

# Strata Schemes Management Regulation 2016

[2016-501]



New South Wales

## Status Information

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### Provisions in force

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### Authorisation

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New South Wales

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# Strata Schemes Management Regulation 2016



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Strata Schemes Management Regulation 2016*.

### 2 Commencement

- (1) Except as provided by subclause (2), this Regulation commences on 30 November 2016 and is required to be published on the NSW legislation website.
- (2) Part 8 commences on 1 January 2018.

### 3 Definitions

- (1) In this Regulation—

**approved form** means a form approved by the Secretary.

**close of the ballot**—see clause 15(8).

**Department** means the Department of Customer Service.

**pre-meeting electronic voting**—see clause 14(1).

**the Act** means the *Strata Schemes Management Act 2015*.

#### Note—

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

- (2) Notes included in this Regulation do not form part of this Regulation.

## Part 2 Owners corporations and strata committees

### 4 Functions that may only be delegated to strata committee member or strata managing agent

For the purposes of section 13(1)(h) of the Act, the following functions of an owners

corporation are prescribed as functions that may be delegated to or conferred only on a member of the strata committee or a strata managing agent—

- (a) arranging for inspections for the purposes of fire safety in accordance with section 123 of the Act,
- (b) ensuring that the owners corporation complies with any relevant requirements under the *Work Health and Safety Act 2011*,
- (c) entering into contracts relating to the maintenance of common property or the provision of services to the common property (other than contracts relating to a parcel),
- (d) arranging for inspections of records and other documents under section 183 of the Act,
- (e) giving certificates under section 184 of the Act.

#### **5 Agenda for first AGM**

- (1) For the purposes of section 15(p) of the Act, the agenda for the first annual general meeting of an owners corporation is to include the following item, if a tenant representative has been nominated for the strata committee in accordance with section 33 of the Act—

to receive the nomination of a tenant representative for the strata committee

- (2) The agenda for the first annual general meeting of an owners corporation is also to include the following item, if the initial period of the strata scheme ends not later than 12 months after completion of building work for which a building inspector is required to be appointed under Part 11 of the Act—

to approve the appointment of a building inspector for the purposes of Part 11 of the Act

#### **6 Documents and records to be provided to owners corporation before first AGM**

For the purposes of section 16(1)(f) of the Act, the following documents obtained or received by the original owner or lessor and relating to the parcel concerned, or any building, plant or equipment on the parcel, are prescribed—

- (a) if a building is required to be insured under Division 1 of Part 9 of the Act, any valuation of the building,
- (b) maintenance and service manuals,
- (c) all service agreements relating to the supply of gas, electricity or other utilities to the parcel,

- (d) copies of building contracts for the parcel, including any variations to those contracts,
- (e) the most recent BASIX certificate (issued under the *Environmental Planning and Assessment Act 1979*) for each building on the parcel.

#### **7 Tenant representatives: section 33 of Act**

- (1) A person who is entitled to convene an annual general meeting of an owners corporation that has tenants for at least half of the number of lots in the scheme must convene a meeting of eligible tenants for the purpose of the nomination of a person for the position of tenant representative on the strata committee.
- (2) The person must give notice of the meeting to each eligible tenant at least 14 days before the annual general meeting and the tenants meeting may be held at any time before the annual general meeting, but not earlier than 7 days after notice of the meeting is given.
- (3) Notice may be given in one of the following ways—
  - (a) by causing a copy of the notice to be prominently displayed on any notice board required to be maintained by or under the by-laws on some part of the common property,
  - (b) by written notice given to each eligible tenant.
- (4) The convenor of the meeting, or a tenant nominated by the eligible tenants present at the meeting, is to chair the tenants meeting.
- (5) An eligible tenant may nominate for, or nominate another eligible tenant for, nomination as the tenant representative at the meeting.
- (6) The tenant representative to be nominated by the eligible tenants for a strata scheme is to be determined by majority vote of tenants present at the meeting.
- (7) The quorum for the meeting is one person.
- (8) The term of a tenant representative commences at the end of the annual general meeting at which the nomination is received.
- (9) A person is an **eligible tenant** for the purposes of this Part if the tenant is a tenant notified in a tenancy notice given in accordance with the Act.

#### **8 Vacation of office by tenant representative**

- (1) A tenant representative ceases to be a tenant representative—
  - (a) if the person ceases to be an eligible tenant, or
  - (b) on receipt by the secretary of the owners corporation from the person of written



notice of the person's resignation as the tenant representative, or

(c) at the end of the next meeting at which a new strata committee is elected by the owners corporation, or

(d) if the person dies.

(2) If a tenant representative ceases to be a tenant representative before the next meeting at which a new strata committee is elected, the secretary of the owners corporation is to convene a meeting of eligible tenants for the purpose of the nomination of a person for the position of tenant representative on the strata committee.

(3) The secretary must give at least 7 days notice of the meeting to each eligible tenant.

(4) The secretary, a member of the strata committee or a tenant nominated by the eligible tenants at the meeting is to chair the tenants meeting.

(5) Clause 7(3), (5) and (6) apply to the nomination of a replacement tenant representative.

(6) The term of a replacement tenant representative is for the remainder of the term of the representative that the person replaces.

## **9 Election of strata committee**

(1) At a meeting of an owners corporation at which the strata committee is to be elected, the chairperson must—

(a) announce the names of the candidates already nominated in writing for election to the strata committee, and

(b) call for any oral nominations of candidates eligible for election to the strata committee.

(2) A written or oral nomination made for the purposes of the election is ineffective if it is made by a person other than the nominee unless it is supported by the consent of the nominee given—

(a) in writing, if the nominee is not present at the meeting, or

(b) orally, if the nominee is present at the meeting.

(3) After the chairperson declares that nominations have closed, the owners corporation is to decide, in accordance with the Act, the number of members of the strata committee.

(4) If the number of candidates—

- (a) is the same as, or fewer than, the number of members of the strata committee decided on—those candidates are to be declared by the chairperson to be, and are taken to have been, elected as the strata committee, or
- (b) is greater than the number so decided on—a ballot is to be held.

#### **10 Ballot for strata committee**

- (1) This clause applies to the election of a strata committee for a strata scheme comprising more than 2 lots.
- (2) If a ballot for membership of the strata committee of an owners corporation is required, the person presiding at the meeting of the owners corporation must—
  - (a) announce to the meeting the name of each candidate, and
  - (b) provide each person present and entitled to vote at the meeting with a blank ballot paper for each vote the person is entitled to cast.
- (3) For a vote to be valid, a ballot paper must be signed by the voter and completed by the voter's writing on it—
  - (a) the names of the candidates (without repeating a name) for whom the voter desires to vote, the number of names written being no more than the number determined by the owners corporation as the number of members of the strata committee, and
  - (b) the capacity in which the voter is exercising a right to vote, whether—
    - (i) as owner, first mortgagee or covenant chargee of a lot (identifying the lot), or
    - (ii) as a company nominee, or
    - (iii) by proxy, and
  - (c) if the vote is being cast by proxy—the name and capacity of the person who gave the proxy.
- (4) The completed ballot paper must be returned to the chairperson.
- (5) Until all places for membership of the strata committee have been filled, the chairperson is to declare elected successively each candidate who has a greater number of votes than all other candidates who have not been elected.
- (6) If only one place remains to be filled but there are 2 or more eligible candidates with an equal number of votes, the candidate to fill the place is to be decided by a show of hands of those present and entitled to vote.
- (7) Subclause (6) is subject to a resolution referred to in clause 14(1)(a).

## **11 Nominations for officers of strata committee**

- (1) The written notice of the first meeting of a strata committee after the appointment of the committee is to include a call for nominations for chairperson, secretary and treasurer of the committee.
- (2) Any person who is a member of the strata committee may nominate another member for election as any or all of chairperson, secretary or treasurer of the committee.
- (3) The nomination is to be made by written notice given to the person convening 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 person convening the meeting must include any prior nominations 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 convenor 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) If a ballot for the election of a person as chairperson, secretary or treasurer of the committee is required, the election is to be conducted by a show of hands of persons at the meeting.
- (7) Subclause (6) is subject to a resolution referred to in clause 14(1)(a).

