

# Strata Schemes Management Act 2015 No 50

[2015-50]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
*Statute Law (Miscellaneous Provisions) Act (No 2) 2017 No 63* (not commenced — to commence on 14.1.2018)
- **See also**  
*Property, Stock and Business Agents Amendment (Property Industry Reform) Bill 2017*

### Authorisation

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File last modified 1 January 2018

# Strata Schemes Management Act 2015 No 50



New South Wales

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# Strata Schemes Management Act 2015 No 50



New South Wales

An Act with respect to the management of strata schemes and disputes related to strata schemes and other matters; and to repeal the *Strata Schemes Management Act 1996*.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Strata Schemes Management Act 2015*.

### 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 as follows:

- (a) to provide for the management of strata schemes,
- (b) to provide for the resolution of disputes arising from strata schemes.

### 4 Definitions

(1) In this Act:

**accounting records** means the accounting records required to be kept by an owners corporation under section 96.

**administrative fund** of an owners corporation means the fund established by the owners corporation under section 73.

**aggregate unit entitlement** of lots in a strata scheme means the sum of the unit entitlements of the lots.

**approved insurer** means:

- (a) a general insurer within the meaning of the *Insurance Act 1973* of the Commonwealth, or
- (b) any other person prescribed by the regulations for the purposes of this definition.

**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 proposed lot, in the scheme or proposed scheme.

**building management committee** means a building management committee established for a building under a strata management statement for a strata scheme.

**building manager**—see section 66.

**building manager agreement**—see section 67.

**by-laws** means the by-laws in force for a strata scheme.

**capital works fund** of an owners corporation means the fund established by the owners corporation under section 74.

**change** a by-law—see section 133.

**common property**, in relation to a strata scheme or a proposed strata scheme, has the same meaning as it has in the [Strata Schemes Development Act 2015](#).

**common property rights by-law**—see section 142.

**community scheme** has the same meaning as it has in the [Community Land Development Act 1989](#).

**company nominee** of a corporation means an individual for the time being authorised under section 154 (1) by the corporation.

**connected person**—see section 7.

**covenant chargee** of a lot or development lot in a leasehold strata scheme means a covenant chargee of a leasehold estate of the lot.

**damage policy**—see section 160 (1).

**defective building work**—see section 190.

**developer** of the strata scheme constituted on registration of a strata plan proposed under a development scheme means the person who, for the time being, is:

- (a) the original owner of the strata scheme, or
- (b) a person, other than the original owner, who is the owner of a development lot within the strata plan.

**development lot** means a lot in a strata plan or strata plan of subdivision 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 for the contract.



**development scheme** means the scheme of development provided for, and represented by, a strata development contract.

**financial statements** means the financial statements prepared by an owners corporation in accordance with Division 3 of Part 5.

**floor** includes a stairway or ramp.

**freehold strata scheme** has the same meaning as it has in the [Strata Schemes Development Act 2015](#).

**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

**initial maintenance schedule** means the schedule prepared by the original owner under section 115.

**initial period** of an owners corporation of a strata scheme means the period:

- (a) commencing on the day the owners corporation is constituted, and
- (b) ending on the day there are owners of lots in the strata scheme (other than the original owner) the sum of whose unit entitlements is at least one-third of the aggregate unit entitlement.

**interested person**—see section 226.

**large strata scheme**—see section 6.

**leasehold strata scheme** has the same meaning as it has in the [Strata Schemes Development Act 2015](#).

**lessor** of a leasehold strata scheme has the same meaning as it has in the [Strata Schemes Development Act 2015](#).

**local council**, in relation to land, means:

- (a) the council of the area under the [Local Government Act 1993](#) in which the land is situated, or
- (b) a person declared by the regulations to be the local council for that land for the purposes of this Act or any specified provision of this Act.

**lot**, in relation to a strata scheme, has the same meaning as it has in the [Strata Schemes Development Act 2015](#).

**minor renovations**—see section 110.

**mortgage**, in relation to a lot in a strata scheme, has the same meaning as it has in

the *Strata Schemes Development Act 2015*.

**mortgagee**, in relation to a lot or development lot in a leasehold strata scheme, has the same meaning as it has in the *Strata Schemes Development Act 2015*.

**occupier** of a lot means a person in lawful occupation of the lot.

**officer** of an owners corporation means the chairperson, secretary or treasurer of the owners corporation.

**on-site residential property manager** has the same meaning as it has in the *Property, Stock and Business Agents Act 2002*.

**original owner:**

- (a) of a freehold strata scheme means the person who held the fee simple in the parcel the subject of that scheme when the strata plan for the scheme was registered, or
- (b) of a leasehold strata scheme means the person who, immediately after registration of the strata plan for the scheme, is entitled to a leasehold estate in all the lots in the scheme or is entitled to a leasehold estate in 2 or more lots in the scheme with total unit entitlements exceeding more than two-thirds of the aggregate unit entitlement of the lots in the scheme.

**owner** of a lot in a strata scheme means:

- (a) except as provided by paragraph (b) or (c), each person for the time being recorded in the Register as entitled to an estate in fee simple in the lot (in the case of a freehold strata scheme) or as entitled to a leasehold estate in the lot (in the case of a leasehold strata scheme), or
- (b) except as provided by paragraph (c), each person whose name is entered on the strata roll in accordance with section 178 as being entitled to an estate in fee simple in the lot (in the case of a freehold strata scheme) or as entitled to a leasehold estate in the lot (in the case of a leasehold strata scheme), or
- (c) each person who is taken by section 43 (1) of the *Strata Schemes Development Act 2015* to be the owner of the lot.

**owners corporation** means an owners corporation constituted under section 8 for a strata scheme.

**parcel** means:

- (a) in relation to a strata scheme, the land from time to time comprising the lots and common property in the scheme, and
- (b) in relation to a plan lodged for registration as a strata plan, the land comprised in

that plan.

**part strata parcel** has the same meaning as it has in the [Strata Schemes Development Act 2015](#).

**person present** at a meeting includes a person who is not personally present but is able to vote at the meeting by another means specified under clause 28 of Schedule 1 or clause 10 of Schedule 2.

**planning approval** means:

- (a) a development consent within the meaning of the [Environmental Planning and Assessment Act 1979](#), or
- (b) an approval under Part 3A or Part 5.1 of that Act.

**positive covenant** means a positive covenant imposed on land under section 88D or 88E of the [Conveyancing Act 1919](#).

**precinct scheme** has the same meaning as it has in the [Community Land Development Act 1989](#).

**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.

**registrar** means a registrar of the Tribunal.

**retirement village** has the same meaning as it has in the [Retirement Villages Act 1999](#).

**schedule of unit entitlement**, in relation to a strata scheme, has the same meaning as it has in the [Strata Schemes Development Act 2015](#).

**Secretary** means:

- (a) the Commissioner for Fair Trading, Department of Finance, Services and Innovation, or
- (b) if there is no person employed as Commissioner for Fair Trading—the Secretary of the Department of Finance, Services and Innovation.

**special resolution**—see section 5.

**strata committee** of an owners corporation means the strata committee of that owners corporation established under this Act.

**strata development contract** has the same meaning as it has in the [Strata](#)

*Schemes Development Act 2015.*

**strata information certificate**—see section 184 (1).

**strata interest notice**—see section 22 (1).

**strata management statement** has the same meaning as it has in the *Strata Schemes Development Act 2015*.

**strata managing agent** means a person appointed as the strata managing agent for a strata scheme.

**strata plan** has the same meaning as it has in the *Strata Schemes Development Act 2015*.

**strata roll** for a strata scheme or a former strata scheme means the strata roll for that scheme established under Division 1 of Part 10.

**strata scheme** means a freehold strata scheme or a leasehold strata scheme.

**tenancy notice** means a notice given to an owners corporation under section 258.

**tenant** of a lot means a lessee, sublessee or assignee of a lot, but does not include an owner of the lot.

**the Register** has the same meaning as it has in the *Real Property Act 1900*.

**Tribunal** means the Civil and Administrative Tribunal.

**unanimous resolution**—see section 5.

**unfinancial owner** means an owner of a lot in a strata scheme who has not paid all contributions levied on the owner that are due and payable, and any other amounts recoverable from the owner, in relation to the lot.

**unit entitlement** of a lot in a strata scheme means the unit entitlement of the lot shown on the schedule of unit entitlement for the strata scheme.

**utility lot** means 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.

**wall** includes a door, window or other structure dividing a lot:

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

**Note—**

The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

- (2) A reference in this Act to the **registration of a strata plan or a strata plan of subdivision** is a reference to the registration of a plan as any such plan under the *Strata Schemes Development Act 2015*.
- (3) This Act applies to a leasehold strata scheme in the same way as it applies to a freehold strata scheme unless otherwise specified.
- (4) Notes included in this Act do not form part of this Act.

## 5 Resolutions of owners corporations

- (1) In this Act, a resolution of an owners corporation is a **special resolution** if:
  - (a) it is passed at a properly convened general meeting, and
  - (b) not more than 25% of the value of votes cast are against the resolution.
- (2) For the purposes of determining a special resolution, the value of a vote in respect of a lot is equal to the unit entitlement of the lot. However, if the total unit entitlement of lots of the original owner is not less than half of the aggregate unit entitlement, the value of the vote in respect of those lots is taken to be reduced by two-thirds (ignoring any fraction).
- (3) In this Act, a resolution of an owners corporation is a **unanimous resolution** if it is passed at a properly convened general meeting and no vote is cast against the resolution.

### Note—

A motion or election that is not required to be approved by a special resolution or unanimous resolution is passed by a simple majority of votes (see clause 14 of Schedule 1).

## 6 Meaning of “large strata scheme”

- (1) In this Act, **large strata scheme** means a strata scheme comprising more than 100 lots or another number of lots prescribed by the regulations for the purposes of this section.
- (2) When calculating the number of lots in a strata scheme for the purposes of this section, utility lots and lots used for the purposes of parking are not to be included in the calculation.
- (3) The regulations may contain provisions of a savings or transitional nature consequent on a change in the kinds of schemes that are large strata schemes.

## 7 Connected persons

- (1) For the purposes of this Act, a person (the **principal person**) is **connected** with another person if the other person:
  - (a) is a relative (within the meaning of the [Local Government Act 1993](#)) of the principal person or, if the principal person is a corporation, is a relative of the holder of an executive position in the corporation, or
  - (b) is employed or engaged by the principal person or is a business partner of the principal person, or
  - (c) if the principal person is a corporation, holds an executive position in the corporation, or
  - (d) is the employer of the principal person, or
  - (e) is employed or engaged by, or holds an executive position in, a corporation that also employs or engages the principal person or in which the principal person holds an executive position, or
  - (f) has any other connection or association with the principal person of a kind prescribed by the regulations.
- (2) However, the principal person is not connected with a member of an owners corporation, or the strata committee of an owners corporation, merely because of any dealing, contact or arrangement the member has with the principal person in the capacity of a member of the owners corporation or strata committee.
- (3) In this section, **executive position** in a corporation means the position of director, manager or secretary of the corporation, or any other executive position of the corporation, however those positions are designated.

## Part 2 Managing body for strata schemes—owners corporation

### Division 1 Constitution of owners corporation

#### 8 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* of the Commonwealth 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.

## **Division 2 Management of strata schemes**

### **9 Owners corporation responsible for management of strata scheme**

- (1) The owners corporation for a strata scheme has the principal responsibility for the management of the scheme.
- (2) The owners corporation has, for the benefit of the owners of lots in the strata scheme:
  - (a) the management and control of the use of the common property of the strata scheme, and
  - (b) the administration of the strata scheme.
- (3) The owners corporation has responsibility for the following:
  - (a) managing the finances of the strata scheme (see Part 5),
  - (b) keeping accounts and records for the strata scheme (see Parts 5 and 10),
  - (c) maintaining and repairing the common property of the strata scheme (see Part 6),
  - (d) taking out insurance for the strata scheme (see Part 9).

### **10 Functions of owners corporation generally**

- (1) An owners corporation has such other functions as may be conferred or imposed on it by or under this or any other Act.
- (2) An owners corporation must not delegate any of its functions to a person unless the delegation is specifically authorised by this Act.

### **11 Other management bodies and persons who assist the owners corporation**

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

- (a) the strata committee of the owners corporation established in accordance with this Act,
- (b) a strata managing agent for the scheme appointed in accordance with Part 4,
- (c) a building manager for the scheme appointed in accordance with Part 4.

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

- (1) The owners corporation for a strata scheme may employ such persons as it thinks fit to assist it in the exercise of any of its functions.
- (2) The 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 or any other law for the exercise of that function.

## **13 Functions that may only be delegated to member of strata committee or strata managing agent**

- (1) The following functions of an owners corporation, strata committee or officer of an owners corporation may be delegated to or conferred only on a member of the strata committee or a strata managing agent:
  - (a) the preparation of estimates for the purposes of section 79,
  - (b) the levying of contributions,
  - (c) the receiving of, acknowledging of, banking of or accounting for money paid to the owners corporation,
  - (d) having custody of any money paid to the owners corporation or making payments from any such money,
  - (e) the taking out of insurance required or permitted by this Act,
  - (f) the conduct of meetings of the owners corporation and handling of correspondence,
  - (g) the maintenance of records required to be kept under this Act,
  - (h) such other functions as may be prescribed by the regulations.
- (2) This section is subject to sections 56 and 101.

### **Note—**

Section 101 enables some of these functions to be exercised by certain other specified persons.

## **Division 3 Meetings of owners corporation**

### **14 First AGM must be held within 2 months after initial period**

- (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 accordance with this Act and the regulations, not later than 2 months after the end of the initial period.

Maximum penalty: 10 penalty units.



- (2) An original owner or lessor who fails to comply with this section remains liable to the penalty for that contravention even if the Tribunal makes an order under this Division or a meeting is convened and held in accordance with the order or otherwise.
- (3) An original owner or lessor required to convene the first annual general meeting of an owners corporation must give at least 14 days notice of the first annual general meeting to:
  - (a) each other owner and each first mortgagee and covenant chargee shown on the strata roll, and
  - (b) each tenant of a lot in the strata scheme whose name has been notified under a tenancy notice as a tenant of the lot to the owners corporation in accordance with this Act.

### **15 Agenda for first AGM**

The agenda for the first annual general meeting of an owners corporation must include the following items and may include other items:

- (a) to decide whether the amount of a contribution required to be made to the administrative fund or capital works fund should be confirmed or varied,
- (b) to discuss the preparation of the 10-year capital works fund plan,
- (c) to determine the number of members of the strata committee and to elect the strata committee,
- (d) to decide whether insurance taken out by the owners corporation should be confirmed, varied or extended,
- (e) to decide whether insurance referred to in section 165 (2) should be taken out by the owners corporation,
- (f) to decide if any matter or class of matter is to be determined by the owners corporation in general meeting,
- (g) to decide whether the by-laws for the strata scheme should be altered or added to,
- (h) to decide whether a strata managing agent should be appointed by the owners corporation and, if appointed, what functions of the owners corporation should be delegated to the strata managing agent,
- (i) if there is a strata managing agent, a form of motion to consider the report by the agent as to whether, and what, commissions have been paid to the agent or are likely to be payable to the agent for the following 12 months,
- (j) to decide whether a building manager should be appointed and, if appointed, what functions the building manager should exercise,

- (k) to receive the documents required to be provided under section 16,
- (l) to consider the accounting records and last financial statements prepared,
- (m) to consider the initial maintenance schedule,
- (n) to consider building defects and rectification,
- (o) to appoint an auditor or to decide whether an auditor should be appointed,
- (p) any item prescribed by the regulations for the purposes of this section.

**16 Documents and records to be provided to owners corporation at first AGM**

- (1) An original owner or lessor of a strata scheme required to convene a meeting under this Division must, not later than 48 hours before its first annual general meeting, deliver to the owners corporation the following:
  - (a) all plans, specifications, occupation certificates or other certificates (other than certificates of title for lots), diagrams, depreciation schedules and other documents (including policies of insurance) relating to the parcel or any building on the parcel,
  - (b) without limiting paragraph (a), all planning approvals, complying development certificates and related endorsed plans, approvals, “as built” drawings, compliance certificates (within the meaning of the [Environmental Planning and Assessment Act 1979](#)), fire safety certificates and warranties relating to the parcel or any building, plant or equipment on the parcel,
  - (c) the certificate of title for the common property, the strata roll and any notices or other records relating to the strata scheme,
  - (d) the initial maintenance schedule,
  - (e) any interim report or final report of a building inspector prepared under Part 11 and relating to any building on the parcel,
  - (f) any other document or item relating to the parcel or any building, plant or equipment on the parcel that is prescribed by the regulations for the purposes of this section.

Maximum penalty: 100 penalty units.

- (2) An original owner or lessor is only required under this section to deliver to the owners corporation a thing if that thing is in the possession or control of the original owner or lessor or may be obtained by the original owner or lessor by taking reasonable steps to do so.
- (3) 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.

#### **17 Tribunal may order initial documents to be provided**

The Tribunal may, on application by an owners corporation, order an original owner or lessor required to convene a meeting under this Division to provide to the owners corporation a thing that was required to be but was not delivered to the owners corporation in accordance with this Division.

#### **18 AGM must be held**

An owners corporation must hold an annual general meeting once in each financial year of the corporation.

#### **19 Other general meetings**

- (1) The secretary or a strata committee of an owners corporation may convene a general meeting (that is not an annual general meeting) of the owners corporation at any time.
- (2) The secretary of the owners corporation, or another officer if the secretary is absent, must convene a general meeting (that is not an annual general meeting) of the owners corporation as soon as practicable, and not later than 14 days after, receiving a qualified request.
- (3) A meeting may be convened on a qualified request even if the first annual general meeting has not been held.
- (4) A request is a **qualified request** for the purposes of this section if it is made by one or more owners of a lot or lots in the strata scheme having a total unit entitlement of at least one-quarter of the aggregate unit entitlements.

#### **20 Tribunal may appoint person to hold first AGM and other meetings**

- (1) The Tribunal may, on application by an owners corporation or an owner or mortgagee of a lot in a strata scheme, order a person to convene and hold a meeting of the owners corporation within the time specified in the order if a meeting has not been convened and held in accordance with this Act.
- (2) The person who is to convene and hold the meeting is to be a person nominated by the applicant, or appointed by the Tribunal, who has consented to the nomination or appointment.

#### **21 Unanimous or special resolutions to be amended or revoked in same way**

- (1) A unanimous resolution or special resolution of an owners corporation about a matter

that is required by or under this Act or the by-laws of a strata scheme to be determined by a resolution of that kind cannot be amended or revoked other than by a subsequent resolution of the same kind.

- (2) However, a unanimous resolution of an owners corporation dealing with common property may be amended by a special resolution.

## **22 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 an owners corporation must give the owners corporation written notice of that interest (a ***strata interest notice***).
- (2) **Contents of strata interest notice** The strata interest 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 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 this Act, is to be exercised by a nominee, the nominee's full name and address for service of notices.

### **Note—**

An address for service of notices may be an Australian postal address or an electronic address, including an email address (see section 261).

- (3) **Other matters to be specified in notice** The strata interest 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 written notice given to 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 notice given to 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.

### 23 Meeting procedures and voting

Other procedures for general meetings of the owners corporation and voting at those meetings are set out in Schedule 1.

### 24 Order invalidating resolution of owners corporation

(1) The Tribunal may, on application by an owner or first mortgagee of a lot in a strata scheme, make an order invalidating any resolution of, or election held by, the persons present at a meeting of the owners corporation if the Tribunal considers that the provisions of this Act or the regulations have not been complied with in relation to the meeting.

(2) The Tribunal may, on application by an owner or first mortgagee of a lot in a strata scheme, make an order invalidating any resolution of, or election held by, the persons present at a meeting of the owners corporation if the Tribunal considers that the provisions of Part 10 (other than Division 6 or 7) of the *Strata Schemes Development Act 2015* have not been complied with in relation to the meeting.

(3) The Tribunal may refuse to make an order under this section only if it considers:

(a) that the failure to comply with the provisions of this Act or the regulations, or of the *Strata Schemes Development Act 2015*, did not adversely affect any person, and

(b) that compliance with the provisions would not have resulted in a failure to pass the resolution or affected the result of the election.

(4) The Tribunal may not make an order invalidating a resolution under subsection (2) if an application for an order has been made under Division 6 of Part 10 of the *Strata Schemes Development Act 2015* in relation to the same or a related matter.

- (5) The Tribunal may not make an order under this section invalidating a decision by an owners corporation to approve, or not to approve, the appointment of a building inspector under Part 11.

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

- (1) The Tribunal may, on application by a person entitled to vote on a motion for a resolution of an owners corporation at a general meeting, order that a resolution passed at the general meeting be treated as a nullity on and from the date of the order.
- (2) The Tribunal must not make the order unless the Tribunal is 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.
- (3) An application for an order may not be made unless:
- (a) an application for mediation of the dispute was made not later than 28 days after the date of the meeting at which the resolution was passed, or
  - (b) if an application for mediation was not made, the application for the order was made not later than 28 days after the date of the meeting at which the resolution was passed.
- (4) If a resolution that is to be treated as a nullity by an order changes the by-laws and the order has been recorded in the Register under this Act, 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 change had not been made.
- (5) Subsection (4) is subject to the by-laws having been or being changed in accordance with this Act and to any relevant order made by a superior court.
- (6) The Tribunal may not make an order under this section if an application for an order has been made under Division 6 of Part 10 of the [Strata Schemes Development Act 2015](#) in relation to the same or a related matter.
- (7) The Tribunal may not make an order under this section invalidating a decision by an owners corporation to approve, or not to approve, the appointment of a building inspector under Part 11.

## **Division 4 Limitation on functions during initial period**

### **26 Restrictions on powers of owners corporation during initial period**

- (1) An owners corporation for a strata scheme 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 this Division:
  - (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 capital works fund,
  - (c) appoint a strata managing agent or a building manager 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 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 (other than subsection (1) (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 140 places restrictions on the making, amendment and repeal of by-laws during the initial period.

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

- (1) The Tribunal may, on application, make an order:
  - (a) waiving, varying or extinguishing a restriction relating to the initial period of an owners corporation (whether or not imposed by this Act or the *Strata Schemes Development Act 2015*), and
  - (b) authorising any matter to be done in relation to the waiving, varying or extinguishing of that restriction.
- (2) The application may be made by the owners corporation, the original owner or an owner of a lot in the strata scheme or a proposed strata scheme.
- (3) Written notice of an application must be given to:
  - (a) the owners corporation and each owner of a lot in the strata scheme or proposed strata scheme to which the application relates, unless the owners corporation or the owner is the applicant, and
  - (b) each registered mortgagee of a lot in the strata scheme and any mortgagee specified on the strata roll for the lot and any covenant chargee having the benefit of a covenant charge affecting a lot, and
  - (c) any other persons that the Tribunal directs.
- (4) The Tribunal may order that notice of an application be dispensed with if the Tribunal considers it appropriate in the circumstances of the case. Any person to whom notice is given is entitled to appear and be heard on the hearing of the application.
- (5) Notice of an application is not required to be given to a mortgagee specified on the strata roll for a lot if the rights of the person as a mortgagee:
  - (a) are suspended for the time being because of a sub-mortgage, particulars of which are specified on the strata roll, or
  - (b) have been terminated because of an instrument, particulars of which are specified on the strata roll.

## **Division 5 Effect of termination order on owners corporation**

### **28 Termination of strata scheme**

- (1) An owners corporation for a strata scheme that is subject to an order under the *Strata Schemes Development Act 2015* for the termination of the strata scheme 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.

## **Part 3 Strata committee of owners corporation**

### **Division 1 Constitution of strata committee**

#### **29 Owners corporation to appoint strata committee**

- (1) An owners corporation must appoint a strata committee of the owners corporation in accordance with this Act.
- (2) The owners corporation may appoint the strata committee before the first annual general meeting of the owners corporation.
- (3) The members of the strata committee must be elected at the first annual general meeting of the owners corporation whether or not members were appointed before that meeting.
- (4) If there is no strata 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.

#### **30 Members of strata committee**

- (1) The strata committee of an owners corporation is to consist of the number of persons determined by the owners corporation (not being more than 9).
- (2) The strata committee of a large strata scheme must consist of at least 3 members.
- (3) A strata committee for a strata scheme comprising 2 lots is to consist of the following persons:
  - (a) the owner of each lot who is a sole owner or the company nominee of a lot if the sole owner is a corporation,
  - (b) for each lot that is owned by co-owners, the co-owner nominated by the other co-owners or (if the co-owner nominated is a corporation) the company nominee of that co-owner, or if there is no such nomination, the co-owner first named on the strata roll.
- (4) The elected members of a strata committee must be elected at each annual general meeting of the owners corporation.
- (5) Nomination for election as a member of a strata committee (other than a tenant representative) may be made before or at the meeting at which the election is held.

- (6) The regulations may provide for the procedures for nomination of members of the strata committee.

### **31 Persons who are eligible to be appointed or elected to strata committee**

- (1) The following persons are eligible for appointment or election to the strata committee of an owners corporation:
- (a) an individual who is a sole owner of a lot in the strata scheme,
  - (b) a company nominee of a corporation that is a sole owner of a lot in the strata scheme,
  - (c) an individual who is a co-owner of a lot or a company nominee of a corporation that is a co-owner of a lot in the strata scheme, if the person is nominated for election by an owner who is not a co-owner of the lot or by a co-owner of the lot who is not a candidate for election as a member,
  - (d) an individual who is not an owner of a lot in the strata scheme, if the person is nominated for election by an owner of a lot who is not a member, or is not seeking election as a member, of the strata committee.
- (2) To avoid doubt, an individual who is a sole owner of a lot may nominate himself or herself, and an owner that is a corporation may nominate the corporation's company nominee, for election as a member of the strata committee.
- (3) A sole owner of a lot in a strata scheme may not nominate more than one person for election as a member of the strata committee, except as provided by subsection (5).
- (4) Only one co-owner (including a company nominee of a co-owner) of the same lot may be a member of a strata committee at the same time, except as provided by subsection (5).
- (5) A person who is an owner of more than one lot in the strata scheme may nominate one person for election as a member of the strata committee for each lot for which the person is an owner.

### **32 Persons who are not eligible to be appointed or elected to strata committee**

- (1) The following persons are not eligible for appointment or election to a strata committee or to act as members of a strata committee unless they are also the owners of lots in the strata scheme:
- (a) the building manager for the strata scheme,
  - (b) a person who acts as an agent for the leasing of a lot or lots in the strata scheme to tenants,
  - (c) a person who is connected with the original owner of the strata scheme or the

building manager for the scheme, unless the person discloses that connection at the meeting at which the election is held and before the election is held or before the person is appointed to act as a member,

(d) any other person prescribed by the regulations for the purposes of this section.

