit of the positive covenant.

### **161 Order enforcing restriction on use of utility lot**

- (1) An Adjudicator may order the owner of a utility lot and any other person who received notice of the application to refrain from committing a breach of a restriction imposed under section 39 of the *Strata Schemes (Freehold Development) Act 1973* or section 68 of the *Strata Schemes (Leasehold Development) Act 1986* on the use of the utility lot.
- (2) An application for an order under subsection (1) may be made only by an owners corporation, the lessor under a leasehold strata scheme or an owner or occupier of a lot in a strata scheme.
- (3) An Adjudicator may order the owner of a utility lot within the area of a local council and any other person who received notice of the application to refrain from committing a breach of a restriction imposed under section 39 of the *Strata Schemes (Freehold Development) Act 1973* or section 68 of the *Strata Schemes (Leasehold Development) Act 1986* on the use of the utility lot.
- (4) An application for an order under subsection (3) may be made only by the relevant local council.

**Note—**

Utility lot is defined in the *Strata Schemes (Freehold Development) Act 1973* and the *Strata Schemes (Leasehold Development) Act 1986* as meaning a lot 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.

## **Division 10 Orders appointing strata managing agents**

### **162 Order appointing strata managing agent to exercise certain functions**

- (1) **Order appointing strata managing agent to exercise functions of owners corporation** An Adjudicator may by order appoint a person as a strata managing agent:

- (a) to exercise all the functions of an owners corporation, or
  - (b) to exercise specified functions of an owners corporation, or
  - (c) to exercise all the functions other than specified functions of an owners corporation.
- (2) **Order may confer other functions on strata managing agent** An Adjudicator may also order, when appointing a strata managing agent under this section, that the strata managing agent is to have and may exercise:
- (a) all the functions of the chairperson, secretary, treasurer or executive committee of the owners corporation, or
  - (b) specified functions of the chairperson, secretary, treasurer or executive committee of the owners corporation, or
  - (c) all the functions of the chairperson, secretary, treasurer or executive committee of the owners corporation other than specified functions.
- (3) **Order may be made without application in special circumstances** An Adjudicator may make an order under this section, whether or not on application, but only if satisfied that the management structure of a strata scheme the subject of an application under this Chapter is not functioning or is not functioning satisfactorily.
- (4) **Qualifications of person appointed** A person appointed as a strata managing agent under this section must:
- (a) hold a strata managing agent's licence issued under the *Property, Stock and Business Agents Act 1941*, and
  - (b) have consented in writing to the appointment, and
  - (c) in the case of a person appointed in the circumstances referred to in subsection (3), be selected by the Adjudicator from a panel of nominees of prescribed persons or bodies.
- (5) **Terms and conditions of appointment** A strata managing agent may be appointed under this section on such terms and conditions (including terms and conditions relating to remuneration by the owners corporation and the duration of appointment) as may be specified in the order making the appointment.
- (6) **Revocation of certain appointments** An order made in the circumstances referred to in subsection (3) may be revoked or varied by an Adjudicator on the application of a person entitled to make an application for an order under this section and, unless sooner revoked, ceases to have effect at the expiration of such period after its making (not exceeding 12 months) as is specified in the order.

- (7) **Who may make an application?** An application for an order under this section may be made only by:
- (a) a person who obtained an order under this Act that imposed a duty on the owners corporation or on its executive committee, chairperson, secretary or treasurer and that has not been complied with, or
  - (b) a person having an estate or interest in a lot in the strata scheme concerned or, in the case of a leasehold strata scheme, in a lease of a lot in the scheme, or
  - (c) the authority having the benefit of a positive covenant that imposes a duty on the owners corporation, or
  - (d) a judgment creditor to whom the owners corporation owes a judgment debt.

## **Division 11 Provisions relating to orders of Adjudicator**

### **162A Applications for orders generally**

If a provision of this Act, other than a provision of this Chapter, enables a person to make an application for an order of an Adjudicator, the application for the order must:

- (a) be made to the Registrar, and
- (b) be in writing, stating the grounds on which it is based, and
- (c) specify the order sought, and
- (d) be accompanied by the prescribed fee.

### **163 Dismissal of application on certain grounds**

- (1) An Adjudicator must, by order, dismiss an application for an order under this Part if satisfied that mediation was appropriate and was not attempted.
- (2) If the ground for an application is:
  - (a) the absence of a quorum at a meeting, or
  - (b) a defect, irregularity or deficiency of notice or time,an Adjudicator may, by order, dismiss the application if the Adjudicator believes that no substantial injustice has resulted.
- (3) An Adjudicator may, by order, dismiss an application for an order under this Part on any other ground that the Adjudicator considers appropriate.
- (4) Without limiting the generality of subsection (3), an Adjudicator may, by order, dismiss an application for an order under this Part if:

- (a) the Adjudicator believes that the application is frivolous, vexatious, misconceived or lacking in substance, or
  - (b) the Adjudicator believes that a decision in favour of the applicant is not within the jurisdiction of the Adjudicator, or
  - (c) the Adjudicator believes that the applicant has unreasonably delayed the provision of information required by the Adjudicator, or
  - (d) in the case of an application made by an owner of a lot in the strata scheme concerned, the applicant has not paid all contributions levied and payable in relation to the lot under this Act.
- (5) An Adjudicator may dismiss an application in accordance with this section even though the notice requirements of Part 3 have not been complied with and despite that a time, or extended time, specified for making written submissions on the application has not expired.

#### **164 Matters that may be referred to Tribunal**

- (1) An Adjudicator may refer to the Tribunal an application for an order if the Adjudicator is of the opinion:
- (a) that the application raises complex legal issues, or
  - (b) that it should be referred because of its importance or the possible frequency of like applications, or
  - (c) that there are other good reasons to refer the application.
- (2) This section does not confer on any person a right to have referred to the Tribunal an application for an order that may be made by an Adjudicator.

#### **165 Power of Adjudicator to decide type of order to be made**

If an application is made for an order of an Adjudicator under a specific provision of this Act and the Adjudicator dealing with the application considers that an order under that provision is inappropriate, the Adjudicator may determine to deal with the application under another provision of this Act.

#### **166 Order to be in writing**

An order by an Adjudicator (including a variation of an order, an interim order and a renewal or revocation of an interim order) must be in writing.

#### **167 Investigations by Adjudicator**

- (1) An Adjudicator may investigate an application for an order in any way the Adjudicator thinks fit and may refuse to proceed with an application until any further information

required by the Adjudicator has been provided.

- (2) For the purposes of the investigation, an Adjudicator may:
  - (a) enter common property, or
  - (b) enter a lot at a reasonable time on notice given to the occupier, or
  - (c) if the strata scheme concerned is for the part of a building, enter any lot in any stratum parcel that includes the part of the building concerned and any other part of the building or its site at a reasonable time on notice given to the occupier of that lot or other part.
- (3) The power conferred by this section does not include power to enter a dwelling-house or other residential premises unless the occupier consents.
- (4) If an Adjudicator believes on reasonable grounds that there has been a breach of the by-laws for a strata scheme, the Adjudicator may exercise the power conferred by this section to investigate the grounds for the belief.
- (5) A person must not obstruct or hinder an Adjudicator, or a delegate of an Adjudicator, in the exercise of powers conferred by this section.

Maximum penalty (subsection (5)): 5 penalty units.

#### **168 Order may not be made until submission time has expired**

An Adjudicator must not make an order under this Part (other than an interim order) until after the expiration of the time, or extended time, for making written submissions on the application.

#### **169 Ancillary orders**

- (1) An order of an Adjudicator under this Part may include such ancillary or consequential provisions as the Adjudicator thinks fit.
- (2) For the purposes of this Part, an Adjudicator may order any person who is the subject of an application for an order to do, or to refrain from doing, a specified act with respect to a strata scheme.

#### **170 Interim orders**

- (1) If an applicant for an order under another provision of this Chapter requests the making of an interim order and an Adjudicator is satisfied on reasonable grounds that urgent considerations justify the making of the order, the Adjudicator may:
  - (a) make any order that could otherwise be made by the Adjudicator or the Tribunal, and
  - (b) renew the order by serving notice in accordance with section 174 that the order is

renewed if a request for its renewal is made not later than 3 months after the order was made.

- (2) An Adjudicator may revoke an interim order, or a renewal of an order, made under subsection (1).
- (3) An Adjudicator must serve notice in accordance with section 174 that the order has been revoked.
- (4) A person must not in, or in connection with, a request for an interim order or for the renewal of an interim order make a statement that the person knows is false or misleading in a material respect.

Maximum penalty: 5 penalty units.

- (5) An interim order may be made or renewed even if:
  - (a) an Adjudicator proposes to refer the application to the Tribunal, or
  - (b) since receipt of the application, any procedure under this Act has not been followed or a function of an Adjudicator has not been exercised in relation to the application, or
  - (c) the time, or extended time, for making written submissions on the application has not expired, or
  - (d) a right of appearance or representation has not been exercised.
- (6) An interim order continues in force until:
  - (a) the expiration of the period of 3 months that commenced with the making of the order, or
  - (b) if application is duly made for its renewal—until the renewal is granted or refused, or
  - (c) if it is renewed—the expiration of the period of 6 months that commenced with the making of the order.
- (7) Subsection (6) does not apply if the order is revoked by the Adjudicator or, on appeal, by the Tribunal or the application is determined in accordance with another provision of this Chapter.

### **171 Variation or revocation of order by Adjudicator**

- (1) Unless specifically provided by this Act, an order made by an Adjudicator is not capable of being varied or revoked by the Adjudicator but this subsection does not prevent a subsequent order being made by the Adjudicator under this Part on a fresh application.

- (2) This section does not operate to prevent an Adjudicator from varying an order for the purpose of correcting or clarifying it or extending a time and the order as so varied is taken to be the order instead of the original order.

### **172 Duration of order by Adjudicator**

Except to the extent that the order otherwise provides, an order made by an Adjudicator under this Part (other than an interim order) ceases to have any force or effect on the expiration of the period of 2 years that commences on the making of the order.

### **173 Adjudicator to have regard to strata management statement**

- (1) Before making any order relating to the management of a strata scheme for a stratum parcel or the management of the building concerned or its site, an Adjudicator must have regard to the strata management statement for the building.
- (2) This section does not prevent an Adjudicator from making an order that is inconsistent with the provisions of a strata management statement, or that requires the amendment of such a statement.

### **174 Copy of order to be served**

- (1) A copy of an order of an Adjudicator under this Part must be served by the Registrar on:
  - (a) the owners corporation for the strata scheme to which the order relates and, in the case of a leasehold strata scheme, the lessor under the scheme, and
  - (b) the applicant for the order, and
  - (c) any person who duly made a written submission to an Adjudicator 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) On receipt of a copy of the order, the owners corporation must, unless the order otherwise provides:
  - (a) cause it to be prominently displayed, within 72 hours of its receipt and for 14 days after that, on any notice board required to be maintained under the by-laws, or
  - (b) if no notice board is required to be maintained under the by-laws, cause a further copy of the order to be given to each person whose name appears on the strata roll.
- (3) In this section, **order** includes a variation of an order, an interim order and a renewal or revocation of an interim order.

### **175 Adjudicator may inspect certain records**

- (1) If an Adjudicator requests an owners corporation in the exercise of the Adjudicator's functions, the owners corporation must provide information to the Adjudicator and allow the Adjudicator to inspect its records under Division 4 of Part 5 of Chapter 3.
- (2) An owners corporation must not neglect or fail to comply with a request under subsection (1).

Maximum penalty: 5 penalty units.

- (3) No charge is payable by an Adjudicator in connection with a request made under this section.

### **176 Adjudicator not to make order with respect to certain matters**

- (1) An Adjudicator may not, in connection with an application under this Part, make an order for the payment of costs.
- (2) Nothing in this Division authorises an Adjudicator to make an order of the kind that may be made by the Supreme Court under section 32, 50 or 51 of the *Strata Schemes (Freehold Development) Act 1973* or section 61, 79 or 80 of the *Strata Schemes (Leasehold Development) Act 1986*.
- (3) An Adjudicator may determine a question of title to land only for the purpose of deciding a matter under this Part.
- (4) Any determination under subsection (3) does not have any force or effect except as provided by this Act.

## **Division 12 Appeals against orders of Adjudicator**

### **177 Appeal against order of Adjudicator**

- (1) An appeal lies to the Tribunal against an order made by an Adjudicator under this Part.
- (2) The appellant may be:
  - (a) the applicant for the order appealed against, or
  - (b) a person who made a written submission on the application for the order, or
  - (c) a person required by the order to do or refrain from doing a specified act, or
  - (d) in the case of a leasehold strata scheme, the lessor of the strata scheme.

### **178 How is an appeal made?**

- (1) The appellant must lodge with the Registrar a written notice of appeal that is accompanied by the prescribed fee and specifies:



- (a) the name and address of the appellant, and
  - (b) the order appealed against, and
  - (c) the grounds of the appeal, and
  - (d) any other prescribed particulars.
- (2) The only ground of appeal against the granting of an interim order is that the Adjudicator acted unreasonably in making the order.
- (3) The notice of appeal against an order made by an Adjudicator dismissing an application must be lodged not later than 21 days after the order takes effect.
- (4) The notice of appeal against any other order must be lodged:
- (a) not later than 21 days after the order takes effect, or
  - (b) not later than 90 days after the order takes effect if the Tribunal gives leave to do so on sufficient cause being shown why the notice was not lodged within the time referred to in paragraph (a).

#### **179 Procedure after appeal is lodged**

- (1) The Registrar must send to the Tribunal the notice of appeal and the Adjudicator's records relating to the order appealed against.
- (2) The Registrar must complete a notice containing the time and place at which, and the date on which, the Tribunal will determine the appeal.
- (3) The Registrar must send a copy of that notice together with a copy of the notice of appeal to the following persons so that the notices would, in the ordinary course of post, be received by the addressee not less than 7 days before the day specified in them for the determination of the appeal:
- (a) the appellant,
  - (b) the person against whom the order appealed against was sought and any other person entitled to appeal,
  - (c) the owners corporation for the strata scheme to which the order appealed against relates.

#### **180 Stay of operation of order**

- (1) If a notice of appeal is accompanied by a request for a stay of the operation of the order appealed against under this section, an Adjudicator, before the Tribunal is sent the notice of appeal and other documents, or the Tribunal may, by order, stay the operation of the order appealed against until the appeal is determined.