## **12 Priority votes—owners corporation**

For the purposes of clause 24(2)(b) of Schedule 1 to the Act, a priority vote may be cast on a motion if the motion would require expenditure that exceeds an amount calculated by multiplying \$1,000 by the number of lots in the strata scheme.

## **13 (Repealed)**

## **14 Other means of voting—owners corporation and strata committee**

- (1) An owners corporation or strata committee may, by resolution, adopt any of the following means of voting on a matter to be determined by the corporation or committee—
  - (a) voting by means of teleconference, video-conferencing, email or other electronic means while participating in a meeting from a remote location,
  - (b) voting by means of email or other electronic means before the meeting at which the matter (not being an election) is to be determined by the corporation or

committee (***pre-meeting electronic voting***).

- (2) Without limiting subclause (1)(b), the other electronic means of voting may include requiring voters to access a voting website and to vote in accordance with directions contained on that website.
- (3) If a matter may be determined partly by pre-meeting electronic voting, the notice of the meeting must include a statement that the relevant motion may be amended by a further motion given at the meeting after the pre-meeting electronic voting takes place and that consequently the pre-meeting vote may have no effect.
- (4) A motion that is to be determined wholly by pre-meeting electronic voting may not be amended at the meeting for which the pre-meeting electronic voting is conducted.
- (5) A motion that is to be determined partly by pre-meeting electronic voting must not be amended at the meeting for which the pre-meeting electronic voting is conducted if the effect of the amendment is to change the subject matter of the original motion.
- (6) If a motion that is to be determined wholly or partly by pre-meeting electronic voting is amended at the meeting for which the pre-meeting electronic voting is conducted, the minutes of the meeting distributed to owners must be accompanied by notice of the change and a statement setting out the power to make a qualified request for a further meeting under section 19 of the Act.

## **15 Pre-meeting electronic voting**

- (1) This clause applies to a ballot for determination of a matter by an owners corporation or strata committee that is to be conducted by pre-meeting electronic voting.
- (2) The secretary of the owners corporation must ensure that the form for the electronic ballot paper contains—
  - (a) instructions for completing the ballot paper, and
  - (b) the question to be determined, and
  - (c) the means of indicating the voter's choice on the question to be determined.
- (3) The secretary of the owners corporation must, at least 7 days before the meeting at which the matter is to be determined, give each person entitled to vote—
  - (a) access to an electronic ballot paper, or to a voting website or electronic application containing an electronic ballot paper, that complies with this clause, and
  - (b) access to information about—
    - (i) how the ballot paper must be completed, and

- (ii) the closing date of the ballot, and
  - (iii) if voting is by email, the address where the ballot paper is to be returned, and
  - (iv) if voting is by other electronic means, the means of accessing the electronic voting system and how the completed electronic ballot paper is to be sent to the secretary, and
- (c) access to an electronic form of declaration requiring the voter to state—
  - (i) his or her name, and
  - (ii) the capacity in which the person is entitled to vote, and
  - (iii) in the case of a matter that requires a special resolution, the voter's unit entitlement, and
  - (iv) if the vote is a proxy vote, the name and capacity of the person who gave the proxy.
- (4) Each person entitled to vote must vote in accordance with the instructions contained in the information.
- (5) If the ballot is a secret ballot, the secretary must ensure that—
  - (a) the identity of the voter cannot be ascertained from the form of the electronic ballot paper, and
  - (b) the declaration by the voter is dealt with so that it is not capable of being used to identify the voter.
- (6) An electronic ballot paper and the form of declaration must be sent to the secretary of the owners corporation no later than the close of the ballot.
- (7) The secretary of the owners corporation must ensure that all electronic ballot papers are stored securely until the counting of the votes begins.
- (8) In this clause, the **close of the ballot** means—
  - (a) for a matter to be determined by the owners corporation, the time that is 24 hours before the commencement of the meeting at which the matter is to be determined, or
  - (b) for a matter to be determined by a strata committee, immediately before the commencement of the meeting at which the matter is to be determined.

## 16 Informal votes

- (1) A ballot paper of a voter who votes by means of pre-meeting electronic voting is informal if the voter has failed to record a vote in accordance with the information

provided by the secretary.

- (2) If voting is carried out by pre-meeting electronic voting using a voting website or other electronic application, the website or application is to provide a warning message to a person casting an informal vote that the proposed vote is informal.

### **17 Ascertaining result of pre-meeting electronic voting**

- (1) As soon as practicable after the close of a ballot conducted by pre-meeting electronic voting, the secretary of the owners corporation must—
  - (a) review all information and reports about the electronic ballot, and
  - (b) reject as informal any votes that do not comply with the requirements of this Regulation, and
  - (c) ascertain the result of the electronic ballot.
- (2) The secretary must, at the meeting to consider the matter for which the pre-meeting electronic voting was held, inform the persons present of the result of the ballot.

## **Part 3 Financial management**

### **18 Payment plans for unpaid contributions: section 85(6) of Act**

- (1) A payment plan for the payment of overdue contributions is to be in writing and is to contain the following—
  - (a) the name of the lot owner and the title details of the lot,
  - (b) the address for service of the lot owner,
  - (c) the amount of the overdue contributions,
  - (d) the amount of any interest payable for the overdue contributions and the way in which it is calculated,
  - (e) the schedule of payments for the amounts owing and the period for which the plan applies,
  - (f) the manner in which the payments are to be made,
  - (g) contact details for a member of the strata committee or a strata managing agent who is to be responsible for any matters arising in relation to the payment plan,
  - (h) a statement that a further plan may be agreed to by the owners corporation by resolution,
  - (i) a statement that the existence of the payment plan does not limit any right of the owners corporation to take action to recover the amount of the unpaid

contributions.

- (2) The strata committee must, at the request of a lot owner who has entered into a payment plan, give the lot owner a written statement for each calendar month (or any longer interval specified by the lot owner) of the plan that sets out the payments made during that month and the amount of unpaid contributions and interest owing.

#### **19 Notice of recovery action for unpaid contributions, interest or expenses**

For the purposes of section 86(5)(c) of the Act, a notice of proposed action to recover an amount of contributions, interest or expenses must include the following—

- (a) the date the amount was due to be paid,
- (b) the manner in which the amount may be paid,
- (c) whether a payment plan may be entered into,
- (d) any other action that may be taken to arrange for payment of the amount.

#### **20 (Repealed)**

#### **21 Calculation of annual budget**

For the purposes of section 95(4) of the Act, the amount of the annual budget is to be the sum of the following—

- (a) the amount of contributions levied for the year concerned (whether or not they have been paid),
- (b) any income of the owners corporation from any other source,
- (c) any other amounts held by the owners corporation for the purposes of the owners corporation.

#### **22 Accounting records**

The accounting records required to be kept for the purposes of section 96(4) of the Act are as follows—

- (a) receipts consecutively numbered,
- (b) a statement of deposits and withdrawals for the account of the owners corporation,
- (c) a cash record,
- (d) a levy register.

#### **23 Levy register**

- (1) The levy register must include a separate section for each lot in the strata scheme

that is not a utility lot.

- (2) Each of those sections must specify, by appropriate entries, the following matters in relation to each contribution levied by the owners corporation and must indicate whether those entries are debits or credits and the balances for those entries—
- (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 was made,
  - (f) whether a payment made was made in cash or by cheque 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.

## **24 Receipts**

For the purposes of section 97(2) of the Act, each receipt issued by the treasurer of the owners corporation must include the following—

- (a) the date of issue of the receipt,
- (b) the amount of money received,
- (c) the form (cash, cheque, postal order or other) in which the money was received,
- (d) the name of the person on whose behalf the payment was made,
- (e) if the payment is for a contribution to the administrative or capital works fund—
  - (i) a statement that the payment was made in respect of that contribution, and
  - (ii) the lot number in respect of which the contribution was made, and
  - (iii) the period in respect of which the payment is made (if relevant), and
  - (iv) details of any discount given for early payment,
- (f) if the payment is not a payment referred to in paragraph (e)—particulars of the transaction in respect of which the payment is received,



- (g) if the payment is received in respect of more than one transaction—the manner in which the payment is apportioned between transactions.