- (2) An owner of a lot in a strata scheme who was an unfinancial owner at the date notice was given of the meeting at which the election of a strata committee is to be held and who did not pay the amounts owing by the owner before the meeting is not eligible for appointment or election to the strata committee.
- (3) A person who becomes ineligible for appointment or election to a strata committee after being appointed or elected to the strata committee must disclose that fact to the secretary or chairperson of the owners corporation as soon as possible after becoming aware of that fact.
- (4) A disclosure by a person under this section, other than a disclosure that is made at a meeting of an owners corporation or strata committee, is to be made by written notice given to the secretary or chairperson.

### **33 Tenant representatives**

- (1) This section applies to a strata scheme if there are tenants (being tenants notified in a tenancy notice given in accordance with this Act) for at least half of the number of lots in the scheme.
- (2) The tenants of lots in a strata scheme (being tenants notified in a tenancy notice given in accordance with this Act) may nominate one tenant representative for the strata committee.
- (3) The tenant representative on a strata committee, in that capacity:
  - (a) is not entitled to vote on decisions of the committee or to put a motion or nominate a person for office, and
  - (b) is not entitled to act as an officer of the owners corporation for committee purposes, and
  - (c) cannot be counted in determining whether there is a quorum of the committee.
- (4) The strata committee, at any meeting or for the purpose of all meetings, may determine that a tenant representative is not entitled to be present when the following matters are being discussed or determined:
  - (a) financial statements and auditor's reports,
  - (b) levying of contributions,
  - (c) recovery of unpaid contributions,

(d) a strata renewal proposal under Part 10 of the *Strata Schemes Development Act 2015* or any related matter,

(e) any other financial matter specified by the regulations.

(5) The regulations may provide for the procedures for nomination of a tenant representative, including the term for which a tenant representative is appointed, the notification of an appointment and the end of an appointment.

#### **34 Acting members of strata committee**

(1) A member of a strata committee may, with the consent of the strata committee, appoint an owner or company nominee of a corporation that is an owner who is eligible to be a member to act in his or her place as a member at any meeting of the strata committee.

(2) The owner or company nominee appointed is, while so acting as a member, taken to be a member.

(3) An owner or company nominee of a corporation may be appointed whether or not he or she is already a member of the strata committee.

(4) If a person so appointed is a member of the strata committee, the person may, at any meeting of the strata 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.

#### **35 Vacation of office of elected member of strata committee**

(1) An elected member of a strata committee vacates office as a member:

(a) if the person was eligible to be a member at the time of election and the person ceases to be so eligible (other than because the person is an unfinancial 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 gives written notice to the owners corporation 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 strata 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, or

(f) if the person dies.

- (2) A strata committee may appoint a person eligible for election as a member to fill a vacancy in the office of a member of the strata committee, other than a vacancy arising under subsection (1) (d) or a vacancy in the office of an officer of the owners corporation. Any person so appointed holds office, subject to this section, for the balance of his or her predecessor's term of office.

**Note—**

Section 45 (2) provides for the filling of vacancies in the office of members who are officers of the owners corporation.

- (3) A special resolution that determines that the office of a member is vacated may relate to more than one member of a strata committee or to all members of a strata committee.

## **Division 2 Functions of strata committee**

### **36 Functions of strata committee**

- (1) A strata committee has the functions conferred on it by or under this or any other Act.
- (2) A decision of a strata committee is taken to be the decision of the owners corporation. However, in the event of a disagreement between the owners corporation and the strata committee, the decision of the owners corporation prevails.
- (3) The following decisions cannot be made by the strata 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.
- (4) 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 a strata committee holds office.

### **37 Duty of members of strata committee**

It is the duty of each member of a strata committee of an owners corporation to carry out his or her functions for the benefit, so far as practicable, of the owners corporation and with due care and diligence.

**Note—**

Section 260 provides protection from personal liability for members of strata committees who act in good faith.

### **38 Acts and proceedings of strata committee valid despite vacancies or defects**

- (1) This section applies if, when any act or proceeding of a strata committee was done, taken or commenced there was:
  - (a) a vacancy in the office of an officer of the owners corporation or any other member of the strata committee, or
  - (b) any defect in the appointment, or any disqualification, of any such officer or member.
- (2) Any act or proceeding of a strata committee done in good faith is as valid as if the vacancy, defect or disqualification did not exist and the strata committee were fully and properly constituted.

## **Division 3 Meetings of strata committee**

### **39 Convening meetings**

- (1) The secretary of the owners corporation may convene a meeting of the strata committee at any time.
- (2) The secretary of the owners corporation, or any other member of the strata committee, must convene a meeting of the committee if requested to do so by at least one-third of the members of the committee.
- (3) The meeting must be held:
  - (a) in the case of a large strata scheme, not later than 28 days after the request is made, or
  - (b) in the case of any other strata scheme, not later than 14 days after the request is made.

### **40 Meeting procedures and voting**

Other procedures for meetings of a strata committee and voting at those meetings are set out in Schedule 2.

## **Division 4 Office holders**

### **41 Strata committee to appoint officers**

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

- (3) A person may be appointed to one or more of the offices of chairperson, secretary and treasurer.
- (4) Nomination for election as an officer of the owners corporation may be made before or at the meeting at which the election is held.
- (5) The regulations may provide for the procedures for nomination of officers of the strata committee.

#### **42 Functions of chairperson of owners corporation**

The functions of the chairperson of an owners corporation include the following:

- (a) to preside at meetings of the owners corporation and the strata committee of the owners corporation,
- (b) to make determinations as to quorums and procedural matters at meetings of the owners corporation and the strata committee of the owners corporation.

#### **43 Functions of secretary of 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 the strata committee of the owners corporation 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 this Act,
- (e) to answer communications addressed to the owners corporation,
- (f) to convene meetings of the strata 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 of functions by the owners corporation or the strata committee of the owners corporation,
- (h) any other functions conferred on the secretary under any other Act or law.

#### **44 Functions of treasurer of owners corporation**

- (1) **General functions** 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 strata information certificate,
  - (d) to keep the accounting records and prepare the financial statements.
- (2) **Delegation by treasurer of functions** 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 strata committee of the owners corporation if:
- (a) the delegation is specifically approved by the strata committee, and
  - (b) the strata committee specifically approves of the function being delegated to that member, and
  - (c) the delegation is subject to any limitations as to time or otherwise that the strata committee requires.
- (3) While a delegate is acting in accordance with the terms of the delegation, the delegate is taken to be the treasurer of the owners corporation.
- (4) **Strata committee may require treasurer to exercise functions jointly** The strata committee of an owners corporation may, by a written notice given to 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.

#### **45 Vacation of office by officer**

- (1) An officer of an owners corporation vacates office as an officer:
- (a) if the person ceases to be a member of the strata committee, or
  - (b) on the receipt by the owners corporation from the person of written notice of the person's resignation as an officer, or
  - (c) if another person is appointed by the strata committee to hold that office, or
  - (d) if the owners corporation, by special resolution, declares that the person's office is vacated, or
  - (e) if the person dies.
- (2) A strata committee is to appoint a person who is a member of the strata committee, or who is eligible to be a member of the strata committee, to fill a vacancy in the office of an officer of an owners corporation, other than a vacancy referred to in



section 35 (1) (d). Any person so appointed holds office, subject to this section, for the balance of his or her predecessor's term of office.

#### **46 Payment of officers of owners corporation**

An owners corporation may pay to a person who is an officer of the owners corporation or another member of the strata committee of the owners corporation an amount determined by the owners corporation 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.

#### **47 Original owner to exercise officers' functions before appointment of officers**

The functions of the chairperson, secretary and treasurer of an owners corporation are to be exercised by the original owner of the strata scheme, or an agent of the original owner authorised in writing, until the offices are filled or until the end of the first annual general meeting of the owners corporation, whichever first occurs.

#### **48 Tribunal may order meeting if no officers or strata committee**

- (1) The Tribunal may, on application by an owner, mortgagee or covenant chargee of a lot in a strata scheme, make an order appointing a person to convene and hold a meeting of the owners corporation if there is not a chairperson, secretary and treasurer of the owners corporation, or if no strata committee exists, after the first annual general meeting of the owners corporation has been held.
- (2) The Tribunal may make any other ancillary orders it thinks fit, including the following orders:
  - (a) orders relating to giving notice of the meeting,
  - (b) orders relating to the person who is to preside at the meeting.
- (3) The person who is to convene and hold the meeting is to be a person nominated by the applicant, or appointed by the Tribunal, who has consented to the nomination or appointment.
- (4) The meeting is to be convened and held within the time (if any) specified in the order.
- (5) A person appointed by an order under this section to preside at a meeting is taken, while so presiding, to be the chairperson of the owners corporation.

## **Part 4 Strata managing agents and building managers**

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

#### **49 Appointment of strata managing agents**

- (1) An owners corporation for a strata scheme may appoint a person who is the holder of

a strata managing agent's licence under the *Property, Stock and Business Agents Act 2002* to be the strata managing agent of the scheme.

- (2) The appointment is to be made by instrument in writing authorised by a resolution at a general meeting of the owners corporation.
- (3) The developer of a strata scheme, or a person connected with the developer, is not entitled to be appointed as the strata managing agent of the scheme until after the end of the period of 10 years commencing on the date of registration of the strata plan.
- (4) A reference in this section to a strata managing agent's licence under the *Property, Stock and Business Agents Act 2002* includes a reference to a corporation licence under that Act that authorises the holder to act as, or carry on the business of, a strata managing agent.
- (5) An owner who is seeking appointment as a strata managing agent is not entitled to vote or cast a proxy vote on the appointment at a meeting of the owners corporation.

#### **50 Term of appointment of strata managing agents**

- (1) The term of appointment (including any additional term under an option to renew) of a strata managing agent for a strata scheme expires (if the term of the appointment does not end earlier or is not ended earlier for any other reason):
  - (a) if the strata managing agent is appointed by the owners corporation at the first annual general meeting, at the end of the period of 12 months following that appointment, or
  - (b) in any other case, at the end of the period of 3 years following the appointment.
- (2) A person may be reappointed by the owners corporation by resolution at a general meeting as the strata managing agent for a strata scheme at the end of the person's term of appointment.
- (3) The appointment of a strata managing agent may be terminated in accordance with the instrument of appointment if authorised by a resolution at a general meeting of the owners corporation.
- (4) The term of appointment of a strata managing agent may be extended by the strata committee for successive periods of up to 3 months after it would otherwise expire (but not for any period that would extend beyond the date of the next annual general meeting of the owners corporation) pending a decision as to the reappointment of the strata managing agent.
- (5) However, if a strata committee has extended a term of appointment of a strata managing agent under this section, the strata committee must give the strata

managing agent at least 1 month's notice of a decision not to reappoint the strata managing agent or not to further extend the appointment.

- (6) A strata managing agent must give the owners corporation written notice of the end of a term of appointment:
  - (a) at least 3 months before the end of the term of appointment, and
  - (b) at least 1 month before the end of each extension of a term permitted by this section.
- (7) An instrument of appointment of a strata managing agent for a period of 3 years (as referred to in subsection (1) (b)) is taken to include an option for the agent to extend the term of the appointment for a maximum period of 3 months after the end of the term of 3 years, if the owners corporation decides not to reappoint the agent and does not extend the term of appointment under subsection (4). The agent must give the owners corporation written notice of the exercise of the option.
- (8) A strata managing agent is not entitled to exercise an option under subsection (7) if the owners corporation gives the agent written notice that the agent will not be reappointed at least 3 months before the end of the term.
- (9) In this section, a reference to the **appointment** of a strata managing agent includes a reference to the reappointment of a strata managing agent.

#### **51 Transfer of functions of strata managing agent**

- (1) A strata managing agent may transfer his or her functions as a strata managing agent, but only if the transfer is authorised by a resolution at a general meeting of the owners corporation for the strata scheme.
- (2) A person to whom the functions are transferred is taken to be appointed under this Division as a strata managing agent for the strata scheme.
- (3) The term of appointment as a strata managing agent of the person to whom the functions are transferred ends on the same day as the term of the person by whom the functions were transferred would have ended if the transfer had not taken place.

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

#### **52 Owners corporation may delegate functions to strata managing agent**

- (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.
- (2) An owners corporation must not 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.
- (3) A delegation may be made subject to the conditions or limitations as to the exercise of all or any of the functions, or as to time or circumstances, that may be specified in the instrument of delegation.
- (4) An owners corporation may delegate the functions only if authorised to do so by a resolution at a general meeting.
- (5) An owners corporation may, if authorised to do so by a resolution at a general meeting, revoke or vary a delegation under this section.

### **53 Exercise of delegated functions by strata managing agent**

- (1) A function delegated under this Division may, while the delegation remains unrevoked, be exercised from time to time in accordance with the delegation.
- (2) Despite any delegation made under this Division, the owners corporation may continue to exercise all or any of the functions delegated.
- (3) Any act or thing done or suffered by a strata managing agent while acting in the exercise of a delegation under this Division:
  - (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.
- (4) This section is subject to section 56.

### **54 Functions of officers and strata committee may be given to strata managing agent**

- (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 strata committee of an owners corporation or the functions of those officers or the strata committee specified in the instrument.
- (2) However, the chairperson, secretary, treasurer and strata 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 strata committee conferred on the strata managing agent in accordance with this section:
  - (a) has the same effect as if it had been done or suffered by the chairperson, secretary, treasurer or strata committee, and
  - (b) is taken to have been done or suffered by the chairperson, secretary, treasurer or strata committee.
- (4) This section is subject to section 56.

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

- (1) A strata managing agent who exercises a function of the owners corporation or of an officer of the owners corporation must, immediately after its exercise, make a record specifying the function and the manner in which it was exercised.
- (2) The strata managing agent must give a copy of the records kept for the preceding 12 months to the owners corporation at least once each year.

#### **56 Exercise of functions of strata managing agent appointed by Tribunal**

If a strata managing agent is appointed by the Tribunal, or by an owners corporation on an order of the Tribunal, 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 it had been done or suffered by the person who, but for paragraph (a), could have exercised it.

#### **57 Breaches by strata managing agent**

- (1) If a strata managing agent has been delegated a function 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.
- (2) A strata managing agent must not, in connection with the provision of services as a strata managing agent or the exercise of functions as a strata managing agent, request or accept a gift or other benefit from another person for himself or herself or for another person.

Maximum penalty: 20 penalty units.

- (3) Subsection (2) does not apply to:

- (a) remuneration paid to a strata managing agent or an employee or contractor of a strata managing agent by an owners corporation, or
- (b) a monetary commission provided to a strata managing agent, if the provision of such a commission is in accordance with the terms of appointment of the strata managing agent by the owners corporation or has been otherwise approved by the owners corporation, or
- (c) a training service provided to, or paid for, a strata managing agent, if it was related to strata management functions and the provision or payment is in accordance with the terms of appointment of the strata managing agent by the owners corporation or has been otherwise approved by the owners corporation, or
- (d) a gift or other benefit that has a value that is less than the amount prescribed by the regulations for the purposes of this subsection.

(4) In this section:

**gift** has the same meaning as it has in Part 6 of the *Election Funding, Expenditure and Disclosures Act 1981*.

**training service** means a training course or service (including attendance at industry events such as conferences).

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

#### **58 Strata managing agent may be required to provide information about trust account and other accounts**

- (1) 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 the *Property, Stock and Business Agents Act 2002*:
  - (a) the name and number of the account,
  - (b) the name of the authorised deposit-taking 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.
- (2) 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 authorised deposit-taking 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.

**59 Provision of information about money received and other transactions**

- (1) 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.
- (2) An owners corporation may require a strata managing agent to provide full particulars of any specified transaction that has been entered into by the agent on behalf of the owners corporation.

**60 Disclosure of commissions and training services**

- (1) A strata managing agent for a strata scheme must report the following at the annual general meeting of the owners corporation for the scheme:
  - (a) whether any commissions or training services have been provided to or paid for the agent (other than by the owners corporation) in connection with the exercise by the agent of functions for the scheme during the preceding 12 months and particulars of any such commissions or training services,
  - (b) any such commissions or training services and the estimated amount or value of any such commissions or training services that the agent believes are likely to be provided to or paid for the agent in the following 12 months.

Maximum penalty: 20 penalty units.

**Note—**

It will be an offence for an agent to receive commissions or training services that are not of a kind permitted by the agent's terms of appointment or approved by the owners corporation (see section 57).

- (2) A strata managing agent must, as soon as practicable after becoming aware that commissions or training services provided to or paid for the agent (other than by the owners corporation) differ from the commissions or training services or any estimate of them disclosed at the annual general meeting, disclose to the strata committee the variation and give an explanation for the variation.

Maximum penalty: 20 penalty units.

- (3) The Tribunal may, on application by an owners corporation, order a strata managing agent to pay to the owners corporation:
- (a) the whole or part of the amount or value of any commissions or training services provided to or paid for the agent and not disclosed in accordance with this section, or
  - (b) the whole or part of the amount or value of any commissions or training services provided to or paid for the agent that are not of a kind or an amount disclosed by the agent under this section, if the Tribunal is satisfied that the disclosure of those things at the previous annual general meeting was not made in good faith.

- (4) In this section:

**training service** means a training course or service (including attendance at industry events such as conferences).

#### **61 Procedure for requiring information from strata managing agent**

- (1) An owners corporation is to require information from a strata managing agent under this Division by written notice given to the strata managing agent.
- (2) The notice must specify a member of the strata committee to whom the information is to be delivered.

#### **62 Offences**

- (1) A strata managing agent must comply with a notice to provide information under this Division by giving a written statement, containing the information required, within 14 days after the notice is given.

Maximum penalty: 20 penalty units.

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

Maximum penalty: 20 penalty units.

#### **63 Responsibility 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 2002](#) to carry on business as a strata managing agent or dies:



- (a) this Division (except section 59) applies to any person who is required by that Act to maintain a trust account in connection with the business of the former licensee, and
  - (b) this Division (except section 58 (1)) and section 188 apply to any person who is required by that Act to preserve records kept by the former licensee,
- and so apply as if the person concerned were the strata managing agent.

#### **64 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 5 years before notice requiring the information was given.

#### **65 Provision of other Act requiring agents to provide information not to apply to affairs of owners corporation**

Section 101 of the *Property, Stock and Business Agents Act 2002* does 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—**

Section 101 of the *Property, Stock and Business Agents Act 2002* enables a person directly concerned in a transaction with a licensee under that Act to require an itemised account of the transaction from the licensee.

### **Division 4 Building managers**

#### **66 Building managers**

- (1) A **building manager** is a person who assists in exercising any one or more of the following functions of the owners corporation:
  - (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 building manager if the person exercises those functions only on a voluntary or casual basis or as a member of the strata committee.
- (3) A person may be both a building manager and an on-site residential property manager.
- (4) A building manager may be a person who is entitled to exclusive possession (whether or not jointly with any other person) of a lot or common property in a strata scheme.
- (5) For the purposes of this Act, a person is taken to be a building manager for a strata scheme if the person meets the description of a building manager set out in this

section, regardless of whether the title given to the person's position is building manager, caretaker, resident manager or any other title.

#### **67 Appointment of building managers**

- (1) A building manager may be appointed for a strata scheme.
- (2) The appointment is to be made by instrument in writing (a **building manager agreement**) executed before or after the strata scheme commenced by the building manager 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, if executed after the strata scheme commenced.

#### **68 Term of appointment of building managers**

- (1) A building manager agreement (including any additional term under any option to renew it) expires (if the term of the appointment does not end earlier or is not ended earlier for any other reason):
  - (a) at the conclusion of the first annual general meeting of the owners corporation, if the agreement was executed before the meeting, or
  - (b) when 10 years have expired after it commenced to authorise the building manager to act under it, in any other case.
- (2) A person may be reappointed as building manager for a strata scheme at the end of the person's building manager agreement.
- (3) The appointment of a building manager may be terminated in accordance with the building manager agreement, if authorised by a resolution at a general meeting of the owners corporation.

#### **69 Transfer of functions of building manager**

- (1) A building manager may transfer his or her functions as a building manager to another person, but only if the transfer is authorised by a resolution at a general meeting of the owners corporation.
- (2) A person to whom those functions are transferred is taken to be appointed as a building manager by the building manager agreement.
- (3) The term of appointment as a building manager of the person to whom the functions are transferred ends on the same day as the term of the person by whom the functions were transferred would have ended if the transfer had not taken place.

## **70 Functions of building manager**

- (1) A building manager may, in accordance with the building manager agreement appointing the building manager, 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 building manager 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 building manager acting in accordance with a building manager agreement.

## **Division 5 General**

### **71 Interests must be disclosed by potential strata managing agents or building managers**

- (1) A person appointed as the strata managing agent or building manager for a strata scheme who has an interest that must be disclosed under this section must disclose the interest to the owners corporation before the appointment of the person.

Maximum penalty: 50 penalty units.

- (2) The following are interests that must be disclosed to the owners corporation by a person:
  - (a) that the person is connected with the original owner,
  - (b) any direct or indirect pecuniary interest in the strata scheme (other than an interest arising only from the prospective appointment).

### **72 Strata managing agent and building manager agreements may be terminated or varied by Tribunal**

- (1) The Tribunal may, on application by an owners corporation for a strata scheme, make any of the following orders in respect of an agreement for the appointment of a strata managing agent or building manager for the scheme:
  - (a) an order terminating the agreement,
  - (b) an order requiring the payment of compensation to a party to the agreement,
  - (c) an order varying the term, or varying or declaring void any of the conditions, of the agreement,
  - (d) an order that a party to the agreement take any action or not take any action under the agreement,

- (e) an order dismissing the application.
- (2) If the Tribunal makes an order terminating the agreement, the Tribunal may also order the strata managing agent or building manager to return to the owners corporation, within the period specified in the order, any documents or other records relating to the strata scheme that are in the possession of the agent or manager.
- (3) The Tribunal may make an order under this section on any of the following grounds:
  - (a) that the strata managing agent or building manager has refused or failed to perform the agreement or has performed it unsatisfactorily,
  - (b) that charges payable by the owners corporation under the agreement are unfair,
  - (c) that the strata managing agent has contravened section 58 (2),
  - (d) that the strata managing agent has failed to disclose commissions or training services (including estimated commissions or value of training services or variations and explanations for variations) in accordance with section 60 or has failed to make the disclosures in good faith,
  - (e) that the strata managing agent or building manager has failed to disclose an interest under section 71,
  - (f) that the agreement is, in the circumstances of the case, otherwise harsh, oppressive, unconscionable or unreasonable.

## **Part 5 Financial management**

### **Division 1 Funds and accounts of owners corporation**

#### **73 Administrative fund**

- (1) **Establishment of fund** An owners corporation must establish an administrative fund.
- (2) **Amounts payable to fund** 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,
  - (d) any monetary penalty payable to the owners corporation under this Act,
  - (e) the proceeds of any investment of the fund.
- (3) An owners corporation may also pay the following amounts into the administrative

fund:

- (a) any amounts paid to the owners corporation by way of discharge of insurance claims,
- (b) any income of the owners corporation (other than proceeds of any investment of the capital works fund),
- (c) any amount that may be, but is not required to be, paid into the fund under this Act.

(4) **Amounts payable from fund** An owners corporation may pay money from its administrative fund only for the following purposes:

- (a) payments of the kind for which estimates have been made under section 79 (1),
- (b) payments made in accordance with this Division on a distribution of a surplus in the fund,
- (c) payments to a member of the strata committee of the owners corporation in accordance with this Act,
- (d) other payments in connection with exercising its functions under this Act or the by-laws, or the *Strata Schemes Development Act 2015*, except payments that are permitted to be made from the capital works fund,
- (e) any monetary penalty payable by the owners corporation under this Act,
- (f) the transfer of money to the capital works fund or to pay expenditure that should have been paid from the capital works fund.

#### **74 Capital works fund**

(1) **Establishment of fund** An owners corporation must establish a capital works fund.

(2) **Amounts payable to fund** An owners corporation must pay the following amounts into the capital works 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 paid into the administrative fund,
- (c) any amounts paid to the owners corporation under Part 11,
- (d) any amount received by the owners corporation that is not required or permitted to be paid into the administrative fund,
- (e) the proceeds of any investment of the fund.

- (3) An owners corporation may also pay the following amounts into the capital works fund:
- (a) any income of the owners corporation,
  - (b) any amount that may be, but is not required to be, paid into the fund under this Act.
- (4) **Amounts payable from fund** An owners corporation may pay money from its capital works fund only for the following purposes:
- (a) payments of the kind for which estimates have been made under section 79 (2),
  - (b) payments made in accordance with this Division on a distribution of a surplus in the fund,
  - (c) payments of amounts for the purposes of Part 11,
  - (d) the transfer of money to the administrative fund or to pay expenditure that should have been paid from the administrative fund.
- (5) **Exemption** An owners corporation for a strata scheme comprising 2 lots need not establish a capital works 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.

#### **75 Investment of money in administrative fund or capital works fund**

- (1) An owners corporation may invest any money in its administrative fund or capital works fund in any manner permitted by law for the investment of trust funds or in any investment prescribed by the regulations.
- (2) Any interest received on an investment made under this section forms part of the fund to which the investment belongs.

#### **76 Use of administrative fund or capital works fund for purposes of other fund**

- (1) This section applies if the owners corporation for a strata scheme having more than 2 lots:
  - (a) transfers money from the administrative fund to the capital works fund or uses the administrative fund to meet expenditure that should have been met from the capital works fund, or
  - (b) transfers money from the capital works fund to the administrative fund or uses

the capital works fund to reimburse expenditure that should have been met from the administrative fund.

- (2) The owners corporation must, not later than 3 months after the transfer or use, determine the amount to be levied as a contribution to the fund from which the transfer or use was made to reimburse the amounts paid from the fund. Section 81 (3) and (5) apply to a contribution determined under this subsection.

#### **77 Distribution of surplus money in administrative fund or capital works fund**

- (1) An owners corporation for a strata scheme may, in accordance with a unanimous resolution, distribute between the owners any money in its administrative fund or capital works 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 other person entitled to receive it under this section must be made in the same proportion that the unit entitlement of the lot bears to the aggregate unit entitlement.
- (3) Any money distributed under this section 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 under this section.
- (4) The Tribunal may, on application by an owners corporation, an owner of a lot that is subject to a mortgage or covenant charge, or the mortgagee or covenant chargee concerned, make an order as to the payment of money under subsection (3).
- (5) An application under this section is to be made to, and determined by, the Supreme Court (and not the Tribunal) if:
  - (a) the title to land is in question otherwise than incidentally, or
  - (b) the matter is incidental to other proceedings being dealt with by the Court.