- (2) The Registrar must forward notice of an order made under this section to the persons referred to in section 179 (3).

### **181 Determination of appeal from order of Adjudicator**

- (1) This section applies to the determination by the Tribunal of an appeal from an order of an Adjudicator.
- (2) The Tribunal may admit new evidence.
- (3) Unless the order appealed against is an interim order, the Tribunal may determine an appeal by an order affirming, amending or revoking the order appealed against or substituting its own order for the order appealed against.
- (4) If the order appealed against is an interim order, the Tribunal may determine the appeal by an order revoking the interim order or dismissing the appeal.
- (5) An order made by the Tribunal under subsection (3) has effect, and the provisions of this Act (other than the provisions conferring a right of appeal to the Tribunal) apply to it, as if it were an order made under the same provision as the order appealed against.
- (6) Subsection (5) does not exclude an appeal from an order of the Tribunal made under this section.

## **Part 5 Orders of Tribunal**

### **Division 1 Matters for which orders may be made by Tribunal**

#### **182 Order to authorise certain acts during initial period**

- (1) The Tribunal may make an order:
  - (a) waiving, varying or extinguishing a restriction relating to the initial period (whether or not imposed by this Act, the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*), and
  - (b) authorising any matter to be done in relation to the waiving, varying or extinguishing of such a restriction.
- (2) Notice of an application must be served on:
  - (a) the owners corporation and each owner of a lot, unless the owners corporation or the owner is the applicant, and
  - (b) each registered mortgagee and enrolled mortgagee (if any) of a lot and any covenant chargee having the benefit of a covenant charge affecting a lot, and
  - (c) such other persons as the Tribunal may direct.

- (3) The Tribunal may order that service of notice of an application be dispensed with if the Tribunal considers it appropriate in the circumstances of the case.
- (4) The applicant and any person referred to in subsection (2) (whether or not the person has been served with a notice of the application) are entitled to appear and be heard on the hearing of the application.
- (5) An application for an order under subsection (1) may be made only by:
  - (a) in any case—the owners corporation, or
  - (b) in a case where the application relates to a proposed subdivision of a lot—by the original owner, or
  - (c) in a case where the application relates to the making, amendment or repeal of a by-law—an owner.

### **183 Order for reallocation of unit entitlements**

- (1) **Tribunal may make order allocating unit entitlements** The Tribunal may make an order allocating unit entitlements among the lots that are subject to a strata scheme in the manner specified in the order.
- (2) **Circumstances in which order may be made** An order may be made only if the Tribunal considers that the allocation of unit entitlements among the lots:
  - (a) was unreasonable when the strata plan was registered or when a strata plan of subdivision was registered, or
    - (a1) was unreasonable when a revised schedule of unit entitlements was lodged at the conclusion of a development scheme, or
  - (b) became unreasonable because of a change in the permitted land use, being a change (for example, because of a rezoning) in the ways in which the whole or any part of the parcel could lawfully be used, whether with or without development consent.
- (3) **Matters to be taken into consideration** In making a determination under this section, the Tribunal is to have regard to the respective values of the lots and (if a strata development contract is in force in relation to the strata scheme) to such other matters as the Tribunal considers relevant.
- (4) **Application to be accompanied by valuation** An application for an order must be accompanied by a certificate specifying the valuation, at the relevant time of registration or immediately after the change in the permitted land use, of each of the lots to which the application relates.
- (5) **Qualifications of person making valuation** The certificate must have been given by the

holder of a current certificate of registration under the *Valuers Registration Act 1975* as a practising real estate valuer authorised under that Act to make such a valuation (a **qualified valuer**).

- (6) **Ancillary orders that may be made if original valuation unsatisfactory** The Tribunal may, if it makes an order allocating unit entitlements that were not allocated in accordance with a valuation of a qualified valuer and, in the opinion of the Tribunal, were allocated unreasonably by a developer, also order:
- (a) the payment by the developer to the applicant for the order of the costs incurred by the applicant, including fees and expenses reasonably incurred in obtaining the valuation and the giving of evidence by a qualified valuer, and
  - (b) the payment by the developer to any or all of the following people of such amounts as may be assessed by the Tribunal to represent any overpayments (due to the unreasonable allocation) for which liability arose not earlier than 6 years before the date of the order:
    - the lessor of a leasehold strata scheme
    - the owners corporation
    - the owners of lots.
- (7) **Recovery of amounts awarded** An amount ordered to be paid under this section may be recovered as a debt.
- (8) **Who may make application?** An application for an order under this section may be made only by:
- (a) an owner of a lot (whether or not a development lot) within the parcel, or
  - (b) the owners corporation, or
  - (c) the lessor of a leasehold strata scheme, or
  - (d) the local council, or by any other public authority or statutory body representing the Crown, being an authority or body that is empowered to impose a rate, tax or other charge by reference to a valuation of land.

### **183A Orders relating to caretaker agreements**

- (1) The Tribunal may make an order with respect to a caretaker agreement:
- (a) terminating the agreement, or
  - (b) requiring the payment of compensation by a party to the agreement, or
  - (c) varying the term or varying or declaring void any of the conditions of the

agreement, or

(d) confirming the term or any of the conditions of the agreement, or

(e) dismissing the application.

(2) An order under this section may be made only on an application made by the owners corporation for the strata scheme concerned on one or more of the following grounds:

(a) that the caretaker has refused or failed to perform the agreement or has performed it unsatisfactorily,

(b) that charges payable by the owners corporation under the agreement for the services of the caretaker are unfair,

(c) that the agreement is, in the circumstances of the case, otherwise harsh, oppressive, unconscionable or unreasonable.

(3) Any amount ordered to be paid under this section may be recovered as a debt.

#### **184 Tribunal's jurisdiction to deal with applications referred by Adjudicator**

(1) If an Adjudicator refers to the Tribunal an application for an order that, but for the referral, could have been made by the Adjudicator, the Tribunal has the same powers as the Adjudicator to make an order (other than an interim order) or to dismiss the application.

(2) Except in relation to a right of appeal to the Tribunal, this Act has effect in relation to an order made under subsection (1) as if the order were an order of an Adjudicator.

(3) Subsection (2) does not exclude an appeal from an order of the Tribunal made under subsection (1).

## **Division 2 Provisions relating to orders of Tribunal**

#### **185 Dismissal of application on certain grounds**

(1) The Tribunal must, by order, dismiss an application for an order under this Part if satisfied that mediation was appropriate and was not attempted.

(2) If the ground for an application is:

(a) the absence of a quorum at a meeting, or

(b) a defect, irregularity or deficiency of notice or time,

the Tribunal may, by order, dismiss the application if the Tribunal believes that no substantial injustice has resulted.

(3) The Tribunal may, by order, dismiss an application for an order under this Part on any

other ground that the Tribunal considers appropriate.

- (4) Without limiting the generality of subsection (3), the Tribunal may, by order, dismiss an application for an order under this Part if:
  - (a) the application is frivolous, vexatious, misconceived or lacking in substance, or
  - (b) a decision in favour of the applicant is not within the jurisdiction of the Tribunal, or
  - (c) the applicant has unreasonably delayed the provision of information required by an Adjudicator, or
  - (d) the application is made by an owner of a lot in the strata scheme concerned and the applicant has not paid all contributions levied and payable in relation to the lot under this Act.
- (5) The Tribunal may, by order, dismiss an appeal.

#### **186 Investigations and proceedings before the Tribunal**

- (1) Before making an order (except an order for a stay of proceedings), the Tribunal must investigate the application for the order or, in the case of an appeal, the grounds for the appeal.
- (2) In any such investigation or in any proceedings before it for an order, the Tribunal:
  - (a) is not bound by the rules of evidence and may inform itself on any matter in such manner as it thinks fit, and
  - (b) must act according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms.
- (3) The Tribunal need not hold a hearing in order to decide an application or appeal unless there is an appearance by a person entitled or required to appear before it.
- (4) A hearing need not be formal.

#### **187 Power of Tribunal to decide type of order to be made**

If an application is made for an order of the Tribunal under a specific provision of this Act and the Tribunal considers that an order under that provision is inappropriate, the Tribunal may determine to deal with the application under another provision of this Act.

#### **188 Ancillary orders**

- (1) An order made by the Tribunal may include such ancillary or consequential provisions as the Tribunal thinks fit.
- (2) For the purpose of securing compliance with an order of the Tribunal, the Tribunal may order any person who was the subject of the application for the order to do or refrain

from doing a specified act with respect to a strata scheme.

**189 Variation or revocation of orders by Tribunal**

Unless specifically provided by this Act, an order made by the Tribunal is not capable of being varied or revoked by the Tribunal but this subsection does not prevent a subsequent order being made by the Tribunal under this Part on a fresh application.

**190 Tribunal may vary order to correct error, for clarification or to extend time limit**

The Tribunal may vary an order for the purpose of correcting or clarifying it or extending a time limit and the order as so varied is taken to be the order instead of the original order.

**191 Tribunal may vary or revoke order in certain circumstances**

- (1) The Tribunal may, on application, make an order varying or revoking an order made by the Tribunal under this Part.
- (2) An application may only be made with the approval of the Registrar and within the prescribed time.
- (3) The Registrar must not give approval unless:
  - (a) the Registrar is satisfied that there is sufficient reason to do so, or
  - (b) the order was made in the absence of the applicant and the Registrar is satisfied that there were reasonable grounds for that absence.
- (4) An application under this section may be made by any of the following persons:
  - (a) the owners corporation,
  - (b) the lessor of a leasehold strata scheme,
  - (c) the applicant for the original order,
  - (d) any person who made a written submission on the application for the original order,
  - (e) any other person who is required by the original order to do or refrain from doing a specified act.
- (5) An application under this section must be dealt with in all respects as if it were an application for an order under this Part required to be referred to the Tribunal.
- (6) An order made under this section has effect, and the provisions of this Act apply to it, in all respects as if it were an order made under the provision of this Act under which the original order was made.
- (7) However, an order made under this section may not be varied or revoked by another

order made under this section.

### **192 Orders relating to costs**

The Tribunal may not make any order for the payment of costs except as specifically authorised by this Act or in relation to an order dismissing an application or appeal because:

- (a) the application or appeal is frivolous, vexatious, misconceived or lacking in substance, or
- (b) a decision in favour of the applicant or appellant is not within the jurisdiction of the Tribunal.

### **193 Representation before the Tribunal**

- (1) The following persons may appear or be represented before the Tribunal if the Tribunal is dealing with an application:
  - (a) the applicant for the order,
  - (b) a person who received a copy of the notice of the application from the Registrar and who made a written submission on the application and any person who was entitled to receive a copy of such a notice,
  - (c) in the case of an appeal, a person who received a copy of the notice of appeal from the Registrar and any person who was entitled to receive a copy of such a notice,
  - (d) any other person who is, or whose conduct is, the subject of an application or appeal.
- (2) Representation before the Tribunal may be by counsel or solicitor, or by an agent authorised in writing.
- (3) A representative may examine witnesses and address the Tribunal.

### **194 Intervention by Director-General**

- (1) The Director-General may intervene in proceedings before the Tribunal if the Director-General is of the opinion that it would be in the public interest to do so.
- (2) The Director-General must intervene in proceedings before the Tribunal if directed to do so by the Minister.
- (3) The Director-General has a right to be heard personally or by barrister, solicitor or agent in proceedings before the Tribunal.
- (4) The Director-General, on intervening in any proceedings, becomes a party to the



proceedings and has all the rights of such a party.

- (5) The Director-General is to bear the Director-General's costs of intervening in proceedings before the Tribunal.

### **195 Copy of order to be served**

- (1) An order made by the Tribunal must be made in writing.
- (2) The Registrar must serve a copy of any such order on:
- (a) the owners corporation for the strata scheme to which the order relates and, in the case of a leasehold strata scheme, the lessor of the strata scheme, and
  - (b) the applicant for the order and the appellant (if any), and
  - (c) any person who made a written submission on the application for the order or who, in the case of an order on appeal, was given notice by the Registrar of the time and place for the determination of the appeal, and
  - (d) any person required by the order to do or to refrain from doing a specified act, and
  - (e) in the case of an order under Part 6 (Enforcement of orders of Adjudicators and Tribunal and certain notices), any person against whom the order has been made.
- (3) On receipt of a copy of the order, the owners corporation must, unless the order otherwise provides:
- (a) cause it to be prominently displayed, within 72 hours of its receipt and for 14 days after that, on any notice board required to be maintained under the by-laws, or
  - (b) if no notice board is required to be maintained under the by-laws, cause a further copy of the order to be given to each person whose name appears on the strata roll.
- (4) Subsections (2) (c) and (d) and (3) do not apply to an application for an order under Part 6 (Enforcement of orders of Adjudicators and Tribunal and certain notices).

### **196 Witness may be summoned before Tribunal**

- (1) The Tribunal, or the Registrar if authorised by the Tribunal either generally or in a particular case, may summon any person to attend the Tribunal at the time and place specified in the summons and then and there to give evidence and to produce any books, documents or writings specified in the summons that are in the person's custody or control.
- (2) A summons may be issued under this section only on the request of one of the following persons:

- (a) a person whose application is being or is to be dealt with under this Part,
  - (b) a person who received a copy of the notice of the application from the Registrar,
  - (c) in the case of an appeal, a person who received a copy of the notice of appeal from the Registrar,
  - (d) the agent of any such person.
- (3) The fee payable for the issue of a summons is such amount as may be prescribed.
- (4) A person is not bound to produce any books, documents or writings that are not specified or otherwise sufficiently described in the summons or that the person would not be bound to produce on a subpoena for production in the Supreme Court.
- (5) A summons under this section need not be complied with by a person unless the person is tendered his or her reasonable expenses for attending the Tribunal in accordance with the summons.
- (6) A person served with a summons under this section must not, without reasonable excuse, fail to comply with the summons.

Maximum penalty (subsection (6)): In the case of a corporation, 10 penalty units and, in any other case, 5 penalty units or imprisonment for 6 months, or both.