## **25 Limits on spending by large strata schemes**

For the purposes of section 102(1) of the Act, the prescribed amount for a proposed expenditure is \$30,000.

## **26 Approval for legal services costs**

- (1) The amount of \$15,000 is prescribed for the purposes of section 103(2)(b) of the Act.
- (2) For the purposes of section 103 of the Act, approval is not required under that section to the obtaining of legal services in relation to a matter that is not urgent if the cost of the legal services does not exceed \$3,000.

# **Part 4 Property management**

## **27 Common property memorandum**

The Common Property Memorandum, published in the Gazette and on the website of the Department of Finance, Services and Innovation on 30 November 2016 is prescribed for the purposes of section 107(1) of the Act as the common property memorandum that may be adopted by the by-laws for a strata scheme.

### **Note—**

The Common Property Memorandum cannot be modified by the adopting by-laws, except to exclude specified items that are not common property for the purposes of the particular strata scheme. Any common property by-law or a by-law made under section 108 of the Act prevails over the by-law adopting the Memorandum if it is inconsistent with the Memorandum (see section 107(3) and (4) of the Act).

## **28 Minor renovations by owners**

Work for the following purposes is prescribed as minor renovations for the purposes of section 110(3) of the Act—

- (a) removing carpet or other soft floor coverings to expose underlying wooden or other hard floors,
- (b) installing a rainwater tank,
- (c) installing a clothesline,
- (d) installing a reverse cycle split system air conditioner,
- (e) installing double or triple glazed windows,
- (f) installing a heat pump,
- (g) installing ceiling insulation.

**Note—**

The work prescribed by this clause is subject to the requirements set out in section 110(7) of the Act, including requirements that it does not involve structural changes, changes to the external appearance of a lot or waterproofing.

**29 Initial maintenance schedule: section 115 of Act**

- (1) The initial maintenance schedule for the maintenance of the common property of a strata scheme must contain maintenance and inspection schedules for a thing that is on common property if the maintenance and inspection is reasonably required to avoid damage to the thing or a failure to function properly for its intended purpose.
- (2) Without limiting the matters to be included in the initial maintenance schedule, maintenance and inspection schedules must be included for the following—
  - (a) exterior walls, guttering, downpipes and roof,
  - (b) pools and surrounds, including fencing and gates,
  - (c) air conditioning, heating and ventilation systems,
  - (d) fire protection equipment, including sprinkler systems, alarms and smoke detectors,
  - (e) security access systems,
  - (f) embedded networks and micro-grids.
- (3) The following are to be included with or attached to the initial maintenance schedule—
  - (a) all warranties for systems, equipment or any other things referred to in the schedule,
  - (b) any manuals or maintenance requirements provided by manufacturers for any of those things,
  - (c) the name and contact details of the manufacturer and installer of any of those things.
- (4) The schedule may be in hard copy or in an electronic form that is accessible by the owners corporation.

**30 Window safety devices**

- (1) A building in a strata scheme is a building to which section 118 of the Act applies if the building contains lots used for residential purposes.
- (2) A window within any such building is a window to which section 118 of the Act applies

if—

- (a) it is a window within the meaning of the *Building Code of Australia*, and
  - (b) it can be opened, and
  - (c) the lowest level of the window opening is less than 1.7 metres above the surface of any internal floor that abuts the wall of which it forms part, and
  - (d) that internal floor is 2 metres or more above the ground surface, or any external surface, below the window that abuts the wall, and
  - (e) it is a window on common property to which access can be gained from a residence in a strata scheme or a window on any part of the building that is part of a residence.
- (3) A screen, lock or any other device is a complying window safety device for the purposes of section 118 of the Act if it—
- (a) is capable of restricting the opening of a window so that a sphere having a diameter of 125 millimetres or more cannot pass through the window opening, and
  - (b) is capable of resisting an outward horizontal action of 250 newtons, and
  - (c) has a child resistant release mechanism, in the case of a device that can be removed, overridden or unlocked.

(4) In this clause—

***Building Code of Australia*** has the same meaning as it has in the *Environmental Planning and Assessment Act 1979*.

### **31 Notification by owners of window safety devices**

An owner of a lot in a strata scheme who installs a window safety device under section 118 of the Act must give written notice of the installation to the owners corporation within 7 days after completion of the installation.

**Note—**

Section 262 of the Act sets out the manner in which a document is to be served on an owners corporation.

### **32-34 (Repealed)**

## **Part 5 By-laws**

### **35 By-laws for schemes before [Strata Schemes Management Act 1996](#)**

For the purposes of section 134(3) of the Act, the by-laws 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 Schedule 2.

**Note—**

By virtue of section 134(3) of the Act, the by-laws also include any amendments to the by-laws set out in Schedule 2, and any additional by-laws made for the scheme, as in force before the commencement of section 134 of the Act. The by-laws may also be amended in accordance with the Act.

**36 Occupancy limits—exception**

- (1) For the purposes of section 137(3)(b) of the Act, a by-law that limits the number of adults who may reside in a lot has no effect if all of the adults who reside in the lot are related to each other.
- (2) For the purposes of this clause, a person is related to another person who resides in a lot if—
  - (a) the person is the parent, guardian, grandparent, son, daughter, grandchild, brother, sister, uncle, aunt, niece, nephew or cousin of the other person, or
  - (b) the person is such a relative of the other person's spouse or de facto partner or former spouse or de facto partner, or
  - (c) the person is the spouse or de facto partner of the other person, or
  - (d) the person is the carer of, or is cared for by, the other person.
- (3) For the purposes of this clause, a person who is an Aboriginal person or a Torres Strait Islander is also related to another person if the person is, or has been, part of the extended family or kin of the person according to the indigenous kinship system of the person's culture.

**37 Model by-laws**

For the purposes of section 138 of the Act, the by-laws set out in Schedule 3 are model by-laws that may be adopted, either in whole or in part, as the by-laws for a strata scheme.

**Part 6 Insurance**

**38 Approved insurers**

- (1) A Lloyd's underwriter authorised to carry on insurance business, or exempted from authorisation, under the *Insurance Act 1973* of the Commonwealth is an approved insurer for the purposes of paragraph (b) of the definition of **approved insurer** in section 4(1) of the Act.
- (2) In this clause—

**Lloyd's underwriter** has the same meaning as in the *Insurance Act 1973* of the Commonwealth.

### **39 Manner of calculation of insurance limit under damage policy**

- (1) For the purposes of section 161(1)(a) of the Act, the minimum amount for which a building is to be insured is to be not less than the amount calculated in accordance with subclause (2).
- (2) For the purposes of section 161(2) of the Act, the amount to which the liability of an insurer may be limited under a damage policy is to be calculated by adding together the following amounts—
  - (a) the estimated cost, as at the date of commencement of the damage policy, of—
    - (i) carrying out the work that a damage policy is required to provide for under section 161 of the Act, and
    - (ii) making the payments that a damage policy is required to provide for under section 161 of the Act,
  - (b) the estimated amount by which expenditure referred to in the preceding paragraphs may increase during the period of 24 months following the date of commencement of the damage policy.
- (3) The amounts referred to in subclause (2)(a) and (b) are to be calculated so as to include any applicable taxes, fees and charges (including taxes, fees and charges of the Commonwealth).

### **40 Insurance amount**

For the purposes of section 164(2) of the Act, the minimum insurance cover for the purposes of damage to property, death or bodily injury for which the owners corporation could become liable in damages is \$20,000,000.

## **Part 7 Records and information about strata schemes**

### **41 Electronic voting records**

- (1) For the purposes of section 180(1)(j) of the Act, records relating to electronic voting for motions for resolutions by an owners corporation must be retained by an owners corporation.
- (2) For the purposes of section 180(2) of the Act, the period for which an owners corporation is required to retain voting papers under section 180(1)(g) of the Act or records referred to in subclause (1) is 13 months, if the voting papers or records relate to secret ballots, unless the papers relate to the appointment of a strata renewal committee or other decisions in connection with Part 10 of the [Strata Schemes Development Act 2015](#).