#### **78 Accounts 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 an authorised deposit-taking 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 Contributions by owners**

### **79 Estimates to be prepared of contributions to administrative and capital works 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, lawn mowing 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 capital works 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 replacement of roofing, guttering or fences and the like.

- (3) When estimating amounts needed to be credited to the administrative fund or the capital works 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.
- (4) An estimate prepared before the first annual general meeting of an owners



corporation is to take into account the initial maintenance schedule provided by the original owner for that meeting.

- (5) In estimating amounts to be credited to the capital works fund, an owners corporation is to take into account anticipated major expenditure identified in the 10-year plan for the capital works fund proposed under this Division.
- (6) An owners corporation of a large strata scheme must include in the estimates prepared at an annual general meeting:
  - (a) specific amounts in relation to each item or matter on which the owners corporation intends to spend money, or on which the owners corporation is aware money will be likely to be spent, in the period until the next annual general meeting, and
  - (b) a note as to any difference between the estimates and the 10-year plan for the capital works fund prepared under this Division and the reasons for the difference.

#### **80 Owners corporation to prepare 10-year capital works fund plan**

- (1) An owners corporation is to prepare a plan of anticipated major expenditure to be met from the capital works fund for a 10-year period commencing on the first annual general meeting of the owners corporation.
- (2) An owners corporation is to prepare a plan for each 10-year period following the 10-year period to which the first plan applied. The plan is to be prepared for the annual general meeting at which the period covered by the previous plan expires.
- (3) An owners corporation may, by resolution at a general meeting, review, revise or replace a 10-year plan prepared under this section and must review the plan at least once every 5 years.
- (4) A plan under this section is to include the following:
  - (a) details of proposed work or maintenance,
  - (b) the timing and anticipated costs of any proposed work,
  - (c) the source of funding for any proposed work,
  - (d) any other matter the owners corporation thinks fit,
  - (e) any other matter prescribed by the regulations for the purposes of this section.
- (5) A plan under this section is to be finalised by the end of the next annual general meeting of the owners corporation after the annual general meeting for which the plan is prepared.
- (6) An owners corporation may engage expert assistance in the preparation of a plan

under this section.

- (7) An owners corporation is, so far as practicable (and subject to any adjustment under this section), to implement each plan prepared under this section.

### **81 Owners corporation to set contributions to administrative and capital works funds**

- (1) The owners corporation must determine the amounts to be levied as a contribution to the administrative fund and the capital works 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 of a lot in the strata scheme a contribution to the administrative fund or capital works 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 the regular periodic instalments specified in the determination setting the amount of the contribution.

### **82 Individual contributions may be larger if greater insurance costs**

- (1) If the use to which a lot in a strata scheme 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 the premium.
- (2) The Tribunal may, on application, make an order for payment of contributions of a different amount to one or more contributions levied or proposed by an owners corporation on an owner if the Tribunal is of the opinion that the owner's consent has been unreasonably refused under this section.
- (3) An application for an order under this section may be made by the lessor of a leasehold strata scheme, an owners corporation, an owner of a lot or a mortgagee in possession.

### **83 Levying of contributions**

- (1) An owners corporation levies a contribution required to be paid to the administrative fund or capital works fund by an owner of a lot by giving the owner 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 82) by the owners in shares proportional to the unit entitlements of their respective lots.
- (3) Any contribution levied by an owners corporation becomes due and payable to the owners corporation on the date set out in the notice of the contribution. The date must be at least 30 days after the notice is given.
- (4) Regular periodic contributions to the administrative fund and capital works 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 given to the owner.

#### **84 Liability of persons other than owners for contributions**

- (1) If, at the time a person becomes the owner of a lot, another person is liable to pay a contribution in respect of the lot, the owner is jointly and severally liable with the other person for the payment of the contribution and any interest on the contribution.
- (2) A mortgagee or covenant chargee in possession of a lot is jointly and severally liable with the owner of the lot:
  - (a) for any regular periodic contributions to the administrative fund or capital works fund together with any interest on those contributions, and
  - (b) for any other contribution together with interest on that contribution taken to recover unpaid contributions, if the mortgagee or covenant chargee has been given written notice of the levy of the contribution, and
  - (c) for any costs payable as a debtor in respect of enforcement action to recover unpaid contributions.
- (3) Subsection (2) does not affect the liability of an owner of a lot for any contribution levied under this section.

#### **85 Interest, discounts on contributions and payment plans**

- (1) A contribution, if not paid when it becomes due and payable, bears until paid simple interest at an annual rate of 10% or, if the regulations provide for another rate, that other rate.
- (2) Interest is not payable if the contribution is paid not later than one month after it becomes due and payable.
- (3) However, an owners corporation may by resolution determine (either generally or in a particular case) that a contribution is to bear no interest.
- (4) An owners corporation may, by resolution at a general meeting, determine (either generally or in a particular case) that a person may pay 10% less of a contribution

levied if the person pays the contribution before the date on which it becomes due and payable.

- (5) An owners corporation may, by resolution at a general meeting, agree to enter into payment plans, either generally or in particular cases, for the payment of overdue contributions. A payment plan is to be limited to a period of 12 months but a further plan may be agreed to by the owners corporation by resolution.
- (6) The regulations may prescribe requirements for payment plans.
- (7) The existence of a payment plan does not limit any right of the owners corporation to take action to recover the amount of unpaid contributions.
- (8) The Tribunal or a court may, on application by an owner, order that no interest is chargeable on a specified contribution if the Tribunal or the court is satisfied that the owners corporation should reasonably have made a determination not to charge interest for the late contribution.

## **86 Recovery of unpaid contributions and interest**

- (1) The Tribunal may order the owner of a lot in the strata scheme, or other person, to pay a contribution that is payable by the owner or other person under this Act that is not paid at the end of 1 month after it becomes due and payable, together with any interest payable on that unpaid contribution and the reasonable expenses of the owners corporation incurred in recovering those amounts.
- (2) The Tribunal may make an order under subsection (1) only:
  - (a) on the application of the owners corporation, and
  - (b) if proceedings between the owners corporation and the owner of a lot in the strata scheme or other person are pending before the Tribunal.
- (2A) An owners corporation may, without obtaining an order under this section, recover as a debt in a court of competent jurisdiction, a contribution not paid at the end of 1 month after it becomes due and payable, together with any interest payable on that unpaid contribution and the reasonable expenses of the owners corporation incurred in recovering those amounts.

### **Note—**

Clause 6 of Schedule 4 to the [Civil and Administrative Tribunal Act 2013](#) provides for the transfer of proceedings between the Tribunal and a court which has jurisdiction (and vice versa) if the parties to the proceedings agree or if the Tribunal or court of its own motion or on the application of a party so directs.

- (3) Interest paid or recovered forms part of the fund to which the relevant contribution belongs.
- (4) An owners corporation must not take action to recover an amount under this section unless it has given the person against whom the action is to be taken at least 21 days

notice of the action.

- (5) The notice of the action must set out the following:
- (a) the amount of the contribution, interest or expenses sought to be recovered,
  - (b) the recovery action proposed,
  - (c) any other matter prescribed by the regulations for the purposes of this subsection.

### **87 Orders varying contributions or payment methods**

- (1) The Tribunal may, on application, make either or both of the following orders if the Tribunal 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) An application for an order may be made by the lessor of a leasehold strata scheme, an owners corporation, an owner or a mortgagee in possession.

### **88 Effect of order varying contributions where payments have been made**

If a contribution that is the subject of an order by the Tribunal under this Division 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.

### **89 Order requiring original owner to pay compensation for inadequate estimates and levies**

- (1) The Tribunal may, on application by the owners corporation for or an owner of a lot in the strata scheme, order the original owner of the strata scheme to pay compensation to the owners corporation if the Tribunal determines that the estimates and levies determined during the initial period for the purposes of determining and meeting expenditures relating to the scheme were inadequate to meet the actual or expected expenditures of the owners corporation.
- (2) The Tribunal must not make an order under this section if the original owner satisfies the Tribunal that the original owner used due care and diligence in determining the estimates and levies.
- (3) An application under this section must be made not later than 3 years after the end of

the initial period.

#### **90 Contributions for legal costs awarded in proceedings between owners and 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 the 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 the lots and in the proportions that are specified in the order.
- (3) 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) This Division (other than provisions relating to the amount of contributions) applies to and in respect of contributions levied under this section in the same way as it applies to other contributions levied under this Division.

#### **91 Information about contributions payable for retirement village**

An owners corporation of a strata scheme for a retirement village (within the meaning of the [Retirement Villages Act 1999](#)) must, if requested by the operator of the retirement village, give a statement in writing specifying the amount of current contributions levied on a particular lot in the strata scheme.

### **Division 3 Financial statements and accounting records of owners corporation**

#### **92 Owners corporation must prepare financial statements and statements of key financial information**

- (1) An owners corporation must cause financial statements, and a statement of key financial information, to be prepared for each reporting period for the administrative fund, the capital works fund and any other fund kept by the owners corporation.
- (2) The **reporting period** for financial statements or a statement of key financial information prepared under this Division is:
  - (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 Division and ends on a date that is not earlier than 2 months

before the next succeeding annual general meeting.

### **93 Requirements for financial statements**

- (1) The financial statements are to be prepared on a cash or accrual basis and 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 capital works fund,
  - (c) a statement of income and expenditure for any other fund kept by the owners corporation.
- (2) The financial statement for an administrative fund or capital works fund must specify the following:
  - (a) the fund, and the reporting period, for which it is prepared,
  - (b) the balance carried forward in the fund from the previous period,
  - (c) the particulars and amount of each item of income of the fund received during the current period,
  - (d) the particulars and amount of each item of expenditure from the fund during the current period,
  - (e) the amount of the contribution to the fund determined for each person liable to make such a contribution,
  - (f) the balance outstanding for each such contribution,
  - (g) the cash in the fund at the end of the current period,
  - (h) the balance of the fund,
  - (i) in respect of each liability to contribute to the fund—any unpaid arrears and any balance outstanding,
  - (j) the extent to which, at the end of the current period, the fund is in debit or credit.
- (3) The financial statements for any other fund must specify the following:
  - (a) the fund, and the reporting period, for which it is prepared,
  - (b) the balance carried forward in the fund from the previous period,
  - (c) the particulars and amount of each item of income of the fund received during the current period,
  - (d) the particulars and amount of each item of expenditure from the fund during the

current period,

- (e) the cash in the fund at the end of the current period,
- (f) the balance of the fund,
- (g) the extent to which, at the end of the current period, the fund is in debit or credit.

#### **94 Statement of key financial information**

- (1) The statement of key financial information for an administrative fund or capital works fund must be in the form prescribed by the regulations and specify the following matters:
  - (a) the fund, and the reporting period, for which it is prepared,
  - (b) the balance carried forward in the fund from the previous period,
  - (c) the total income of the fund received during the period,
  - (d) the total interest earned by the fund during the period,
  - (e) the total contributions paid to the fund during the period and the total of all arrears in contributions payable to the fund,
  - (f) the total expenditure for maintenance from the fund during the period,
  - (g) the total expenditure for administration costs from the fund during the period,
  - (h) the balance of the fund,
  - (i) the principal items of expenditure for maintenance proposed during the next year.
- (2) The statement of key financial information for any other fund must be in the form prescribed by the regulations and specify the following matters:
  - (a) the fund, and the reporting period, for which it is prepared,
  - (b) the balance carried forward in the fund from the previous period,
  - (c) the total income of the fund received during the period,
  - (d) the total interest earned by the fund during the period,
  - (e) the balance of the fund.

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

- (1) The owners corporation for a large strata scheme, or a strata scheme for which the annual budget exceeds \$250,000 (or another amount prescribed for the purposes of this section by the regulations), must ensure that the accounts and financial



statements of the owners corporation are audited before presentation to the annual general meeting.

- (2) The owners corporation for any other strata scheme may determine that the accounts and financial statements of the owners corporation are to be audited.
- (3) An audit of the accounts and financial statements of an owners corporation under this section must be carried out in accordance with the Australian Auditing Standards.
- (4) The regulations may specify the manner in which the annual budget of a strata scheme is to be determined for the purposes of this section.

## **Division 4 Accounting records**

### **96 Accounting records must be kept by owners corporation**

- (1) An owners corporation must keep accounting records in accordance with this Division.  
Maximum penalty: 5 penalty units.
- (2) The accounting records may be made and stored in the form determined by the owners corporation.
- (3) Separate accounting records must be kept for the administrative fund, the capital works fund and any other fund kept by the owners corporation.
- (4) The regulations may prescribe accounting records that are required to be kept by an owners corporation.

### **97 Receipts**

- (1) The treasurer of an owners corporation must, if requested to do so, issue a receipt for each payment received by the treasurer for the owners corporation and must cause a record to be kept of the details of such receipts.
- (2) Each receipt must contain the information prescribed by the regulations for the purposes of this section.

### **98 Transaction records**

- (1) The treasurer of an owners corporation must record particulars of money received or money disbursed by the owners corporation as soon as practicable after each transaction occurs.
- (2) The treasurer must balance the records of transactions and carry the balance forward at the end of each prescribed period.
- (3) At the end of each prescribed period, the treasurer must compare the entries in the records of transactions with the banking records for the account of the owners

corporation and enter in the records of transactions:

- (a) the amounts credited to the account and appearing in the banking records for which no receipt had been given, and
  - (b) the amounts debited to the account and appearing in the banking records for which no cheque had been drawn.
- (4) Any necessary reconciliation (showing the balance in the account of the owners corporation as indicated in the banking records, and adding any money received but not banked and deducting any cheques drawn but not presented for payment) must be entered by the treasurer in the record of transactions at the end of the entries for the relevant prescribed period.
- (5) In this section:

***prescribed period*** means 12 months or, if an annual general meeting of the owners corporation determines a shorter period, that shorter period.

## **99 Levy register**

The treasurer of an owners corporation must keep a levy register that includes, for each lot in the strata scheme (other than a utility lot), the following particulars in relation to contributions payable:

- (a) the date on which the contribution is due and payable,
- (b) the type of contribution and the period in respect of which it is to be made,
- (c) the amount of the contribution levied shown as a debit,
- (d) the amount of each payment shown as a credit,
- (e) the date on which each payment relating to the contribution is made,
- (f) whether a payment made was made in cash or in some other specified manner,
- (g) whether an amount paid comprised full payment or part payment,
- (h) details of any discount given for early payment,
- (i) the balance of the account.

## **Division 5 Financial functions generally**

### **100 Power to borrow money**

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

- (2) An owners corporation must not borrow money, or secure the payment of money and interest, unless a resolution approving the relevant loan has been passed at a general meeting of the owners corporation.

**101 Persons 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 accounting for, money of the owners corporation or the keeping of the books of account of the owners corporation unless the person is:

- (a) the treasurer of the owners corporation, or
- (b) a strata managing agent who is empowered to exercise the function, or
- (c) a person with whom the treasurer of the owners corporation is required by a decision of the strata committee to exercise the function jointly, and who is enabling the treasurer to comply with the decision, or
- (d) a member of CPA Australia, or a member of the Institute of Chartered Accountants Australia and New Zealand, authorised by the owners corporation to exercise the function, or
- (e) a member of the Institute of Public Accountants authorised by the owners corporation to exercise the function, or
- (f) during the initial period only—a person authorised by the owners corporation to exercise the function.

Maximum penalty: 5 penalty units.

**102 Limits on spending by large strata schemes**

- (1) An owners corporation for a large strata scheme must obtain at least 2 quotations in relation to proposed expenditure in respect of any one item or matter if the proposed expenditure will exceed the amount prescribed by the regulations for the purposes of this section.
- (2) An owners corporation for a large strata scheme must not spend on an item or matter an amount greater than the amount specified for the item or matter (plus 10%) in estimates provided for that item or matter at an annual general meeting.
- (3) The owners corporation may by a resolution passed at a general meeting remove the limitation imposed by subsection (2) generally or in relation to any particular item or matter.
- (4) This section does not apply to expenditure for emergency purposes, including (but not

limited to) the following:

- (a) burst or blocked water or sewerage pipes,
- (b) serious damage caused by fire or storm or any other natural disaster,
- (c) unexpected electrical or security system failure,
- (d) glass breakages that affect the security of any building in the strata scheme or could result in damage to the inside of any such building.

### **103 Legal services to be approved by general meeting**

- (1) An owners corporation or strata committee of an owners corporation must not obtain legal services for which any payment may be required unless a resolution approving the obtaining of those services is passed at a general meeting of the owners corporation.
- (2) An owners corporation or strata committee may obtain legal services without obtaining approval under this section if:
  - (a) it is of the opinion that urgent action is necessary to protect the interests of the owners corporation, and
  - (b) the cost of the legal services does not exceed \$10,000 or another amount prescribed by the regulations for the purposes of this subsection.
- (3) Approval under this section is not required for the following:
  - (a) to obtain legal advice before commencing legal action,
  - (b) to take legal action to recover unpaid contributions, interest on unpaid contributions or related expenses,
  - (c) to take any other legal action prescribed by the regulations for the purposes of this section.
- (4) A failure by an owners corporation or the strata committee of an owners corporation to obtain an approval under this section does not affect the validity of any proceedings or other legal action taken by the owners corporation.
- (5) In this Division:

***legal services*** includes obtaining legal advice and taking legal action.

### **104 Restrictions on payment of expenses incurred in Tribunal proceedings**

- (1) An owners corporation cannot, in respect of its costs and expenses in proceedings brought by or against it for an order by the Tribunal, 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 for an order by the Tribunal cannot pay any part of its costs and expenses in the proceedings from its administrative fund or capital works fund, but may make a levy for the purpose.
- (3) In this section, a reference to **proceedings** includes a reference to proceedings on appeal from the Tribunal.

#### **105 Disclosure of matters relating to legal costs**

If a disclosure under another Act is made to an owners corporation in respect of the costs of legal services to be provided to the owners corporation and the legal services are services for which approval is required under section 103, the owners corporation must give a copy of the disclosure to each owner and strata committee member not later than 14 days after the disclosure being made.

### **Part 6 Property management**

#### **Division 1 Common property**

##### **106 Duty of owners corporation to maintain and repair property**

- (1) An owners corporation for a strata scheme 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 section 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.
- (4) If an owners corporation has taken action against an owner or other person in respect of damage to the common property, it may defer compliance with subsection (1) or (2) in relation to the damage to the property until the completion of the action if the failure to comply will not affect the safety of any building, structure or common property in the strata scheme.
- (5) An owner of a lot in a strata scheme may recover from the owners corporation, as damages for breach of statutory duty, any reasonably foreseeable loss suffered by the owner as a result of a contravention of this section by the owners corporation.

- (6) An owner may not bring an action under this section for breach of a statutory duty more than 2 years after the owner first becomes aware of the loss.
- (7) This section is subject to the provisions of any common property memorandum adopted by the by-laws for the strata scheme under this Division, any common property rights by-law or any by-law made under section 108.
- (8) This section does not affect any duty or right of the owners corporation under any other law.

### **107 Common property memorandum**

- (1) The by-laws for a strata scheme may adopt a common property memorandum prescribed by the regulations for the purposes of this section.
- (2) The common property memorandum is to specify whether an owner of a lot or the owners corporation is responsible for the maintenance, repair or replacement of any part of the common property.
- (3) The by-laws may modify the common property memorandum only to provide that it does not apply to specified items, being items that are not common property for the purposes of the particular strata scheme or that are the subject of a common property rights by-law or a by-law made under section 108.
- (4) The provisions of a common property rights by-law or a by-law made under section 108 for a strata scheme prevail, to the extent of any inconsistency, over the provisions of a common property memorandum adopted by the by-laws of the strata scheme.

### **108 Changes to common property**

- (1) **Procedure for authorising changes to common property** An owners corporation or an owner of a lot in a strata scheme may add to the common property, alter the common property or erect a new structure on common property for the purpose of improving or enhancing the common property.
- (2) Any such action may be taken by the owners corporation or owner only if a special resolution has first been passed by the owners corporation that specifically authorises the taking of the particular action proposed.
- (3) **Ongoing maintenance** A special resolution under this section that authorises action to be taken in relation to the common property by an owner of a lot may specify whether the ongoing maintenance of the common property once the action has been taken is the responsibility of the owners corporation or the owner.
- (4) If a special resolution under this section does not specify who has the ongoing maintenance of the common property concerned, the owners corporation has the responsibility for the ongoing maintenance.

- (5) A special resolution under this section that allows an owner of a lot to take action in relation to certain common property and provides that the ongoing maintenance of that common property after the action is taken is the responsibility of the owner has no effect unless:
- (a) the owners corporation obtains the written consent of the owner to the making of a by-law to provide for the maintenance of the common property by the owner, and
  - (b) the owners corporation makes the by-law.
- (6) The by-law:
- (a) may require, for the maintenance of the common property, the payment of money by the owner at specified times or as determined by the owners corporation, and
  - (b) must not be amended or repealed unless the owners corporation has obtained the written consent of the owner concerned.
- (7) Sections 143 (2), 144 (2) and (3) and 145 apply to a by-law made for the purposes of this section in the same way as they apply to a common property rights by-law.

**Note—**

A new by-law or other changes to the by-laws for a strata scheme must be approved by a special resolution of the owners corporation (see section 141).

**109 Cosmetic work by owners**

- (1) The owner of a lot in a strata scheme may carry out cosmetic work to common property in connection with the owner's lot without the approval of the owners corporation.
- (2) **Cosmetic work** includes but is not limited to work for the following purposes:
- (a) installing or replacing hooks, nails or screws for hanging paintings and other things on walls,
  - (b) installing or replacing handrails,
  - (c) painting,
  - (d) filling minor holes and cracks in internal walls,
  - (e) laying carpet,
  - (f) installing or replacing built-in wardrobes,
  - (g) installing or replacing internal blinds and curtains,
  - (h) any other work prescribed by the regulations for the purposes of this subsection.

- (3) An owner of a lot must ensure that:
  - (a) any damage caused to any part of the common property by the carrying out of cosmetic work by or on behalf of the owner is repaired, and
  - (b) the cosmetic work and any repairs are carried out in a competent and proper manner.
- (4) The by-laws of a strata scheme may specify additional work that is to be cosmetic work for the purposes of this section.
- (5) This section does not apply to the following work:
  - (a) work that consists of minor renovations for the purposes of section 110,
  - (b) work involving structural changes,
  - (c) work that changes the external appearance of a lot, including the installation of an external access ramp,
  - (d) work that detrimentally affects the safety of a lot or common property, including fire safety systems,
  - (e) work involving waterproofing or the plumbing or exhaust system of a building in a strata scheme,
  - (f) work involving reconfiguring walls,
  - (g) work for which consent or another approval is required under any other Act,
  - (h) any other work prescribed by the regulations for the purposes of this subsection.
- (6) Section 108 does not apply to cosmetic work carried out in accordance with this section.

### **110 Minor renovations by owners**

- (1) The owner of a lot in a strata scheme may carry out work for the purposes of minor renovations to common property in connection with the owner's lot with the approval of the owners corporation given by resolution at a general meeting. A special resolution authorising the work is not required.
- (2) The approval may be subject to reasonable conditions imposed by the owners corporation and cannot be unreasonably withheld by the owners corporation.
- (3) **Minor renovations** include but are not limited to work for the purposes of the following:
  - (a) renovating a kitchen,



- (b) changing recessed light fittings,
  - (c) installing or replacing wood or other hard floors,
  - (d) installing or replacing wiring or cabling or power or access points,
  - (e) work involving reconfiguring walls,
  - (f) any other work prescribed by the regulations for the purposes of this subsection.
- (4) Before obtaining the approval of the owners corporation, an owner of a lot must give written notice of proposed minor renovations to the owners corporation, including the following:
- (a) details of the work, including copies of any plans,
  - (b) duration and times of the work,
  - (c) details of the persons carrying out the work, including qualifications to carry out the work,
  - (d) arrangements to manage any resulting rubbish or debris.
- (5) An owner of a lot must ensure that:
- (a) any damage caused to any part of the common property by the carrying out of minor renovations by or on behalf of the owner is repaired, and
  - (b) the minor renovations and any repairs are carried out in a competent and proper manner.
- (6) The by-laws of a strata scheme may provide for the following:
- (a) additional work that is to be a minor renovation for the purposes of this section,
  - (b) permitting the owners corporation to delegate its functions under this section to the strata committee.
- (7) This section does not apply to the following work:
- (a) work that consists of cosmetic work for the purposes of section 109,
  - (b) work involving structural changes,
  - (c) work that changes the external appearance of a lot, including the installation of an external access ramp,
  - (d) work involving waterproofing,
  - (e) work for which consent or another approval is required under any other Act,

(f) work that is authorised by a by-law made under this Part or a common property rights by-law,

(g) any other work prescribed by the regulations for the purposes of this subsection.

(8) Section 108 does not apply to minor renovations carried out in accordance with this section.

**Note—**

Section 132 enables rectification orders to be made against owners of lots for damage caused by work done by owners.

**111 Work by owners of lots affecting common property**

An owner of a lot in a strata scheme must not carry out work on the common property unless the owner is authorised to do so:

(a) under this Part, or

(b) under a by-law made under this Part or a common property rights by-law, or

(c) by an approval of the owners corporation given by special resolution or in any other manner authorised by the by-laws.

**112 Owners corporation may grant licence to use common property**

(1) An owners corporation may grant a licence to an owner or occupier of a lot in the strata scheme or another person to use common property in a particular manner or for particular purposes if the owners corporation has approved the granting of the licence by a special resolution.

(2) A licence may be granted subject to terms and conditions.

**Note—**

Division 3 of Part 7 enables owners corporations to make common property rights by-laws granting exclusive use rights and special privileges (including licences) in relation to common property.

(3) Without limiting this section, a licence may be granted under an agreement with the local council for a strata parking area under section 650A of the [Local Government Act 1993](#).

**113 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 6 of Part 2 of the [Strata Schemes Development Act 2015](#), or

- (b) any money payable to the owners corporation under a common property rights by-law.

#### **114 Functions subject to strata development contract**

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 and the *Strata Schemes Development Act 2015* in relation to the strata development contract.

#### **115 Initial maintenance schedule must be prepared**

- (1) The original owner must cause an initial maintenance schedule to be prepared for the maintenance of the common property of a strata scheme.