#### **197 Tribunal may administer oath**

- (1) The Tribunal may administer an oath or affirmation to a person appearing as a witness before the Tribunal, whether or not the person has appeared in answer to a summons, and may examine the witness on oath or affirmation.
- (2) A person appearing as a witness before the Tribunal:
- (a) must not refuse to be sworn or to make an affirmation, and
  - (b) must not refuse to answer any question relevant to any proceedings before the Tribunal put to the person by the Tribunal or by any person entitled to appear before the Tribunal in those proceedings, and
  - (c) must not knowingly give false testimony in any evidence given by the person to the Tribunal.

Maximum penalty: 5 penalty units or imprisonment for 6 months, or both.

- (3) A witness before the Tribunal has the same protection and, in addition to the penalties provided by this Act, the same liabilities as the person would have had if the person had been a witness before the Supreme Court.

### **198 Contempt of Tribunal**

- (1) A person must not:
  - (a) wilfully insult the Tribunal, or
  - (b) wilfully misbehave in proceedings before the Tribunal, or
  - (c) wilfully and without lawful excuse interrupt proceedings before the Tribunal, or without lawful excuse disobey a direction of the Tribunal during proceedings before the Tribunal.

Maximum penalty: 5 penalty units or imprisonment for 6 months, or both.

- (2) The Tribunal may, in proceedings before it, direct a person who does anything referred to in subsection (1) to leave and a person to whom such a direction is given must not fail to comply with the direction.

Maximum penalty: 5 penalty units.

- (3) The Registrar or an officer prescribed by the regulations for the purposes of this section may act as informant in proceedings for an offence under this section.

### **199 Tribunal may not make order where title to land in question**

- (1) The Tribunal may determine a question of title to land only for the purpose of deciding a matter under this Part.
- (2) Any determination under this section does not have any force or effect except as provided by this Act.

## **Division 3 Appeals against orders of Tribunal**

### **200 Appeal to Supreme Court**

- (1) An appeal lies to the Supreme Court against an order made by the Tribunal under this Chapter.
- (2) An appeal lies in the same cases and in the same way as it would lie under Part 5 of the *Crimes (Local Courts Appeal and Review) Act 2001* if the order were a determination that a Local Court made, at the time the order took effect, in the exercise of summary jurisdiction on a court attendance notice.
- (3) The persons who may appeal against an order of the Tribunal (other than an order varying or revoking an order of the Tribunal or an order made on an appeal to the Tribunal) are:
  - (a) the applicant for the order appealed against, or
  - (b) a person who duly made written submissions on the application for the order, or

- (c) any person required by the order to do, or refrain from doing, any act.
- (4) The persons who may appeal against an order of the Tribunal varying or revoking an order made by it are:
  - (a) the applicant for the variation or revocation, or
  - (b) any person who under subsection (3) was entitled to appeal against the making of the order that has been varied or revoked, or
  - (c) the relevant owners corporation or lessor of a leasehold strata scheme.
- (5) The persons who may appeal against an order of the Tribunal made on the determination of an appeal are:
  - (a) the appellant to the Tribunal, or
  - (b) the applicant for the original order made by an Adjudicator (if the applicant was not the appellant to the Tribunal), or
  - (c) any person who duly made written submissions to an Adjudicator in connection with the application for the original order, or
  - (d) a person required to do or refrain from doing any act by the order.

**201 No appeal available from Tribunal except as provided by this Division**

Except as provided by this Part, an appeal does not lie from an order made by the Tribunal.

**Part 6 Enforcement of orders of Adjudicators and Tribunal and certain notices**

**202 Civil penalties for contravention of orders under this Chapter**

- (1) The Tribunal may, by order, require a person to pay a pecuniary penalty of an amount of up to 50 penalty units for contravention of an order under this Chapter (***the original order***).
- (2) An application for an order under subsection (1) may be made:
  - (a) in any case, by the applicant for the original order, or
  - (b) if the original order relates to a parcel that is not a stratum parcel, by the owners corporation for the parcel, or
  - (c) if the order relates to a stratum parcel, by each owners corporation for a stratum parcel including part of the building, the lessor of the strata scheme (in the case of a leasehold strata scheme) or by any person in whom is vested an estate in fee

simple (or in the case of a leasehold strata scheme, a leasehold estate) in a part of the building that is not included in a stratum parcel, or

- (d) in the case of an order that gives effect to any agreement or arrangement arising out of a mediation session, by either party to the mediation.

### **203 Civil penalties for contravention of notice of owners corporation**

- (1) The Tribunal may, on application by an owners corporation, by order require a person to pay a pecuniary penalty of an amount of up to 5 penalty units if the Tribunal is satisfied that:
- (a) the owners corporation served a notice under section 45 on the person requiring the person to comply with a particular by-law, and
  - (b) the person has since contravened the by-law.
- (2) An application for an order under this section must be made by the owners corporation within 12 months after the notice under section 45 was served.

### **204 Order as to costs**

- (1) The Tribunal may also make an order for the payment of costs when making an order requiring the payment of a pecuniary penalty under this Part.
- (2) Any costs awarded against a person on an application for an order under section 202 include the amount of the fee paid when the application for the original order was made.

### **205 Payment of penalties or costs**

- (1) If the Tribunal makes an order under this Part requiring a person to pay a pecuniary penalty, the Tribunal may specify in the order that the penalty or a part of the penalty must be paid to the applicant for the order as damages for work carried out by the person in relation to the matter the subject of the proceedings.
- (2) The imposition of the pecuniary penalty operates as a judgment under the *Local Courts (Civil Claims) Act 1970* for the amount of the pecuniary penalty against the person required to pay it in favour of:
- (a) the applicant for the order, or
  - (b) the applicant for the order and the Director-General, if the order requires part only of the penalty to be paid to the applicant, or
  - (c) the Director-General only, if the order so requires.
- (3) Any pecuniary penalty or part of a pecuniary penalty recovered under this Part that the Tribunal has not ordered to be paid to an applicant for an order is to be paid to the

Director-General for payment into the Department of Fair Trading Operating Account or an account prescribed by the regulations for the purposes of this subsection.

- (4) The making of an order as to costs operates as a judgment under the *Local Courts (Civil Claims) Act 1970* for the amount of the costs against the person required to pay it in favour of the applicant for the order.

#### **206 Unpaid pecuniary penalty is charge on lot**

- (1) Any pecuniary penalty or part of a pecuniary penalty the subject of an order under this Part that is to be paid by an owner of a lot in a freehold strata scheme to the owners corporation is a charge on the lot until paid to or recovered by the owners corporation.
- (2) Any pecuniary penalty or part of a pecuniary penalty the subject of an order under this Part that is to be paid by an owner of a lot in a leasehold strata scheme to the owners corporation is a charge on the lease of the lot until paid to or recovered by the owners corporation.
- (3) The charge does not affect a bona fide purchaser for value who made due inquiry at the time of purchase but had no notice of the liability.

### **Part 7 Effect of orders of Adjudicators and Tribunal**

#### **207 Effect of certain orders**

- (1) The terms of the following orders, to the extent to which they impose a requirement on an owners corporation, are taken to have effect as a resolution of the owners corporation to do what is needed to comply with the requirement:
  - (a) an order under section 138 in which an Adjudicator declares that the order is to have effect as a decision of the owners corporation,
  - (b) an order under section 140, 142, 143, 147, 148, 149 or 154 (except subsection (3)).
- (2) The owners corporation must cause the terms of an order referred to in subsection (1) to be recorded in its minute book on receipt of a copy of the order served on the owners corporation by the Registrar.

#### **208 Resolution purporting to alter effect of order**

- (1) The owners corporation may amend or revoke an order referred to in section 207 only by a unanimous resolution or as provided by subsection (2).
- (2) If an order referred to in section 207 specifies a period during which a resolution of an owners corporation purporting to alter the effect of the order would be inoperative, such a resolution passed during that period has no force or effect unless:

- (a) it is a unanimous resolution, or
  - (b) it is passed on a motion submitted to a general meeting after being authorised, by order, by the Tribunal.
- (3) An application for an order authorising a motion for submission to a general meeting:
- (a) may be made by any person who, at the time of the application, could have applied for the order to which the proposed motion relates, and
  - (b) must be made to the Registrar in writing, and
  - (c) must specify the order sought, and
  - (d) must specify the grounds on which it is based, and
  - (e) must be accompanied by the prescribed fee.
- (4) The application must be dealt with as if it were an application for an order required to be referred to the Tribunal for determination.

#### **209 Recording in Register of effect of certain orders**

- (1) The Registrar-General must make such recordings in the Register with respect to an order under this Act as appear to the Registrar-General to be necessary or proper to give effect to the order if:
- (a) a copy of the order, certified by the Registrar as a true copy, has been lodged in the office of the Registrar-General, and
  - (b) the prescribed fee has been paid.
- (2) A certificate of title comprising the common property for a strata scheme is, for the purposes of Part 15 of the *Real Property Act 1900*, taken to be wrongfully retained if a copy of an order has been lodged as referred to in subsection (1) and the owners corporation:
- (a) has not, within a period of 21 days after notice in writing served on it by the person lodging the copy of the order, lodged the certificate of title, or
  - (b) has not, within that period, made application under section 111 of the *Real Property Act 1900* or does not duly prosecute that application.
- (3) The Registrar-General must, on lodgment under subsection (1) of a copy of an order under section 183, amend the schedule of unit entitlement recorded in the folio of the Register comprising the common property to which the order relates, to the extent necessary to give effect to the order.
- (4) The Registrar-General must, on lodgment in the Registrar-General's office of a copy of

an order made by a superior court with respect to an order under section 183 that 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 comprising 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 this section with respect to a copy of an order unless the copy is accompanied by the certificate of title comprising the common property or evidence to the satisfaction of the Registrar-General of the service of the notice referred to in subsection (2) (a).

### **210 Time at which order takes effect**

- (1) An order takes effect when a copy of the order is served:
- (a) if the order requires a person to do or refrain from doing a specified act, on that person, or
  - (b) in any other case, on the owners corporation for the strata scheme to which the order relates.
- (2) This section does not apply if express provision is otherwise made by this Act or in the order itself.

## **Chapter 6 Administration**

### **Introductory note—**

This Chapter provides for the appointment of Strata Schemes Adjudicators.

## **Part 1 Functions of Director-General under this Act**

### **211 (Repealed)**

### **212 Functions of Director-General**

- (1) (Repealed)
- (2) The functions of the Director-General under this Act include the following:
- (a) attempting to resolve complaints and disputes relating to strata schemes, and
  - (b) investigating alleged breaches of the Act, and
  - (c) taking such action, including prosecution, as the Director-General thinks appropriate,
  - (d) providing information to owners, occupiers, owners corporations, lessors of leasehold strata schemes, strata managing agents and the public about this Act and the services provided by the Director-General, the Adjudicator and the



Tribunal,

- (e) investigating and reporting on any matters, or making inquiries in relation to any matters, referred to the Director-General by the Minister in connection with this Act.

### **213 Staff**

Such staff as may be necessary to enable the Director-General to exercise the Director-General's functions under this Act may be employed under and subject to Part 2 of the *Public Sector Management Act 1988*.

### **214 Delegation of functions**

The Director-General may, by instrument in writing, delegate to a person employed under and subject to the provisions of the *Public Sector Management Act 1988* the exercise of such of the functions (other than this power of delegation) conferred on the Director-General by or under this Act as may be specified in the instrument.

### **215 Investigations by Director-General**

- (1) If the Director-General believes on reasonable grounds that an offence under this Act has been, or may be committed, the Director-General may exercise the following powers to investigate the grounds for the belief:
  - (a) enter common property,
  - (b) enter a lot at a reasonable time on notice given to the occupier,
  - (c) if the strata scheme concerned is for part of a building, 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 a reasonable time on notice given to the occupier of that lot or other part,
  - (d) request an owners corporation to provide information to the Director-General and allow the Director-General to inspect its records under Part 5 of Chapter 3.
- (2) When exercising a power under this section, the Director-General may, if the Director-General thinks fit, be accompanied by:
  - (a) a member of the executive committee of the owners corporation, or
  - (b) a member of the building management committee (if any) for the building concerned, or
  - (c) the managing agent (if any) of the strata scheme concerned.
- (3) A person must not obstruct or hinder the Director-General, or a delegate of the Director-General, in the exercise of powers conferred by this section.

Maximum penalty: 5 penalty units.

- (4) An owners corporation must not neglect or fail to comply with a request under subsection (1) (d).

Maximum penalty: 5 penalty units.

- (5) No charge is payable by the Director-General in connection with a request made under subsection (1) (d).

## **216 Annual report of Director-General**

- (1) As soon as practicable after 30 June, but on or before 31 December, in each year, the Director-General is to prepare and forward to the Minister a report of the operations of the Director-General under this Act during that year.
- (2) The Minister is to lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.

## **Part 2 Strata Schemes Adjudicators**

### **217 Appointment of Strata Schemes Adjudicators**

The Minister may appoint Strata Schemes Adjudicators.

### **218 General functions of Adjudicators**

An Adjudicator has the functions conferred or imposed on an Adjudicator by or under this or any other Act.

### **219 Delegation of functions of Adjudicators**

An Adjudicator may delegate to the Registrar or Deputy Registrar the exercise of a function of the Adjudicator (other than this power of delegation).

## **Part 3 Proceedings before Tribunal**

### **220, 221 (Repealed)**

### **222 Proceedings before Tribunal**

- (1) The provisions of the [Consumer, Trader and Tenancy Tribunal Act 2001](#), and of the regulations made under that Act, apply in relation to proceedings before the Tribunal under this Act, subject to any modifications prescribed by the regulations.
- (2) For the purposes of subsection (1), the jurisdictional limits imposed on the Tribunal by section 85 (3) of the [Residential Tenancies Act 1987](#) do not apply to proceedings before the Tribunal under this Act.
- (3) In this section, a reference to proceedings includes a reference to the whole of

proceedings, from the time an application is made to the Tribunal until the application has been finally determined.

## **Part 4 Registrar**

### **223 (Repealed)**

### **224 Delegation**

The Registrar may delegate to any member of staff of the Tribunal any of the Registrar's functions (other than this power of delegation).

## **Chapter 7 General**

### **Introductory note—**

This Chapter contains miscellaneous provisions relating to the operation and management of strata schemes and the administration of the Act.

The Chapter contains a regulation-making power that enables regulations to be made in relation to such matters as the fees for applications to the Director-General, an Adjudicator or the Tribunal, mediation and other matters of a procedural or administrative nature.