## 42 Inspection of records

For the purposes of section 182(3)(k) of the Act, the owners corporation must make available for inspection the accounting records and other records relating to the strata scheme that are kept by the strata managing agent.

## 43 (Repealed)

# Part 8 Building defects

## Division 1 Interpretation

### 44 Interpretation

(1) Words and expressions used in this Part have the same meaning as they have in Part 11 of the Act.

(2) In this Part—

**authorised professional association** means any of the following bodies—

- (a) the Housing Industry Association Limited (ACN 004 631 752),
- (b) the Master Builders Association of New South Wales Pty Ltd (ACN 074 397 532),
- (c) the Australian Institute of Building (ACN 000 165 248),
- (d) the Australian Institute of Building Surveyors (ACN 004 540 836),
- (e) the Australian Institute of Building Consultants Pty Ltd (ACN 605 683 690),
- (f) the Australian Society of Building Consultants Incorporated (NSW Y1805133),
- (g) the Institute of Building Consultants Inc (NSW Y0848702),
- (h) Engineers Australia Pty Limited (ACN 001 311 511),
- (i) the Association of Accredited Certifiers Incorporated (NSW INC9880607),
- (j) the Australian Institute of Quantity Surveyors Ltd (ACN 000 093 005),
- (k) RICS Australasia Pty Ltd (ACN 089 873 067).

**Building Code of Australia** has the same meaning as in the [Environmental Planning and Assessment Act 1979](#).

**building inspector functions** mean the functions of a building inspector under Part 11 of the Act.

**strata inspector panel**—see clause 45.

## **Division 2 Building inspectors, inspection reports and rectification**

### **45 Persons qualified to be appointed as building inspectors**

- (1) An authorised professional association may establish and maintain a strata inspector panel for building work of a particular kind (a ***strata inspector panel***).
- (2) The association may appoint an individual to be a member of the panel if satisfied that the individual is appropriately qualified to carry out building inspector functions in relation to that kind of building work.
- (3) A member of the panel is qualified to be appointed under section 193(2) of the Act as a building inspector for that kind of building work.

### **45A Register of members of strata inspector panel**

- (1) An authorised professional association must keep a register of members of a strata inspector panel established by the association that contains the following particulars in relation to each member—
  - (a) the member's name,
  - (b) any registered business name under which the member carries on business as a building inspector, together with the related Australian Business Number,
  - (c) the address of the member's principal place of business,
  - (d) the member's telephone number and other particulars (such as an email address) for contacting the member for business purposes,
  - (e) any formal qualifications held by the member that are relevant to the individual's business as a building inspector,
  - (f) any conditions in force under clause 45C in relation to the member that the association has been made aware of as a result of notification to the association under that clause.
- (2) The register may contain any other particulars that the association considers appropriate, including particulars of project experience that have been provided by the member to the association and that the association considers relevant.
- (3) An authorised professional association that is required to keep a register under this clause must retain the register and its contents for at least 7 years after the date on which the last entry was made in it.
- (4) An authorised professional association that is required to keep a register under this clause must ensure that the register is made available free of charge for inspection by the public—

- (a) at the professional association's offices during ordinary office hours (in paper or electronic form), and
- (b) on the internet.

Maximum penalty—40 penalty units.

#### **45B Secretary's guidelines**

- (1) In exercising its functions under clauses 45 and 45A, an authorised professional association must have regard to the guidelines (if any) approved by the Secretary for the purposes of this clause that have been provided to the professional association by the Secretary and are in force.
- (2) The Secretary is to cause such guidelines to be published on the website of the Department.

#### **45C Conditions imposed on building inspectors by Secretary**

- (1) For the purposes of section 214(1)(a3) of the Act, the Secretary may impose a condition on the exercise of building inspector functions by a building inspector.
- (2) Conditions may be imposed on a specified building inspector or a class of building inspectors by written notice—
  - (a) in the case of a specified building inspector—given to the building inspector and to the authorised professional association that established the strata inspector panel of which the building inspector is a member, or
  - (b) in the case of a class of building inspectors—given to each authorised professional association and published in the Gazette.
- (3) The imposition of a condition under this clause takes effect on the date specified in the notice concerned.
- (4) A building inspector exercising building inspector functions must comply with any applicable conditions imposed under this clause.

Maximum penalty—200 penalty units in the case of a corporation and 100 penalty units in any other case.

- (5) This clause applies to the variation or removal of a condition imposed under this clause in the same way as it applies to the imposition of the condition.

#### **45D Liability of professional associations in respect of accreditation and other functions**

For the purposes of the definition of **professional association** in section 213B(2) of the Act, each authorised professional association is prescribed.



#### **45E Nomination of building inspector for approval of owners corporation**

- (1) A developer nominating a building inspector for approval under section 195(1) of the Act at a general meeting of an owners corporation must do so by written notice given to the owners corporation at least 14 days before the general meeting.
- (2) The notice must be in the approved form (if any) and contain the matters specified in the form (if any).
- (3) The notice must include or be accompanied by the following particulars—
  - (a) the name of the authorised professional association that established the strata inspector panel of which the building inspector is a member,
  - (b) the particulars required to be kept in relation to the building inspector under clause 45A(1),
  - (c) particulars of project experience that have been provided by the member to the developer or that appear on the register.

Maximum penalty—40 penalty units in the case of a corporation and 20 penalty units in any other case.

#### **46 Disclosure of previous employment by developer**

For the purposes of section 195(2) of the Act, a building inspector must disclose previous employment by the developer or a contractor of the developer that occurred at any time within the period of 2 years before appointment as a building inspector.

#### **46A Documents to be provided to building inspector by developer**

- (1) For the purposes of section 198A(1)(b) of the Act, the following are prescribed—
  - (a) a copy of the initial maintenance schedule relating to the strata scheme,
  - (b) copies of the following documents relating to the building work—
    - (i) the contract or contracts between the developer and the builder,
    - (ii) any specifications and any variations (including any “issued for construction” and “as-built” drawings and specifications and particulars of approved alternative solutions to meet the performance requirements of the *Building Code of Australia*),
    - (iii) any written warranties,
    - (iv) any schedule of samples (being samples of fixtures, fittings, materials and finishes) approved by the developer for use in the building work,
    - (v) any development consents, approvals or certificates granted or issued under

the *Environmental Planning and Assessment Act 1979*,

- (vi) in the case of building work involving an alternative solution in respect of a fire safety requirement under the *Building Code of Australia*—any report prepared by or on behalf of an accredited practitioner (fire safety) in relation to the alternative solution that was required in connection with an application for a certificate under the *Environmental Planning and Assessment Act 1979*,
- (vii) any certificates relating to the design of the building work that were required in connection with an application for a development consent, approval or certificate under the *Environmental Planning and Assessment Act 1979*,
- (viii) any report obtained by the developer or builder relating to the inspection of the building work.

(2) In this clause, a reference to an **accredited practitioner (fire safety)** includes a reference to a fire safety practitioner for things done before 1 July 2020.

#### **47 Interim reports: section 199(2) of Act**

An interim report by a building inspector must be in the approved form and contain the matters specified in the form.

#### **48 Final report: section 201(2) of Act**

A final report by a building inspector must be in the approved form and contain the matters specified in the form.

#### **49 Notice to owners of reports: section 202(3) of Act**

A notice to owners of the receipt of an interim or final report by a building inspector must contain the following particulars—

- (a) whether the report is an interim or final report,
- (b) how to obtain an electronic copy of the report.

#### **49A Reasons enabling appointment of new builder to rectify defects**

For the purposes of section 206(7) of the Act, the following reasons are prescribed—

- (a) the builder responsible for the defective building work is unwilling to rectify the defective building work,
- (b) it would be unlawful for the builder to rectify the defective building work (for example, because the builder does not hold a licence where required to do so by law),
- (c) the builder is unable to rectify the defective building work because the builder has become a mentally incapacitated person or physically incapacitated or is serving a

term of imprisonment,

(d) after due search and inquiry, the builder cannot be found in Australia.