**Note—**

The purpose of the initial maintenance schedule is to provide information to the owners corporation about obligations and costs relating to the maintenance of common property.

- (2) The initial maintenance schedule must comply with the requirements prescribed by the regulations for the purposes of this subsection.
- (3) An owners corporation is not required by this Act to comply with the initial maintenance schedule for the maintenance of common property vested in it.
- (4) The initial maintenance schedule may be considered in any proceedings for the purpose of determining whether or not a defect in or damage to a building could have been avoided by the taking of specified action.

### **Division 2 Dealings with property**

#### **116 Powers to deal with property**

- (1) 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 13 of the *Strata Schemes Development Act 2015*.
- (2) The owners corporation may acquire or dispose of personal property or otherwise deal with personal property of the owners corporation.
- (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.

## **Division 3 Work carried out by owners corporation**

### **117 Provision of amenities and services to lot**

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

### **118 Window safety devices—child safety**

(1) An owners corporation for a strata scheme to which this section applies must ensure that there are complying window safety devices for all windows of each building in the strata scheme that are windows to which this section applies.

Maximum penalty: 5 penalty units.

- (2) An owners corporation is to carry out work related to its functions under this section at its own expense and may, for the purposes of this section, carry out work on any part of the parcel.
- (3) An owner of a lot in a strata scheme to which this section applies may install a complying window safety device on a window to which this section applies (other than a window on another owner's lot).
- (4) An owner of a lot who installs a window safety device under this section must:
- (a) repair any damage caused to any part of the common property by the installation of the device, and
  - (b) ensure that the device is installed in a competent and proper manner and has an appearance, after it has been installed, in keeping with the appearance of the building.
- (5) An owners corporation or an owner of a lot may carry out work authorised by this section despite any other provision of this Act, the regulations or any by-law of the scheme.
- (6) The regulations may make provision for or with respect to the following:
- (a) the strata schemes and windows to which this section applies,
  - (b) the devices or other things that are complying window safety devices for the purposes of this section,
  - (c) notification to the owners corporation by owners who install window safety devices.
- (7) A regulation may apply this section to a window located on any part of a parcel.

### **119 Work to rectify certain defects**

- (1) An owners corporation for a strata scheme may carry out work that is necessary to rectify any of the following defects:
  - (a) any structural defect in any part of a building comprised in a lot in the scheme 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, internet, radio or television services) within a lot.
- (2) An owners corporation may carry out the work at its own expense if the cost of the work cannot be recovered from some other person.

### **120 Owners corporation may carry out work required to be carried out by others**

- (1) **Work required by public authority** If an owner of a lot in a strata scheme fails to carry out work that is required to be carried out under a notice given to the owner by a public authority, the owners corporation may carry out the work and recover the cost of carrying out the work from the owner or any person who, after the work is carried out, becomes the owner.
- (2) **Work required to be carried out under term or condition of by-law** If a person who is the owner, mortgagee or covenant chargee in possession, tenant or occupier of a lot in the strata scheme fails to carry out work that is required to be carried out by the person under a term or condition of a by-law of the scheme, the owners corporation may carry out the work and recover the cost of carrying out the work from that person, the owner of the lot (if the person is not the owner) or any person who, after the work is carried out, becomes the owner of that lot.
- (3) **Work that is duty of owner or occupier to carry out** If a person who is the owner, mortgagee or covenant chargee in possession, tenant or occupier of a lot in the strata scheme fails to carry out work in order to remedy a breach of a duty imposed by Part 8, the owners corporation may carry out the work and recover the cost of the work from that person.
- (4) **Work required to be carried out under order** If a person fails to carry out work required to be carried out under an order made under this Act, the owners corporation may carry out the work and recover the cost of carrying out the work from the person against whom the order was made.
- (5) **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.

### **121 Provision of 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.

## **Division 4 Powers to enter premises and carry out work**

### **122 Power of owners corporation to enter property in order to carry out work**

- (1) An owners corporation for a strata scheme may, by its agents, employees or contractors, enter on any part of the parcel of the scheme for the purpose of carrying out the following work:
  - (a) work required or authorised to be carried out by the owners corporation in accordance with this Act (including work relating to window safety devices and rectification work carried out under Part 11),
  - (b) work required to be carried out by the owners corporation by a notice given to it by a public authority,
  - (c) work required or authorised to be carried out by the owners corporation by an order under this Act.
- (2) An owners corporation for a strata scheme 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 the Tribunal under this Division.
- (5) A person must not obstruct or hinder an owners corporation in the exercise of its functions under this section.

Maximum penalty: 5 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.

### **123 Access for fire safety inspections**

- (1) A person authorised to carry out an inspection under the *Environmental Planning and Assessment Act 1979* of a building or premises that is part of a strata scheme for purposes relating to fire safety may give a written notice to the owners corporation requiring the owners corporation to ensure that access is provided, within a period or at a time specified in the notice, to the common property of the strata scheme and, if so specified, some or all of the lots in the strata scheme.
- (2) An owners corporation must comply with a requirement of a notice given to the owners corporation under this section.

Maximum penalty: 20 penalty units.

- (3) It is a defence to a prosecution for an offence against this section consisting of a failure to ensure that access is provided to a lot in a strata scheme if the owners corporation establishes that the owner or occupier of the lot refused to allow the access or could not be contacted by the owners corporation.

### **124 Orders by Tribunal relating to entry to carry out work or inspections**

- (1) The Tribunal may, on application by an owners corporation for a strata scheme, make an order requiring the occupier of a lot or part of a lot in the scheme to allow access to the lot for any of the following purposes:
  - (a) to enable the owners corporation to carry out work referred to in section 118, 119, 120 or 122 or to determine whether such work needs to be carried out,
  - (b) to enable an entry or inspection referred to in section 122 or 123 or Part 11 to be carried out.
- (2) This section does not limit the power of an owners corporation to enter a lot under this Division in an emergency without applying for an order.

## **Division 5 Goods left on common property**

### **125 Disposal of abandoned goods on common property**

The regulations may make provision for or with respect to the following matters:

- (a) conferring power on an owners corporation to store or dispose of, or authorise the disposal of, goods left on common property,
- (b) notices to owners and other persons as to disposal or proposed disposal of goods by an owners corporation,
- (c) the passing of title to any goods on disposal by an owners corporation,
- (d) the payment of the proceeds of disposal of goods by an owners corporation,

- (e) conferring jurisdiction on the Tribunal to make directions and orders relating to the disposal of goods, including orders for the payment of compensation and as to the payment of the costs of disposing of goods.

## **Division 6 Orders about property**

### **126 Orders relating to alterations and repairs to common property and other property**

- (1) **Order requiring owners corporation to carry out work on common property** The Tribunal may, on application by a lessor of a leasehold strata scheme or an owner of a lot in a strata scheme, order the owners corporation to consent to work proposed to be carried out by an owner of a lot if the Tribunal considers that the owners corporation has unreasonably refused its consent and the work relates to any of the following:
  - (a) minor renovations or other 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) **Order consenting to owner's work on owners corporation property** The Tribunal may, on application by a lessor of a leasehold strata scheme or an owner of a lot in a strata scheme, make an order (a **work approval order**) approving of minor renovations or alterations or repairs already made by an owner to common property or any other property of the owners corporation directly affecting the owner's lot if the Tribunal considers that the owners corporation unreasonably refused its consent to the minor renovations or alterations or repairs.
- (3) A work approval order is taken to be the consent of the owners corporation to the renovations, alterations or repairs and may provide that it has effect from a day specified in the order that occurred before the order was made.
- (4) In deciding whether to grant a work approval order or to provide for the order to have effect from a day that occurred before the date of the order, the Tribunal 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 renovations, alterations or repairs.
- (5) **Responsibility for ongoing repair and maintenance of affected property** The Tribunal may specify in an order under this section whether the owners corporation or the owner of the lot has the ongoing responsibility for the repair and maintenance of any additional property arising out of a minor renovation or alteration or repair to common property approved under the order.
- (6) If an order provides 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.



### **127 Order relating to cosmetic work or minor renovations**

The Tribunal may, on application by an owner of a lot in a strata scheme, make an order declaring that specified work is cosmetic work for the purposes of section 109 or a minor renovation for the purposes of section 110.

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

- (1) The Tribunal may, on application by a lessor of a leasehold strata scheme, an owners corporation or an owner of a lot in a strata scheme, make an order directing an owner to lodge in the office of the Registrar-General the plan and certificate referred to in section 19 of the *Strata Schemes Development Act 2015* if the Tribunal is satisfied that the owner has failed to comply with that provision.
- (2) The order must specify the time within which the plan and certificate must be lodged.

### **129 Orders relating to window safety devices**

- (1) The Tribunal may, on application by an interested person (other than an owners corporation), order an owners corporation to exercise a function under section 118 if the Tribunal considers that the owners corporation has failed to do so.
- (2) For the purposes of this section, an owners corporation is taken to have failed to exercise a function if 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.
- (3) The Tribunal may, on application by an owners corporation, order an owner of a lot in the strata scheme to comply with section 118 (4) if the Tribunal considers that the owner has failed to do so.

### **130 Orders relating to personal property**

- (1) The Tribunal may, on application by an owner of a lot in a strata scheme, make one of the following orders if the Tribunal considers that an acquisition, or a proposed acquisition, by the 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) The Tribunal may, on application by an owner of a lot in a strata scheme, order the owners corporation to acquire personal property if the Tribunal considers that the owners corporation has unreasonably refused to acquire the personal property.

### **131 Order granting certain licences**

- (1) The Tribunal may, on application by an owner of a lot in a strata scheme, order that the owner and any occupier of the lot 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) The Tribunal must not make the order unless satisfied:
- (a) that the lot 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 that 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 Tribunal with respect to the application for the order.
- (3) An order under this section, when recorded under section 246, has effect as if its terms were a by-law (but subject to any relevant order made by a superior court).

### **132 Rectification where work done by owner**

- (1) The Tribunal may, on application by an owners corporation for a strata scheme, make either of the following orders if the Tribunal is satisfied that work carried out by or for an owner or occupier on any part of the parcel of the scheme has caused damage to common property or another lot:
- (a) an order that the owner or occupier performs the work or takes other steps as specified in the order to repair the damage,
  - (b) an order that the owner or occupier pay to the owners corporation or the owner of the lot a specified amount for the cost of repairs of the damage and any associated costs, including insurance and legal costs.
- (2) An amount payable by an owner or occupier to an owners corporation under this section is payable, and may be recovered, under this Act as if it were an amount of unpaid contributions.

**Note—**

Section 86 provides for the recovery of unpaid contributions.

## **Part 7 By-laws for strata schemes**

### **Division 1 Interpretation**

#### **133 Definitions**

In this Part:

**change** the by-laws for a strata scheme means amend or repeal the by-laws or add to the by-laws.

**previous law** means:

- (a) Division 3 of Part 5 of Chapter 2 of the *Strata Schemes Management Act 1996*, as in force immediately before its repeal, or
- (b) Division 1 of Part 2 of the *Strata Schemes (Freehold Development) Act 1973*, as in force immediately before its repeal, or
- (c) Division 1 of Part 2 of the *Strata Schemes (Leasehold Development) Act 1986*, as in force immediately before its repeal.

## Division 2 Establishment and effect of by-laws

### 134 By-laws that apply to strata schemes

- (1) **New strata schemes** The by-laws in force for a strata scheme that came into existence after the commencement of this section are the by-laws adopted by or lodged with the strata plan registered by the Registrar-General for the strata scheme, as changed in accordance with this Act.
- (2) **Strata schemes 1997 to commencement of section** The by-laws in force for a strata scheme that came into existence after the commencement of the *Strata Schemes Management Act 1996* and before the commencement of this section are the by-laws adopted by or lodged with the strata plan registered by the Registrar-General for the strata scheme, including any changes to the by-laws made in accordance with that Act or in accordance with this Act.

**Note—**

The *Strata Schemes Management Act 1996* commenced on 1 July 1997.

- (3) **Strata schemes before 1996** The by-laws in force for a strata scheme that was in existence before the commencement of the *Strata Schemes Management Act 1996* are the by-laws set out in the regulations for the purposes of this section, including any changes to the by-laws made in accordance with a previous law or in accordance with this Act.

### 135 Requirement to comply with by-laws

- (1) The by-laws for a strata scheme bind the owners corporation and the owners of lots in the strata scheme and any mortgagee or covenant chargee in possession, or tenant 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, tenant 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 tenant of a lot or common property to comply with the by-laws for the strata scheme.

**Note—**

The effect of having been taken to have signed and sealed a by-law is that the person is always taken to have known about it.

**136 Matters by-laws can provide for**

- (1) By-laws may be made in relation to the management, administration, control, use or enjoyment of the lots or the common property and lots of a strata scheme.
- (2) A by-law has no force or effect to the extent that it is inconsistent with this or any other Act or law.

**137 Occupancy limits**

- (1) A by-law may limit the number of adults who may reside in a lot by reference to the number of bedrooms of the residence.
- (2) The limit may not be fewer than 2 adults per bedroom.
- (3) The by-law has no effect:
  - (a) to the extent to which it is inconsistent with any planning approval or other law applicable to the lot, or
  - (b) in any other circumstances prescribed by the regulations for the purposes of this section.
- (4) To avoid doubt, the Tribunal may make an order under Division 5 about a by-law made under this section.
- (5) The regulations may provide for the circumstances when a person is a resident of a lot for the purposes of a by-law made under this section.
- (6) For the purposes of this section, a **bedroom** is a room approved for use as a bedroom under, or indicated as a bedroom in any plans the subject of, a planning approval and includes any other room prescribed by the regulations as a bedroom for the purposes of this section.

**138 Model by-laws**

The regulations may prescribe model by-laws that may be adopted as the by-laws for a strata scheme.

### 139 Restrictions on by-laws

- (1) **By-law cannot be unjust** A by-law must not be harsh, unconscionable or oppressive.

**Note—**

Any such by-law may be invalidated by the Tribunal (see section 150).

- (2) **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.
- (3) **By-law resulting from order cannot be changed** If an order made by the Tribunal under this Act 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 of the owners corporation and, in the case of a leasehold strata scheme, with the consent of the lessor of the scheme.
- (4) **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.
- (5) **By-law cannot prevent keeping of assistance animal** 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 an assistance animal (as referred to in section 9 of the [Disability Discrimination Act 1992](#) of the Commonwealth) used by an owner or occupier of the lot as an assistance animal or the use of an assistance animal for that purpose by a person on a lot or common property.
- (6) A by-law may require a person who keeps an assistance animal on a lot to produce evidence to the owners corporation that the animal is an assistance animal as referred to in section 9 of the [Disability Discrimination Act 1992](#) of the Commonwealth.
- (7) **Community management and precinct management statements prevail over by-laws** A community management statement or a precinct management statement prevails to the extent of any inconsistency with a by-law for a strata scheme that is also part of a community scheme or precinct scheme.

### 140 Restrictions on by-laws during initial period

- (1) An owners corporation for a strata scheme must not, during the initial period, change the by-laws so 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 in the scheme.
- (2) An owners corporation may recover from the original owner of the strata scheme, 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 of a lot in a strata scheme may recover, as damages for breach of statutory duty, any loss 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.

#### **141 Procedure for changes to by-laws**

- (1) An owners corporation may, in accordance with a special resolution of the owners corporation, change the by-laws of the strata scheme.
- (2) A change to the by-laws of a strata scheme has no effect until:
  - (a) the owners corporation has lodged a notification with the Registrar-General in the manner approved by the Registrar-General, and
  - (b) the Registrar-General has made an appropriate recording of the notification in the folio of the Register for the common property.
- (3) The secretary of the owners corporation must keep a consolidated up to date copy of the by-laws for the strata scheme.
- (4) A notification cannot be lodged in the Registrar-General's office more than 6 months after the passing of the resolution to make the by-law.

### **Division 3 By-laws conferring rights or privileges over common property**

#### **142 Common property rights by-law**

For the purposes of this Act, a **common property rights by-law** is a by-law that confers on the owner or owners of a specified lot or lots in the strata scheme:

- (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 (including, for example, a licence to use the whole or any specified part of the common property in a particular manner or for particular purposes),

or that changes such a by-law.

#### **143 Requirements and effect of common property rights by-laws**

- (1) An owners corporation may make a common property rights by-law only with the written consent of each owner on whom the by-law confers rights or special privileges.

**Note—**

Any addition to the by-laws will require a special resolution (see section 141).

- (2) A common property rights by-law may confer rights or special privileges subject to conditions specified in the by-law (such as a condition requiring the payment of money by the owner or owners concerned, at specified times or as determined by the owners corporation).
- (3) A common property rights by-law 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.
- (4) After 2 years from the making, or purported making, of a common property rights by-law, it is conclusively presumed that all conditions and preliminary steps precedent to the making of the by-law were complied with and performed.

#### **144 Common property rights by-law must provide for maintenance of property**

- (1) A common property rights by-law 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 of the lots the responsibility for that maintenance and upkeep.
- (2) Any money payable under a common property rights by-law 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 of their lots unless the by-law otherwise provides.
- (3) To the extent to which a common property rights by-law makes a person directly responsible for the proper maintenance of, and keeping in a state of good and serviceable repair, any common property, it discharges the owners corporation from its obligations to maintain and repair the property under this Act.

#### **145 Common property rights by-law binding on owners for time being**

- (1) A common property rights by-law, 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 the owner of a lot 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 the 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 common property rights by-law or under subsection (2) may be recovered, as a debt in a court of competent jurisdiction, by the owners corporation.

## **Division 4 Enforcement of by-laws**

### **146 Notice by owners corporation to owner or occupier**

- (1) An owners corporation for a strata scheme may give a notice, in a form approved by the Secretary, to the owner or occupier of a lot in the scheme 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.
- (2) The notice must contain a copy of the specified by-law.
- (3) A notice must not be given unless a resolution approving the issue of the notice, or the issue of notices for the type of contravention concerned, has first been passed by the owners corporation at a general meeting or by the strata committee of the owners corporation.
- (4) Subsection (3) does not apply to the giving of a notice by a strata managing agent if that function has been delegated to the strata managing agent in accordance with this Act.

### **147 Civil penalty for breach of by-laws**

- (1) The Tribunal may, on application by an owners corporation, order a person to pay a monetary penalty of up to 10 penalty units if the Tribunal is satisfied that:
  - (a) the owners corporation gave a notice under this Division to the person requiring the person to comply with a by-law, and
  - (b) the person has since contravened the by-law.
- (2) The Tribunal may, on application by an owners corporation, order a person to pay a monetary penalty of up to 20 penalty units if the Tribunal is satisfied that the person has contravened a by-law within 12 months after the Tribunal had imposed a monetary penalty on the person for a previous breach of the by-law.
- (3) Despite subsections (1) and (2), the Tribunal may, in dealing with a contravention of a



by-law made under section 137, impose a monetary penalty of up to 50 penalty units under subsection (1) and a monetary penalty of up to 100 penalty units under subsection (2).

- (4) An application for an order under subsection (1) must be made not later than 12 months after the notice was given.
- (5) An owners corporation is not required to give notice under this Division before applying for an order under subsection (2).
- (6) A monetary penalty is payable to the owners corporation, unless the Tribunal otherwise orders.

**Note—**

The penalty may be registered as a judgment debt and will be enforceable accordingly (see section 78 of the *Civil and Administrative Tribunal Act 2013*).

## **Division 5 Orders about by-laws**

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

- (1) The Tribunal may, on application by a person entitled to vote on the amendment or repeal of a by-law or addition of a new by-law or the lessor of a leasehold strata scheme, make one of the following orders:
  - (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) The Tribunal may make an order only if the Tribunal 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, the change to the by-laws should not have been made by the owners corporation.
- (3) An order under this section, when recorded under section 246, has effect as if its terms were a by-law (but subject to any relevant order made by a superior court).
- (4) When making an order under this section in relation to a common property rights by-law, the Tribunal 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.

**Note—**

Section 78 of the *Civil and Administrative Tribunal Act 2013* provides for the recovery as a judgment debt of amounts ordered to be paid by the Tribunal.

- (5) 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.

### **149 Order with respect to common property rights by-laws**

- (1) The Tribunal may make an order prescribing a change to a by-law if the Tribunal finds:
  - (a) on application made by an owner of a lot in a strata scheme, that the owners corporation has unreasonably refused to make a common property rights by-law, 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 common property rights by-law, or to the proposed amendment or repeal of a common property rights by-law, or
  - (c) on application made by any interested person, that the conditions of a common property rights by-law relating to the maintenance or upkeep of any common property are unjust.
- (2) In considering whether to make an order, the Tribunal 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 common property rights by-law.
- (3) The Tribunal must not determine an application by an owner on the ground that the owners corporation has unreasonably refused to make a common property rights by-law 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) The Tribunal 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 246, has effect as if its terms were a by-law (but subject to any relevant order made by a superior court).
- (6) 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.

### **150 Order invalidating by-law**

- (1) The Tribunal may, on the application of a person entitled to vote on the motion to make a by-law or the lessor of a leasehold strata scheme, make an order declaring a by-law to be invalid if the Tribunal considers that an owners corporation did not have the power to make the by-law or that the by-law is harsh, unconscionable or oppressive.

- (2) The order, when recorded under section 246, 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 made by 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.

## **Part 8 Obligations of owners, occupiers and others relating to lots**

### **Division 1 Obligations relating to lots**

#### **151 Owners, occupiers and other persons not to interfere with support or shelter provided by lot or with services**

An owner, mortgagee or covenant chargee in possession, tenant or occupier of a lot in a strata scheme 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, internet, 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.

#### **152 Owner must notify owners corporation of alteration to lot structure**

The owner of a lot in a strata scheme must not alter the structure of a lot without giving to the owners corporation, not later than 14 days before commencement of the alteration, a written notice describing the proposed alteration.

**Note—**

The right of an owner to alter the structure of a lot is also subject to other provisions of this Act relating to approvals that are required to carry out work affecting the common property.

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

- (1) An owner, mortgagee or covenant chargee in possession, tenant or occupier of a lot in a strata scheme must not:
  - (a) use or enjoy the lot, or permit the lot to be used or enjoyed, in a manner or for a purpose that causes 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 a manner or for a purpose that interferes 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 a manner or for a purpose that interferes 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.

**Note—**

Depending on the circumstances in which it occurs, the penetration of smoke from smoking into a lot or common property may cause a nuisance or hazard and may interfere unreasonably with the use or enjoyment of the common property or another lot.

- (2) This section does not operate to prevent the due exercise of rights conferred on a developer by the operation of section 82 of the *Strata Schemes Development Act 2015*.

**Note—**

Division 1 of Part 6 contains provisions about the circumstances in which owners of lots may carry out work that affects common property.

## **Division 2 Agents for owners**

### **154 Appointment of agents by corporations to exercise functions in relation to lots**

- (1) A corporation may authorise an individual (a **company nominee**) 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. The corporation may revoke the authority of any individual so authorised.
- (2) A function exercised with respect to a lot by a company nominee of an owner, mortgagee or covenant chargee is taken to have been exercised with respect to the lot by the owner, mortgagee or covenant chargee.
- (3) This section does not affect 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 an authorisation is admissible in evidence and is, unless the contrary is proved, taken to be an authorisation or revocation.

### **155 Owner may appoint agent if not able to deal with notices**

- (1) An owner of a lot in a strata scheme 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.

### **Division 3 Keeping of animals on lots**

#### **156 Order for removal of an animal not permitted under by-laws**

- (1) The Tribunal may, on application by an interested person, order a person to cause an animal to be removed from a parcel within a specified time, and to be kept away from the parcel, if the Tribunal considers that the person is keeping an animal on the parcel in contravention of the by-laws.
- (2) An order under this section ceases to have effect if the keeping of the animal is subsequently authorised in accordance with the by-laws.

#### **157 Order permitting keeping of animal**

- (1) The Tribunal may, on application by the owner or occupier (with the consent of the owner) of a lot in a strata scheme, make an order declaring that the applicant may keep an animal on the lot or common property.
- (2) The Tribunal must not make the order unless it is satisfied that:
  - (a) the by-laws permit the keeping of an animal with the approval of the owners corporation and provide that the owners corporation cannot unreasonably withhold consent to the keeping of an animal, and
  - (b) the owners corporation has unreasonably withheld its approval to the keeping of the animal on the lot or common property.

#### **158 Order for removal of an animal permitted under by-laws**

- (1) The Tribunal may, on application by an interested person, make an order against a person who is keeping an animal on a lot or common property in accordance with the by-laws for a strata scheme, if the Tribunal considers that the animal causes a nuisance or hazard to the owner or occupier of another lot or unreasonably interferes with the use or enjoyment of another lot or of the common property.
- (2) The Tribunal may order that the person:

- (a) cause the animal to be removed from the parcel within a specified time, and be kept away from the parcel, or
- (b) within a time specified in the order, take such action as, in the opinion of the Tribunal, will terminate the nuisance or hazard or unreasonable interference.

### **159 Effect of orders**

An order under this Division binds the following persons, despite any by-law of the strata scheme:

- (a) each owner and occupier of a lot in the strata scheme and the owners corporation for the strata scheme,
- (b) each person who is bound by the strata management statement for the building and its site,
- (c) in the case of a leasehold strata scheme, the lessor of the scheme.

## **Part 9 Insurance**

### **Division 1 Owners corporation insurance obligations**

#### **160 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 contract of insurance, in accordance with this Division, that insures the building if it is destroyed or damaged by fire, lightning, explosion or any other occurrence specified in the policy (a **damage policy**).

Maximum penalty: 5 penalty units.

- (2) 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 the parcel of the strata scheme must insure the building and keep the building insured under a damage policy.

Maximum penalty: 5 penalty units.

- (3) In any proceedings for an offence under subsection (2), it is a defence to establish that the defendant was willing to join in the insurance of a building under a damage policy but that the policy could not be taken out because another person specified in that subsection was unwilling to join in the application for that policy.
- (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) A damage policy may consist of one or more policies of insurance.