## **Part 1 Matters relating to proceedings**

### **225 Proceedings for offences**

Proceedings for an offence against this Act or the regulations may be dealt with summarily before a Local Court.

### **226 Other rights and remedies not affected by this Act**

- (1) Nothing in this Act derogates from any rights or remedies that an owner, mortgagee or chargee of a lot or an owners corporation or covenant chargee may have in relation to any lot or the common property apart from this Act.
- (2) In any proceedings to enforce a right or remedy referred to in subsection (1), the court in which the proceedings are taken must order the plaintiff to pay the defendant's costs if the court is of the opinion that, having regard to the subject-matter of the proceedings, the taking of the proceedings was not justified because this Act or Part 4 of the *Community Land Management Act 1989* makes adequate provision for the enforcement of those rights or remedies.
- (3) The defendant's costs are to be as determined by the court.

### **227 Owners corporation may represent owners in certain proceedings**

- (1) This section applies to proceedings in relation to common property.
- (2) If the owners of the lots in a strata scheme are jointly entitled to take proceedings against any person or are liable to have proceedings taken against them jointly, the

proceedings may be taken by or against the owners corporation.

- (3) Any judgment or order given or made in favour of or against the owners corporation in any such proceedings has effect as if it were a judgment or order given or made in favour of or against the owners.
- (4) A contribution required to be made by an owner of a lot to another owner in relation to such a judgment debt is to bear the same proportion to the judgment debt as the unit entitlement of the contributing owner bears to the aggregate unit entitlement.

## **228 Structural defects—proceedings as agent**

- (1) An interested person may take proceedings 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 an owner 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 owner 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.
- (4) In this section, ***interested person*** means:
  - (a) the owners corporation for 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) the lessor of a leasehold strata scheme, or
  - (c) any person in whom is vested an estate in fee simple or, in the case of a leasehold strata scheme, a leasehold estate, registered under the [Real Property Act 1900](#) in any part of the building or its site that is not included in a stratum parcel.

## **229 Costs in proceedings by owners against owners corporation**

- (1) This section applies to proceedings brought by one or more owners of lots against an owners corporation or by an owners corporation against one or more owners of lots (including one or more owners joined in third party proceedings).
- (2) The court may order in proceedings that any money (including costs) payable by an owners corporation under an order made in the proceedings must be paid from contributions levied only in relation to such lots and in such proportions as are specified in the order.

- (3) If a court makes such an order the owners corporation must, for the purpose of paying the money ordered to be paid by it, levy contributions in accordance with the terms of the order and must pay the money out of the contributions paid in accordance with that levy.
- (4) Division 2 of Part 3 of Chapter 3 (section 78 (2) excepted) applies to and in respect of contributions levied under this section in the same way as it applies to contributions levied under that Division.

### **230 Restrictions on owners corporation levying contributions for expenses**

- (1) An owners corporation cannot, in respect of its costs and expenses in proceedings brought by or against it under Chapter 5, levy a contribution on another party who is successful in the proceedings.
- (2) An owners corporation that is unsuccessful in proceedings brought by or against it under Chapter 5 cannot pay any part of its costs and expenses in the proceedings from its administrative fund or sinking fund, but may make a levy for the purpose.
- (3) In this section, a reference to proceedings under Chapter 5 includes a reference to proceedings on appeal.

## **Part 2 Legal assistance**

### **231 Applications for legal assistance**

- (1) The owner of a lot or the owners corporation for a strata scheme as the owner of common property may apply for assistance in connection with the institution or defence of legal proceedings before any court or tribunal in relation to any matter arising or connected with the operation or application of a provision of the lease of that lot or common property.
- (2) The application is to be in writing to the Director-General.
- (3) The lessor of a leasehold strata scheme cannot make an application under this Division.

### **232 Procedure when Director-General receives application**

- (1) After receiving an application under this Division, the Director-General:
  - (a) may require the applicant to provide the Director-General with such further information in relation to the application as, in the opinion of the Director-General, may assist the investigation of the application, or
  - (b) may refuse to proceed with the application until such a requirement has been complied with, or

- (c) must determine whether to proceed with an investigation of the application or, having proceeded with such an investigation, whether to discontinue the investigation.
- (2) In making a determination to proceed with or discontinue an investigation of an application, the Director-General must have regard to whether, in the opinion of the Director-General:
  - (a) the application is frivolous, vexatious, misconceived or lacking in substance, or
  - (b) the applicant has unreasonably delayed complying with a requirement of the Director-General to supply further information, or
  - (c) the applicant has an alternative and better means of redress.
- (3) The Director-General may have regard to such other matters as the Director-General considers to be appropriate.
- (4) If the Director-General decides to proceed with an investigation of an application, the Director-General must:
  - (a) inform the applicant of the decision, and
  - (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 written submission with respect to that subject-matter.
- (5) The Director-General must inform the applicant if the Director-General decides not to proceed with an investigation of an application under this section and must inform the applicant and the lessor if the Director-General decides to discontinue such an investigation.

### **233 Investigation of application for legal assistance**

- (1) For the purpose of investigating an application under this Division, the Director-General, or a delegate of the Director-General, 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.
- (2) A person must not obstruct or hinder the Director-General, or the delegate of the Director-General, in the exercise of the powers conferred by this section.

Maximum penalty (subsection (2)): 5 penalty units.

### **234 Grant of legal assistance**

- (1) Division 2 (sections 12 and 15 (6) excepted) of Part 2 of the *Fair Trading Act 1987*

applies to and in respect of an application under this Part in the same way as it applies to and in respect of an application under section 12 of that Act.

- (2) Whether or not an investigation of an application under this Division has been completed, the Director-General may, with the consent of the Minister administering the *Fair Trading Act 1987*, seek an injunction in the Supreme Court in relation to the subject-matter of the application.
- (3) An injunction may be granted without any undertaking being given by the Director-General as to damages.
- (4) For the purposes of subsection (1):
  - (a) an injunction sought under this section is taken to have been sought by the person who made the relevant application under this Division, and
  - (b) that person is taken to be an assisted person under Division 2 of Part 2 of the *Fair Trading Act 1987*.

## **Part 3 Service of documents**

### **235 Service of documents on an owners corporation**

- (1) A summons or other legal process may be served on an owners corporation by leaving it with the chairperson or secretary of the owners corporation or of the executive committee or with any member of the executive committee.
- (2) A document other than a summons or other legal process may be served on an owners corporation:
  - (a) by leaving it with any person referred to in subsection (1) or in the letterbox of the owners corporation, or
  - (b) by posting it, by prepaid mail, to the owners corporation at its address recorded in the folio of the Register comprising the common property, or
  - (c) by sending it by facsimile transmission to a person referred to in subsection (1).

### **236 Service of documents by owners corporation and others**

- (1) **Application of section** This section applies to service of a notice or other document required or authorised by this Act or the by-laws to be served by the Director-General, an Adjudicator, the Tribunal, an owners corporation, the lessor of a leasehold strata scheme, an executive committee or the secretary of an executive committee and is subject to the other provisions of this Act.
- (2) **Service on occupier of lot** A notice or other document may be served on the occupier of a lot:

- (a) by post at that address, or
  - (b) by leaving it at the address of the lot with some person apparently of or above the age of 16 years.
- (3) **Service where address is included in strata roll** If an address for the service of notices on a person is recorded in the strata roll, a document may be served on the person:
- (a) by post at that address, or
  - (b) by leaving it at that address with some person apparently of or above the age of 16 years.
- (4) **Service on owner of lot** A document may be served on the owner of a lot:
- (a) personally, or
  - (b) by post at the address of the lot, or
  - (c) by leaving it on a part of the lot that is the owner's place of residence or business (otherwise than on a part of the lot provided for the accommodation of a vehicle or as a storeroom), or
  - (d) by leaving it in a place provided on the parcel for receiving mail posted to the lot, or
  - (e) in any manner authorised by the by-laws for the service of notices on owners.
- (5) **Service of notice to produce certain records and property** Notice under section 105 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 person to be served with the notice.
- (6) **Service on person where building included in stratum parcel** A document may be served on a person in whom is vested an estate in fee simple, or, in the case of a leasehold strata scheme, a leasehold estate registered under the *Real Property Act 1900*, 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*.

## Part 4 Seal of owners corporation

### 237 Who may keep seal of owners corporation?

- (1) If an owners corporation has only one owner, the seal of the owners corporation must be kept by the owner or by the strata managing agent of the owners corporation.
- (2) If an owners corporation has 2 or more owners, the seal of the owners corporation



must be kept:

- (a) by an owner, or member of the executive committee, that the owners corporation determines is to keep the seal or, in the absence of a determination, by the secretary of the executive committee, or
  - (b) by the strata managing agent of the owners corporation.
- (3) A strata managing agent is entitled to custody of the seal of an owners corporation only to permit the exercise of the strata managing agent's functions.
- (4) Section 50 (2) and (3) of the *Interpretation Act 1987* do not apply to an owners corporation.

**Note—**

Section 50 (2) and (3) of the *Interpretation Act 1987* contain provisions relating to the keeping of the seal of a statutory corporation and the authentication of documents by a statutory corporation.

**238 How should the seal of the owners corporation be affixed?**

- (1) If an owners corporation has only one owner or 2 owners, the seal of the owners corporation must not be affixed to any instrument or document except in the presence of the owner or owners or the strata managing agent of the owners corporation.
- (2) If an owners corporation has more than 2 owners, the seal of the owners corporation must not be affixed to any instrument or document except in the presence of:
  - (a) 2 persons, being owners of lots or members of the executive committee, that the owners corporation determines for the purpose or, in the absence of a determination, the secretary and any other member of the executive committee, or
  - (b) the strata managing agent of the owners corporation.
- (3) The strata managing agent must attest the fact and date of the affixing of the seal:
  - (a) by his or her signature, or
  - (b) if the strata managing agent is a corporation, by the signature of the president, chairperson or other principal officer of the corporation or by any member of staff of the corporation authorised to do so by the president, chairperson or other principal officer.
- (4) A strata managing agent who has affixed the common seal of the owners corporation to any instrument or document is taken to have done so under the authority of a delegation from the owners corporation.
- (5) Subsection (4) does not operate so as to enable a person to fraudulently obtain a benefit.

- (6) A person is taken not to have fraudulently obtained a benefit from the operation of subsection (4) if the benefit was, without any fraud by the person, obtained before the seal was affixed.

## Part 5 Miscellaneous

### 239 Change of owners corporation's address

- (1) An owners corporation may change its address for service of notices by deciding in general meeting to make the change and lodging in the office of the Registrar-General a notice in the form approved under the *Real Property Act 1900* of the change of address.
- (2) On receiving the notice, the Registrar-General is to make such recording as the Registrar-General considers appropriate:
  - (a) in the case of a freehold strata scheme, in the folio of the Register comprising the common property for the scheme, or
  - (b) in the case of a leasehold strata scheme, in the folio of the Register for the lease of the common property for the scheme.
- (3) If the strata scheme is part of a community scheme, the owners corporation must give written notice of the change to the community association and, in the case of a strata scheme that is also part of a precinct scheme under the *Community Land Management Act 1989*, to the precinct association.
- (4) A change of address does not take effect until it is recorded in the Register in accordance with this section.

### 240 Dividing fences

- (1) The owners corporation for a strata scheme for a parcel that is not a stratum parcel is taken to be the owner of the land constituting the parcel for the purposes of the *Dividing Fences Act 1991*.
- (2) The owners corporation for each freehold 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.
- (3) The owners corporation for each leasehold strata scheme for a stratum parcel including part of a building (for the purposes of that parcel) and any person, not being a sublessee, in whom is vested a leasehold estate, registered under the *Real Property Act 1900*, 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.

- (4) Subsections (1)–(3) do not apply to land that is part of a community scheme or to any part of a parcel that is the subject of a lease accepted or acquired by an owners corporation under section 19 of the *Strata Schemes (Freehold Development) Act 1973* or section 22 of the *Strata Schemes (Leasehold Development) Act 1986*.
- (5) A strata management statement may apportion liability arising under the *Dividing Fences Act 1991*, but only between persons bound by the statement.

#### **241 Apportionment of statutory charges**

- (1) This section applies to expenditure by a public authority that would, because of any Act or of anything done under the authority of any Act (including the registration of a covenant charge), be a charge on the land comprised in a parcel if the parcel were not the subject of a strata scheme.
- (2) Any expenditure is a charge on:
  - (a) in the case of a freehold strata scheme, each lot in the strata scheme 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, or
  - (b) in the case of a leasehold strata scheme, the lease of each lot in the strata scheme 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.
- (3) The owner or mortgagee of a lot the subject of a charge referred to in this section may pay to the authority entitled to the charge the amount of the charge and on payment:
  - (a) the lot or the lease and the appurtenant beneficial interest in the common property are freed from the charge, and
  - (b) the authority has no legal rights against the owner or the lot or lease or appurtenant beneficial interest in common property in relation to the subject-matter of the charge.

#### **242 Powers of entry by public authority**

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

#### **243 Notices under *Real Property Act 1900* to owners corporation taken to be notices to owners**

A notice given to an owners corporation under Part 2, 4 or 15 of the *Real Property Act*

1900 is taken to have been given to each owner of a lot in the strata scheme concerned in the absence of evidence that the contents of the notice were not communicated by the owners corporation to any owner of such a lot.

#### **244 Protection of Director-General and Adjudicator**

The Director-General and an Adjudicator, in the exercise of their functions under this Part, have the same protection and immunities as a Magistrate.

#### **245 Contracting out prohibited**

- (1) The provisions of this Act have effect despite any stipulation to the contrary in any agreement, contract or arrangement entered into after the commencement of this section.
- (2) No agreement, contract or arrangement, whether oral or wholly or partly in writing, entered into after the commencement of this section operates to annul, vary or exclude any of the provisions of this Act.

#### **246 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to the following:
  - (a) the forms to be used for the purposes of this Act,
  - (b) the fees to be paid for applications made to the Director-General, an Adjudicator or the Tribunal under this Act and the remission of any such fees,
  - (c) the nomination and election of members of executive committees,
  - (d) the mediation of matters under this Act,
  - (e) the practice and procedure of Adjudicators and the Tribunal,
  - (f) the procedure for the referral of applications to an Adjudicator or the Tribunal.
- (3) A regulation may create an offence punishable by a penalty not exceeding 2 penalty units.