### **Division 3 Building bonds**

#### **50 Contract price for determining building bond**

- (1) For the purposes of the definition of **contract price** in section 189 of the Act, the contract price for building work is the total price paid or payable under all the applicable contracts for the building work regardless of when the amounts become payable.
- (2) However, the contract price for building work is to be the price set out in a cost report if—
  - (a) there is no written contract for the building work, or
  - (b) the parties to the building contract are connected persons (other than as a result of being parties to the contract).
- (2A) The cost report is to be prepared by a qualified quantity surveyor—
  - (a) engaged by the developer (except as provided by paragraph (b)), or
  - (b) determined by the Tribunal or the Supreme Court to be appropriate in proceedings dealing with an application by an owners corporation or the Secretary under section 211 of the Act.
- (2B) The quantity surveyor who prepares the cost report must not be connected to—
  - (a) the builder or the developer (other than as a result of being engaged by the developer to prepare the report), or
  - (b) a bank, or other person, providing finance for the building work.
- (2C) For the purposes of this clause, a **qualified quantity surveyor** is a quantity surveyor who is a member of the Australian Institute of Quantity Surveyors or the Royal Institution of Chartered Surveyors.
- (3) A cost report prepared by a quantity surveyor for the purposes of this clause must include the costs of the following and be accompanied by a certificate by the quantity surveyor that he or she has inspected the as-built drawings and specifications for the strata plan to which the report relates—
  - (a) construction and fit out costs, not including appliance and PC items,
  - (b) demolition and site preparation,
  - (c) excavation,

- (d) car parking,
- (e) costs for the common property that is included in the property plan, including landscaping, pools, fencing and gates,
- (f) professional fees,
- (g) taxes applied in the calculation of the as-built construction.

#### **51 Maturity dates for building bond**

The amount secured by a building bond must be able to be claimed or realised for a period of not less than 30 months and not more than 3 years after the date of the occupation certificate for the building work to which the bond relates.

#### **52 Additional documents to be lodged with building bond**

- (1) A developer must, when giving a building bond to the Secretary, also give the Secretary the following documents and information, in the manner approved by the Secretary—
  - (a) a lodgment form in the approved form,
  - (b) the strata plan number of the strata scheme concerned,
  - (c) the street address of any building to which the bond relates,
  - (d) the name and address of the principal certifying authority for any building work to which the bond relates,
  - (e) an address for service for the developer,
  - (f) an address for service for the owners corporation for the strata scheme,
  - (g) a copy of any documents relevant to the determination of the contract price used to calculate the amount required to be secured by the building bond (including, if applicable, the quantity surveyor's cost report referred to in clause 50(2A)),
  - (h) the documents set out in clause 46A(1)(b) relating to the building work.
  - (i)–(r) (Repealed)
- (2) Without limiting subclause (1)(g) and (h), the Secretary may, by notice in writing given to the developer, require the developer to provide any additional information or documents that the Secretary considers necessary to substantiate the contract price used to calculate the amount required to be secured by the building bond.
- (3) The developer must not, without reasonable excuse, fail to comply with the notice.

Maximum penalty (subclauses (1) and (3))—200 penalty units in the case of a corporation

and 100 penalty units in any other case.

### **53 Application to pay amount secured by building bond to owners corporation**

- (1) For the purposes of section 209(2) of the Act, an application to pay the whole or part of the amount secured by a building bond to the owners corporation must be made not later than 14 days before the last day on which the amount must be claimed or realised under that section.
- (2) The application is to be made in accordance with the procedures (if any) approved by the Secretary and published on the website of the Department that are in force.

### **54 (Repealed)**

### **55 Payment of building bond**

- (1) The Secretary must not pay the whole or part of an amount secured by a building bond unless the Secretary has given at least 14 days written notice to the owners corporation, the developer of the strata scheme and the builder of the proposed payment.
- (2) If an application to review a decision to pay the whole or part of an amount secured by a building bond is made in accordance with clause 56, the amount is not to be paid until the application for the review is determined or withdrawn.
- (3) The Secretary may approve procedures relating to the payment by the Secretary of amounts secured by a building bond and publish the procedures on the website of the Department.

## **Division 4 Miscellaneous**

### **56 Review of decisions**

- (1) For the purposes of section 213 of the Act, the following decisions of the Secretary are reviewable decisions—
  - (a) a decision under section 200(2)(a) of the Act to arrange for a final inspection and report,
  - (b) a determination under section 200(4) of the Act that a developer is not required to arrange for a final report,
  - (c) a decision under section 212 of the Act to vary the period within which an interim report or final report is to be provided, or other action is to be done, under Part 11 of the Act,
  - (d) a decision that the whole or part of a building bond may be claimed or realised for payment to an owners corporation, developer or other person.

- (2) Despite subclause (1), a decision by the Secretary to claim or realise a building bond for payment is not reviewable if the amount has been paid in accordance with the decision.
- (3) An application for a review of a reviewable decision must be made not later than 14 days after notice of the decision is given by the Secretary to the interested person or, if the interested person is the owner of a lot, to the owners corporation and must—
  - (a) be in writing and signed by the applicant, and
  - (b) specify the decision for which a review is sought and the grounds on which the review is sought, and
  - (c) specify any additional information that is provided by the applicant for the purposes of the review and indicate why the information was not previously provided, and
  - (d) provide an address for giving notice to the applicant of the decision by the Secretary on the review.
- (4) For the purposes of section 213(2)(d) of the Act, a builder who carried out building work to which a reviewable decision relates, or a builder who is responsible for defective building work to which a reviewable decision relates, is an interested person in relation to the reviewable decision.

## **Part 9 Alternative dispute resolution**

### **57 Application of Part**

This Part applies to a mediation conducted under section 218 of the Act.

### **58 Directions of Secretary**

Subject to the Act and this Regulation, the Secretary may give written directions for regulating and prescribing the practice and procedure to be followed in connection with a mediation session, including the preparation and service of documents.

### **59 Attendance and representation**

- (1) A mediation session must be attended by each party or a representative of the party if all other parties consent to the representation.
- (2) Other persons may attend a mediation session with the leave of the mediator.

### **60 Costs**

The parties to a mediation are to pay their own costs associated with the mediation.

## 61 Termination

- (1) A mediator may terminate a mediation at any time.
- (2) A party may terminate a mediation at any time by giving notice of the termination to the mediator and each other party.

## Part 10 Miscellaneous

### 62 Connected persons

- (1) For the purposes of section 7(1)(f) of the Act, a person that is a corporation (the **principal person**) is connected with another person if the other person—
  - (a) is a related body corporate or an associated entity (within the meaning of the *Corporations Act 2001* of the Commonwealth) of the principal person, or
  - (b) holds an executive position (within the meaning of section 7 of the Act) in a related body corporate or an associated entity of the principal person, or
  - (c) holds or will hold any relevant financial interest in the principal person, or is or will be entitled to exercise any relevant power (whether in the person's own right or on behalf of any other person) in the business of the principal person, and by virtue of that interest or power is or will be able to exercise a significant influence over or with respect to the management or operation of the principal person.

- (2) In this clause—

**relevant financial interest**, in relation to a principal person, means—

- (a) any shares in the capital of the principal person, or
- (b) any entitlement to receive any income derived from a business carried on by the principal person, or to receive any other financial benefit or financial advantage from the carrying on of the business, whether the entitlement arises at law or in equity or otherwise.

**relevant power** means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others—

- (a) to participate in any directorial, managerial or executive position in the principal person, or
- (b) to elect or appoint any person to any such position.

### 63 Limit for gifts to strata managing agents

For the purposes of section 57(3)(d) of the Act, the amount prescribed is \$60.

#### **64 Fees**

The fees payable under the Act are set out in Schedule 4.

#### **65 Penalty notice offences and penalties**

- (1) For the purposes of section 250 of the Act—
  - (a) each offence created by a provision specified in Column 1 of Schedule 5 is an offence for which a penalty notice may be served, and
  - (b) the penalty prescribed for each such offence is the amount specified opposite the provision in Column 2 of the Schedule.
- (2) If the reference to a provision in Column 1 of Schedule 5 is qualified by words that restrict its operation to specified kinds of offences, an offence created by the provision is a prescribed offence only if it is an offence of a kind so specified or committed in the circumstances so specified.