### **161 Requirements for damage policy**

- (1) **General requirements** The damage policy for a building must be with an approved insurer, be in the name of the owners corporation, and any other person required to insure under section 160 and provide for the following:
- (a) the building is to be insured for at least the amount determined in accordance with the regulations,
  - (b) if the building is destroyed, the building is to be rebuilt or replaced so that the condition of every part of the rebuilt or replacement building is not worse or less extensive than that part when new,
  - (c) if the building is damaged but not destroyed, the damaged part of the building is to be repaired or restored so that the condition of the repaired or restored part is not worse or less extensive than that part when new,
  - (d) expenses incurred in removing debris are payable,
  - (e) the remuneration of architects and other persons whose services are necessary as an incident to the rebuilding, replacement, repair or restoration is payable.
- (2) **Limited sum liability** Instead of providing for work and payments being made if a building is destroyed or damaged, the damage policy may limit the liability of the insurer in that event to an amount specified in the policy. The amount must not be less than an amount calculated in accordance with the regulations.
- (3) **Parts of building to be covered** The parts of a building to be covered by a damage policy include the following:
- (a) owners' improvements and owners' fixtures forming part of the building,
  - (b) a building consisting entirely of common property,
  - (c) anything prescribed by the regulations as forming part of a building for the purposes of this section.
- (4) **Parts of building not required to be covered** The following parts of a building are not required to be covered by a damage policy:
- (a) fixtures removable by a tenant at the expiration of a tenancy,

- (b) owners' improvements and fixtures comprising paint, wallpaper and temporary wall, floor and ceiling coverings,
- (c) anything prescribed by the regulations as not forming part of a building for the purposes of this section.

#### **162 Insurance premiums where strata scheme is for part only of building**

- (1) This section applies if a requirement is imposed on an owners corporation for a strata scheme for part of a building and any other person to insure the building under a damage policy.
- (2) The premium for a damage policy is to be paid by the owners corporation or other person according to the proportion that the replacement value of the part (or parts) of the building subject to the strata scheme or held in fee simple by the other person bears to the replacement value of the whole building.
- (3) The Tribunal may, on application by an owners corporation or other person liable to pay a proportion of a premium, determine the replacement value and proportion payable. The determination is binding on each person liable to pay a proportion.
- (4) The Tribunal may, on application by any person liable under this section to pay a proportion of a premium, make an order adjusting the proportion payable by a person to reflect that the use to which a part of a building in which that person has the fee simple is put causes an insurance premium under this section to be greater than it would be if it were not put to that use.

#### **163 Use of insurance money by owners corporation**

- (1) An owners corporation that receives money from an insurer for the destruction of or damage to a building must immediately apply that money in rebuilding, replacing, repairing or restoring the building.
- (2) This section does not apply to an owners corporation if the owners corporation determines, by unanimous resolution, that the money is not to be so applied.
- (3) This section is subject to any order made under the [Strata Schemes Development Act 2015](#).

#### **164 Other mandatory insurance requirements for owners corporation**

- (1) An owners corporation must take out the following insurance with an approved insurer, in addition to any other requirements of this Part:
  - (a) insurance 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,



- (b) insurance in respect of damage to property, death or bodily injury for which the owners corporation could become liable in damages,
- (c) insurance against the possibility of the owners becoming jointly liable because of a claim arising in respect of any other occurrence against which the owners corporation, in accordance with a special resolution, decides to insure,
- (d) insurance against any damages for which the owners corporation could become liable because, 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,
- (e) insurance 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 for a cover of not less than \$10,000,000 for each event for which any claim or claims may be made or, if the regulations provide for another amount, that other amount.
- (3) The regulations may provide that the amount is to be calculated or determined in the manner prescribed by the regulations.

#### **165 Owners corporation may take out other insurance**

- (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 any of the following:
  - (a) damage to property, death or bodily injury for which a person holding the office of chairperson, secretary or treasurer of the owners corporation or of a member of the strata 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.
- (3) Any insurance taken out under this section must be taken out with an approved insurer.

#### **166 Strata managing agent to obtain insurance quotations**

A strata managing agent must provide the owners corporation with not less than 3 quotations from different providers for each type of insurance proposed by the agent to the owners corporation or provide written reasons to the owners corporation if less than 3

quotations are provided.

## **Division 2 Insurance claims and other matters affecting insurance**

### **167 Part does not limit owner's insurance rights**

- (1) This Part does not limit any right of an owner of a lot in a strata scheme to take out insurance.
- (2) Insurance taken out by an owner of a lot in a strata scheme 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. This subsection has effect despite anything contained in the relevant contract of insurance.

### **168 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 160 (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.

### **169 Insurance of mortgaged lot**

- (1) An owner of a lot in a strata scheme may take out insurance in respect of damage to the lot for an amount equal to the amount secured at the date of the contract of insurance by mortgages of and any covenant charges affecting the lot.
- (2) The following provisions apply to the payment of an amount under the contract (subject to the terms of the contract):
  - (a) any payment to be made 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,
  - (b) the amount 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,
  - (c) if the amount 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,
  - (d) if the amount 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 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.

#### **170 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 in the strata scheme, 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.

#### **171 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.

### **Division 3 Orders about insurance**

#### **172 Exemption by Tribunal from building insurance requirements**

- (1) The Tribunal may, on application by a person required by this Part to insure a building or structure, by order exempt the applicant:
  - (a) from compliance with the requirements to insure unconditionally, or
  - (b) with the written consent of the applicant, from compliance with those requirements subject to a condition that the applicant takes out insurance for the building that is specified in the order.
- (2) The Tribunal must not make an order unless:
  - (a) it is of the opinion that compliance with the requirements to insure is unnecessary or impracticable, and
  - (b) 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 the Tribunal with respect to the application

for the order.

- (3) An owners corporation may apply for an order, or give a consent for the purposes of this section, only in accordance with a unanimous resolution.
- (4) If an owners corporation is required by a positive covenant to insure the building, an order must not be made until:
  - (a) at least 21 days after the Tribunal has given notice to the authority having the benefit of the covenant of the intention to make the order, and
  - (b) the Tribunal has considered any representations made during the 21-day period to the Tribunal by the authority in relation to the intended order.

### **173 Effect of exemption from building insurance requirements**

- (1) A person exempted by the Tribunal from the requirement to insure a building is not under a duty to comply with the requirement or any corresponding requirement of a positive covenant.
- (2) However, if the exemption was granted subject to a condition, the person is under the duty, if in breach of that condition.

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

- (1) The Tribunal may, on application, 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, if the Tribunal considers the person has unreasonably refused to make or pursue the claim.
- (2) An application for an order may be made by any of the following:
  - (a) an owner or tenant of a lot in the strata scheme for the building or part of the building,
  - (b) the lessor of a leasehold strata scheme for the building or part of the building,
  - (c) if part of the building is included in a part strata 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 part strata parcel.

### **175 Orders requiring damage policy**

- (1) The Tribunal may, on application, order that a damage policy must be taken out for a specified amount, if the Tribunal 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 this Act to keep the building insured after that period.
- (3) The Tribunal may, on application, order that the amount of any insurance taken out for a damage policy or under section 164 (1) (c) must be varied to a specified amount, if the Tribunal considers that the amount of the current insurance is unreasonable.
- (4) An order must specify by whom the insurance is to be taken out or varied and (if the building is included in a part strata parcel) the proportions in which the premium is to be paid.
- (5) An application for an order under this section may be made by any of the following:
  - (a) an owner or a mortgagee of a lot shown on the strata roll, or a person having an interest in a lot, in a strata scheme for the whole or any part of the building concerned,
  - (b) the lessor of a leasehold strata scheme for the building or any part of the building concerned or by any owner or sublessee of the common property,
  - (c) if part of the building is included in a part strata parcel, 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 part strata parcel or any mortgagee under a mortgage registered under the [Real Property Act 1900](#) of any such estate or interest,
  - (d) an authority having the benefit of a positive covenant affecting the building or its site.

## **Part 10 Records and information about strata schemes**

### **Division 1 Strata roll and other records**

#### **176 Form of records**

A strata roll or any other record required to be made or stored by an owners corporation may be made or stored in the form determined by the owners corporation.

#### **177 Owners corporation must prepare strata roll**

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

Maximum penalty: 5 penalty units.

#### **178 Content of strata roll**

(1) **Information about lots** The following information must be recorded in the strata roll in

relation to a particular lot in the strata scheme:

- (a) the name of the holder of the estate in fee simple in the lot (in the case of a freehold strata scheme) or the holder of the leasehold estate in the lot (in the case of a leasehold strata scheme),
- (b) an address for service of notices,
- (c) an Australian postal address, and an email address if the holder has one, if not provided as the address for service,
- (d) the name of the holder's agent (if any) appointed in accordance with this Act and the agent's address for service of notices,
- (e) information provided under a strata interest notice,
- (f) information provided under a tenancy notice.

(2) **Information about common property and strata scheme** The following information must be recorded in the strata roll in relation to the common property of the strata scheme and the scheme in general:

- (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 addresses for service of notices,
- (c) the aggregate 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:
  - (i) the name of the insurance company,
  - (ii) the number of the insurance policy,
  - (iii) the nature of the risk insured,
  - (iv) the amount of the insurance,
  - (v) the due date for payment of the premium,
  - (vi) the date on which the premium was last paid,
- (e) the by-laws for the time being in force for the strata scheme,
- (f) if the scheme was registered before the commencement of Part 10 of the *Strata Schemes Development Act 2015*, whether that Part applies to the scheme.

(3) **Sources of information for strata roll** The owners corporation may make or amend

entries in the strata roll on the basis of information contained in the Register or provided under a strata interest notice or a tenancy notice (to the extent that information so provided is not inconsistent with information contained in the Register). Information provided under any such notice may be presumed to be consistent with information contained in the Register until the contrary is evident.

### **179 Notices and orders to be kept**

An owners corporation must cause the following to be recorded:

- (a) particulars of any notice given to the owners corporation under this or any other Act, any order under this Act given to the owners corporation and any order made by a court or tribunal and given to the owners corporation,
- (b) the date on which it was given and the manner in which it was given,
- (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: 5 penalty units.

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

- (1) An owners corporation must cause the following to be retained for 7 years:
  - (a) any records, notices and orders required to be kept under this Division or Part 10 of the *Strata Schemes Development Act 2015*,
  - (b) minutes of meetings required to be kept under Schedule 1 or Schedule 2,
  - (c) its financial statements and accounting records,
  - (d) copies of correspondence received and sent by the owners corporation,
  - (e) notices of meetings of the owners corporation and its strata committee,
  - (f) proxies delivered to the owners corporation,
  - (g) voting papers relating to motions for resolutions by the owners corporation and to the election of officers or the establishment of a strata renewal committee (under Part 10 of the *Strata Schemes Development Act 2015*),
  - (h) a copy of any signed strata managing agent agreement or building manager agreement entered into by the owners corporation,
  - (i) records given to the owners corporation by the strata managing agent relating to the exercise of functions by the agent,

(j) any other documents prescribed by the regulations for the purposes of this section.

Maximum penalty: 5 penalty units.

(2) The regulations may prescribe a different period for which any or all of the things referred to in subsection (1) are required to be retained.

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

(1) If the strata 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 strata committee, the person must, not later than 14 days after the notice is given, deliver that property to a member of the strata committee specified in the notice.

Maximum penalty: 20 penalty units.

(2) If the strata 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, not later than 14 days after the notice is given, deliver that property to a member of the strata 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 the [Property, Stock and Business Agents Act 2002](#).

#### **Note—**

The [Property, Stock and Business Agents Act 2002](#) contains requirements relating to the keeping of records under that Act.

## **Division 2 Provision of information about strata schemes**

### **182 Requests for inspection of records of owners corporation**

(1) **Persons who may inspect** An owner, mortgagee or covenant chargee of a lot in a strata scheme, or a person authorised 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 made by written notice given to the owners corporation 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 other records or documents required to be kept under this Part,
  - (c) the plans, specifications, certificates, diagrams and other documents required to be delivered to the owners corporation before its first annual general meeting by the original owner or the lessor of a leasehold strata scheme,
  - (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) any applicable 10-year capital works fund plan,
  - (f) the last financial statements prepared,
  - (g) every current policy of insurance taken out by the owners corporation and the receipt for the premium last paid for each such policy,
  - (h) if a strata managing agent has been appointed, a copy of the instrument of appointment,
  - (i) if a strata renewal plan has been given to owners for their consideration under Part 10 of the *Strata Schemes Development Act 2015*, a copy of the plan,
  - (j) any other record or document in the custody or under the control of the owners corporation,
  - (k) if the duties of the owners corporation under this subsection have been delegated to a strata managing agent, any other records (including records of the strata managing agent) relating to the strata scheme that are prescribed by the regulations,
  - (l) if a building manager agreement is in force or has been entered into but has not yet commenced, a copy of the building manager agreement,
  - (m) particulars of any service agreement entered into by the owners corporation,
  - (n) particulars of any agreement entered into with a local council for a strata parking area,
  - (o) if the request is made within 5 years after the end of the initial period, particulars of any orders made under section 27 and copies of any related contracts or other documents.

Maximum penalty: 5 penalty units.

- (4) **Meeting inspections** For the purpose of complying with requirements for the giving of notice of a meeting of the owners corporation, the original owner (whether or not having ceased to be an owner) or an agent authorised in writing by the original owner is entitled to inspect the strata roll without payment on making a written application.

### **183 Inspection of owners corporation documents**

- (1) An inspection under this Division is to take place at the time and place, or by the means, agreed on and, failing agreement, at the parcel at a time and on a date, or by the means, fixed by the owners corporation under this section.
- (2) 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 give the applicant a written 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), or a specified means, for the inspection to take place.
- (3) The means for inspecting documents may be in person or through electronic access to the documents or any other means agreed on or fixed under this section.
- (4) A person entitled to inspect a document 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.

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

- (1) **Persons who may request certificate** An owner, mortgagee or covenant chargee of a lot in a strata scheme, or a person authorised by the owner, mortgagee or covenant chargee, may request the owners corporation for the strata scheme to give a certificate under this section (a **strata information certificate**) in relation to a particular lot.
- (2) **Form of request** The request must be made by written notice given to the owners corporation and be accompanied by the fee prescribed by the regulations.
- (3) **Information relating to lot to be included in strata information certificate** The strata information certificate must specify the following information in respect of the lot and the strata scheme:
- (a) the amount of any regular periodic contributions for the lot determined by the owners corporation under this Act, the periods for which those contributions are payable and any discounts applicable for early payment,
- (b) whether there is any amount unpaid of any contributions determined for the lot and, if so, the amount unpaid and, in the case of a contribution levied for the capital works fund, the date on which the contribution was levied,

- (c) whether there is any amount unpaid by an owner under a common property rights by-law or a by-law made under section 108,
  - (d) whether there is any amount unpaid of any contribution levied under section 81 (4) for the lot and, if so, the amount unpaid and the date on which it was levied,
  - (e) any amount and rate of interest payable in relation to any unpaid contribution referred to in this subsection,
  - (f) whether there is any amount recoverable from the owner of that lot for work carried out by the owners corporation,
  - (g) the proposals for funding the matters set out in the 10-year capital works fund plan,
  - (h) whether or not a strata renewal committee has been established in relation to the strata scheme under the *Strata Schemes Development Act 2015*,
  - (i) any other information that is required to complete the certificate.
- (4) **Information relating to management of strata scheme to be included in strata information certificate** The strata information certificate must state, as at the date of the certificate, the name and address of each member of the strata committee and of any strata managing agent and building manager 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 strata information certificate must also include the following information:
- (a) the amount of any regular periodic contributions required to be made to the administrative fund and the capital works fund of the community association and the respective periods to which they relate,
  - (b) the amount of any such contribution that has not been paid,
  - (c) the date on which any regular periodic contribution to the administrative fund, and the capital works fund, of the association was levied,
  - (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 this section in relation to the community scheme.
- (6) **Form of strata information certificate** The strata information certificate must be in the form prescribed by the regulations.
- (7) **When strata information certificate must be given** An owners corporation must give a strata information certificate under this section not later than 14 days after receipt by

it of an application for the certificate.

Maximum penalty: 5 penalty units.

**185 Strata information certificate is evidence of matters stated in it**

A strata information certificate 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.

**186 Provision of strata scheme information to tenants**

- (1) The lessor or sub-lessor of a lot or common property in a strata scheme must give the tenant of the lot or common property a copy of the by-laws and any strata management statement affecting the lot or common property, not later than 14 days after the tenant becomes entitled to possession of the lot.

Maximum penalty: 5 penalty units.

- (2) The lessor or sub-lessor of a lot or common property in a strata scheme must, if the by-laws of the strata scheme are, or any strata management statement affecting the lot or common property is, changed, give the tenant of the lot or common property a copy of the changed by-laws not more than 14 days after the change takes effect.

Maximum penalty: 5 penalty units.

- (3) This section does not apply to a strata scheme that is part of a community scheme.

**Division 3 Orders about strata roll and records**

**187 Order confirming information for strata roll**

- (1) The Tribunal may, on application by an owners corporation, owner or other person having or acquiring an estate or interest in a lot in a strata scheme, order an owners corporation to enter information contained in a strata interest notice in the strata roll if a person fails to provide the required written confirmation of the notice.
- (2) In making the order, the Tribunal may amend the information in the strata interest notice to which the order relates in any manner the Tribunal thinks fit.
- (3) The Tribunal must dismiss an application for an order if the Tribunal considers that the rights of any person would be prejudiced if the order were made.

- (4) A copy of an order under this section given to an owners corporation is taken to be a strata interest notice given to the owners corporation and information entered on a strata roll in accordance with the order is taken to have been entered from a notice with any written confirmation required.

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

- (1) The Tribunal may, on application by a person, order an owners corporation, strata managing agent, officer or former strata managing agent of an owners corporation to supply to the applicant information that the Tribunal considers that the owners corporation, strata managing agent, officer or former strata managing agent has wrongfully withheld from the applicant and to which the applicant is entitled under this Act.
- (2) The Tribunal may, on application by a person, order an owners corporation, strata managing agent, officer or former strata managing agent of an owners corporation to supply or make available to the applicant a record or document if:
- (a) the Tribunal considers that the owners corporation, strata managing agent, officer or former strata managing agent 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.
- (3) The order may specify the manner in which information is to be supplied or made available.

## **Part 11 Building defects**

### **Division 1 Preliminary**

#### **189 Definitions**

In this Part:

**building bond**—see section 207 (1).

**building inspector**—see section 193 (1).

**contract price** means the price determined as the contract price in accordance with the regulations.

**developer** means the developer of the strata scheme by whom or on whose behalf building work to which this Part applies was carried out.

**final report** means a report prepared under section 201.

**interim report** means a report prepared under section 199.

**residential building work** has the same meaning as it has in the [Home Building Act 1989](#).

### 190 Interpretation provisions—building work

(1) In this Part:

**builder responsible for defective building work** means:

- (a) the person (the **principal contractor**) who contracted to do the building work and who contracted with another person (a **subcontractor**) to do the work for the principal contractor, or
- (b) the principal contractor, if the principal contractor did not contract with a subcontractor to do the work.

**building work** means any work involved in, or involved in co-ordinating or supervising any work involved in:

- (a) the construction of a building, or
- (b) the making of alterations or additions to a building, or
- (c) the repairing, renovation, decoration or protective treatment of a building.

**defective building work** means building work that:

- (a) is residential building work done in such a way that it constitutes a breach of a statutory warranty applicable to the work under Part 2C of the [Home Building Act 1989](#), or
- (b) is building work done in such a way that it would constitute such a breach if the building work were residential building work.

(2) For the purposes of this Part, the **completion of building work** to which this Part applies occurs on the date specified for the completion of residential building work for the construction of a new building for a strata scheme in the [Home Building Act 1989](#) (whether or not the work is residential building work) or on the occurrence of some other event that is prescribed by the regulations as constituting completion of the work.

### 191 Building work to which Part applies

- (1) This Part applies to building work carried out on a building, or a part of a building, that is part of the parcel of a strata scheme, being work that is:
  - (a) residential building work, or
  - (b) carried out on a building, or a part of a building, used or proposed to be used for mixed use purposes that include residential purposes.

**Note—**

The parcel of a strata scheme includes common property and lots in a strata scheme.

- (2) This Part applies to building work only if the building work was carried out for the purposes of, or contemporaneously with, the registration of a strata plan or a strata plan of subdivision of a development lot.
- (3) This Part does not apply to building work if the work is subject to the requirement to obtain insurance under Part 6 of the *Home Building Act 1989* in relation to the work or is not subject to that requirement only because the contract price does not exceed the amount referred to in section 92 (3) of the *Home Building Act 1989*.
- (4) The regulations may prescribe additional building work to which this Part does not apply.
- (5) (Repealed)

## **192 Owners corporation decisions**

The approval or consent of an owners corporation under this Part is to be given by a resolution of the owners corporation at a general meeting.

**Note—**

A resolution at a meeting is to be determined by a simple majority (see clause 14 (1) of Schedule 1). A developer, or lessor of a leasehold strata scheme, is not entitled to vote, or exercise a proxy vote, on a matter concerning building defects (see clause 15 of Schedule 1).

## **Division 2 Inspection reports**

### **193 Building inspectors**

- (1) In this Part, **building inspector** means a person appointed for the purposes of this Part as a building inspector for building work.
- (2) A person is qualified to be appointed as a building inspector only if the person is a member of a class of persons prescribed by the regulations for the purposes of this section.

### **194 Obligations of developer**

- (1) If the initial period of a strata scheme ends not later than 12 months after the completion of building work, the developer of the strata scheme must within that period of 12 months:
  - (a) appoint a qualified person as a building inspector to carry out an inspection of, and to report on, the building work and give the Secretary written notice of the appointment not later than 14 days after making the appointment, or
  - (b) if the developer fails for any reason to appoint a building inspector within that

period of 12 months, give the Secretary written notice of the fact not later than 21 days after the end of that period.

Maximum penalty: 200 penalty units.

- (2) If the initial period for a strata scheme does not end within 12 months after the completion of building work, the developer of the strata scheme must give the Secretary written notice of that fact not later than 21 days after the end of that period.

Maximum penalty: 200 penalty units.

### **195 Approval of building inspector appointment by owners corporation**

- (1) The developer of a strata scheme must not appoint a building inspector under section 194 to carry out an inspection and to report on building work unless the appointment is approved by the owners corporation by a resolution at a general meeting of the owners corporation.

Maximum penalty: 200 penalty units.

- (2) If a building inspector proposed to be appointed by a developer to carry out any such inspection has been employed by, or by a contractor of, the developer at any time within the prescribed period preceding the proposed appointment, the developer and the proposed building inspector must disclose that fact to the owners corporation before the owners corporation determines whether or not to approve the appointment.

Maximum penalty: 200 penalty units.

#### **Note—**

Notice of other connections is also required to be given to the owners corporation under section 197 (4).

- (3) An owners corporation may refuse to approve the appointment of a building inspector on any grounds.
- (4) The owners corporation must, not later than 14 days after deciding to approve or refuse to approve the appointment of a building inspector by a developer, give the developer and the Secretary written notice of the decision.

Maximum penalty: 5 penalty units.

### **196 When building inspector for interim inspection arranged by Secretary**

- (1) On notification by a developer that the developer has not appointed a building inspector in accordance with section 194 or if the Secretary otherwise becomes aware that a developer has not done so:
- (a) the Secretary is to arrange for the appointment of a qualified person as a building inspector to carry out an inspection of, and to report on, the building work in accordance with this Part, and



- (b) must give written notice of the appointment to the developer and the owners corporation as soon as practicable after the appointment is made.

**Note—**

The regulations may provide for a fee for an appointment by the Secretary, see section 204.

- (2) An owner of a lot in a strata scheme who objects to an approval of the appointment of a building inspector by the owners corporation may, not later than 14 days after the approval, give the Secretary written notice of the objection and the grounds for the objection.
- (3) On receiving the objection, the Secretary may, if the Secretary thinks it appropriate in the circumstances and the building inspector has not carried out an interim inspection:
  - (a) arrange for the appointment of another qualified person as the building inspector to carry out an inspection of, and to report on, the building work in accordance with this Part, and
  - (b) give written notice of the appointment to the developer and the owners corporation as soon as practicable after the appointment is made.
- (4) The Secretary must give written notice of a decision not to arrange the appointment of a building inspector to the person who made the objection, the developer, the owners corporation and the building inspector approved by the owners corporation.
- (5) The appointment of a building inspector arranged by the Secretary under this Part is not required to be approved by the owners corporation.

**197 Building inspector must not be connected with developer**

- (1) The developer of a strata scheme must not appoint a building inspector to inspect building work for the scheme if the building inspector is, or was at any time in the 2 years immediately before the appointment, connected with the developer.

Maximum penalty: 200 penalty units.

- (2) In addition to the circumstances set out in section 7, a building inspector is **connected** with a developer if the inspector:
  - (a) has been involved in the design or any aspect of the construction or certification of the building work or any part of the building work to be reported on, or
  - (b) is connected with any person who has been so involved, or
  - (c) has a pecuniary interest in any aspect of the building work.
- (3) A building inspector is not connected with a developer merely because the inspector

has been or is appointed by the developer to carry out a report under this Part on other building work.

- (4) A person who is connected with a developer of a strata scheme and who is proposed for appointment as a building inspector under this Part in connection with that scheme must give written notice of the connection to the person making or arranging the appointment, and to the owners corporation before the appointment.

Maximum penalty: 100 penalty units.

### **198 Obligations of building inspector**

- (1) A building inspector carrying out functions under this Part cannot and does not represent the interests of the developer of a strata scheme and has a duty to act impartially in carrying out the functions of a building inspector under this Part. This subsection has effect despite any condition of the appointment of the building inspector and whether or not the inspector was appointed by the developer.
- (2) A building inspector must not, on an understanding that the building inspector will act otherwise than impartially in the course of the building inspector's functions as a building inspector under this Act, seek or accept, or offer or agree to accept, any benefit of any kind, whether on the building inspector's own behalf or on behalf of any other person.

Maximum penalty: 200 penalty units.

- (3) A person must not, on an understanding that a building inspector will act otherwise than impartially in the exercise of the building inspector's functions as a building inspector under this Act, give, or offer to give, any benefit of any kind, whether to the building inspector or any other person.

Maximum penalty: 200 penalty units.

### **199 Interim report**

- (1) A building inspector appointed under this Division is to carry out an inspection of the building work, and provide an interim report, not earlier than 15 months and not later than 18 months after the completion of the building work.
- (2) The interim report must:
  - (a) be in the form and contain the matters prescribed by the regulations for the purposes of this section, and
  - (b) without limiting paragraph (a), identify any defective building work of a kind required by the regulations to be reported on, and
  - (c) if reasonably practicable, identify the cause of that defective building work.

## **200 Obligation to arrange final inspection and report**

- (1) The developer of a strata scheme must, not later than 18 months after completion of the building work:
  - (a) arrange for the building inspector who prepared the interim report on the building work to carry out a final inspection of, and provide a final report on, the building work and give written notice to the Secretary of the arrangement not later than 14 days after making the arrangement, or
  - (b) if the original building inspector is not available, give the Secretary written notice of that fact not later than 14 days after becoming aware that the building inspector is not available, or
  - (c) make an application to the Secretary under this section.