#### **247 Savings, transitional and other provisions**

Schedule 4 has effect.

#### **248 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act

remain valid and whether the terms of the Act remain appropriate for securing those objectives.

- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## Schedule 1 By-laws

(Section 42)

### Note—

The matters that were previously contained in By-laws 1–11 in Schedule 1 to the *Strata Schemes (Freehold Development) Act 1973* and Schedule 3 to the *Strata Schemes (Leasehold Development) Act 1986* have been included as provisions of this Act and are therefore no longer by-laws.

### 1 Noise

An owner or occupier of a lot must not create any noise on the parcel likely to interfere with the peaceful enjoyment of the owner or occupier of another lot or of any person lawfully using common property.

#### Note—

This by-law was previously by-law 12 in Schedule 1 to the *Strata Schemes (Freehold Development) Act 1973* and by-law 13 in Schedule 3 to the *Strata Schemes (Leasehold Development) Act 1986*.

### 2 Vehicles

An owner or occupier of a lot must not park or stand any motor or other vehicle on common property except with the written approval of the owners corporation.

#### Note—

This by-law was previously by-law 13 in Schedule 1 to the *Strata Schemes (Freehold Development) Act 1973* and by-law 14 in Schedule 3 to the *Strata Schemes (Leasehold Development) Act 1986*.

### 3 Obstruction of common property

An owner or occupier of a lot must not obstruct lawful use of common property by any person.

#### Note—

This by-law was previously by-law 14 in Schedule 1 to the *Strata Schemes (Freehold Development) Act 1973* and by-law 15 in Schedule 3 to the *Strata Schemes (Leasehold Development) Act 1986*.

### 4 Damage to lawns and plants on common property

An owner or occupier of a lot must not:

- (a) damage any lawn, garden, tree, shrub, plant or flower being part of or situated on

common property, or

(b) use for his or her own purposes as a garden any portion of the common property.

**Note—**

This by-law was previously by-law 15 in Schedule 1 to the *Strata Schemes (Freehold Development) Act 1973* and by-law 16 in Schedule 3 to the *Strata Schemes (Leasehold Development) Act 1986*.

**5 Damage to common property**

- (1) An owner or occupier of a lot must 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 owners corporation.
- (2) An approval given by the owners corporation under subclause (1) cannot authorise any additions to the common property.
- (3) This by-law does not prevent an owner or person authorised by an owner from installing:
  - (a) any locking or other safety device for protection of the owner's lot against intruders, or
  - (b) any screen or other device to prevent entry of animals or insects on the lot, or
  - (c) any structure or device to prevent harm to children.
- (4) Any such locking or safety device, screen, other device or structure must be installed in a competent and proper manner and must have an appearance, after it has been installed, in keeping with the appearance of the rest of the building.
- (5) Despite section 62, the owner of a lot must maintain and keep in a state of good and serviceable repair any installation or structure referred to in subclause (3) that forms part of the common property and that services the lot.

**Note—**

This by-law was previously by-law 16 in Schedule 1 to the *Strata Schemes (Freehold Development) Act 1973* and by-law 17 in Schedule 3 to the *Strata Schemes (Leasehold Development) Act 1986*.

**6 Behaviour of owners and occupiers**

An owner or occupier of a lot when on common property must be adequately clothed and must not use language or behave in a manner likely to cause offence or embarrassment to the owner or occupier of another lot or to any person lawfully using common property.

**Note—**

This by-law was previously by-law 17 in Schedule 1 to the *Strata Schemes (Freehold Development) Act 1973* and by-law 18 in Schedule 3 to the *Strata Schemes (Leasehold Development) Act 1986*.

## **7 Children playing on common property in building**

An owner or occupier of a lot must not permit any child of whom the owner 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.

**Note—**

This by-law was previously by-law 18 in Schedule 1 to the *Strata Schemes (Freehold Development) Act 1973* and by-law 19 in Schedule 3 to the *Strata Schemes (Leasehold Development) Act 1986*.

## **8 Behaviour of invitees**

An owner or occupier of a lot must take all reasonable steps to ensure that invitees of the owner or occupier do not behave in a manner likely to interfere with the peaceful enjoyment of the owner or occupier of another lot or any person lawfully using common property.

**Note—**

This by-law was previously by-law 19 in Schedule 1 to the *Strata Schemes (Freehold Development) Act 1973* and by-law 20 in Schedule 3 to the *Strata Schemes (Leasehold Development) Act 1986*.

## **9 Depositing rubbish and other material on common property**

An owner or occupier of a lot must not deposit or throw on the common property any rubbish, dirt, dust or other material likely to interfere with the peaceful enjoyment of the owner or occupier of another lot or of any person lawfully using the common property.

**Note—**

This by-law was previously by-law 20 in Schedule 1 to the *Strata Schemes (Freehold Development) Act 1973* and by-law 21 in Schedule 3 to the *Strata Schemes (Leasehold Development) Act 1986*.

## **10 Drying of laundry items**

An owner or occupier of a lot must not, except with the consent in writing of the owners corporation, hang any washing, towel, bedding, clothing or other article on any part of the parcel in such a way as to be visible from outside the building other than on any lines provided by the owners corporation for the purpose and there only for a reasonable period.

**Note—**

This by-law was previously by-law 21 in Schedule 1 to the *Strata Schemes (Freehold Development) Act 1973* and by-law 22 in Schedule 3 to the *Strata Schemes (Leasehold Development) Act 1986*.

## **11 Cleaning windows and doors**

An owner or occupier of a lot must keep clean all glass in windows and all doors on the boundary of the lot, including so much as is common property.

**Note—**

This by-law was previously by-law 22 in Schedule 1 to the *Strata Schemes (Freehold Development) Act 1973* and

by-law 23 in Schedule 3 to the *Strata Schemes (Leasehold Development) Act 1986*.

## **12 Storage of inflammable liquids and other substances and materials**

- (1) An owner or occupier of a lot must not, except with the approval in writing of the owners corporation, use or store on the lot or on the common property any inflammable chemical, liquid or gas or other inflammable material.
- (2) This by-law does not apply to chemicals, liquids, gases or other material used or intended to be used for domestic purposes, or any chemical, liquid, gas or other material in a fuel tank of a motor vehicle or internal combustion engine.

### **Note—**

This by-law was previously by-law 23 in Schedule 1 to the *Strata Schemes (Freehold Development) Act 1973* and by-law 24 in Schedule 3 to the *Strata Schemes (Leasehold Development) Act 1986*.

## **13 Moving furniture and other objects on or through common property**

An owner or occupier of a lot must not transport any furniture or large object through or on common property within the building unless sufficient notice has first been given to the executive committee so as to enable the executive committee to arrange for its nominee to be present at the time when the owner or occupier does so.

### **Note—**

This by-law was previously by-law 24 in Schedule 1 to the *Strata Schemes (Freehold Development) Act 1973* and by-law 25 in Schedule 3 to the *Strata Schemes (Leasehold Development) Act 1986*.

## **14 Floor coverings**

- (1) An owner of a lot must ensure that all floor space within the lot is covered or otherwise treated to an extent sufficient to prevent the transmission from the floor space of noise likely to disturb the peaceful enjoyment of the owner or occupier of another lot.
- (2) This by-law does not apply to floor space comprising a kitchen, laundry, lavatory or bathroom.

### **Note—**

This by-law was previously by-law 25 in Schedule 1 to the *Strata Schemes (Freehold Development) Act 1973* and by-law 26 in Schedule 3 to the *Strata Schemes (Leasehold Development) Act 1986*.

## **15 Garbage disposal**

An owner or occupier of a lot:

- (a) must maintain within the lot, or on such part of the common property as may be authorised by the owners corporation, in clean and dry condition and adequately covered a receptacle for garbage, and



- (b) must ensure that before refuse is placed in the receptacle it is securely wrapped or, in the case of tins or other containers, completely drained, and
- (c) for the purpose of having the garbage collected, must place the receptacle within an area designated for that purpose by the owners corporation and at a time not more than 12 hours before the time at which garbage is normally collected, and
- (d) when the garbage has been collected, must promptly return the receptacle to the lot or other area referred to in paragraph (a),
- (e) must not place any thing in the receptacle of the owner or occupier of any other lot except with the permission of that owner or occupier, and
- (f) must promptly remove any thing which the owner, occupier or garbage collector may have spilled from the receptacle and must take such action as may be necessary to clean the area within which that thing was spilled.

**Note—**

This by-law was previously by-law 26 in Schedule 1 to the *Strata Schemes (Freehold Development) Act 1973* and by-law 27 in Schedule 3 to the *Strata Schemes (Leasehold Development) Act 1986*.

## **16 Keeping of animals**

- (1) Subject to section 49 (4), an owner or occupier of a lot must not, without the approval in writing of the owners corporation, keep any animal on the lot or the common property.
- (2) The owners corporation must not unreasonably withhold its approval of the keeping of an animal on a lot or the common property.

**Note—**

This by-law was previously by-law 27 in Schedule 1 to the *Strata Schemes (Freehold Development) Act 1973* and by-law 28 in Schedule 3 to the *Strata Schemes (Leasehold Development) Act 1986*.

## **17 Appearance of lot**

- (1) The owner or occupier of a lot must not, without the written consent of the owners corporation, 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.
- (2) This by-law does not apply to the hanging of any washing, towel, bedding, clothing or other article as referred to in By-law 10.

**Note—**

This by-law was previously by-law 29 in Schedule 1 to the *Strata Schemes (Freehold Development) Act 1973* and by-law 30 in Schedule 3 to the *Strata Schemes (Leasehold Development) Act 1986*.

## **18 Notice-board**

An owners corporation must cause a notice-board to be affixed to some part of the common property.

### **Note—**

This by-law was previously by-law 3 in Schedule 1 to the *Strata Schemes (Freehold Development) Act 1973* and by-law 3 in Schedule 3 to the *Strata Schemes (Leasehold Development) Act 1986*.

## **19 Change in use of lot to be notified**

An occupier of a lot must notify the owners corporation if the occupier changes the existing use of the lot in a way that may affect the insurance premiums for the strata scheme (for example, if the change of use results in a hazardous activity being carried out on the lot, or results in the lot being used for commercial or industrial purposes rather than residential purposes).

## **Schedule 2 Meetings and procedure of owners corporation**

(Section 14)

### **Part 1 Requirements relating to holding of meetings**

#### **Division 1 Requirements relating to holding of first annual general meeting**

##### **1 Definition**

For the purposes of this Division, the first annual general meeting of the owners corporation is:

- (a) a meeting convened and held in accordance with clause 2, or
- (b) a meeting held in accordance with an order under clause 5, or
- (c) if no meeting is held as referred to in paragraph (a) or (b), the first meeting, however convened and whenever held, of the owners corporation having an agenda consisting of the items referred to in clause 3.

##### **2 When must first annual general meeting of owners corporation be held?**

- (1) The original owner or, in the case of a leasehold strata scheme for which there is no original owner, the lessor of the leasehold strata scheme must convene and hold a meeting of the owners corporation, in the prescribed manner, within 2 months of the expiration of the initial period.

Maximum penalty: 10 penalty units.

- (2) An original owner or lessor who has failed to convene and hold a meeting of the owners corporation in accordance with subclause (1) remains liable to the penalty

provided by that subclause even though an order has been made under clause 5 or a meeting has been convened and held in accordance with any such order or otherwise.

- (3) Divisions 1 and 3 of Part 2 apply to and in respect of the first annual general meeting of the owners corporation and voting at that meeting.

### **3 What is the agenda for first annual general meeting of owners corporation?**

The agenda for the first annual general meeting must consist of the following items:

- (a) to decide whether insurances taken out by the owners corporation should be confirmed, varied or extended,
- (b) to decide whether any determination of the amount of a contribution required to the administrative fund or sinking fund should be confirmed or varied,
- (c) to determine the number of members of the executive committee and to elect the executive committee,
- (d) to decide if any matter or class of matter is to be determined by the owners corporation in general meeting,
- (e) to decide whether the by-laws for the strata scheme should be altered or added to,
- (f) to decide whether a strata managing agent should be appointed by the owners corporation and, if a strata managing agent is to be appointed, which functions of the owners corporation should be delegated to the strata managing agent,
- (g) to consider the accounting records and the last financial statements prepared,
- (h) to decide whether an auditor should be appointed,
- (i) to decide whether insurance of the kind referred to in section 88 (2) should be taken out.

### **4 What documents and records must be produced at first annual general meeting?**

- (1) An original owner or lessor required to convene a meeting under this Division must not fail to deliver to the owners corporation at its first annual general meeting the following:
- (a) all plans, specifications, certificates (other than certificates of title for lots), diagrams and other documents (including policies of insurance) obtained or received by the owner and relating to the parcel or building,
  - (b) the certificate of title for the common property, the strata roll and any notices or other records relating to the strata scheme, if they are in the owner's or lessor's possession or under the owner's or lessor's control,

(c) the accounting records and the last preceding financial statements prepared.

Maximum penalty: 10 penalty units.

- (2) This section does not require an original owner or lessor to deliver to the owners corporation any documents that exclusively evidence rights or obligations of the original owner or lessor and that are not capable of being used for the benefit of the owners corporation or any of the other owners.

## **5 What happens if first annual general meeting not held?**

- (1) The Adjudicator may, on application, appoint by order a person nominated by the applicant (and who has consented to that nomination) to convene and hold a meeting of the owners corporation if a meeting of the owners corporation has not been convened and held in accordance with clause 2.
- (2) The meeting is to be convened and held within the time specified in the order.
- (3) An application under this section may be made by an owners corporation, an owner or a mortgagee of a lot.

## **Division 2 Requirements relating to holding of other meetings**

### **6 Owners corporation to convene annual general meetings**

- (1) An owners corporation is to cause annual general meetings to be convened and held in accordance with Division 3 of Part 2.
- (2) A meeting does not fail to be an annual general meeting merely because it is not held within the time required by this Act.