#### **66 Seals of owners corporations—savings provision**

The seal of an owners corporation in existence before the commencement of this clause may continue to be used as its seal for the purposes of the Act or for any other purpose, unless replaced by the owners corporation.

#### **67 Amendment of Act: clause 1(5) of Schedule 3 to Act**

**Schedule 3 Savings, transitional and other provisions** Omit clause 8(1) and (2). Insert instead—

- (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.

#### **68 Amendment of Act: clause 1(5) of Schedule 3 to Act**

**Schedule 3 Savings, transitional and other provisions** Omit clause 14(1). Insert instead—

- (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.

## **Part 11 Response to COVID-19 pandemic**

### **69 Definition**

In this Part—

***relevant strata meeting*** has the same meaning as in section 271A of the Act.

### **70 Altered arrangements for convening relevant strata meetings—section 271A(1)(a) of Act**

Notice of, or any other document in relation to, a relevant strata meeting may be given to a person by email to an email address specified by the person for the service of documents.

### **71 Altered arrangements for voting at relevant strata meetings—section 271A(1)(b) of Act**

- (1) The means of voting specified in clause 14 may be used to determine a matter at a relevant strata meeting even if the owners corporation or strata committee, as the case may be, has not, by resolution, adopted those means of voting.
- (2) Clauses 14–17 extend to the use, under this clause, of those means of voting.
- (3) If those means of voting are to be used and have not, by resolution, been adopted, the secretary of the owners corporation, or, if a strata managing agent may exercise the functions of the secretary under clauses 14–17, the strata managing agent, must take reasonable steps necessary to ensure that each owner of a lot in the strata scheme or each member of the strata committee, as the case may be, can participate in and vote at the relevant strata meeting.
- (4) To avoid doubt, this clause—
  - (a) applies despite any requirement in the Act for a vote at a relevant strata meeting to be exercised in person, but

**Note—**

See clause 28(1) of Schedule 1, and clause 10(1) of Schedule 2, to the Act.

- (b) does not permit pre-meeting electronic voting to be used for an election.
- (5) 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 for the motion or election.

**Note—**

For quorum requirements for relevant strata meetings, see clause 17 of Schedule 1, and clause 12 of Schedule 2, to the Act.

**72 Alternative to affixing seal of owners corporation—section 271A(1)(c) of Act**

- (1) An instrument or document may, as an alternative to being affixed with the seal of an owners corporation in the presence of the persons referred to in section 273 of the Act, be signed by those persons (each of whom is, in that capacity, a **signatory**) in the presence of those persons (each of whom is, in that capacity, a **witness**).
- (2) The instrument or document must indicate the following—
  - (a) the date on which it is signed and the signatures are witnessed,
  - (b) the name of each signatory and witness,
  - (c) the relationship of each signatory and witness to the owners corporation,

**Example—**

The secretary of the owners corporation, the strata managing agent of the owners corporation (or a relevant officer of the strata managing agent), a member of the strata committee of the owners corporation or an owner of a lot in the relevant strata scheme.

- (d) if a signatory or witness is the strata managing agent of the owners corporation, or a relevant officer of a strata managing agent that is a corporation—the number of the strata managing agent’s licence under the [Property and Stock Agents Act 2002](#).
- (3) A reference in section 273(4)–(6) of the Act to affixing the seal of an owners corporation to an instrument or document is taken to include a reference to signing, and witnessing the signature of, the instrument or document in accordance with this clause.
- (4) For the purposes of this clause—
  - (a) the presence of a signatory or witness is taken to be satisfied if the signatory or witness is present by audio visual link, and
  - (b) a signature is not required to be witnessed if it is the signature of—
    - (i) a strata managing agent, or a relevant officer of a strata managing agent that is a corporation, or
    - (ii) if the owners corporation has only 1 owner—the owner.
- (5) In this clause—

**audio visual link** means technology that enables continuous and contemporaneous audio and visual communication between persons at different places, including video

conferencing.

**relevant officer** of a strata managing agent that is a corporation means—

- (a) the president, chairperson or other principal officer of the corporation, or
- (b) any member of staff of the corporation authorised by the president, chairperson or other principal officer to affix the seal of the owners corporation to an instrument or document, or to attest the fact and date of the affixing of the seal.

### **73 Extension of time periods—section 271A(1)(d) of Act**

- (1) A meeting of an owners corporation under section 14 of the Act must be convened and held not later than 6 months after the end of the initial period.
- (2) An owners corporation must, not later than 6 months after transferring money from, or using, the administrative fund or the capital works fund in the manner referred to in section 76 of the Act, 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.

### **74 (Repealed)**

## **Schedule 1 (Repealed)**

## **Schedule 2 By-laws for pre-1996 strata schemes**

(Clause 35)

### **1 Noise**

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

**Note—**

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

### **2 Vehicles**

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

**Note—**

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

### **3 Obstruction of common property**

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

person.

**Note—**

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

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

An owner or occupier of a lot must not—

- (a) damage any lawn, garden, tree, shrub, plant or flower being part of or situated on common property, or
- (b) use for his or her own purposes as a garden any portion of the common property.

**Note—**

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

#### **5 Damage to common property**

- (1) An owner or occupier of a lot must not mark, paint, drive nails or screws or the like into, or otherwise damage or deface, any structure that forms part of the common property without the approval in writing of the owners corporation.

**Note—**

This by-law is subject to sections 109 and 110 of the *Strata Schemes Management Act 2015*.

- (2) An approval given by the owners corporation under clause (1) cannot authorise any additions to the common property.
- (3) This by-law does not prevent an owner or person authorised by an owner from installing—
  - (a) any locking or other safety device for protection of the owner's lot against intruders, or
  - (b) any screen or other device to prevent entry of animals or insects on the lot, or
  - (c) any structure or device to prevent harm to children.
- (4) Any such locking or safety device, screen, other device or structure must be installed in a competent and proper manner and must have an appearance, after it has been installed, in keeping with the appearance of the rest of the building.
- (5) Despite section 106 of the *Strata Schemes Management Act 2015*, the owner of a lot must maintain and keep in a state of good and serviceable repair any installation or structure referred to in clause (3) that forms part of the common property and that services the lot.

**Note—**

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

## **6 Behaviour of owners and occupiers**

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

**Note—**

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

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

An owner or occupier of a lot must not permit any child of whom the owner or occupier has control to play on common property within the building or, unless accompanied by an adult exercising effective control, to be or to remain on common property comprising a laundry, car parking area or other area of possible danger or hazard to children.

**Note—**

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

## **8 Behaviour of invitees**

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

**Note—**

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

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

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

**Note—**

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

## **10 Drying of laundry items**

An owner or occupier of a lot must not, except with the consent in writing of the owners corporation, hang any washing, towel, bedding, clothing or other article on any part of the

parcel in such a way as to be visible from outside the building other than on any lines provided by the owners corporation for the purpose and there only for a reasonable period.

**Note—**

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

## **11 Cleaning windows and doors**

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

**Note—**

This by-law was previously by-law 22 in Schedule 1 to the *Strata Schemes (Freehold Development) Act 1973* and by-law 23 in Schedule 3 to the *Strata Schemes (Leasehold Development) Act 1986*.

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

- (1) An owner or occupier of a lot must not, except with the approval in writing of the owners corporation, use or store on the lot or on the common property any inflammable chemical, liquid or gas or other inflammable material.
- (2) This by-law does not apply to chemicals, liquids, gases or other material used or intended to be used for domestic purposes, or any chemical, liquid, gas or other material in a fuel tank of a motor vehicle or internal combustion engine.

**Note—**

This by-law was previously by-law 23 in Schedule 1 to the *Strata Schemes (Freehold Development) Act 1973* and by-law 24 in Schedule 3 to the *Strata Schemes (Leasehold Development) Act 1986*.