Maximum penalty: 200 penalty units.

- (2) On notification under this section that the original building inspector is not available or if the Secretary otherwise becomes aware that a developer has not complied with subsection (1), the Secretary:
  - (a) is to arrange for the appointment of a qualified person as a building inspector to carry out the final inspection of, and provide the final report on, the building work, and
  - (b) must give written notice to the developer and the owners corporation of the appointment as soon as practicable after it is made.
- (3) The Secretary is not required to arrange for a final inspection and report under this section if the interim report was prepared by a building inspector arranged by the Secretary and the report did not identify any defective building work.
- (4) The Secretary may, on application by a developer, determine that the developer is not required to arrange for a final report under this section if the interim report did not identify any defective building work and the Secretary thinks it appropriate in the circumstances of the case to make the determination.
- (5) The Secretary must give written notice of any decision that a final inspection and report is not required to the owners corporation and the developer not later than 28 days after the decision is made.
- (6) In any case in which a final report is not required, the interim report is taken to be the final report for the purposes of this Part.

## **201 Final report**

- (1) A building inspector appointed to carry out a final inspection is to carry out a final

inspection of the building work, and provide a final report, not earlier than 21 months and not later than 2 years after the completion of the building work.

- (2) The final report must:
  - (a) be in the form and contain the matters prescribed by the regulations for the purposes of this section, and
  - (b) without limiting paragraph (a), identify defective building work identified in the interim report that has not been rectified, and
  - (c) identify any defective building work arising from rectification of defective building work previously identified in the interim report, and
  - (d) specify how the defective building work identified in the report should be rectified.
- (3) The final report must not contain matters that relate to defective building work not identified in the interim report, other than work arising from rectification of defective building work identified in the interim report.

## **202 Persons who are to be provided with copies or notice of reports**

- (1) A building inspector must give a copy of an interim report or a final report to the following persons not later than 14 days after completing the report:
  - (a) the developer,
  - (b) the owners corporation, if the initial period has ended,
  - (c) the Secretary,
  - (d) the builder responsible for any defective building work identified in the report.
- (2) An owners corporation must give written notice to the owners of lots in the strata scheme of the receipt of an interim report or a final report on building work in connection with the scheme not later than 14 days after receiving the report.
- (3) The notice must contain the particulars, if any, prescribed by the regulations for the purposes of this section.

Maximum penalty: 5 penalty units.

## **203 Powers of building inspector**

- (1) A building inspector appointed to prepare a report under this Division may enter and inspect any part of the parcel of the strata scheme.
- (2) The building inspector must give at least 14 days written notice to the owners corporation and the owner and any occupier of any affected lot of an intention to enter any part of the parcel of the strata scheme.

- (3) The owners corporation, any person who has exclusive use of common property, a strata managing agent, any building manager or manager of the common property and any owner or occupier of a lot must provide any assistance that is reasonable to enable an inspection to be carried out in accordance with this Division.
- (4) A person must not, without reasonable excuse, refuse a building inspector access to any part of the parcel of a strata scheme or a lot in the strata scheme, or obstruct or hinder a building inspector, in the exercise of the inspector's functions under this Act.

Maximum penalty: 10 penalty units.

#### **204 Costs of reports and appointment**

- (1) The costs of obtaining an inspection and report by a building inspector under this Division are to be borne by the developer, whether or not the building inspector was appointed by the developer.
- (2) The regulations may provide for the fees that may be charged for an inspection or a report under this Division.
- (3) The regulations may provide for a fee for the arrangement by the Secretary of the appointment of a building inspector under this Division.

#### **205 Effect of inspection report**

- (1) A report prepared under this Division must be considered by the Tribunal for the purposes of determining a building claim under Part 3A of the [Home Building Act 1989](#) and by any other court in proceedings relating to the building work the subject of the report, if the report is brought to the attention of the Tribunal or the court in the proceedings.
- (2) The report does not bind the Tribunal or court.

#### **206 Rectification of defects**

- (1) The builder who is responsible for defective building work, or an employee, agent or contractor of any such person, (the **builder**) may, at any time after the completion of the building work, enter any part of the parcel of the strata scheme that the person may reasonably require for the purpose of or in connection with rectifying the building work.

**Note—**

See sections 122 and 123 for other powers to enter the parcel of a strata scheme.

- (2) The builder must give at least 14 days written notice to the owners corporation, the developer and the owner and any occupier of any affected lot of an intention to enter any part of the strata parcel for the purpose of or in connection with rectifying defective building work.

- (3) A builder who enters a lot after giving notice in accordance with this section may enter the lot only at a time that is reasonable in the circumstances or at a time agreed with the owner or, if the owner is not the occupier of the lot, the occupier.
- (4) The builder is not bound by any provision of a report under this Division for the purpose of or in connection with rectifying defective building work.
- (5) A person must not, without reasonable excuse, refuse access to a builder to any part of the parcel of the strata scheme or a lot in a strata scheme if that access is permitted by this section.

Maximum penalty: 10 penalty units.

- (6) The duty under section 18BA of the *Home Building Act 1989* to allow reasonable access does not require a builder to be given reasonable access to the parcel of a strata scheme at any time while a building inspector is carrying out a final inspection under this Part on any part of the parcel.
- (7) If the builder who is responsible for defective building work is unavailable because the builder has died, is insolvent, has ceased to exist or is unavailable for any other reason prescribed by the regulations for the purposes of this section, the developer may appoint another person to rectify building work under this section. Any such person is taken to be the builder for the purposes of this section.

## Division 3 Building bonds

### 207 Bond to be given

- (1) The developer of a strata scheme must give the Secretary a security (a **building bond**) for building work to which this Part applies before an occupation certificate is issued under the *Environmental Planning and Assessment Act 1979* for any part of a building for which the building work was done.
- (2) The amount secured by a building bond is to be 2% of the contract price for the building work.
- (3) The purpose of the building bond is to secure funding for the payment (up to the amount of the bond) of the costs of rectifying defective building work identified in a final report under this Part.
- (4) If the building work to which this Part applies comprises only part of the building work to which a contract price applies, the amount secured is to be 2% of the part of the contract price applicable to the building work to which this Part applies.
- (5) A developer must not fail to comply with this section.

Maximum penalty: 200 penalty units.

## **208 Form of building bond**

A building bond may be in one or more of the following forms:

- (a) a bank guarantee,
- (b) a bond,
- (c) another form of security that is prescribed by the regulations for the purposes of this section.

## **209 When amount secured by building bond payable**

- (1) The whole or part of the amount secured by a building bond may be claimed or realised by the Secretary for payment as follows:
  - (a) to the owners corporation to meet the costs of rectifying defective building work identified in the final report on the work, if the report identifies the defective building work,
  - (b) to the owners corporation, with the consent of the developer, on application to the Secretary by the owners corporation and the developer.
- (2) An application under subsection (1) (b) must be made within the period prescribed by the regulations for the purposes of this section.
- (3) A building bond must be claimed or realised under this section:
  - (a) 2 years after the date of completion of building work for which it is given, or
  - (b) within 60 days after the final report on the building work is given to the Secretary by the building inspector,whichever is the later.
- (4) The developer must take any necessary steps to enable the Secretary to claim or realise an amount of building bond given by the developer and required for payment in accordance with this Division.

Maximum penalty: 10 penalty units.
- (5) The Secretary may refuse to claim or realise an amount, or reduce the amount otherwise payable, under this section if the Secretary is satisfied that the developer or the builder responsible for defective building work was unreasonably refused access to the strata parcel for the purposes of rectifying that work.
- (6) The Secretary must give the owners corporation and the developer of a strata scheme written notice of any proposed payment under this section in relation to the strata scheme.

## **210 Use of amounts secured by building bond**

- (1) **Purposes for which bond amount may be used** An owners corporation for a strata scheme that is paid the whole or part of an amount secured by a building bond must, within a reasonable time, use the amount paid:
  - (a) for or in connection with rectifying the defective building work identified in the final report (whether or not the work affects the common property or any other part of the parcel), or
  - (b) for costs related to the rectification.
- (2) An amount secured by a building bond cannot be used to meet the costs of an inspection or a report under Division 2, including any fee for the appointment of a building inspector by the Secretary, except in the circumstances (if any) specified by the regulations for the purposes of this section.
- (3) **Repayment of excess amounts to developer** An owners corporation must repay to the developer any amount of a building bond that is not required for a purpose specified in subsection (1) and must give the developer written notice of the completion of the rectification of the defective building work.

Maximum penalty: 10 penalty units.
- (4) **Owner not entitled to building bond** This Act does not confer on the owner of a lot any entitlement to be paid any part of an amount secured by a building bond that is paid in respect of defective building work affecting the owner's lot.
- (5) **Payments with consent not affected** This section does not prevent the owners corporation from retaining any part of a building bond, and using it for any purposes, with the consent of the developer.

## **211 Tribunal may make orders as to access and contract price**

- (1) The Tribunal may, on application, make an order requiring the occupier of a lot or part of a lot in a strata scheme or any other person to allow access to the lot or any other part of the parcel for the purpose of or in connection with an inspection under this Part or rectifying defective building work.
- (2) An application under subsection (1) may be made by an owners corporation, the developer, a building inspector or a person entitled to enter any part of a parcel of a strata scheme under section 203 or 206.
- (3) The Tribunal may, on application by an owners corporation, the developer or the Secretary, make an order specifying the amount of the contract price of building work for the purpose only of determining the amount of a building bond.
- (4) An application under this section is to be made to, and determined by, the Supreme



Court (and not the Tribunal) if the matter is incidental to other proceedings being dealt with by the Court.

- (5) A determination under this section of the amount of the contract price of building work does not bind a court or tribunal in any other proceedings.

## **Division 4 Miscellaneous**

### **212 Variation of times for reports and other matters**

- (1) The Secretary may, on the Secretary's own motion or on application by the developer, owners corporation or a building inspector, vary the period within which an interim report or a final report is to be provided, or any other action is to be done, under this Part, if the Secretary considers it appropriate to do so in the circumstances of the case.
- (2) The Secretary must give written notice to the developer, owners corporation or building inspector of the following:
  - (a) any application under this section,
  - (b) a decision by the Secretary under this section.
- (3) The Secretary is not required to give notice of an application to any person who made the application.

### **213 Review of decisions**

- (1) **Right to apply for review** An interested person may apply to the Secretary for a review of a reviewable decision.
- (2) The following persons are interested persons in relation to a reviewable decision:
  - (a) the developer of a strata scheme to which the decision is related,
  - (b) the owners corporation of a strata scheme to which the decision is related,
  - (c) the owner of a lot in a strata scheme to which the decision is related,
  - (d) any other person prescribed by the regulations for the purposes of this section.
- (3) **Reviewable decisions** The regulations may prescribe decisions under this Part that are to be the reviewable decisions for the purposes of this section.
- (4) **Applications** An application for a review is to be made in accordance with the regulations.
- (5) **Individuals who may carry out reviews** An application for a review of a decision is to be dealt with by an individual other than the person who made the decision who is (if the

reviewer is not the Secretary) approved by the Secretary.

- (6) The reviewer must be, as far as practicable, an individual:
- (a) who was not substantially involved in the process of making the decision under review, and
  - (b) who is a member of staff of the Department of Finance, Services and Innovation, and
  - (c) who is suitably qualified to deal with the issues raised by the application.
- (7) **Powers on review** In reviewing a decision, the reviewer is to consider any relevant material submitted by the applicant.
- (8) Following the review of the decision, the reviewer may:
- (a) affirm the decision, or
  - (b) vary the decision, or
  - (c) set aside the decision and make a decision in substitution for the decision that is set aside.
- (9) In exercising a function under subsection (8), a reviewer is taken for all purposes to have the right to exercise the same functions in law that the person who made the decision had in making the decision being reviewed.
- (10) **Reviewer to notify relevant decision maker of decision** A reviewer must notify the Secretary of the result of, and the reasons for, his or her decision under subsection (8) as soon as is practicable after making the decision.
- (11) **Statement of reasons** For the purposes of this section, an applicant is notified of the reasons for a decision in a review only if the applicant is given a statement of reasons setting out the following:
- (a) the findings on material questions of fact, referring to the evidence or other material on which those findings were based,
  - (b) the understanding of the reviewer of the applicable law,
  - (c) the reasoning processes that led the reviewer to the conclusions the reviewer made.
- (12) **Status of decisions made on review** For the purposes of this Act, a reviewable decision that is affirmed, varied or set aside and substituted under this section is:
- (a) taken to have been made by the person who made the original decision (as affirmed, varied or substituted by the reviewer), and

(b) taken to have been made on the date under which the applicant is given a notice of the decision under this section.

(13) **No reviews of decisions previously reviewed under this section** A person is not entitled to a review under this section of any decision previously reviewed under this section or a decision made under subsection (8).

## 214 Regulations

(1) Regulations may be made for or with respect to the following:

- (a) building bonds,
- (b) the appointment of a building inspector by the Secretary if a building inspector is no longer available or is not qualified or is otherwise not suitable,
- (c) additional circumstances in which the Secretary, rather than the developer, is to appoint a building inspector,
- (d) information required to be provided to the Secretary by the developer or the owners corporation in relation to building inspectors and other matters arising from this Part,
- (e) nomination of building inspectors for approval by owners corporations,
- (f) matters to be disclosed to the owners corporation by a developer seeking approval of a building inspector and the period within which disclosure is to be made,
- (g) meetings of owners corporations to consider the approval of the appointment of a building inspector,
- (h) the provision of information to a building inspector for the purposes of an inspection or report,
- (i) applications to the Secretary for a determination that a final inspection and report are not required,
- (j) requirements to be observed in relation to the conduct of a review under section 213.

(2) Without limiting subsection (1) (a), the regulations may provide for the following:

- (a) requirements for the provision and maintenance of a building bond,
- (b) requirements for additional information or documents to be provided relating to the amount of a building bond,
- (c) how the contract price is to be determined for the purposes of the amount of a building bond,

- (d) when a building bond lapses or need not be maintained,
- (e) procedures relating to applications for, and the payment of, amounts secured by a building bond,
- (f) the period of notice to be given of a proposed payment of an amount secured by a building bond,
- (g) fees relating to the provision of building bonds under this Part.

### **215 Relationship of Part to other remedies**

- (1) A building bond is payable in respect of defective building work under this Part whether or not:
  - (a) Part 2C of the *Home Building Act 1989* applies to the work, or
  - (b) the developer is liable to the owners corporation or the owner of a lot in respect of the work.
- (2) A developer may recover the amount of any building bond paid to an owners corporation in respect of defective building work for which the developer is not otherwise liable from any person against whom the developer has a cause of action in respect of the defective building work.
- (3) Any thing done or omitted to be done under this Part does not affect any action that may be taken, or remedy that may be sought, by or in respect of building work under any other law.
- (4) However, any court, tribunal or other body may take into account any payment made, rectification work done or any other action taken in relation to building work under this Part when it is determining a matter relating to the work.

## **Part 12 Disputes and Tribunal powers**

### **Introductory note—**

This Part gives power to the Tribunal to make orders to settle disputes about certain matters relating to the operation and management of a strata scheme. It also contains general provisions about the powers of the Tribunal and some other order-making powers of the Tribunal.

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 to the Secretary 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.

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
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<b>Orders relating to meetings and decisions of owners corporation</b>		
To require original owner to provide things to owners corporation	Owners corporation	17
To require meeting to be held	Owner Owners corporation Mortgagee	20
To invalidate resolution or election	Owner First mortgagee of lot	24
To nullify resolution of owners corporation on ground that person was denied vote or notice was not given	Person entitled to vote on resolution	25
To require meeting to be held if no officers or committee after first AGM	Owner Mortgagee Covenant chargee	48
<b>Orders relating to covenants and other restrictions</b>		
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 Original owner Owner	27
To comply with obligation imposed by positive covenant	Authority having benefit of positive covenant	234
To refrain from breaching restriction on use of utility lot	Owners corporation Lessor of leasehold strata scheme Owner Occupier of lot	235
To refrain from breaching restriction on use of utility lot within area of local council	Relevant local council	235
<b>Orders relating to strata managing agents and building managers</b>		
To terminate strata managing agent or building manager agreement or make other order about an agreement	Owners corporation	72
To appoint strata managing agent	Person who obtained order under this Act that imposed duty on owners corporation or office holder 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	237

<b>Orders relating to contributions and funds</b>		
To allocate payment of surplus money	Owners corporation Covenant chargee Owner Mortgagee	77
To alter amount of contributions	Owners corporation Lessor of leasehold strata scheme Owner Mortgagee in possession	82
To prevent owners corporation charging interest for late payment of contribution	Owner	85
To require original owner to compensate for inadequate estimates/contributions	Owners corporation Owner	89
<b>Orders relating to property</b>		
To require occupier of lot to allow owners corporation to enter lot	Owners corporation	124
To get consent to existing or proposed alterations or repair of common property	Lessor of leasehold strata scheme Owner	126
To declare work to be cosmetic work or minor renovation	Owner	127
To direct owner to lodge documents under section 19 of <a href="#">Strata Schemes Development Act 2015</a>	Owners corporation Lessor of leasehold strata scheme Owner	128
To require owner to comply with window safety device obligation	Owners corporation	129
To require owners corporation to carry out window safety device function	Interested person (other than owners corporation)	129
To require owners corporation to dispose of personal property	Owner	130
To prevent owners corporation acquiring personal property	Owner	130
To require owners corporation to acquire personal property	Owner	130
To use specified common property for specified purposes	Owner	131
To require owner or occupier to repair damage or compensate for damage	Owners corporation	132

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	236
<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	148
To change by-law conferring exclusive rights or privileges over common property	Owners corporation Lessor of leasehold strata scheme Owner Interested person	149
To invalidate by-law	Person entitled to vote on motion relating to by-law Lessor of leasehold strata scheme	150
<b>Order relating to keeping of animals</b>		
To require removal of animal wrongly kept on lot	Interested person	156
To allow person to keep animal on lot	Owner Occupier	157
To remove animal causing nuisance or hazard	Interested person	158
To terminate nuisance, hazard or unreasonable nuisance caused by animal	Interested person	158
<b>Orders relating to insurance</b>		
To adjust proportion of insurance premium to be paid	Person liable to pay premium	162
To exempt from requirement to insure	Person required to insure	172
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 part strata parcel) of part of building not included in part strata parcel	174

To require insurance to be taken out	Owner Enrolled mortgagee or person having interest in lot Lessor of leasehold strata scheme Sublessee of common property 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 part strata parcel) of part of building not included in part strata parcel Authority having benefit of a positive covenant affecting building or site	175
<b>Orders relating to records of owners corporation</b>		
To allow owners corporation to enter information on strata roll	Owners corporation Owner Person having or acquiring estate or interest in lot	187
To require owners corporation, strata managing agent or office holder to supply records or documents for inspection	Person entitled to inspect records or documents	188
<b>Orders relating to defective building work</b>		
To permit access to lot for inspection or building work	Owners corporation Developer Building inspector Person entitled to enter Secretary	211
To specify contract price	Owners corporation Developer Secretary	211
<b>General orders for settlement of disputes</b>		
To resolve dispute or complaint	Interested person Original owner Building manager	232
To resolve dispute between contiguous strata schemes	Owners corporation	233
<b>Orders relating to strata committee</b>		
To remove person from strata committee	Interested person	238
To remove person from office	Interested person	238
To prohibit strata committee from determining a matter	Interested person	238



## **Division 1 Internal dispute resolution**

### **216 Internal dispute resolution procedures for strata schemes**

- (1) An owners corporation for a strata scheme may establish, by any means it thinks fit, a voluntary process for resolving disputes between any one or more owners of lots in the scheme, other interested persons, the owners corporation, the strata committee, the strata managing agent and the building manager.
- (2) The fact that a person has or has not participated in any such process, or the fact that a person has done or omitted to do anything in the course of or as a result of any such process, is not to be considered for the purposes of any mediation or other proceedings under this Act and does not prevent mediation occurring, or proceedings being taken, in any such case.

## **Division 2 Alternative dispute resolution by Secretary**

### **217 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 and, for the purposes of the provisions of this Division relating to privilege, disclosure and admissibility, includes steps taken in the course of arranging or following-up a session.

**mediator** means the Secretary or any person approved by the Secretary in writing to be a mediator for the purposes of this Division.

### **218 Matters that may be subject to mediation**

- (1) A person may apply to the Secretary for mediation of any matter for which an order may be sought from the Tribunal under this Act.
- (2) On receipt of an application for mediation, the Secretary must, if the Secretary thinks the circumstances of the case are appropriate, arrange for mediation in accordance with the regulations.
- (3) The Secretary may dismiss an application for mediation if the Secretary believes that the application is frivolous, vexatious, misconceived or lacking in substance.

### **219 Mediation involving disputes about part strata parcels**

The Secretary may arrange mediation under section 218 of a dispute or complaint relating

to the management of a building or its site where part of the building is a part strata parcel only:

- (a) if any applicable strata management statement provides for the mediation, or determination by the Tribunal, of disputes, or
- (b) with the consent of all parties to the dispute,

but is not required to arrange mediation before exercising any other function under this Act, the by-laws or a strata management statement.

## **220 Representation of parties**

A party to a dispute is not entitled to be represented by another person at a mediation session under this Division unless all the other parties consent to the representation.

## **221 Effect of Division on other agreements or arrangements**

This Division 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.

## **222 Privilege**

- (1) 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, and
  - (b) a document or other material sent to, or produced at an office of, the Secretary for the purpose of enabling a mediation session to be arranged.
- (2) The privilege conferred only extends to a publication made:
  - (a) at a mediation session, or
  - (b) as provided by subsection (1) (b), or
  - (c) as a disclosure permitted by this Division.

## **223 Evidence of mediation sessions not admissible**

- (1) 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.
- (2) A document prepared for the purposes of, or in the course of, or as a result of, a mediation session, or any copy of any such document, is not admissible in evidence in any proceedings before any court, tribunal or body.
- (3) This section does not apply 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 this Division on the ground specified in section 224 (c).

#### **224 Confidentiality**

A mediator may disclose information obtained in connection with the administration or execution of this Division 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 Division,
- (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.

#### **225 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 or omitted to be done in good faith for the purposes of a mediation session under this Division.

### **Division 3 Procedures for applications to Tribunal**

#### **226 Interested persons**

- (1) The following persons are ***interested persons*** for the purpose of making an application to the Tribunal under this Act:
  - (a) the owners corporation,
  - (b) an officer of the owners corporation,
  - (c) a strata managing agent for the scheme,

- (d) an owner of a lot in the scheme, a person having an estate or interest in a lot or an occupier of a lot,
  - (e) if the strata scheme is a leasehold strata scheme, the lessor of the scheme.
- (2) The **interested persons** for the purpose of making an application to the Tribunal under this Act relating to a strata scheme for a part strata parcel also include 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 interest in a lot in, or an occupier of a lot in, any other scheme affecting the building,
  - (b) any other person for the time being bound by any strata management statement for the building.

### **227 Certain applications cannot be accepted without prior mediation**

- (1) A registrar must not accept an application made to the Tribunal under this Act unless:
- (a) mediation by the Secretary under Division 2 or otherwise has been attempted but was not successful, or
  - (b) a party refused to participate in the mediation, or
  - (c) the registrar considers that mediation is unnecessary or inappropriate in the circumstances.
- (2) The registrar must inform an applicant that the applicant should arrange for mediation if the registrar rejects an application under this section.
- (3) The applicant may arrange for mediation under Division 2 or otherwise.
- (4) This section does not apply to applications for the following orders:
- (a) an order to appoint, or requiring the appointment of, a strata managing agent,
  - (b) an order varying or revoking an order that varies or revokes another order by the Tribunal,
  - (c) an order with respect to waiving, varying or extinguishing a restriction relating to the initial period,
  - (d) an order allocating unit entitlements,
  - (e) an order with respect to access to a lot by the owners corporation to inspect or repair common property,
  - (f) an order seeking provision of records to an owners corporation by a former strata managing agent for the strata scheme,

- (g) an order with respect to the inspection of records of an owners corporation,
- (h) an order imposing a monetary penalty and any associated order as to the payment of costs.

## **228 Notice of applications to Tribunal**

- (1) The registrar must give the named parties to the application, and any other person who in the registrar's opinion would be affected, a copy of an application for an order (other than an order imposing a monetary penalty).
- (2) On receipt of an application, an owners corporation given notice of an application for an order must:
  - (a) immediately cause a copy of the application 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) so display the copy for the period specified in the notice for the making of submissions.

## **Division 4 Orders that may be made by Tribunal**

### **229 General order-making power of Tribunal**

The Tribunal may, in any proceedings before it under this Act, make any one or more of the following orders or other decisions:

- (a) an order or decision that provides for any ancillary or consequential matter the Tribunal thinks appropriate,
- (b) an interlocutory decision within the meaning of the [Civil and Administrative Tribunal Act 2013](#).

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

- (1) The Tribunal may make orders to give effect to any agreement or arrangement arising out of a mediation session.
- (2) An order 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) Without limiting subsection (1), the Tribunal may make an order that gives effect to the terms of a written agreement signed during a mediation session by persons who were parties to the mediation.
- (4) A mediator may request the registrar to refer a matter to the Tribunal for the making of an order under this section, but only with the consent of the parties to the mediation.

- (5) 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.

### **231 Interim orders**

- (1) If an applicant for an order by the Tribunal under this Act requests the making of an interim order and the Tribunal is satisfied on reasonable grounds that urgent considerations justify the making of the order, the Tribunal may:
- (a) make an interim order in the form of any order that could otherwise be made by the Tribunal, and
  - (b) renew the interim order by giving notice that the order is renewed if a request for its renewal is made not later than 3 months after the order was made.
- (2) The Tribunal may revoke an interim order, or a renewal of an order.
- (3) The Tribunal must give notice 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) since receipt of the application, any procedure under this Act has not been followed or a function of the Tribunal has not been exercised in relation to the application, or
  - (b) the time, or extended time, for making written submissions on the application has not expired, or
  - (c) a right of appearance or representation has not been exercised.
- (6) An interim order continues in force until:
- (a) the end of the period of 3 months that commenced with the making of the order or any earlier date specified in 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 end of the period of 6 months that commenced with the making of the order or any earlier date specified in the order.
- (7) Subsection (6) does not apply if the order is revoked by the Tribunal or the application

is determined in accordance with another provision of this Act.