## **Part 2 Provisions relating to procedure for meetings**

### **Division 1 General provisions relating to procedure for meetings**

#### **7 Definitions**

- (1) In this Part:

**priority vote**, in relation to a lot, means a vote on a motion that relates to insurance, budgeting or fixing of a levy, that will require expenditure above the prescribed amount by the owners corporation or on any matter that requires a special or unanimous resolution by:

- (a) the mortgagee of the lot under a mortgage shown on the strata roll as having priority over any other mortgage, and over any covenant charge, shown on the strata roll in relation to the lot, or
- (b) the covenant chargee of the lot under a covenant charge shown on the strata roll

as having priority over any mortgage shown on the roll in relation to the lot, or

(c) the covenant chargee of the lot under a covenant charge shown on the strata roll without any mortgage being shown on the roll in relation to the lot.

- (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 11.
- (3) In this Part, a reference to a person entitled to vote on a matter at a meeting of the owners corporation is taken to be a reference to a person entitled to vote on a motion other than a motion requiring a unanimous resolution, unless otherwise specified.

## **8 Notices of general meeting**

- (1) Notice of a general meeting must state that a vote at a meeting by the owner of a lot does not count if a priority vote in respect of the lot is cast in relation to the same matter.
- (2) The notice must state that an owner of a lot or a person with a priority vote in respect of a lot may not vote at the meeting on a motion (other than a motion requiring a unanimous resolution) unless payment has been made before the meeting of all contributions levied on the owner, and any other amounts recoverable from the owner, in relation to the lot that are owing at the date of the notice.
- (3) The notice must state:
  - (a) if the addressee is not a corporation—voting and other rights conferred by this Schedule may be exercised in person or by proxy, or
  - (b) if the addressee is a corporation—voting and other rights conferred by this Schedule may be exercised only by the company nominee in person, or by proxy appointed by the corporation.
- (4) If the addressee of the notice is the first mortgagee, or a covenant chargee, of a lot, the notice must state:
  - (a) the name of the owner of the lot, and
  - (b) the address of the lot, and
  - (c) the place at which the meeting is to be held.
- (5) The notice is to set out the provisions of this Act for determining the quorum at a general meeting.

## **9 Restriction on moving motion or nominating candidate**

- (1) A person is not entitled to move a motion at a meeting or to nominate a candidate for election as a member of the executive committee unless the person is entitled to vote

on the motion or at the election.

- (2) Subclause (1) does not prevent the owner of a lot from moving a motion or nominating a candidate even if the lot is subject to a mortgage or charge.

## **10 Persons entitled to vote at general meetings**

- (1) **Who has voting rights?** Each owner, and each person entitled to a priority vote, has voting rights that may be exercised at a general meeting of the owners corporation, but only if the owner or person is shown on the strata roll and, in the case of a corporation, the company nominee is shown on the strata roll.
- (2) **Exercise of voting rights by joint first mortgagees or joint covenant chargees** Voting rights may be exercised at the meeting by joint first mortgagees or joint covenant chargees only by proxy (who may be one of them) duly appointed by all of them jointly.
- (3) **Exercise of voting rights by owner, first mortgagee or covenant chargee** The voting rights of an owner, first mortgagee or covenant chargee of a lot (other than a joint owner, mortgagee or covenant chargee) may be exercised:
- (a) unless the owner, mortgagee or covenant chargee is a corporation—in person or by proxy, or
  - (b) if the owner, mortgagee or covenant chargee is a corporation—by the company nominee in person, or by proxy appointed by the corporation.
- (4) **Exercise of voting rights by joint owners to be by proxy** The voting rights of joint owners of a lot may not be exercised by them individually but may be exercised:
- (a) by a proxy (who may be one of them), or
  - (b) as provided by subclause (5).
- (5) **Other circumstances in which joint owners may exercise voting rights** If, on a vote at a general meeting, the rights of joint owners of a lot are not exercised by a proxy as referred to in subclause (4), one of them may act as such a proxy:
- (a) if the other joint owners are absent or such of them as are present give their consent, or
  - (b) if paragraph (a) does not apply—if he or she is the owner first named on the strata roll as one of the joint owners.
- (6) **Exercise of voting rights by owners of successive estates in lot** If there are owners of successive estates in a lot, only the owner of the first estate may vote at a general meeting.
- (7) **Exercise of voting rights where owner holds lot as trustee** If the owner of a lot holds it as trustee, a person beneficially entitled may not vote at a general meeting.

- (8) **Voting rights may not be exercised if contributions not paid** A vote at a general meeting (other than a vote on a motion requiring a unanimous resolution) by an owner of a lot or a person with a priority vote in respect of the lot does not count unless payment has been made before the meeting of all contributions levied on the owner, and any other amounts recoverable from the owner, in relation to the lot that are owing at the date of the notice for the meeting.
- (9) **Effect of casting of priority vote** If a priority vote is cast in relation to a lot, a vote on the same matter by the owner of the lot does not count. However, a priority vote has no effect unless at least 2 days' written notice of intention to exercise the priority vote at the particular meeting has been given to the owner of the lot.
- (10) **Effect of section 118 (notice to owners corporation of right to vote)** This clause does not confer a right to vote on a person deprived of the right by failing to comply with section 118.
- (11) **Definition of motion** In this clause, ***motion*** means a motion submitted at a general meeting of an owners corporation or on any election of members of the executive committee.

## 11 Proxies

- (1) **Who is a "duly appointed proxy"?** A person is a duly appointed proxy for the purposes of this Part if the person is appointed as a proxy by an instrument in the form prescribed by the regulations.
- (2) **Form of proxy** The prescribed form is to make provision for the giving of instructions on:
- (a) whether the person appointing the proxy intends the proxy to be able to vote on all matters and, if not, the matters on which the proxy will be able to vote, and
  - (b) how the person appointing the proxy wants the proxy's vote to be exercised on a motion for the appointment or continuation in office of a strata managing agent.
- (3) **Proxy to be given to secretary of owners corporation** The instrument is ineffective unless it is given to the secretary of the owners corporation at or before the first meeting in relation to which the instrument is to operate and it contains the date on which it was made.
- (4) **Period for which proxy effective** An instrument appointing a proxy has effect for the period commencing with the day on which it takes effect and ending with the later of the first anniversary of that day and the conclusion of the second annual general meeting held after that day, unless it is sooner revoked or a shorter period is provided by the instrument.
- (5) **Proxy cannot vote if person appointing proxy votes** A proxy cannot exercise a vote in

relation to a matter if the person who appointed the proxy is exercising personally a power to vote on that matter.

- (6) **Effect of subsequent proxy** An instrument made by a person appointing a proxy has no effect if the person makes a later instrument appointing a proxy and delivers it to the secretary of the owners corporation in accordance with subclause (3).
- (7) **Proxy limited by instrument of appointment** If the instrument appointing a proxy limits the manner in which the proxy may vote at a meeting, a vote by the proxy that does not observe the limitation is invalid.
- (7A) **Other limits on exercise of proxy** A vote by a proxy who is a caretaker, an on-site residential property manager or a strata managing agent is invalid if it would obtain or assist in obtaining a pecuniary interest for, or confer or assist in conferring any other material benefit on, the proxy.
- (7B) For the purposes of subclause (7A), **material benefits** include, but are not limited to, the following:
- (a) an extension of the term or an additional term of appointment of the proxy as caretaker, on-site residential property manager or strata managing agent,
  - (b) an increase in the remuneration of the proxy,
  - (c) a decision of the owners corporation not to proceed with, to withdraw, to delay, to compromise or to settle litigation or other legal proceedings relating to the proxy,
  - (d) any other decision of the owners corporation that affects litigation or other legal proceedings relating to the proxy.
- (8) **Proxy may demand poll** A duly appointed proxy may vote on a show of hands or demand a poll.
- (9) **Powers of proxies** A person duly appointed as a proxy:
- (a) if entitled to vote otherwise than as a proxy—may also vote in his or her own right, and
  - (b) if appointed as proxy for more than one person—may vote separately as a proxy in each case.

## 12 Quorum

- (1) A motion submitted at a general meeting of an owners corporation must not be considered, and an election must not be held, unless there is a quorum present to consider and vote on the motion or on the election.
- (2) There is a quorum for considering and voting on such a motion or at such an election only if:



- (a) at least one-quarter of the number of persons entitled to vote on the motion or at the election is present, either personally or by duly appointed proxy, or
  - (b) at least one-quarter of the aggregate unit entitlement of the strata scheme is represented by the persons who are present and entitled to vote on the motion or at the election, either personally or by duly appointed proxy.
- (3) However, if there is more than one owner in the strata scheme and the quorum calculated in accordance with subclause (2) is less than 2 persons the quorum is 2 persons entitled to vote on the motion or at the election.
- (4) If a quorum, as provided by subclause (2), is not present within the next half-hour after the relevant motion or business arises for consideration at the meeting, the meeting stands adjourned for at least 7 days.
- (5) If a quorum, as provided by subclause (2), is not present within the next half-hour after the time fixed for the adjourned meeting, the persons present personally or by duly appointed proxy and entitled to vote constitute a quorum for considering that motion or business.

### **13 Adjournments**

- (1) A general meeting of an owners corporation may be adjourned for any reason if a motion is passed at the meeting for the adjournment.
- (2) If a general meeting of the owners corporation is adjourned (including where the meeting is adjourned because of clause 12 (4)):
- (a) the time and place at which the adjourned meeting is to be resumed must be fixed by the person who was presiding at the meeting or, in the case of a meeting that is adjourned because of clause 12 (4), by the person who would have presided at the meeting but for the lack of a quorum, and
  - (b) notice of that time and place must be served by the Secretary on the members of the owners corporation at least 1 day prior to the meeting.
- (3) The notice is to set out the provisions of this Act for determining the quorum at a general meeting.

### **14 Motions out of order**

The chairperson at a general meeting of an owners corporation may rule a motion 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 relation to a motion to amend a motion, clause 35 (3) has not been

complied with in relation to the motion.

### **15 Chairperson to preside**

- (1) The chairperson of the owners corporation is to preside at any general meeting of the owners corporation at which the chairperson is present.
- (2) 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 is, while so presiding, taken to be the chairperson of the owners corporation.
- (3) The chairperson does not have a casting vote in relation to any motion but may vote in his or her own right if otherwise entitled.

### **16 Chairperson to announce names of persons entitled to vote**

If requested to do so by a person present and entitled to vote at a general meeting of the owners corporation, the chairperson must, before submitting a motion to the meeting or the holding of the election of members of the executive committee, announce the names of the persons who are entitled to vote on that motion or at that election.

### **17 Counting of votes on election of executive committee**

- (1) An election of members of the executive committee is to be decided according to a majority in number of the votes cast at the election with a person entitled to vote having one vote for each lot in respect of which the person is entitled to vote, unless a poll is demanded by a person present and entitled to vote at the meeting.
- (2) However, if at the time of the meeting at which the election is held the original owner is the owner of not less than one-half of the lots, the original owner or, where the original owner is a corporation, a company nominee of the corporation has, on an election of the executive committee at that meeting, one vote for each 3 lots in respect of which the original owner is entitled to vote (ignoring any fraction).
- (3) If a poll is demanded by a person present and entitled to vote at the meeting:
  - (a) the election is to be decided according to the value of the votes cast, and
  - (b) the value of a vote cast by a person entitled to vote in respect of a lot is equal to the unit entitlement of that lot.
- (4) However, the value of the vote cast by the original owner who at the time of the meeting is the owner of lots the sum of whose unit entitlements is not less than one-half of the aggregate unit entitlement is one-third of the value that, but for this subclause, the owner's vote would have under subclause (3) (ignoring any fraction).

## **18 Counting of votes on motions**

- (1) A motion put to a general meeting of an owners corporation is to be decided according to a majority in number of the votes cast for and against the motion with each person having one vote for each lot in respect of which the person is entitled to vote, unless subclause (2) applies.
- (2) If a poll is demanded by a person present and entitled to vote at the meeting or the motion is for a resolution that, to be effective, must be a special resolution:
  - (a) the motion is to be decided according to the value of the votes cast for and against the motion, and
  - (b) the value of a vote cast by a person entitled to vote in respect of a lot is equal to the unit entitlement of that lot.
- (3) However, if the original owner is the owner at the time of the meeting of lots of which the sum of the unit entitlements is at least one-half of the aggregate unit entitlement, the value of the vote of the original owner, or of a person having a priority vote in relation to any of those lots, is one-third of the value it would have had under subclause (2) (ignoring any fraction).

## **19 Polls**

- (1) A poll demanded under clause 17 or 18 is to be taken in such manner as the chairperson thinks fit.
- (2) A poll may be demanded either before or after a vote decided by a majority in number has been taken.
- (3) A demand for a poll may be withdrawn by the person who made it.

## **20 Chairperson's declaration of vote**

The declaration of the chairperson of the result of the voting on any motion submitted at a general meeting of the owners corporation, otherwise than on a poll, is conclusive without proof of the votes recorded for or against the motion.

## **21 General meetings valid if attended only by chairperson**

A general meeting of an owners corporation is, subject to the provisions of this Schedule relating to the quorum of the owners corporation, validly held even though the only person present at the meeting is the chairperson of the owners corporation.

## **22 Electronic transmission of documents**

- (1) Documents relating to a meeting of the owners corporation (such as proxies) may be transmitted to the secretary of the owners corporation by facsimile.

- (2) In this clause, **facsimile** includes any electronic communication device that transmits information in a form from which written material is capable of being reproduced with or without the aid of any other device or article.

### **23 Amendment or revocation of unanimous or special resolutions**

A unanimous resolution or special resolution of an owners corporation may not be amended or revoked except by a subsequent unanimous resolution or special resolution, as the case may be.

However, a unanimous resolution of an owners corporation dealing with common property may be amended by a special resolution.

### **24 Duties of original owner until executive committee elected**

Until the offices of chairperson, secretary and treasurer of the owners corporation are filled or until the expiration of the first executive committee meeting held after the first annual general meeting, whichever first happens, the functions conferred on the holders of those offices must be exercised and performed by the original owner or by the original owner's agent duly authorised in writing.

## **Division 2 Special provisions relating to procedure for first annual general meeting**

### **25 Definitions**

In this Division:

**business**, in relation to the first annual general meeting, means the items in the agenda referred to in clause 3.

**meeting**, in relation to an owners corporation, means the first annual general meeting of the owners corporation.

### **26 Inspection of strata roll by original owner**

For the purpose of preparing the notices referred to in clause 27, an original owner (whether or not he or she has ceased to be an owner) or an agent authorised in writing by the original owner is entitled to inspect the strata roll without making payment or written application.