## **13 Moving furniture and other objects on or through common property**

An owner or occupier of a lot must not transport any furniture or large object through or on common property within the building unless sufficient notice has first been given to the strata committee so as to enable the strata committee to arrange for its nominee to be present at the time when the owner or occupier does so.

**Note—**

This by-law was previously by-law 24 in Schedule 1 to the *Strata Schemes (Freehold Development) Act 1973* and by-law 25 in Schedule 3 to the *Strata Schemes (Leasehold Development) Act 1986*.

## **14 Floor coverings**

- (1) An owner of a lot must ensure that all floor space within the lot is covered or otherwise treated to an extent sufficient to prevent the transmission from the floor space of noise likely to disturb the peaceful enjoyment of the owner or occupier of another lot.
- (2) This by-law does not apply to floor space comprising a kitchen, laundry, lavatory or

bathroom.

**Note—**

This by-law was previously by-law 25 in Schedule 1 to the *Strata Schemes (Freehold Development) Act 1973* and by-law 26 in Schedule 3 to the *Strata Schemes (Leasehold Development) Act 1986*.

## **15 Garbage disposal**

An owner or occupier of a lot—

- (a) must maintain within the lot, or on such part of the common property as may be authorised by the owners corporation, in clean and dry condition and adequately covered a receptacle for garbage, and
- (b) must ensure that before refuse is placed in the receptacle it is securely wrapped or, in the case of tins or other containers, completely drained, and
- (c) for the purpose of having the garbage collected, must place the receptacle within an area designated for that purpose by the owners corporation and at a time not more than 12 hours before the time at which garbage is normally collected, and
- (d) when the garbage has been collected, must promptly return the receptacle to the lot or other area referred to in paragraph (a), and
- (e) must not place any thing in the receptacle of the owner or occupier of any other lot except with the permission of that owner or occupier, and
- (f) must promptly remove any thing which the owner, occupier or garbage collector may have spilled from the receptacle and must take such action as may be necessary to clean the area within which that thing was spilled.

**Note—**

This by-law was previously by-law 26 in Schedule 1 to the *Strata Schemes (Freehold Development) Act 1973* and by-law 27 in Schedule 3 to the *Strata Schemes (Leasehold Development) Act 1986*.

## **16 Keeping of animals**

- (1) Subject to section 157 of the *Strata Schemes Management Act 2015*, an owner or occupier of a lot must not, without the approval in writing of the owners corporation, keep any animal on the lot or the common property.
- (2) The owners corporation must not unreasonably withhold its approval of the keeping of an animal on a lot or the common property.

**Note—**

This by-law was previously by-law 27 in Schedule 1 to the *Strata Schemes (Freehold Development) Act 1973* and by-law 28 in Schedule 3 to the *Strata Schemes (Leasehold Development) Act 1986*.

## 17 Appearance of lot

- (1) The owner or occupier of a lot must not, without the written consent of the owners corporation, maintain within the lot anything visible from outside the lot that, viewed from outside the lot, is not in keeping with the rest of the building.
- (2) This by-law does not apply to the hanging of any washing, towel, bedding, clothing or other article as referred to in by-law 10.

### Note—

This by-law was previously by-law 29 in Schedule 1 to the *Strata Schemes (Freehold Development) Act 1973* and by-law 30 in Schedule 3 to the *Strata Schemes (Leasehold Development) Act 1986*.

## 18 Notice board

An owners corporation must cause a notice board to be affixed to some part of the common property.

### Note—

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

## 19 Change in use of lot to be notified

An occupier of a lot must notify the owners corporation if the occupier changes the existing use of the lot in a way that may affect the insurance premiums for the strata scheme (for example, if the change of use results in a hazardous activity being carried out on the lot, or results in the lot being used for commercial or industrial purposes rather than residential purposes).

## Schedule 3 Model by-laws for residential strata schemes

(Clause 37)

### Note—

These by-laws do not apply to a strata scheme unless they are adopted by the owners corporation for the strata scheme or lodged with the strata plan.

### 1 Vehicles

An owner or occupier of a lot must not park or stand any motor or other vehicle on common property, or permit a motor vehicle to be parked or stood on common property, except with the prior written approval of the owners corporation or as permitted by a sign authorised by the owners corporation.

### 2 Changes to common property

- (1) An owner or person authorised by an owner may install, without the consent of the owners corporation—



- (a) any locking or other safety device for protection of the owner's lot against intruders or to improve safety within the owner's lot, or
  - (b) any screen or other device to prevent entry of animals or insects on the lot, or
  - (c) any structure or device to prevent harm to children.
- (2) Any such locking or safety device, screen, other device or structure must be installed in a competent and proper manner and must have an appearance, after it has been installed, in keeping with the appearance of the rest of the building.
- (3) Clause (1) does not apply to the installation of any thing that is likely to affect the operation of fire safety devices in the lot or to reduce the level of safety in the lots or common property.
- (4) The owner of a lot must—
- (a) maintain and keep in a state of good and serviceable repair any installation or structure referred to in clause (1) that forms part of the common property and that services the lot, and
  - (b) repair any damage caused to any part of the common property by the installation or removal of any locking or safety device, screen, other device or structure referred to in clause (1) that forms part of the common property and that services the lot.

### **3 Damage to lawns and plants on common property**

An owner or occupier of a lot must not, except with the prior written approval of the owners corporation—

- (a) damage any lawn, garden, tree, shrub, plant or flower being part of or situated on common property, or
- (b) use for his or her own purposes as a garden any portion of the common property.

### **4 Obstruction of common property**

An owner or occupier of a lot must not obstruct lawful use of common property by any person except on a temporary and non-recurring basis.

### **5 Keeping of animals**

#### **Note—**

Select option A or B. If no option is selected, option A will apply.

#### **Option A**

- (1) An owner or occupier of a lot may keep an animal on the lot, if the owner or occupier

gives the owners corporation written notice that it is being kept on the lot.

- (2) The notice must be given not later than 14 days after the animal commences to be kept on the lot.
- (3) If an owner or occupier of a lot keeps an animal on the lot, the owner or occupier must—
  - (a) keep the animal within the lot, and
  - (b) supervise the animal when it is on the common property, and
  - (c) take any action that is necessary to clean all areas of the lot or the common property that are soiled by the animal.

#### Option B

- (1) An owner or occupier of a lot may keep an animal on the lot or the common property with the written approval of the owners corporation.
- (2) The owners corporation must not unreasonably withhold its approval of the keeping of an animal on a lot or the common property and must give an owner or occupier written reasons for any refusal to grant approval.
- (3) If an owner or occupier of a lot keeps an animal on the lot, the owner or occupier must—
  - (a) keep the animal within the lot, and
  - (b) supervise the animal when it is on the common property, and
  - (c) take any action that is necessary to clean all areas of the lot or the common property that are soiled by the animal.
- (4) An owner or occupier of a lot who keeps an assistance animal on the lot must, if required to do so by the owners corporation, provide evidence to the owners corporation demonstrating that the animal is an assistance animal as referred to in section 9 of the [Disability Discrimination Act 1992](#) of the Commonwealth.

## 6 Noise

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

## 7 Behaviour of owners, occupiers and invitees

- (1) An owner or occupier of a lot, or any invitee of an owner or occupier of a lot, when on

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

- (2) An owner or occupier of a lot must take all reasonable steps to ensure that invitees of the owner or occupier—
  - (a) do not behave in a manner likely to interfere with the peaceful enjoyment of the owner or occupier of another lot or any person lawfully using common property, and
  - (b) without limiting paragraph (a), that invitees comply with clause (1).

## **8 Children playing on common property**

- (1) Any child for whom an owner or occupier of a lot is responsible may play on any area of the common property that is designated by the owners corporation for that purpose but may only use an area designated for swimming while under adult supervision.
- (2) An owner or occupier of a lot must not permit any child for whom the owner or occupier is responsible, unless accompanied by an adult exercising effective control, to be or remain on common property that is a laundry, car parking area or other area of possible danger or hazard to children.

## **9 Smoke penetration**

### **Note—**

Select option A or B. If no option is selected, option A will apply.