### **232 Orders to settle disputes or rectify complaints**

- (1) **Orders relating to complaints and disputes** The Tribunal may, on application by an interested person, original owner or building manager, make an order to settle a complaint or dispute about any of the following:
  - (a) the operation, administration or management of a strata scheme under this Act,
  - (b) an agreement authorised or required to be entered into under this Act,
  - (c) an agreement appointing a strata managing agent or a building manager,
  - (d) an agreement between the owners corporation and an owner, mortgagee or covenant chargee of a lot in a strata scheme that relates to the scheme or a matter arising under the scheme,
  - (e) an exercise of, or failure to exercise, a function conferred or imposed by or under this Act or the by-laws of a strata scheme,
  - (f) an exercise of, or failure to exercise, a function conferred or imposed on an owners corporation under any other Act.
- (2) **Failure to exercise a function** For the purposes of this section, an owners corporation, strata committee or building management committee is taken not to have exercised 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) **Other proceedings and remedies** A person is not entitled:
  - (a) to commence other proceedings in connection with the settlement of a dispute or complaint the subject of a current application by the person for an order under this section, or
  - (b) to make an application for an order under this section if the person has commenced, and not discontinued, proceedings in connection with the settlement of a dispute or complaint the subject of the application.
- (4) **Disputes involving management of part strata parcels** The Tribunal must not make an order relating to a dispute involving the management of a strata scheme for a part strata parcel or the management of the building concerned or its site if:

- (a) any applicable strata management statement prohibits the determination of disputes by the Tribunal under this Act, or
  - (b) any of the parties to the dispute fail to consent to its determination by the Tribunal.
- (5) The Tribunal must not make an order relating to a dispute involving a matter to which a strata management statement applies that is inconsistent with the strata management statement.
- (6) **Disputes relating to consent to development applications** The Tribunal must consider the interests of all the owners of lots in a strata scheme in the use and enjoyment of their lots and the common property in determining whether to make an order relating to a dispute concerning the failure of an owners corporation for a strata scheme to consent to the making of a development application under the [Environmental Planning and Assessment Act 1979](#) relating to common property of the scheme.
- (7) **Excluded complaints and disputes** This section does not apply to a complaint or dispute relating to an agreement that is not an agreement entered into under this Act, or the exercise of, or failure to exercise, a function conferred or imposed by or under any other Act, if another Act confers jurisdiction on another court or tribunal with respect to the subject-matter of the complaint or dispute and the Tribunal has no jurisdiction under a law (other than this Act) with respect to that subject-matter.

### 233 Order for settlement of dispute between strata schemes

- (1) The Tribunal may, on application by an owners corporation for a strata scheme, make an order to settle a dispute between that strata scheme and another strata scheme if:
- (a) the strata schemes are contiguous or the dispute relates to a lease of land, or other arrangement relating to property, of one of the schemes, and
  - (b) the matter in dispute is not regulated by or under any other Act.
- (2) In this section, 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.

### 234 Order enforcing positive covenant

- (1) The Tribunal may, on application by an authority having the benefit of a positive covenant, order an owners corporation for or owner of a lot in a strata scheme to comply with an obligation imposed by the covenant and relating to the maintenance, use, repair or insurance of a building or lot in the scheme, if the Tribunal considers that the owners corporation or owner has failed to comply with the obligation.
- (2) If the authority has been refused an injunction under section 88H of the [Conveyancing Act 1919](#), the Tribunal must not make an order to the same effect as the injunction



refused.

### **235 Orders enforcing restrictions on uses of utility lots**

- (1) The Tribunal may, on application by an owners corporation, the lessor under a leasehold strata scheme or an owner or occupier of a lot in a strata scheme, 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 63 of the *Strata Schemes Development Act 2015* on the use of the utility lot.
- (2) The Tribunal may, on application by the local council, 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 63 of the *Strata Schemes Development Act 2015* on the use of the utility lot.

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

- (1) **Tribunal may make order allocating unit entitlements** The Tribunal may, on application, make an order allocating unit entitlements among the lots that are subject to a strata scheme in the manner specified in the order 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
  - (b) was unreasonable when a revised schedule of unit entitlement was lodged at the conclusion of a development scheme, or
  - (c) 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 planning approval.
- (2) **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 to such other matters as the Tribunal considers relevant.
- (3) **Persons who may apply for order** An application for an order under this section may be made by any of the following:
  - (a) an owner of a lot (whether or not a development lot) within the parcel for the strata scheme,
  - (b) the owners corporation,
  - (c) the lessor, in the case of a leasehold strata scheme,
  - (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.

- (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 a person who is a qualified valuer within the meaning of the *Strata Schemes Development Act 2015*.
- (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 an original owner, also order:
- (a) the payment by the original owner 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 original owner to any or all of the following people of the amounts (if any) 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:
    - (i) the lessor, in the case of a leasehold strata scheme,
    - (ii) the owners corporation,
    - (iii) the owners of lots.
- (7) **Lodgment of order** The owners corporation must ensure that a copy of an order made by the Tribunal under this section is lodged in the Registrar-General's office no more than 6 months after the order is made. Nothing in this section prevents a person who is entitled to apply for an order under this section from lodging a copy of an order made under this section.

**Note—**

Section 246 contains provisions with respect to the recording of an order made under this section.

### **237 Orders for appointment of strata managing agent**

- (1) **Order appointing or requiring the appointment of strata managing agent to exercise functions of owners corporation** The Tribunal may, on its own motion or on application, make an order appointing a person as a strata managing agent or requiring an owners corporation to 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** The Tribunal may also, when making an order under this section, order that the strata managing agent is to have and may exercise:
- (a) all the functions of the chairperson, secretary, treasurer or strata committee of the owners corporation, or
  - (b) specified functions of the chairperson, secretary, treasurer or strata committee of the owners corporation, or
  - (c) all the functions of the chairperson, secretary, treasurer or strata committee of the owners corporation other than specified functions.
- (3) **Circumstances in which order may be made** The Tribunal may make an order only if satisfied that:
- (a) the management of a strata scheme the subject of an application for an order under this Act or an appeal to the Tribunal is not functioning or is not functioning satisfactorily, or
  - (b) an owners corporation has failed to comply with a requirement imposed on the owners corporation by an order made under this Act, or
  - (c) an owners corporation has failed to perform one or more of its duties, or
  - (d) an owners corporation owes a judgment debt.
- (4) **Qualifications of person appointed** A person appointed as a strata managing agent as a consequence of an order made by the Tribunal must:
- (a) hold a strata managing agent's licence issued under the [Property, Stock and Business Agents Act 2002](#), and
  - (b) have consented in writing to the appointment, which consent, in the case of a strata managing agent that is a corporation, may be given by the Secretary or other officer of the corporation or another person authorised by the corporation to do so.
- (5) **Terms and conditions of appointment** A strata managing agent may be appointed as a consequence of an order under this section on the terms and conditions (including terms and conditions relating to remuneration by the owners corporation and the duration of appointment) specified in the order making or directing the appointment.

- (6) **Return of documents and other records** A strata managing agent appointed as a consequence of an order under this section must cause a general meeting of the owners corporation to be held not later than 14 days before the end of the agent's appointment and must on or before that meeting make arrangements to return to the owners corporation all documents and other records of the owners corporation held by the agent.
- (7) **Revocation of certain appointments** An order may be revoked or varied on application and, unless sooner revoked, ceases to have effect at the expiration of the period after its making (not exceeding 2 years) that is specified in the order.
- (8) **Persons who may make an application** The following persons may make an application under this section:
- (a) a person who obtained an order under this Act that imposed a duty on the owners corporation or on the strata committee or an officer of the owners corporation and that has not been complied with,
  - (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,
  - (c) the authority having the benefit of a positive covenant that imposes a duty on the owners corporation,
  - (d) a judgment creditor to whom the owners corporation owes a judgment debt.

### **238 Orders relating to strata committee and officers**

- (1) The Tribunal may, on its own motion or on application by an interested person, make any of the following orders:
- (a) an order removing a person from a strata committee,
  - (b) an order prohibiting a strata committee from determining a specified matter and requiring the matter to be determined by resolution of the owners corporation,
  - (c) an order removing one or more of the officers of an owners corporation from office and from the strata committee.
- (2) Without limiting the grounds on which the Tribunal may order the removal from office of a person, the Tribunal may remove a person if it is satisfied that the person has:
- (a) failed to comply with this Act or the regulations or the by-laws of the strata scheme, or
  - (b) failed to exercise due care and diligence, or engaged in serious misconduct, while holding the office.

## **Division 5 General provisions relating to Tribunal powers and orders**

### **239 Orders relating to title to land**

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

### **240 Tribunal may make order of another kind**

The Tribunal may deal with an application for an order under a specified provision of this Act by making an order under a different provision of this Act if it considers it appropriate to do so.

### **241 Tribunal may prohibit or direct taking of specific actions**

The Tribunal may order any person the subject of an application for an order to do or refrain from doing a specified act in relation to a strata scheme.

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

The Tribunal may dismiss an application for an order if:

- (a) the ground for the application is the absence of a quorum at a meeting or a defect, irregularity or deficiency of notice or time, and
- (b) the Tribunal believes no substantial injustice has resulted.

### **243 Copies of orders**

- (1) The Tribunal is to cause a copy of an order under this Act to be given to the owners corporation for the strata scheme to which the order relates (whether or not the owners corporation is a party to the proceedings).
- (2) The owners corporation must:
  - (a) display the copy of the order in a prominent position on the notice board of the owners corporation within 3 days after receiving it, and for 14 days after that, or
  - (b) if the owners corporation does not have a notice board, cause a further copy of the order to be given to each person whose name appears on the strata roll.

### **244 Tribunal to be provided with strata report and inspections**

- (1) An owners corporation must, if required to do so by the Tribunal for the purposes of its functions under this Act, provide to the Tribunal:
  - (a) information under Division 2 of Part 10, or

(b) an opportunity to inspect items under that Division.

Maximum penalty: 5 penalty units.

(2) The Tribunal is not liable to pay a fee for any information provided or inspection under this section.

#### **245 Effect of certain orders imposing obligations on owners corporation**

- (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 relating to a resolution under section 25 (except subsection (4)),
  - (b) an order relating to interest or contributions under section 85 or 87,
  - (c) an order relating to property under section 126, 127, 128, 129 or 130,
  - (d) an order relating to insurance under section 174 or 175,
  - (e) an order under section 232 in which the Tribunal declares that the order is to have effect as a decision of the owners corporation.
- (2) The owners corporation must cause the terms of any such order to be recorded in its minute book when it is given a copy of the order by the registrar.
- (3) If any such order specifies a period (a **limitation period**) during which a resolution of an owners corporation purporting to alter the effect of the order would be inoperative, a resolution passed by the owners corporation 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.
- (4) A resolution that is so authorised and passed may amend or revoke an order before the end of a limitation period.
- (5) An application to the Tribunal for an order authorising a motion for submission to a general meeting 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.

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

- (1) The Registrar-General is to make any recordings in the Register with respect to an order under this Act that 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 Tribunal as a true copy, has been lodged in the office of the Registrar-General, and
  - (b) the copy is accompanied by the certificate of title comprising the common property in the strata scheme, and
  - (c) any fee payable for the recordings has been paid.
- (2) The Registrar-General may waive the requirement for the certificate of title under subsection (1) if:
- (a) the certificate of title has not been lodged within 21 days after written notice is given by the person lodging the copy of the order to the owners corporation requesting the lodging of the certificate of title, or
  - (b) an application under section 111 of the *Real Property Act 1900* for the issue of a new certificate of title has not been made within that period.

#### **247 Changes to Register after orders allocating unit entitlements**

- (1) This section applies if:
- (a) a copy of an order allocating unit entitlements among lots in a strata plan is lodged with the Registrar-General in accordance with this Act, or
  - (b) a copy of an order made by a superior court with respect to any such order is lodged with the Registrar-General and is certified by the appropriate officer of that court to be a true copy.
- (2) The Registrar-General must 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.

#### **248 Recovery of unpaid civil penalty**

Any civil penalty imposed by the Tribunal as a result of a contravention of an order under this Act that is to be paid by an owner of a lot to the owners corporation may be recovered under this Act as if it were an amount of unpaid contributions.

**Note—**

Section 72 (3) of the *Civil and Administrative Tribunal Act 2013* provides for a civil penalty for a contravention of an order of the Tribunal. A monetary penalty of up to \$11,000 for an individual and \$22,000 for a corporation may be imposed for the contravention and may be recovered as a debt due to the Crown in a court of competent jurisdiction (see section 77 of that Act). Other penalties ordered to be paid by the Tribunal may also be recovered as debts under that Act (see section 78 of that Act).

**Note—**

Section 86 of this Act provides for the recovery of unpaid contributions.

## **Part 13 Offences and proceedings**

### **Division 1 Offences and enforcement**

#### **249 Investigations by Secretary**

- (1) The Secretary may, if the Secretary believes on reasonable grounds that an offence under this Act has been or may be committed, 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 part strata 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 Secretary and allow the Secretary to inspect its records under Division 2 of Part 10.
- (2) When exercising a power under this section, the Secretary may, if the Secretary thinks fit, be accompanied by:
  - (a) a member of the strata committee of the owners corporation, or
  - (b) a member of the building management committee (if any) for the building, or
  - (c) the strata managing agent (if any) for the strata scheme.
- (3) A person must not obstruct or hinder the Secretary, or a delegate of the Secretary, in the exercise of powers conferred by this section.

Maximum penalty: 5 penalty units.
- (4) An owners corporation must not fail to comply with a request under subsection (1) (d).

Maximum penalty: 5 penalty units.
- (5) No charge is payable by the Secretary in connection with a request made under subsection (1) (d).

**Note—**

The Secretary may delegate his or her functions under this Act (see section 257).

#### **250 Penalty notices**

- (1) An authorised officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.



(2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.

(3) The *Fines Act 1996* applies to a penalty notice issued under this section.

**Note—**

The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.

(4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).

(5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

(6) In this section, **authorised officer** means a person employed in the Department of Finance, Services and Innovation authorised in writing by the Secretary as an authorised officer for the purposes of this section.

## **251 Nature of proceedings for offences**

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

## **252 Proof of reasonable excuse**

In any proceedings for an offence against a provision of this Act or the regulations, the onus of proving that a person had a reasonable excuse (as referred to in the provision) lies with the defendant and must be proved on the balance of probabilities.

## **Division 2 Other proceedings**

### **253 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 in a strata scheme or an owners corporation or covenant chargee may have in relation to any lot or common property apart from this Act.

(2) In any proceedings to enforce any such right or remedy, 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.

#### **254 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 the 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.

#### **255 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) The 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) The 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 part strata parcel, of any strata scheme for part of the building, or
  - (b) the lessor, in the case 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 part strata parcel.

## **Part 14 Miscellaneous**

### **256 Functions of Secretary**

The functions of the Secretary under this Act include the following:

- (a) investigating and carrying out research into matters relating to or affecting strata schemes,
- (b) investigating and attempting to resolve complaints and disputes relating to strata schemes and taking any action that the Secretary thinks appropriate,
- (c) prosecuting any offence established by or under this Act,
- (d) providing information to owners or occupiers of lots in strata schemes, owners corporations, lessors of leasehold strata schemes, strata managing agents and the public about this Act and the services provided by the Secretary and the Tribunal,
- (e) investigating and reporting on any matters, or making inquiries in relation to any matters, referred to the Secretary by the Minister in connection with this Act.

### **257 Delegation by Secretary**

The Secretary may delegate the exercise of any function of the Secretary under this Act (other than this power of delegation) to:

- (a) any member of staff of the Department of Finance, Services and Innovation, or
- (b) any person, or any class of persons, authorised for the purposes of this section by the regulations.

### **258 Tenancy 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 not later than 14 days after the commencement of the lease.

Maximum penalty: 5 penalty units.

- (2) If a lot is subleased, the sub-lessor must give notice of the sublease, in accordance with this section, to the owners corporation not later than 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 not later than 14 days after the execution of the assignment.

Maximum penalty: 5 penalty units.

- (4) The notice must be in writing and specify:
- (a) the name of the tenant and an address for service of the tenant, 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.

**Note—**

An address for service of notices may be an Australian postal address or other electronic address, including an email address (see section 261).

- (5) This section does not apply to the lease of a lot by the lessor of a strata leasehold scheme to a lessee who is the owner of a lot.
- (6) A notice under this section is to be given to the original owner if it is given during the initial period of the owners corporation for a strata scheme.

**259 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 written notice of that fact to the owners corporation within 14 days of taking possession of the lot.

Maximum penalty: 5 penalty units.

**260 Personal liability**

- (1) A matter or thing done or omitted to be done by any of the following persons, or a person acting under the direction of any of those persons, does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing functions as such a person under this or any other Act, subject any of the following persons or person so acting personally to any action, liability, claim or demand:
- (a) an officer of an owners corporation,
  - (b) a member of a strata committee.
- (2) Any such liability of an officer of an owners corporation or a member of a strata committee attaches instead to the owners corporation.

**261 Address for service**

An address for service given under this Act may be an Australian postal address, an email address or a facsimile number.

**262 Service of documents on an owners corporation**

- (1) A summons or other legal process may be given to an owners corporation by leaving it with the chairperson or secretary of the owners corporation, any member of the

strata committee or the strata managing agent (if any) or by posting it, by prepaid mail, to the owners corporation at its address recorded in the folio of the Register comprising the common property.

- (2) A document other than a summons or other legal process may be given to an owners corporation:
  - (a) by leaving it with the chairperson or secretary of the owners corporation or a member of the strata committee 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 electronic transmission to an address or location nominated (in correspondence or otherwise) by the chairperson or secretary of the owners corporation or a member of the strata committee as an address or location to which correspondence can be sent.

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

- (1) **Application of section** This section applies to a notice or other document required or authorised under this Act or the by-laws to be given by the Secretary, the Tribunal, an owners corporation, the lessor of a leasehold strata scheme, the original owner, a strata committee, the secretary of an owners corporation or a strata managing agent and is subject to the other provisions of this Act.
- (2) **Service on occupier of lot** A notice or other document may be given to the occupier of a lot:
  - (a) by post at the address of the lot, or
  - (b) by leaving it at the address of the lot with a 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 or has been notified in a tenancy notice, a document may be given to the person:
  - (a) in the case of a postal address, by post at that address, or
  - (b) by sending it by electronic transmission to an address or location nominated (in correspondence or otherwise) by the person as an address or location to which correspondence can be sent, or
  - (c) by leaving it at that address with a person apparently of or above the age of 16 years.
- (4) **Service on owner of lot** A document may be given to the owner of a lot in accordance

with subsection (3) or if no address for service is recorded on the strata roll:

- (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 other 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 182 may be given to 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 who is to be given the notice.

(6) **Service on person where building included in part strata parcel** A document may be given to 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 part strata parcel, in any manner provided by section 170 of the [Conveyancing Act 1919](#).

## 264 Service of documents

(1) A document that is authorised or required by this Act or the regulations to be given to any person (other than as required by section 262 or 263) may be given by:

- (a) in the case of an individual:
  - (i) delivering it to the person personally, or
  - (ii) sending it by post to the address specified by the person for the giving of documents or, if no such address is specified, the residential or business address of the person last known to the person giving the document, or
  - (iii) sending it by electronic transmission to an address or location nominated (in correspondence or otherwise) by the person as an address or location to which correspondence can be sent, or
- (b) in the case of a body corporate:
  - (i) leaving it with a person apparently of or above the age of 16 years at, or by

sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or

- (ii) sending it by electronic transmission to an address or location nominated (in correspondence or otherwise) by the body corporate as an address or location to which correspondence can be sent.

- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be given to a person in any other manner.

### **265 Change of owners corporation's address**

- (1) An owners corporation may change its address for the 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 the recordings that the Registrar-General considers appropriate in the folio of the Register comprising the common property for the scheme.
- (3) If the strata scheme relates to a part strata parcel, the owners corporation must give notice in writing of the change to the building management committee.
- (4) If the strata scheme is part of a community scheme, the owners corporation must give notice in writing of the change to the community association and, in the case of a strata scheme that is also part of a precinct scheme, to the precinct association.
- (5) A change of address does not take effect until it is recorded in the Register in accordance with this section.

### **266 Dividing fences**

- (1) The owners corporation for a strata scheme for a parcel that is not a part strata 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 strata scheme for a part strata 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 the part strata parcel are taken to be the owners of the land constituting the building and its site.
- (3) This section does 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 25 of the *Strata Schemes Development Act 2015*.
- (4) A strata management statement may apportion liability arising under the *Dividing*

*Fences Act 1991*, but only between persons bound by the statement.

### **267 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) The 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 of the lot or lease or appurtenant beneficial interest in common property in relation to the subject-matter of the charge.

### **268 Powers of entry by public authority or public officer**

A public authority or public officer 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 part strata 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.

### **269 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.



## **270 Contracting out prohibited**

- (1) The provisions of this Act and the regulations 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 or the regulations.

## **271 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 Secretary under this Act and the remission of fees,
  - (c) the nomination and election of members of strata committees,
  - (d) alternative dispute resolution under this Act,
  - (e) the procedure for meetings of the owners corporation of a large strata scheme,
  - (f) the delegation of functions of the owners corporation of a large strata scheme,
  - (g) the decisions or classes of decisions that may or may not be made by the strata committee of a large strata scheme,
  - (h) the functions of officers of an owners corporation of a large strata scheme,
  - (i) the management of the administrative fund or capital works fund of the owners corporation of a large strata scheme,
  - (j) the exclusion of a particular class or classes of strata scheme from any or all of the provisions of Part 12,
  - (k) requiring information and other matters to be brought to the attention of owners and strata committee members in respect of the provision of legal services to an owners corporation,
  - (l) requirements for agreements between owners corporations and local councils relating to strata parking areas under section 650A of the [Local Government Act 1993](#),

- (m) the service of documents by electronic means under this Act,
- (n) the form in which documents required to be provided or delivered under this Act may be so provided or delivered.

## **272 Persons who may keep seals of owners corporations**

- (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 strata committee, that the owners corporation determines is to keep the seal or, in the absence of a determination, by the secretary of the owners corporation, 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 (1) (b) of the *Interpretation Act 1987* provides that statutory corporations are to have a seal. 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.

## **273 Affixing of seal of owners corporation**

- (1) The seal of an owners corporation that has only one owner or 2 owners 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) The seal of an owners corporation that has more than 2 owners 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 strata committee, that the owners corporation determines for the purpose or, in the absence of a determination, the secretary of the owners corporation and any other member of the strata 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 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.

#### **274 Act to bind Crown**

- (1) This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.
- (2) However, Division 5 of Part 2 and Parts 3, 4, 5, 6 (except sections 122, 123 and 124 and Division 6), 8, 9 and 10 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 reference to the Crown covers statutory bodies representing the Crown and NSW Government agencies.

#### **275 Repeals**

The following are repealed:

- (a) the *Strata Schemes Management Act 1996 No 138*,
- (b) the *Strata Schemes Management Regulation 2010*.

#### **276 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 on 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 Meeting procedures of owners corporation

(Section 23)

### Part 1 Preliminary

#### 1 Meetings to which Schedule applies

This Schedule applies to annual general meetings and other general meetings of an owners corporation for a strata scheme.

#### 2 Application to large strata schemes

The provisions of this Schedule are subject to the regulations, but only to the extent that the regulations relate to large strata schemes.

#### 3 Interpretation

(1) In this Schedule:

**owner** means an owner of a lot in the strata scheme for which a meeting is held or proposed to be held.

**priority vote**—see clause 24 (1).

(2) In this Schedule, a reference to a **person entitled to vote** at a meeting is a reference to a person entitled to vote on a motion other than a motion requiring a unanimous resolution.

### Part 2 Agendas, nominations and notices

#### 4 Inclusion of matters on agenda

(1) Any owner, or any person entitled to vote at a general meeting of an owners corporation, may require a motion to be included in the agenda of the next general meeting of the owners corporation.

(2) The requirement is to be made by written notice given to the secretary of the owners corporation that:

(a) sets out the required motion, and

(b) states the name of the person making the requirement, and

(c) includes an explanation of the motion of not more than 300 words in length.

(3) The secretary must give effect to the requirement.

(4) However, if the requirement is made after notice has been given of the meeting, the secretary must include the motion in the agenda for the next subsequent meeting.

- (5) An owner or a person may make a requirement even if the owner or person cannot vote because the owner is an unfinancial owner.

## **5 Nomination of candidates for election prior to meeting**

- (1) The written notice of an annual general meeting is to include a call for nominations for members of the strata committee at least 7 days before the annual general meeting of an owners corporation.
- (2) Any owner, or any person entitled to vote at a general meeting of an owners corporation, may nominate a person for election as a member of the strata committee.
- (3) The nomination is to be made by written notice given to the secretary of the owners corporation or, in the case of the first annual general meeting, to the convenor of the meeting, that states the name of:
  - (a) the person nominated, and
  - (b) the person making the nomination and that the person nominated consents to the nomination.
- (4) The secretary must include the nomination in the notice of the meeting at which the election is to take place. Notice of any subsequent nomination is to be given by the secretary at the meeting.
- (5) A nomination may be made at any time before the election is held and may be made at the meeting.
- (6) An owner or a person may make a nomination even if the owner or person cannot vote because the owner is an unfinancial owner.

## **6 Required items of agenda for AGM**

The agenda for each annual general meeting must include the following items:

- (a) an item to decide if any matter or type of matter is to be determined only by the owners corporation in general meeting,
- (b) an item to prepare or review the 10-year plan for the capital works fund,
- (c) an item to consider the annual fire safety statement (if one is required for the building) under the [Environmental Planning and Assessment Act 1979](#) and arrangements for obtaining the next annual fire safety statement,
- (d) until the end of warranty periods for applicable statutory warranties under the [Home Building Act 1989](#) for buildings of the strata scheme, an item to consider building defects and rectification.

## **7 Notice of general meetings other than first AGM**

- (1) This clause applies to general meetings other than the first annual general meeting of an owners corporation.
- (2) Written notice of a meeting must, at least 7 days before the meeting, be given to each owner.
- (3) Notice of a meeting must also be given, at least 7 days before the meeting, to each first mortgagee or covenant chargee on the strata roll if an item on the agenda is one in which the mortgagee or covenant chargee may cast a priority vote.

### **Note—**

A priority vote may be cast in the circumstances set out in clause 24.

- (4) Nothing in this Part requires an owner to give notice of a meeting to himself or herself.