### **27 Persons to whom notice of general meeting must be given**

- (1) Notice of the meeting must, at least 14 days before the meeting, be served on each owner and each first mortgagee and covenant chargee shown on the strata roll.
- (2) Nothing in this clause requires an original owner to serve on himself or herself a notice of the meeting.

## **28 Notice of meeting**

Notice of the meeting must set forth as the agenda of the meeting the items referred to in clause 3 only.

## **29 Restriction on moving motion or nominating candidate**

A motion must not be submitted to a meeting unless it relates to the business of the meeting.

## **Division 3 Special provisions relating to procedure for meetings other than first annual general meeting**

### **30 Definition**

In this Part:

**meeting** means a meeting of an owners corporation other than the first annual general meeting of the owners corporation.

### **31 When general meetings of owners corporation are required to be held**

- (1) An annual general meeting of an owners corporation must be held in each year:
  - (a) on a date not earlier than one month before and not later than one month after each anniversary of the first annual general meeting, or
  - (b) if the Adjudicator has made an order under section 152 varying the time at which the meeting must be held, in accordance with the order.
- (2) A general meeting of an owners corporation (in this clause referred to as an **extraordinary general meeting**), which is not an annual general meeting, may be convened by the executive committee at any time.
- (3) The secretary of an executive committee or, in the secretary's absence, any member of the executive committee must convene an extraordinary general meeting as soon as practicable after receiving a requisition for such a 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.

### **32 Persons to whom notice of general meeting must be given**

- (1) Notice of a general meeting of an owners corporation must, at least 7 days before the meeting, be served on each owner.
- (2) Notice of a general meeting of an owners corporation must also be served, within that 7-day period, on each first mortgagee and covenant chargee shown on the strata roll if an item on the agenda for the meeting requires a special or unanimous resolution of

the owners corporation.

- (3) If a member of the executive committee other than the secretary receives a requisition to convene an extraordinary general meeting of the owners corporation in accordance with this Schedule, the member may serve the notice on behalf of the executive committee.
- (4) Nothing in this clause requires an owner to serve on himself or herself a notice of a general meeting.

### **33 Notice of general meeting to include copy of previous minutes**

Notice of a general meeting must be accompanied by a copy of the minutes of the latest general meeting if the notice is to an owner who has not previously been given a copy of those minutes or who, before the notice is given, makes a request for a copy of those minutes that has not been complied with.

### **34 Special requirements for notice of annual general meeting**

Notice of an annual general meeting must:

- (a) be accompanied by a copy of the last financial statements prepared by the owners corporation together with any relevant auditor's report, and
- (b) include a form of motion for adoption of those financial statements, and
- (c) include the information referred to in section 98 (2) (d) in relation to each current insurance policy held by the owners corporation, and
- (d) include a form of motion to consider the appointment of an auditor and the taking out of insurance of the kind referred to in section 88 (2) if insurance of that kind has not already been taken out, and
- (e) include a form of motion for the election of the executive committee, and
- (f) include a form of motion to decide the number of members of the executive committee.

### **35 Forms of motions**

- (1) Notice of a general meeting must include, or be accompanied by:
  - (a) a form of motion to confirm the minutes of the last general meeting of any kind, and
  - (b) if the meeting has been convened to elect an executive committee for the owners corporation, a form of motion for the election of the executive committee, and
  - (c) except in the case of a meeting referred to in paragraph (b), a form of motion of

each other motion to be considered at the meeting.

- (2) The notice must clearly indicate which motions require a special resolution for their passage and which motions require a unanimous resolution for their passage.
- (3) A motion must 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.

### **36 Requisition for motion to be included on agenda for general meeting**

- (1) Any person entitled to vote at a general meeting of an owners corporation on a motion that does not require a unanimous resolution may, by notice in writing served on the secretary of the executive committee, require inclusion in the agenda of the next general meeting of the owners corporation of a motion set out in the notice and the secretary must comply with the notice.
- (2) The secretary must give effect to the requirement of the notice.
- (3) Subclause (1) does not require the inclusion of a motion on the agenda of a general meeting for which notices have already been given in accordance with this Schedule but in that case the motion must be included in the agenda of the next general meeting after that.
- (4) For the purposes of subclause (1), an owner of a lot who, but for the fact that the lot is subject to a mortgage or covenant charge, would be entitled to vote at a general meeting of the owners corporation is entitled to vote at that meeting.

### **37 Meetings of owners corporation before first annual general meeting**

- (1) Until the first annual general meeting of the owners corporation, the secretary of the owners corporation may convene an extraordinary general meeting and must 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 (clauses 31 and 34 excepted) apply to and in respect of a meeting referred to in this clause so far as those provisions are not inconsistent with, or incapable of applying to, such a meeting.

## **Schedule 3 Constitution of executive committee of the owners**

## **corporation and meetings of executive committee**

(Section 20)

### **Part 1 Provisions relating to constitution of executive committee**

#### **1 Constitution of executive committee for strata scheme with 2 lots**

- (1) This clause applies to an executive committee for a strata scheme comprising 2 lots.
- (2) The executive committee is to consist of:
  - (a) the owner of each lot that has only one owner, and
  - (b) one co-owner of each lot owned by co-owners, and
  - (c) the company nominee of each lot owned by a corporation.
- (3) The co-owner of a lot is a member of the executive committee if the other co-owners have consented to that co-owner being the member or, in the absence of consent, the co-owner is the co-owner first named on the strata roll.

#### **2 Constitution of executive committees for strata schemes with more than 2 lots**

- (1) This clause applies to an owners corporation for a strata scheme comprising more than 2 lots.
- (2) The executive committee is to consist of such number of members, being not more than 9, as the owners corporation may determine.
- (3) The members of an executive committee must be elected at each annual general meeting of the owners corporation.
- (4) A person is not eligible for election as a member of an executive committee unless the person is:
  - (a) an individual who is an owner,
  - (b) a company nominee of a corporation that is an owner, or
  - (c) an individual who is not an owner but who is nominated for election by an owner who is not a candidate for election.
- (5) A person who is co-owner of a lot may not be a candidate for election as a member of the executive committee unless the person is nominated for office:
  - (a) by an owner who is not a co-owner of the lot, or
  - (b) by a co-owner of the lot who is not a candidate for election as a member.
- (6) An owner of a lot who is not a co-owner of the lot may nominate himself or herself for



election as a member of the executive committee.

- (7) If an executive committee for an owners corporation is constituted before the first annual general meeting of the owners corporation, the following provisions apply:
- (a) the members of the executive committee are to be elected at a general meeting of the owners corporation,
  - (b) the provisions of Schedule 2 relating to the election of members of executive committees apply to and in respect of that election,
  - (c) the provisions of this Schedule (clause 2 (2) and (3) excepted) apply to and in respect of the executive committee and its members,
  - (d) without limiting the operation of clause 4, a member of the executive committee vacates office as a member on another person being elected as a member in his or her place at a general meeting of the owners corporation.

### **3 Acting members of the executive committee**

- (1) A member of the executive committee may, with the consent of the executive committee, appoint an owner or company nominee of a corporation which is an owner to act in his or her place as a member at any meeting of the executive committee.
- (2) The owner or company nominee so appointed is, while so acting as a member, taken to be a member.
- (3) An owner or company nominee of a corporation may be so appointed whether or not he or she is a member of the executive committee already.
- (4) If a person so appointed is a member of the executive committee the person may, at any meeting of the executive committee, separately vote in the person's capacity as such a member and on behalf of the member in whose place the person has been appointed to act.

### **4 Vacation of office of member of executive committee**

- (1) A person elected as a member of an executive committee vacates office as a member:
  - (a) if the person was an owner at the time of election and the person ceases to be an owner, or
  - (b) if the person was not an owner at the time of election or was a company nominee and the individual who nominated the person for election or the corporation for which the person is a company nominee ceases to be an owner or notifies the owners corporation in writing that the person's office is vacated, or
  - (c) on the receipt by the owners corporation from the person of notice in writing of

the person's resignation as a member, or

- (d) at the end of the next meeting at which a new executive committee is elected by the owners corporation, or
- (e) if the owners corporation, in accordance with a special resolution, determines that the person's office as a member is vacated.

- (2) When a vacancy occurs in the office of a member of an executive committee (otherwise than by reason of subclause (1) (d)), the owners corporation must appoint a person eligible for election as a member to fill the vacancy. Any person so appointed holds office, subject to this clause, for the balance of his or her predecessor's term of office.

## **5 Appointment of chairperson, secretary and treasurer of executive committee**

- (1) A person must not be appointed as chairperson, secretary or treasurer unless the person is a member of the executive committee.
- (2) A person may be appointed to one or more of the offices of chairperson, secretary and treasurer.
- (3) A person appointed as chairperson, secretary or treasurer holds office as such until:
  - (a) the person ceases to be a member of the executive committee, or
  - (b) the receipt by the owners corporation from the person of notice in writing of the person's resignation from that office, or
  - (c) another person is appointed by the executive committee to hold that office,whichever first happens.

## **Part 2 Provisions relating to meetings of executive committee**

### **6 Notice of executive committee meetings**

- (1) An executive committee must give notice of its intention to hold a meeting at least 72 hours before the time fixed for the meeting by displaying the notice on the notice board or, if the owners corporation is not required by the by-laws to maintain a notice board, by giving written notice to each owner and executive committee member.
- (2) The notice must specify when and where the meeting is to be held and contain a detailed agenda for the meeting.

### **7 Executive committee meetings may be required to be convened**

- (1) The secretary of an owners corporation or, in the secretary's absence, any member of the executive committee must convene a meeting of the executive committee if

requested to do so by not less than one-third of the members of the executive committee, within the period of time, if any, specified in the request.

- (2) If a member of the executive committee other than the secretary is requested to convene a meeting of the executive committee under this clause, the member may give, on behalf of the executive committee, the notice required to be given under clause 6.

#### **8 Chairperson to preside at meetings**

- (1) The chairperson presides at all meetings of the executive committee at which the chairperson is present and, if absent from any such meeting, the members of the executive committee present at that meeting must appoint one of their number to preside at that meeting during the absence of the chairperson.
- (2) The chairperson does not have a casting vote in relation to any motion but may vote in his or her own right as a member of the executive committee.

#### **9 Quorum for executive committee meetings**

- (1) A motion submitted at a meeting of an executive committee must not be considered unless there is a quorum present to consider and vote on the motion or on the election.
- (2) The quorum for considering and voting on a motion submitted at a meeting of an executive committee is one if there is only one member of the executive committee.
- (3) The quorum for considering and voting on a motion submitted at a meeting of an executive committee that has 2 or more members is at least one-half of the members.
- (4) If 2 executive committee meetings are held at the same time, both meetings are invalid.
- (5) The quorum for meetings of the executive committee are to be calculated on the basis of the number of members last determined by the owners corporation to be elected to the executive committee.

#### **10 Voting in writing by members of executive committee**

- (1) A resolution is taken to have been validly passed even though the meeting at which the motion for the resolution was proposed to be submitted was not held if:
  - (a) notice was given in accordance with clause 6 of the intended meeting, and
  - (b) a copy of the motion for the resolution was served on each member of the executive committee, and
  - (c) the resolution was approved in writing by a majority of members of the executive committee.

(2) This clause is subject to clause 11 (2).

#### **11 Decisions of executive committee**

- (1) Subject to this Act, the decision on any matter, where there is only one member of the executive committee, of that member or, if there are 2 or more members of an executive committee, of the majority of the members voting on that matter is the decision of the executive committee at any meeting of an executive committee at which a quorum is present.
- (2) A decision of an executive committee has no force or effect if, before that decision is made, notice in writing is given to the secretary of the executive committee by one or more owners, the sum of whose unit entitlements exceeds one-third of the aggregate unit entitlement, that the making of the decision is opposed by those owners.

#### **12 Records and minutes to be kept**

An executive committee must cause to be kept a record of its decisions and of any notices given to its secretary under clause 11 (2) and full and accurate minutes of its meetings.

#### **13 Adjournment of meetings**

- (1) A meeting of the executive committee may be adjourned for any reason if a motion is passed at the meeting for the adjournment.
- (2) Notice of when and where the adjourned meeting is to take place must be displayed on the notice board or, if the owners corporation is not required by the by-laws to maintain a notice board, must be given in writing to each owner at least 1 day prior to the meeting.

#### **14 Owners' attendance at executive committee meetings**

An owner or, where that person is a corporation, any company nominee of the corporation is entitled to attend a meeting of the executive committee but may not address the meeting unless authorised by resolution of the executive committee.

#### **15 Minute of certain resolutions to be included in executive committee's minutes**

The executive committee must cause to be included in its minutes a minute of all resolutions passed in accordance with this Schedule.

#### **16 Display of minutes**

- (1) If the owners corporation is required by the by-laws to maintain a notice board, the executive committee must:
  - (a) cause a copy of the minutes of a meeting of the executive committee to be displayed on the notice board within 7 days after the meeting, and

(b) cause a copy of a minute of any resolution passed in accordance with this Schedule to be displayed on the notice board within 7 days after it is passed.

- (2) A copy of a minute referred to in subclause (1) must be kept displayed on the notice board for a period of not less than 14 days.
- (3) If there is no notice board, the executive committee must give each owner a copy of a minute referred to in subclause (1) (a) or (b) within the period specified in that paragraph.

### **17 Acts and proceedings of executive committee valid despite certain circumstances**

Any act or proceeding of an executive committee done in good faith is, even though 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 executive committee, or
- (b) any defect in the appointment, or any disqualification of a member of the executive committee,

as valid as if the vacancy, defect or disqualification did not exist and the executive committee were fully and properly constituted.

## **Schedule 4 Savings, transitional and other provisions**

(Section 247)

### **Part 1 General**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

*Statute Law (Miscellaneous Provisions) Act (No 2) 2000*, but only in relation to the amendments made to this Act

*Strata Schemes Management Amendment Act 2002*

- (2) Such a provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or on a later date.
- (3) To the extent to which such a provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication, or

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done before the date of that publication.