### **Option A**

- (1) An owner or occupier, and any invitee of the owner or occupier, must not smoke tobacco or any other substance on the common property.
- (2) An owner or occupier of a lot must ensure that smoke caused by the smoking of tobacco or any other substance by the owner or occupier, or any invitee of the owner or occupier, on the lot does not penetrate to the common property or any other lot.

### **Option B**

- (1) An owner or occupier of a lot, and any invitee of the owner or occupier, must not smoke tobacco or any other substance on the common property, except—
  - (a) in an area designated as a smoking area by the owners corporation, or
  - (b) with the written approval of the owners corporation.
- (2) A person who is permitted under this by-law to smoke tobacco or any other substance on common property must ensure that the smoke does not penetrate to any other lot.

- (3) An owner or occupier of a lot must ensure that smoke caused by the smoking of tobacco or any other substance by the owner or occupier, or any invitee of the owner or occupier, on the lot does not penetrate to the common property or any other lot.

#### **10 Preservation of fire safety**

The owner or occupier of a lot must not do any thing or permit any invitees of the owner or occupier to do any thing on the lot or common property that is likely to affect the operation of fire safety devices in the parcel or to reduce the level of fire safety in the lots or common property.

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

- (1) An owner or occupier of a lot must not, except with the prior written approval of the owners corporation, use or store on the lot or on the common property any inflammable chemical, liquid or gas or other inflammable material.
- (2) This by-law does not apply to chemicals, liquids, gases or other material used or intended to be used for domestic purposes, or any chemical, liquid, gas or other material in a fuel tank of a motor vehicle or internal combustion engine.

#### **12 Appearance of lot**

- (1) The owner or occupier of a lot must not, without the prior written approval of the owners corporation, maintain within the lot anything visible from outside the lot that, viewed from outside the lot, is not in keeping with the rest of the building.
- (2) This by-law does not apply to the hanging of any clothing, towel, bedding or other article of a similar type in accordance with by-law 14.

#### **13 Cleaning windows and doors**

- (1) Except in the circumstances referred to in clause (2), an owner or occupier of a lot is responsible for cleaning all interior and exterior surfaces of glass in windows and doors on the boundary of the lot, including so much as is common property.
- (2) The owners corporation is responsible for cleaning regularly all exterior surfaces of glass in windows and doors that cannot be accessed by the owner or occupier of the lot safely or at all.

#### **14 Hanging out of washing**

- (1) An owner or occupier of a lot may hang any washing on any lines provided by the owners corporation for that purpose. The washing may only be hung for a reasonable period.
- (2) An owner or occupier of a lot may hang washing on any part of the lot other than over the balcony railings. The washing may only be hung for a reasonable period.

(3) In this by-law—

**washing** includes any clothing, towel, bedding or other article of a similar type.

**15 Disposal of waste—bins for individual lots [applicable where individual lots have bins]**

- (1) An owner or occupier of a lot must not deposit or throw on the common property any rubbish, dirt, dust or other material or discarded item except with the prior written approval of the owners corporation.
- (2) An owner or occupier of a lot must not deposit in a toilet, or otherwise introduce or attempt to introduce into the plumbing system, any item that is not appropriate for any such disposal (for example, a disposable nappy).
- (3) An owner or occupier must—
  - (a) comply with all reasonable directions given by the owners corporation as to the disposal and storage of waste (including the cleaning up of spilled waste) on common property, and
  - (b) comply with the local council's guidelines for the storage, handling, collection and disposal of waste.
- (4) An owner or occupier of a lot must maintain bins for waste within the lot, or on any part of the common property that is authorised by the owners corporation, in clean and dry condition and appropriately covered.
- (5) An owner or occupier of a lot must not place any thing in the bins of the owner or occupier of any other lot except with the permission of that owner or occupier.
- (6) An owner or occupier of a lot must place the bins within an area designated for collection by the owners corporation not more than 12 hours before the time at which waste is normally collected and, when the waste has been collected, must promptly return the bins to the lot or other area authorised for the bins.
- (7) An owner or occupier of a lot must notify the local council of any loss of, or damage to, bins provided by the local council for waste.
- (8) The owners corporation may give directions for the purposes of this by-law by posting signs on the common property with instructions on the handling of waste that are consistent with the local council's requirements or giving notices in writing to owners or occupiers of lots.
- (9) In this by-law—

**bin** includes any receptacle for waste.

**waste** includes garbage and recyclable material.

## **16 Disposal of waste—shared bins [applicable where bins are shared by lots]**

- (1) An owner or occupier of a lot must not deposit or throw on the common property any rubbish, dirt, dust or other material or discarded item except with the prior written approval of the owners corporation.
- (2) An owner or occupier of a lot must not deposit in a toilet, or otherwise introduce or attempt to introduce into the plumbing system, any item that is not appropriate for any such disposal (for example, a disposable nappy).
- (3) An owner or occupier must—
  - (a) comply with all reasonable directions given by the owners corporation as to the disposal and storage of waste (including the cleaning up of spilled waste) on common property, and
  - (b) comply with the local council’s guidelines for the storage, handling, collection and disposal of waste.
- (4) The owners corporation may give directions for the purposes of this by-law by posting signs on the common property with instructions on the handling of waste that are consistent with the local council’s requirements or giving notices in writing to owners or occupiers of lots.
- (5) In this by-law—

**bin** includes any receptacle for waste.

**waste** includes garbage and recyclable material.

## **17 Change in use or occupation of lot to be notified**

- (1) An occupier of a lot must notify the owners corporation if the occupier changes the existing use of the lot.
- (2) Without limiting clause (1), the following changes of use must be notified—
  - (a) a change that may affect the insurance premiums for the strata scheme (for example, if the change of use results in a hazardous activity being carried out on the lot, or results in the lot being used for commercial or industrial purposes rather than residential purposes),
  - (b) a change to the use of a lot for short-term or holiday letting.
- (3) The notice must be given in writing at least 21 days before the change occurs or a lease or sublease commences.

## **18 Compliance with planning and other requirements**

- (1) The owner or occupier of a lot must ensure that the lot is not used for any purpose

that is prohibited by law.

- (2) The owner or occupier of a lot must ensure that the lot is not occupied by more persons than are allowed by law to occupy the lot.

## Schedule 4 Fees

(Clause 64)

Item	Type of fee	Fee
<b>Fee payable to Secretary</b>		
1	Lodgment of building bond	\$1,500
1A	Arranging appointment of building inspector under section 196 or 200 of the Act	\$1,500
<b>Fees payable to owners corporation</b>		
2	For making records available for inspection under section 182 of the Act	\$31 and an additional \$16 for each half-hour or part of half-hour after the first hour of inspection
3	For giving a certificate under section 184 of the Act—	
	(a) if the request is an initial request or request made more than 3 months after a previous request by the same person in respect of the same lot	\$109 and an additional \$54 for a further certificate for a lot comprising a garage, parking space or storeroom that services the lot the subject of the first certificate
	(b) if the request is made not more than 3 months after a previous request by the same person in respect of the same lot	\$94 and an additional \$47 for a further certificate for a lot comprising a garage, parking space or storeroom that services the lot the subject of the first certificate

## Schedule 5 Penalty notice offences

(Clause 65)

Column 1	Column 2
Provision	Penalty
<b>Offences under the Act</b>	
Section 57(2)	\$550 (in the case of an individual) or \$1,100 (in the case of a corporation)
Section 60(1)	\$550 (in the case of an individual) or \$1,100 (in the case of a corporation)
Section 60(2)	\$550 (in the case of an individual) or \$1,100 (in the case of a corporation)
Section 62(1)	\$550 (in the case of an individual) or \$1,100 (in the case of a corporation)
Section 123(2)	\$1,100

Section 160(1)	\$220
Section 160(2)	\$220
Section 195(4)	\$220
Section 202(1)	\$220
Section 202(2)	\$220
Section 203(2)	\$220
Section 249(4)	\$220
Section 258	\$110 (in the case of an individual) or \$220 (in the case of a corporation)

**Offences under this Regulation**

Clause 45E	\$55 (in the case of an individual) or \$110 (in the case of a corporation)
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