## **8 Matters that must be included in notice of general meetings**

- (1) The following matters must be included in, or accompany, the notice given of all general meetings:
  - (a) a form of motion to confirm the minutes of the last general meeting of any kind,
  - (b) a form of motion for the election of the strata committee, if the meeting is for that purpose,
  - (c) a form of motion for each other motion to be considered at the meeting,
  - (d) whether a motion requires a special resolution or a unanimous resolution to be passed,
  - (e) a statement that a vote by an owner does not count if a priority vote is cast for the lot in relation to the same matter,
  - (f) a statement that an unfinancial owner, mortgagee or covenant chargee cannot vote at a 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,
  - (g) a statement that voting or other rights may be exercised in person (if the addressee is an individual) or by a company nominee (if the addressee is a corporation), or by a proxy appointed by the addressee,
  - (h) the provisions of this Act for determining a quorum at meetings.
- (2) A copy of the minutes of the previous general meeting must be given to an owner with notice of a meeting if the owner has not previously been given a copy of the

minutes or has requested but not received a copy before the notice is given.

### **9 Additional matters to be included in notice of AGM**

The following matters must also be included in, or accompany, the notice given of annual general meetings:

- (a) a copy of the last statements of key financial information for the administrative fund, the capital works fund and any other fund prepared by the owners corporation and any relevant auditor's report,
- (b) a form of motion for adoption of the financial statements,
- (c) a form of motion to consider the appointment of an auditor and the taking out of insurance of the kind referred to in section 165 (2), if insurance of that kind has not already been taken out,
- (d) particulars of each insurance policy taken out by the owners corporation (as required to be specified in the strata roll),
- (e) a form of motion to decide the number of members of the strata committee,
- (f) a form of motion for the election of the strata committee, including the names of any persons nominated for election before the notice is given,
- (g) if there is a strata managing agent, a form of motion to consider the report by the agent as to whether, and what, commissions or training services have been provided or paid for or are likely to be so provided to or paid for the agent for the following 12 months,
- (h) a form of motion to decide how to deal with any overdue contributions payable to the owners corporation,
- (i) a form of motion to decide if any matter or type of matter is to be determined by the owners corporation in general meeting.

### **10 Financial statements to be provided on request**

- (1) The owners corporation must, at the request of an owner or a mortgagee or covenant chargee of a lot, give to the owner, mortgagee or covenant chargee a copy of the last financial statements prepared for the administrative fund, the capital works fund and any other fund of the owners corporation by the owners corporation at least 2 days before the meeting at which the statements are to be presented.
- (2) This Schedule does not prevent the owners corporation from determining that a copy of the last financial statements prepared for the administrative fund, the capital works fund or other fund is to be included in, or to accompany, the notice of an annual general meeting.

## **11 Notice to be given to tenants**

- (1) A copy of the agenda for a meeting must, at least 7 days before the meeting is held:
  - (a) be given to each tenant, who has been notified to the owners corporation in accordance with this Act as a tenant of the lot, or
  - (b) be prominently displayed on any notice board required to be maintained by or under the by-laws on some part of the common property.
- (2) Copies of other documents relating to a meeting may be given to each tenant of a lot if the owners corporation so decides.

## **Part 3 General meeting procedure**

### **12 Chairing of meetings**

- (1) **Chairperson to preside** The chairperson of the owners corporation is to preside at any meeting at which the chairperson is present.
- (2) **Presiding member where chairperson absent** In the chairperson's absence from a meeting, the persons present at that meeting and entitled to vote on motions submitted at that meeting (other than unfinancial owners) 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) **Chairperson does not have casting vote** 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.
- (4) **Chairperson may be only person present** A meeting is, subject to the provisions of this Schedule relating to the quorum, validly held even though the only person present at the meeting is the chairperson of the owners corporation.

### **13 Chairperson to announce names of persons entitled to vote**

If requested to do so by a person present and entitled to vote at a meeting, the chairperson must, before submitting a motion to the meeting or the holding of the election of members of the strata committee, announce the names of the persons who are entitled to vote on that motion or at that election.

### **14 Decisions at meetings**

- (1) **Simple majority vote to generally apply** A motion put to a meeting, or an election of officers of the owners corporation or members of the strata committee, 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.
- (2) **Vote of original owner who owns more than half of lots to be reduced** For the purposes of



determining an election for officers of the owners corporation or members of the strata committee or appointing a strata managing agent (other than in the case of a poll), if the total unit entitlement of lots of the original owner is not less than half of the aggregate unit entitlement, the value of the vote in respect of the lots held by the original owner is taken to be reduced by two-thirds (ignoring any fraction).

- (3) **Value of votes to apply for poll** If a poll is demanded by a person present and entitled to vote on a motion or for the election of officers of the owners corporation or members of the strata committee at the meeting, the motion is to be decided according to the value of the votes cast for and against the motion and 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. However, the value of the vote of an original owner is to be calculated in the same way as for a special resolution.

**Note—**

Section 5 sets out the manner in which a special resolution is determined.

- (4) **Polls** A poll may be demanded immediately before or after a vote decided by a majority in number has been taken. The demand for a poll may be withdrawn by the person who made it.

## **15 Developer or lessor excluded from votes relating to building defects**

The developer or lessor of a leasehold strata scheme is not entitled to vote, or exercise a proxy vote, on a matter concerning building defects in, or the rectification of building defects in, building work to which Part 11 of this Act applies.

## **16 Chairperson's declaration of vote**

- (1) The chairperson must declare the result of the voting on any motion at a meeting or an election at a meeting at the meeting if it is possible to do so.
- (2) The declaration of the chairperson of the result of the voting on any motion at a meeting, otherwise than on a poll, is conclusive without proof of the votes recorded for and against the motion.

## **17 Quorum**

- (1) **Quorum required for motion or election** A motion submitted at a meeting must not be considered, and an election must not be held at a meeting, unless there is a quorum present to consider and vote on the motion or on the election.
- (2) **When quorum exists** A quorum is present at a meeting only in the following circumstances:
- (a) if not less than one-quarter of the persons entitled to vote on the motion or election are present either personally or by duly appointed proxy,

- (b) if not less than one-quarter of the aggregate unit entitlement of the strata scheme is represented by the persons who are present either personally or by duly appointed proxy and who are entitled to vote on the motion or election,
  - (c) if there are 2 persons who are present either personally or by duly appointed proxy and who are entitled to vote on the motion or election, in a case where there is more than one owner in the strata scheme and the quorum otherwise calculated under this subclause would be less than 2 persons.
- (3) A person who has voted, or intends to vote, on a motion or at an election at a meeting by a permitted means other than a vote in person is taken to be present for the purposes of determining whether there is a quorum.
- (4) **Procedure if no quorum** If no quorum is present within the next half-hour after the relevant motion or business arises for consideration at the meeting, the chairperson must:
- (a) adjourn the meeting for at least 7 days, or
  - (b) declare that the persons present either personally or by duly appointed proxy and who are entitled to vote on the motion or election constitute a quorum for considering that motion or business and any subsequent motion or business at the meeting.
- (5) **Quorum for adjourned meeting** If a quorum is not present within the next half-hour after the time fixed for the adjourned meeting, the persons who are present either personally or by duly appointed proxy and who are entitled to vote on the motion or election constitute a quorum for considering that motion or business and any subsequent motion or business at the meeting.

## **18 Motions require notice**

A motion must not be submitted at a general meeting if any requirement of this Act to include the form of the motion in the notice of the meeting has not been complied with, unless the motion is a motion to amend a motion of which notice has been so given.

## **19 Chairperson may rule certain motions out of order**

The chairperson at a meeting 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 of the strata scheme or would otherwise be unlawful or unenforceable, or
- (b) any requirement of this Act to include the form of the motion in the notice of the meeting has not been complied with.

## 20 Adjournments

- (1) A meeting may be adjourned for any reason if a motion is passed at the meeting for the adjournment.
- (2) The time and place at which a meeting adjourned under this Part is to be resumed must be fixed by the person who was presiding at the meeting or, if the meeting was adjourned because of a lack of a quorum, by the person who would have presided at the meeting but for the lack of the quorum.
- (3) The secretary of the owners corporation must give to the members of the owners corporation, at least 1 day before the resumed meeting, a written notice specifying:
  - (a) the time and place of the meeting, and
  - (b) the provisions of this Act for determining the quorum at a meeting.

## 21 Tenants at meetings

- (1) A tenant who has been notified in accordance with this Act to the owners corporation as a tenant of a lot in the strata scheme is entitled to attend a meeting but is not entitled to vote at a meeting unless the tenant is the holder of a duly appointed proxy.
- (2) A tenant is not entitled to address a meeting unless authorised to do so by a resolution of the owners corporation.
- (3) The owners corporation may, at any meeting or for the purpose of all meetings, determine that tenants (other than tenants who hold duly appointed proxies) are not entitled to be present when the following matters are being discussed or determined:
  - (a) financial statements and auditor's reports,
  - (b) levying of contributions,
  - (c) recovery of unpaid contributions,
  - (d) a strata renewal proposal under Part 10 of the *Strata Schemes Development Act 2015* or any related matter,
  - (e) any other financial matter specified by the regulations for the purposes of this clause.

## 22 Minutes

- (1) **Records to be kept** The owners corporation must keep full and accurate minutes of its meetings that include minutes of all motions passed at its meetings.
- (2) **Distribution of minutes and records of motions** Within 14 days after a meeting, the owners corporation must provide copies of the minutes of the meeting in the following

manner:

- (a) by giving each member of the strata committee a copy,
- (b) by giving each owner a copy, if the strata scheme is not a large strata scheme,
- (c) by giving an owner a copy, if the strata scheme is a large strata scheme and the owner requests a copy within the period of 14 days.

Maximum penalty: 5 penalty units.

## **Part 4 Voting rights and voting procedures**

### **Division 1 General rights to vote**

#### **23 Persons entitled to vote at general meetings**

- (1) **Persons who have right to vote** 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 or first mortgagee or covenant chargee of a lot (other than a co-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 co-owners to be by proxy** The voting rights of co-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 co-owners may exercise voting rights** If, on a vote at a general meeting, the rights of co-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 co-owners are absent or those who 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 co-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 cannot 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 if the owner of the lot was an unfinancial owner at the date notice of the meeting was given and did not pay the amounts owing before the meeting.
- (9) **Effect of failure to give strata interest notice** This clause does not confer a right to vote on a person deprived of the right by failing to comply with the requirement to give a strata interest notice.

## 24 Priority votes

- (1) A **priority vote** is a vote cast on a motion by a person whose vote has priority under this clause.
- (2) A priority vote may be cast on any of the following motions:
- (a) a motion that relates to insurance, budgeting or the fixing of a levy,
  - (b) a motion that will require expenditure by the owners corporation of an amount that exceeds the amount prescribed by the regulations for the purposes of this clause,
  - (c) a motion that requires a special resolution or unanimous resolution.
- (3) 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.
- (4) A priority vote may be cast in respect of a lot 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.

**Note—**

Clause 28 allows a vote to be cast in person or by other means.

**25 Rights of proxies and limits on votes by proxies**

- (1) **Proxy may demand poll** A duly appointed proxy may vote on a show of hands or demand a poll.
- (2) **Powers of proxies** A person duly appointed as a proxy:
  - (a) if entitled to vote otherwise than as a proxy—may also vote in the person’s own right, and
  - (b) if appointed as proxy for more than one person—may vote separately as a proxy in each case.
- (3) **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.
- (4) **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.
- (5) **No proxy vote pursuant to contract for sale by original owner** An original owner or a person connected with the original owner cannot cast a vote by means of a proxy or power of attorney given by another owner of a lot in the strata scheme if the proxy or power of attorney was given pursuant to a term of the sale contract for the lot or pursuant to another contract or arrangement that is ancillary or related to the sale contract.
- (6) Subclause (5) does not apply to a proxy or power of attorney given by a person to another person connected with him or her.
- (7) **Limits on exercise of proxy by building manager, on-site residential property manager or strata managing agent** A vote by a proxy who is a building manager, 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.
- (8) For the purposes of subclause (7), **material benefit** includes, but is not limited to, the following:
  - (a) an extension of the term or an additional term of appointment of the proxy as building manager, 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.

## **Division 2 Appointment of proxies**

### **26 Appointment of proxies**

- (1) **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 and the form is signed by the person appointing the proxy or executed in any other manner permitted 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 contains the date on which it was made and it is given to the secretary of the owners corporation at least 24 hours before the first meeting in relation to which the instrument is to operate (in the case of a large corporation) or at or before the first meeting in relation to which the instrument is to operate (in any other case).
- (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) **Limit on number of proxies that may be held** The total number of proxies that may be held by a person (other than proxies held by the person as the co-owner of a lot)

voting on a resolution are as follows:

- (a) if the strata scheme has 20 lots or less, one,
- (b) if the strata scheme has more than 20 lots, a number that is equal to not more than 5% of the total number of lots.

## **27 Certain provisions unenforceable**

A provision of a contract for the sale of a lot in a strata scheme, or of any ancillary or related contract or arrangement, is void and unenforceable to the extent that it:

- (a) requires the purchaser of a lot, or any other person, to cast a vote at a meeting of the owners corporation at the direction of another person, or
- (b) requires the purchaser to give a proxy at the direction of another person for the purpose of voting at a meeting of the owners corporation.

## **Division 3 Manner of voting**

### **28 Manner of voting**

- (1) A vote at a meeting by a person entitled to vote or by a proxy must be cast in person unless the owners corporation, by resolution passed at a general meeting, determines that a vote may be cast by some other specified means.
- (2) The regulations may make provision for or with respect to the following:
  - (a) the means of voting (other than in person) that may be adopted by an owners corporation,
  - (b) without limiting paragraph (a), procedures for voting by those means,
  - (c) prohibiting or requiring the use of specified means of voting.

### **29 Secret ballots**

- (1) Voting on a motion or for an election at a meeting may be carried out by a secret ballot if:
  - (a) the strata committee determines that the motion or matter is to be so determined, or
  - (b) at least one-quarter of the persons entitled to vote on the motion or election agree that the motion or matter is to be so determined.
- (2) The regulations may make provision for or with respect to the procedures for a secret ballot.



## Schedule 2 Meeting procedures of strata committees

(Section 40)

### Part 1 Preliminary

#### 1 Meetings to which Schedule applies

This Schedule applies to meetings of the strata committee of an owners corporation.

#### 2 Application to large strata schemes

The provisions of this Schedule are subject to the regulations, but only to the extent that the regulations relate to large strata schemes.

#### 3 Definitions

In this Schedule:

**owner** means an owner of a lot in the strata scheme for which a meeting is held or proposed to be held.

**tenant member** means a tenant representative nominated for a strata committee under section 33.

### Part 2 Notices of meetings

#### 4 Notice of meetings for large strata schemes

(1) The secretary of the owners corporation of a large strata scheme must give notice of a meeting to each other member of the strata committee (including any tenant member) at least 3 days before the meeting and to each owner.

(2) Notice is to be given in accordance with section 263 and by displaying the notice on the notice board (if any) maintained by the owners corporation.

#### 5 Notice of meetings for other strata schemes

(1) The secretary of the owners corporation of a strata scheme that is not a large strata scheme must give notice of a meeting to each other member of the strata committee at least 3 days before the meeting and to each owner.

(2) Notice is to be given by displaying the notice on the notice board maintained by the owners corporation or in accordance with section 263.

#### 6 Owner not required to serve notice on self

Nothing in this Part requires an owner to give notice of a meeting to himself or herself.

## **7 Matters that must be included in notice of meetings**

The notice of a meeting must include a detailed agenda for the meeting.

## **Part 3 Meeting procedure**

### **8 Chairperson to preside**

- (1) **Chairperson to preside** The chairperson of the owners corporation is to preside at any meeting at which the chairperson is present.
- (2) **Presiding member where chairperson absent** In the chairperson's absence from a meeting, the members of the strata committee present 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.
- (3) **Chairperson does not have casting vote** 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.
- (4) **Chairperson may be only person present** A meeting is, subject to the provisions of this Schedule relating to the quorum, validly held even though the only person present at the meeting is the chairperson of the owners corporation.

### **9 Decisions at meetings**

- (1) **Voting at meetings** A motion put to a meeting is to be decided according to a majority of the number of the votes cast for and against the motion by the members present (other than any tenant member) or in the manner set out in subclause (2). If there is only one member of the strata committee, the decision of the strata committee is the decision of that member.
- (2) **Voting in writing** A motion proposed to be put to a meeting is taken to have been validly passed even if the meeting was not held if:
  - (a) notice was given of the meeting in accordance with this Schedule, and
  - (b) a copy of the motion was given to each member of the strata committee, and
  - (c) the motion was approved in writing by a majority of the members of the committee (other than the tenant member).
- (3) **Decisions to have no effect if opposed by more than specified owners** A decision of a strata committee has no force or effect if, before the decision is made, notice is given to the secretary of the owners corporation 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.
- (4) **Voting rights cannot be exercised if contributions not paid** A member of the strata

committee is not entitled to vote on any motion put or proposed to be put to the strata committee if the member was, or was nominated as a member by a member who was, an unfinancial owner of a lot in the strata scheme at the date notice of the meeting was given and the amounts owed by the unfinancial owner were not paid before the meeting.

- (5) **Tenant member not entitled to vote** A tenant member of a strata committee is not entitled to vote on any motion put or proposed to be put to a strata committee.

## 10 Manner of voting

- (1) A vote at a meeting by a person entitled to vote must be cast in person unless the strata committee, by resolution, determines that a vote may be cast by some other specified means.

### Note—

A person may be present at a meeting even if not actually at the meeting (see section 4 (1), definition of **person present**).

- (2) The regulations may make provision for or with respect to the following:
- (a) the means of voting (other than in person) that may be adopted by a strata committee,
  - (b) without limiting paragraph (a), procedures for voting by such means,
  - (c) prohibiting the use of specified means of voting.

## 11 Chairperson's declaration of vote

The declaration of the chairperson of the result of the voting on any motion at a meeting is conclusive without proof of the votes recorded for and against the motion.

## 12 Quorum

- (1) **Quorum required for motion** A motion submitted at a meeting of a strata committee must not be considered unless there is a quorum present to consider and vote on the motion.
- (2) **When quorum exists** A quorum is present at a meeting only in the following circumstances:
- (a) in the case of a strata committee which has only one member, if the member is present,
  - (b) in any other case, if not less than one-half of the persons entitled to vote on the motion are present.
- (3) A person who has voted, or intends to vote, on a motion or at an election at a meeting by a permitted means other than a vote in person is taken to be present for the

purposes of determining whether there is a quorum.

- (4) The quorum for meetings of a strata committee is to be calculated on the basis of the number of members last determined by the owners corporation for the committee.

### **13 Non-member owner may attend**

An owner or, if the owner of a lot is a corporation, any company nominee of that corporation is entitled to attend a meeting but is not entitled to address the meeting unless authorised to do so by resolution of the strata committee.

### **14 Only person who may vote can move motion**

A person is not entitled to move a motion unless the person is entitled to vote on the motion.

### **15 Chairperson may rule certain motions out of order**

The chairperson at a meeting may rule a motion out of order if the chairperson considers that the motion, if carried, would conflict with this Act or the by-laws of the strata scheme or would otherwise be unlawful or unenforceable.

### **16 Adjournments**

- (1) A meeting may be adjourned for any reason if a motion is passed at the meeting for the adjournment.
- (2) The time and place at which a meeting adjourned under this Part is to be resumed must be fixed by the person who was presiding at the meeting.
- (3) The secretary of the owners corporation must give to the members of the owners corporation, at least 1 day before the resumed meeting, a notice specifying the time and place of the meeting.
- (4) Notice is to be given by displaying the notice on the notice board maintained by the owners corporation or, if there is no notice board, in writing (including by email or other electronic means).

### **17 Minutes and other records**

- (1) **Records to be kept** A strata committee must cause to be kept a record of its decisions, any notices given under this Schedule and full and accurate minutes of its meetings.
- (2) The minutes must include minutes of all resolutions passed in accordance with this Schedule.
- (3) **Distribution of minutes and records of motions** Within 7 days after a meeting of a strata committee or the passing of a resolution by the strata committee, the strata committee must provide copies of the minutes of the meeting or of the resolution in

the following manner:

- (a) by giving each member of the strata committee a copy,
- (b) by giving each owner a copy, if the strata scheme is not a large strata scheme,
- (c) by giving an owner a copy, if the strata scheme is a large strata scheme and the owner requests a copy within the period of 7 days.

## **18 Disclosure of pecuniary interests**

(1) If:

- (a) a member of a strata committee has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting, and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the strata committee.

Maximum penalty: 10 penalty units.

(2) A disclosure by a member at a meeting of the strata committee that the member:

- (a) is a member, or is in the employment, of a specified corporation or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified corporation or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that corporation or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause must be recorded by the strata committee in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the strata committee.

(4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the strata committee otherwise determines:

- (a) be present during any deliberation of the strata committee with respect to the matter, or
- (b) take part in any decision of the strata committee with respect to the matter.

- (5) For the purposes of the making of a determination by the strata committee under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
  - (a) be present during any deliberation of the strata committee for the purpose of making the determination, or
  - (b) take part in the making by the strata committee of the determination.
- (6) A contravention of this clause does not invalidate any decision of the strata committee.
- (7) Without limiting subclause (1), a person has an indirect pecuniary interest in a matter if a person connected with the person has a direct interest in the matter.

## **Schedule 3 Savings, transitional and other provisions**

### **Part 1 General**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, 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 its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.
- (4) The regulations under this Part have effect despite anything to the contrary in this Schedule.
- (5) The regulations under this Part may make separate savings and transitional provisions or amend this Schedule to consolidate the savings and transitional provisions.

## Part 2 Provisions consequent on enactment of this Act

### 2 Definitions

In this Part:

**existing strata scheme** means a strata scheme in existence immediately before the commencement of this clause.

**former Act** means the *Strata Schemes Management Act 1996*.

### 3 General savings

- (1) Any act, matter or thing done or omitted to be done under a provision of the former Act and having any force or effect immediately before the commencement of a provision of this Act that replaces that provision is, on that commencement, taken to have been done or omitted to be done under the provision of this Act.
- (2) This clause does not apply:
  - (a) to the extent that its application is inconsistent with any other provision of this Schedule or a provision of a regulation made under this Schedule, or
  - (b) to the extent that its application would be inappropriate in a particular case.

### 4 By-laws

- (1) An owners corporation of an existing strata scheme is to review the by-laws for the scheme not later than 12 months after the commencement of section 134.
- (2) Despite any other provision of this Act, a by-law continued in force by this Act is taken to be a valid by-law if it was a valid by-law immediately before the commencement of this clause.

### 5 Existing owners corporations

An owners corporation constituted, or taken to have been constituted, under section 11 of the former Act is taken to have been constituted under section 8 of this Act.

### 6 Existing executive committees

- (1) A person who, immediately before the commencement of this clause, was a member of the executive committee of an owners corporation is, on that commencement, taken to have been appointed to be a member of the strata committee of the owners corporation for the balance of the person's term as a member of the executive committee.
- (2) A person who, immediately before the commencement of this clause, was an officer of an executive committee is, on that commencement, taken to have been appointed as

an officer of the same kind of the owners corporation for the balance of the person's term as an officer.

## **7 Existing proceedings**

Any proceedings commenced but not determined or finalised under a provision of the former Act are to be dealt with and determined as if the former Act had not been repealed.

## **8 Adjudicators**

- (1) A person who held office as an Adjudicator under the former Act immediately before the commencement of this clause ceases to hold the office on a day appointed by the Secretary, being a day not earlier than the determination or finalisation of all proceedings referred to in clause 7.
- (2) (Repealed)
- (3) An Adjudicator who ceases to be an Adjudicator under this clause is not entitled to any compensation for loss of office.

## **9 Existing orders under former Act**

An order made by an Adjudicator or a Tribunal under the former Act, and in force immediately before the commencement of this clause, is taken to have been made by the Tribunal under the corresponding provision of this Act.

## **10 Contributions**

Any contributions levied under the former Act are taken to have been levied under this Act and this Act applies to the recovery and payment of any unpaid contributions.

## **11 Approved insurers**

An insurer that was an approved insurer under the former Act immediately before the commencement of section 160 of this Act is taken to be an approved insurer under this Act.

## **12 Previous decisions by owners corporations and executive committees**

- (1) A decision, consent or approval of an owners corporation under the former Act, or that is taken to have been made under the former Act, is taken to have been made by the owners corporation under this Act.
- (2) A decision, consent or approval of the executive committee of an owners corporation under the former Act, or that is taken to have been made under the former Act, is taken to have been made by the strata committee of the owners corporation under this Act.



### **13 Window safety devices**

- (1) Despite any other provision of this Act, an owners corporation is not required to comply with section 118 until 13 March 2018.
- (2) Accordingly, an order cannot be sought under section 129 in respect of a failure to exercise a function under section 118 until on or after 13 March 2018.

### **14 Terms of appointment of strata managing agents**

- (1) The term of appointment of a strata managing agent appointed or reappointed before the commencement of section 50 (1) of this Act, that is in force on that commencement, ends on the following day:
  - (a) if the agent was appointed or reappointed for a term (including any roll over or extension period) of 3 years or more, on the day that is 3 years after the term commenced or that is 6 months after the commencement of section 50 (1) of this Act, whichever is the later,
  - (b) if the agent was appointed or reappointed for a term (including any roll over or extension period) of less than 3 years, on the day that the term ends or that is 6 months after the commencement of section 50 (1) of this Act, whichever is the later.
- (2) Section 50 (1) applies to the term of any reappointment of the strata managing agent after that commencement.
- (3) Section 49 (3) does not apply to a strata managing agent appointed before the commencement of that subsection.

### **15 Caretakers and building managers**

- (1) An agreement in force immediately before the commencement of this clause is taken to be a building manager agreement for the purposes of this Act, despite any of the provisions of the agreement, if:
  - (a) the agreement provides for the appointment of a person to carry out any of the functions specified in section 66 (1) in relation to the owners corporation for a strata scheme, and
  - (b) the primary purpose of the agreement is to provide for that appointment and related matters, and
  - (c) the person is not entitled to exclusive possession of a lot or common property in the strata scheme.
- (2) Any such building manager agreement expires 10 years after the commencement of this clause unless the terms of the agreement provide that it expires on an earlier day

or the agreement is terminated on an earlier day.

- (3) A reference in any instrument to a caretaker in relation to a strata scheme is taken to be a reference to a building manager in relation to that scheme.

## **16 Building defects**

Part 11 of this Act does not apply to building work if the contract for carrying out the building work was entered into before the commencement of this clause or, if there is no contract for the carrying out of the building work, the building work commenced before the commencement of this clause.

## **Schedule 4 (Repealed)**