## **Part 2 Provisions consequent on the enactment of this Act**

### **2 Owners corporations constituted under former provisions**

A body corporate constituted under:

- (a) section 54 of the *Strata Schemes (Freehold Development) Act 1973* before its amendment by the *Strata Schemes Management (Miscellaneous Amendments) Act 1996*, or
- (b) section 83 of the *Strata Schemes (Leasehold Development) Act 1986* before its amendment by the *Strata Schemes Management (Miscellaneous Amendments) Act 1996*,

is taken to have been constituted as an owners corporation under section 11 of this Act.

### **3 Pending proceedings and applications**

Any proceedings commenced but not determined or finalised under provisions of the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986* repealed by the *Strata Schemes Management (Miscellaneous Amendments) Act 1996* may be dealt with and determined as if that Act had not been amended by the *Strata Schemes Management (Miscellaneous Amendments) Act 1996*.

### **4 Previous orders made by Commissioner or a board**

- (1) An order made by the Commissioner or a strata titles board under the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986* is taken to have been made by an Adjudicator or the Strata Schemes Board under the corresponding provision of this Act.
- (2) Despite subclause (1):
- (a) Part 6 of Chapter 5 of this Act does not apply to such an order, and
- (b) the provisions of the *Strata Schemes (Freehold Development) Act 1973* and the *Strata Schemes (Leasehold Development) Act 1986* relating to the contravention of orders as in force immediately before their repeal continue to apply to such an order.

### **5 Previous decisions of owners corporations**

A decision, consent or approval of an owners corporation under the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986* before its amendment by the *Strata Schemes Management (Miscellaneous Amendments) Act 1996* is taken to have been made under this Act.

## **6 Levies**

- (1) Section 59 of the *Strata Schemes (Freehold Development) Act 1973* continues to apply to a contribution levied by an owners corporation under that Act before the repeal of that section.
- (2) Section 89 of the *Strata Schemes (Leasehold Development) Act 1986* continues to apply to a contribution levied by an owners corporation under that Act before the repeal of that section.
- (3) Part 3 of Chapter 3 does not apply to a contribution referred to in this clause.

## **7 Approved insurers**

An order under section 156 of the *Strata Schemes (Freehold Development) Act 1973* in force immediately before the repeal of that section is taken to have been made under section 95 of this Act.

## **8 References in other Acts and instruments**

A reference in any other Act or in any instrument to a body corporate constituted under the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986* (however expressed) is taken to be a reference to an owners corporation within the meaning of this Act.

## **9 Abolition of Strata Titles Boards**

A Strata Titles Board in existence immediately before the repeal of section 98A of the *Strata Schemes (Freehold Development) Act 1973* is abolished on the completion of any proceedings being heard by it.

## **10 Certain matters not affected by repeal of provisions**

Any act, matter or thing that, immediately before the repeal of a provision of the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986* by the *Strata Schemes Management (Miscellaneous Amendments) Act 1996* was done for the purposes of, or had effect under, that provision is taken to have been done for the purposes of, or to have effect under, this Act.

## **Part 3 Provisions consequent on amendment of Act**

### **11 Construction of references**

In any other Act or instrument:

- (a) a reference to the Strata Schemes Board is taken to be a reference to the Residential Tribunal, and
- (b) a reference to an order or declaration of the Residential Tribunal made in the exercise

of jurisdiction conferred by the *Strata Schemes (Freehold Development) Act 1973*, the *Strata Schemes (Leasehold Development) Act 1986* or this Act includes a reference to an order or declaration made by the Strata Schemes Board under any of those Acts and in force immediately before the commencement of the *Residential Tribunal Act 1998*, and

- (c) a reference to the Registrar of the Strata Schemes Board is taken to be a reference to the Registrar of the Residential Tribunal.

## **Part 4 Provisions consequent on Strata Schemes Management Amendment Act 2002**

### **12 Effect of certain common property management agreements**

- (1) Any agreement that was in force immediately before the commencement of Part 4A of Chapter 2 that, if entered into after that commencement, would be a caretaker agreement is taken to be a caretaker agreement appointing a caretaker.
- (2) However:
- (a) the caretaker is not required to be or have been entitled to exclusive possession of a lot or common property either while the agreement is in force or as a precondition to entering into the agreement, and
  - (b) section 40B (2) does not apply to such an agreement, and
  - (c) an application for an order under section 183A may not be made with respect to such an agreement on the ground that the period for which the agreement is in force is harsh, oppressive, unconscionable or unreasonable.

### **13 Effect of certain proxies**

- (1) In this clause, **the amending Act** means the *Strata Schemes Management Amendment Act 2002*.
- (2) Clause 11 (4) of Schedule 2, as amended by the amending Act, extends to an instrument appointing a proxy that was in force immediately before that subclause was amended by that Act.
- (3) Clause 11 (7A) and (7B) of Schedule 2, as inserted by the amending Act, extend to a proxy that was in force immediately before those subclauses were inserted by that Act.

## **Dictionary**

### **Part 1 Definitions**

**accounting records** means the accounting records required to be kept by an owners corporation



under section 103.

**Adjudicator** means a Strata Schemes Adjudicator appointed under Part 2 of Chapter 6.

**administrative fund** of an owners corporation means the fund established by that owners corporation under section 66.

**aggregate unit entitlement** of lots the subject of a strata scheme means the sum of the unit entitlements of those lots.

**approved insurer** means a person, or a person belonging to a class of persons, approved by the Minister under section 95.

**building**, in relation to a strata scheme or a proposed strata scheme, means a building containing a lot or proposed lot or part of a lot or of a proposed lot the subject of that scheme or proposed scheme.

**building management committee**, in relation to a strata scheme, means the building management committee established under the strata management statement for the scheme.

**by-laws** for a strata scheme means the by-laws in force in respect of the strata scheme.

**common property** means so much of a parcel as from time to time is not comprised in any lot.

**community scheme** means a community scheme under the [Community Land Development Act 1989](#).

**company nominee** of a corporation means the individual, if any, for the time being authorised under section 122 by the corporation.

**consent authority** has the same meaning as it has in the [Environmental Planning and Assessment Act 1979](#).

**covenant chargee**, in relation to a lot in a leasehold strata scheme, means a covenant chargee of a lease of the lot.

**Deputy Registrar** means a Deputy Registrar of the Tribunal.

**developer**, in relation to the strata scheme constituted on registration of the strata plan proposed under a development scheme, means the person who, for the time being, is:

- (a) the original owner, or
- (b) a person, other than the original owner, who is the owner of a development lot within the strata plan.

**development consent** has the same meaning as it has in the [Environmental Planning and Assessment Act 1979](#).

**development lot** means a lot in a strata plan (not being a lot in a stratum parcel) that is identified by a strata development contract 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 strata

development contract.

**Director-General** means the Director-General of the Department of Fair Trading.

**enrolled mortgagee** of a lot the subject of a freehold strata scheme or a lease of a lot the subject of a leasehold strata scheme means a person notice of whose mortgage has been given to the owners corporation for that strata scheme and whose name has been entered on the strata roll for that strata scheme as a mortgagee of that lot or lease, 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 strata scheme.

**executive committee** of an owners corporation means the executive committee of that owners corporation.

**exercise** a function includes perform a duty.

**financial institution** means a bank, building society or credit union.

**financial statements** means the financial statements prepared by an owners corporation in accordance with section 106.

**floor** includes a stairway or ramp.

**freehold strata scheme** means a strata scheme under the [Strata Schemes \(Freehold Development\) Act 1973](#).

**function** includes a power, authority or duty.

**initial period**, in relation to an owners corporation, means the period commencing on the day on which that owners corporation is constituted and ending on the day on which there are owners of lots the subject of the strata scheme concerned (other than the original owner) the sum of whose unit entitlements is at least one-third of the aggregate unit entitlement.

**interested person**, in relation to a freehold strata scheme, means any of the following:

- (a) the owners corporation for the strata scheme,
- (b) the chairperson, secretary or treasurer of the owners corporation (or of the executive committee of the owners corporation) of the strata scheme,
- (c) a strata managing agent for the strata scheme,
- (d) an owner 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.

**interested person**, in relation to a leasehold strata scheme, means any of the following:

- (a) the owners corporation for the strata scheme,
- (b) the chairperson, secretary or treasurer of the owners corporation (or of the executive committee of the owners corporation) of the strata scheme,
- (c) a strata managing agent for the strata scheme,
- (d) the lessor of the strata scheme,
- (e) an owner or sublessee of, a person having any other estate or interest in, or an occupier of, a lot in the strata scheme.

**interested person**, in relation to a strata scheme for a stratum parcel, includes the following:

- (a) the owners corporation or a strata managing agent for, an owner 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,
- (b) any other person for the time being bound by the strata management statement for the building.

**interim order** means an order under section 170.

**leasehold strata scheme** means a strata scheme under the [Strata Schemes \(Leasehold Development\) Act 1986](#).

**lessor of a leasehold strata scheme** has the same meaning as **lessor** has in the [Strata Schemes \(Leasehold Development\) Act 1986](#).

**local council**, in relation to land, means the council of the area under the [Local Government Act 1993](#) in which the land is situated.

**lot**:

- (a) in relation to a freehold strata scheme, has the same meaning as in the [Strata Schemes \(Freehold Development\) Act 1973](#), and
- (b) in relation to a leasehold strata scheme, has the same meaning as in the [Strata Schemes \(Leasehold Development\) Act 1986](#).

**mortgage**, in relation to a freehold strata scheme, means a charge, other than a statutory interest or a covenant charge, on a lot for securing money or money's worth.

**mortgage**, in relation to a leasehold strata scheme, means a charge, other than a statutory interest or covenant charge, on a lease of a lot for securing money or money's worth.

**mortgagee** of a lot in a leasehold strata scheme means a mortgagee of a lease of the lot.

**occupier** of a lot means any person in lawful occupation of the lot.

**on-site residential property manager** has the same meaning as in the [Property, Stock and Business Agents Act 2002](#).

**original owner** means:

- (a) in relation to a freehold strata scheme, the person by whom the parcel the subject of that scheme was held in fee simple at the time of registration of the strata plan to which the scheme relates, or
- (b) in relation to a leasehold strata scheme, the person who, immediately after registration of the strata plan concerned is the lessee of all the lots the subject of the scheme or the lessee of 2 or more of those lots (the sum of whose unit entitlements is more than two-thirds of the aggregate of the aggregate unit entitlement).

**owner** of a lot in a freehold strata scheme means:

- (a) except as provided by paragraph (b), a person for the time being recorded in the Register as entitled to an estate in fee simple in that lot, or
- (b) a person whose name has been entered on the strata roll as an owner in accordance with section 98.

**owner** of a lot in a leasehold strata scheme means:

- (a) except as provided by paragraph (b) or (c), a person for the time being recorded in the Register as entitled to a leasehold estate in the lot, or
- (b) a person whose name has been entered on the strata roll as a lessee in accordance with section 98, or
- (c) while a prescribed authority is taken by section 35 (1) of the *Strata Schemes (Leasehold Development) Act 1986* to be the lessee of the lot, that authority.

**owners corporation** means an owners corporation constituted under section 11.

**parcel** means:

- (a) except as provided in paragraph (b), the land from time to time comprising the lots and common property the subject of a 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 88D or 88E of the *Conveyancing Act 1919*.

**public authority** means a public or local authority that is constituted by or under an 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*.

**Registrar** means the Registrar of the Tribunal.

**retirement village** has the same meaning as in the *Retirement Villages Act 1999*.

**schedule of unit entitlement:**

- (a) in relation to a freehold strata scheme, has the same meaning as in the *Strata Schemes (Freehold Development) Act 1973*, and

(b) in relation to a leasehold strata scheme, has the same meaning as in the *Strata Schemes (Leasehold Development) Act 1986*.

**sinking fund** of an owners corporation means the fund established by the owners corporation under section 69.

**special resolution** means a resolution which is passed at a duly convened general meeting of an owners corporation and against which not more than one-quarter in value, ascertained in accordance with clause 18 (2) and (3) of Part 2 of Schedule 2, 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 Parliament of the Commonwealth, affecting a lot or common property and enforceable against an owner for the time being or the owners corporation, whether or not it has been recorded in the Register.

**strata development contract** means:

- (a) in relation to a freehold strata scheme, a strata development contract, as in force for the time being, registered under Division 2A of Part 2 of the *Strata Schemes (Freehold Development) Act 1973*, and
- (b) in relation to a leasehold strata scheme, a strata development contract, as in force for the time being, registered under Division 5 of Part 2 of the *Strata Schemes (Leasehold Development) Act 1986*.

**strata management statement** in relation to a strata scheme, means the strata management statement in force for the time being in respect of that strata scheme and registered under:

- (a) in the case of a freehold strata scheme, the *Strata Schemes (Freehold Development) Act 1973*, and
- (b) in the case of a leasehold strata scheme, the *Strata Schemes (Leasehold Development) Act 1986*.

**strata roll**, in relation to a strata scheme or a strata scheme which has been terminated, means the roll referred to in section 98 which relates to that scheme.

**strata scheme** means a freehold strata scheme or a leasehold strata scheme.

**stratum parcel**:

- (a) in relation to a freehold strata scheme, has the same meaning as in the *Strata Schemes (Freehold Development) Act 1973*, and
- (b) in relation to a leasehold strata scheme, has the same meaning as in the *Strata Schemes (Leasehold Development) Act 1986*.

**Supreme Court** means the Supreme Court of New South Wales.

**Tribunal** means the Consumer, Trader and Tenancy Tribunal established by the *Consumer, Trader and Tenancy Tribunal Act 2001*.

**unanimous resolution** means a resolution which is passed at a duly convened general meeting of an owners corporation and against which no vote is cast.

**unit entitlement** of 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 from common property or from another lot.

## **Part 2 Other expressions**

### **1 References to certain documents to be read as references to registered documents**

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 under the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*, or
- (b) to a notice of conversion is a reference to a notice registered as such under the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*,

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.

### **2 Certain accompanying instruments may be endorsed on other instruments**

Unless otherwise specifically provided by this Act, 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.

### **3 References to contiguous**

For the purposes of this Act, a strata scheme is contiguous with another strata scheme even if it is divided by, or separated from the other scheme by, a natural feature (such as a watercourse), a railway, a road, a public reserve or a drainage reserve.

### **4 References to certain matters in relation to strata schemes**

If, 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 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 strata scheme.