

Strata Schemes Development Act 2015 No 51



New South Wales

Status information

Currency of version

Current version for 25 September 2017 to date (accessed 12 May 2020 at 10:18)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced. See [Historical Notes](#)

Does not include amendments by:

[Building and Development Certifiers Act 2018 No 63](#) (not commenced — to commence on 1.7.2020)

Responsible Minister

Minister for Customer Service

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 4 March 2020.

Strata Schemes Development Act 2015 No 51



Contents

Long title	11
Part 1 Preliminary	11
Division 1 Introduction	11
1 Name of Act	11
2 Commencement.....	11
3 Main objects of Act.....	11
Division 2 Interpretation	11
4 Definitions	11
5 Contiguous land	18
6 Boundaries of lot	18
7 Meaning of “subdivision” of a lot or common property	19
8 Relationship with Real Property Act 1900.....	19
Part 2 Creation of lots and common property in strata schemes	19
Division 1 Strata plans	19
9 Subdivision of land by strata plan	19
10 General requirements for strata plan	20
11 Requirements for leasehold strata scheme	21
12 Effect on leases of registration of strata plan for leasehold strata scheme.....	21
Division 2 Strata plans of subdivision and consolidation	22
13 Subdivision of lots and common property	22
14 Subdivision of development lot	23
15 Consolidation of lots.....	24
16 Effect of registration of strata plan of subdivision or consolidation for leasehold strata scheme	24
Division 3 Notices of conversion	25
17 Conversion of lots into common property	25

18 Effect of conversion of lots in leasehold strata scheme	25
Division 4 Building alteration plans	26
19 Alteration of building affecting lot boundary	26
20 Registrar-General to give plan to local council	26
Division 5 Additional requirements for registration of plans and notices	27
21 Requirement for certificate of title for common property	27
22 Plans to be signed or consented to	27
Division 6 Common property	28
23 Dealing with common property—general	28
24 Effect of creation of common property by registration of plans or notices	28
25 Acquisition of additional common property	28
26 Registration and effect of dealings	29
27 Surrender of lease or sublease of common property	29
28 Holding common property and dealing with lots and common property	29
29 Requirement for folio if no common property	29
30 References to folios and certificates of title	30
31 Requirement for folio if there is common property	30
32 Recording particular matters relating to common property	31
33 Transfer or lease of common property	31
34 Creation or variation of easements, restrictions and positive covenants	32
35 Dedication of common property	32
36 Restrictions on dealings under this Division	32
37 Effect of dealings under this Division	33
Division 7 Miscellaneous	33
38 Application of certain provisions of Conveyancing Act 1919	33
39 Encroachments shown on plans	34
40 When by-laws for strata scheme have effect	34
Part 3 Provisions relating to leases in leasehold strata schemes	34
Division 1 Leases of lots and common property	34
41 Provisions generally applicable to leases	34
42 Dealings in lease of lot or common property	34
43 Powers of lessor if no current lease	34
44 Further leases of lots and common property	35
45 Lessor may refuse to grant further leases	35
Division 2 Re-entry or forfeiture of leases of lots	36
46 Restriction on re-entry or forfeiture	36

47 Order about re-entry or forfeiture	36
Division 3 Conversion of leasehold strata schemes to freehold strata schemes	37
48 Procedure for conversion	37
49 Effect of merger of leasehold estate with lessor's reversion	38
Part 4 Strata certificates	38
Division 1 Preliminary	38
50 Definitions	38
51 Relationship with other Acts	39
52 When relevant planning approval is in force	39
53 Who may apply for strata certificate	39
Division 2 Issue of strata certificates by local councils	40
54 Strata certificate for strata plans and subdivision of development lots	40
55 Strata certificate for subdivision not involving development lot	41
56 Strata certificate for notices of conversion	42
57 Restriction on issue of strata certificate	42
Division 3 Issue of strata certificates by accredited certifiers	43
58 Strata certificate for strata plans and subdivision of development lots	43
59 Strata certificate for subdivision not involving development lot	44
60 Strata certificate for notices of conversion	44
61 Restrictions on issue of strata certificate	44
Division 4 Strata certificates relating to encroachments onto public places, and to utility lots	
.....	44
62 Issue of strata certificates relating to encroachments	44
63 Restriction on use of utility lot	45
64 Release of restriction on use of utility lot	46
Division 5 Notice of decisions and appeals	46
65 Notice of decision	46
66 Appeal to Land and Environment Court	46
Division 6 Application of Building Professionals Act 2005	47
67 Accredited certifiers	47
68 Insurance of accredited certifiers	47
Division 7 Miscellaneous	47
69 Satisfaction about compliance with conditions precedent to issue of strata certificates	47
70 Regulations	48

Part 5 Staged development	48
Division 1 Preliminary	48
71 Purpose and scope of Part	48
72 Definitions	48
73 Explanation of staged development	49
74 Meaning of “development concern”	49
Division 2 Restriction on granting planning approval	50
75 Obligations of planning authorities	50
Division 3 Strata development contracts and registration of contracts and amendments	50
76 Form and content of strata development contract	50
77 Concept plan	51
78 Variation of liability for common property expenses	51
79 Signing and lodging strata development contract and amendments	51
80 Registering strata development contract and amendments	52
81 Effect of strata development contract	52
82 Use of common property and development lot by developer	53
83 Adding land to a parcel subject to a strata development contract	53
Division 4 Amendment of strata development contracts	54
84 Amendment of strata development contract	54
85 Notice of particular decision, and appeal	55
86 Approval of amendments by Land and Environment Court	55
Division 5 Provisions relating to development concerns	56
87 Right to complete permitted development	56
88 Meetings of owners corporation relating to development concerns	56
Division 6 Conclusion of development schemes	57
89 When development scheme is concluded	57
90 Revised schedule of unit entitlement	58
91 Registrar-General to record matters about conclusion of development scheme	58
92 Order for extension or conclusion of development scheme	58
Division 7 Applications for assistance	59
93 Application for assistance	59
94 Investigation of application	60
95 Application of Fair Trading Act 1987 to investigation	60
96 Grant of legal assistance	61
97 Resolution authorising application by owners corporation	61

Division 8 Miscellaneous	62
98 Functions of Secretary	62
Part 6 Strata management statements and easements relating to part strata parcels	62
Division 1 Strata management statements	62
99 Requirement to register strata management statement	62
100 Form and content of strata management statement	62
101 Registration of strata management statement and amendment	63
102 Recording information about strata management statement in folios	63
103 Amendment of strata management statement	63
104 Signing of strata management statement and amendment	64
105 Effect of strata management statement	64
Division 2 Easements	65
106 Easements on registration of strata plan that creates part strata parcel	65
107 Other easements in particular strata schemes	66
Division 3 Miscellaneous	67
108 Registered building management statement taken to be strata management statement	67
109 Obligation of lessee to comply with particular management statements	67
110 Obligation to give information about particular management statements	67
Part 7 Compulsory acquisition of lots and common property	68
111 Application of Part	68
112 Restriction on resumptions affecting parcels	68
113 Requirements for registration of plans to effect resumption	68
114 Effect of resumption	69
115 Readjustment of strata scheme for purposes of resumption	69
116 Costs	71
117 Common property not to pass with lot or part of lot in certain circumstances	71
118 Severance of lots by resumption	71
119 Resumption by authority bound by Act	71
120 Resumption by authority not bound by Act	71
Part 8 Particular functions of Registrar-General	71
121 Registration of plans and other instruments	71
122 Provisions applying to plans and certain other documents	72
123 Power to adjust unit entitlements	72
124 Recordings about restrictive use conditions	73
125 Prohibition on recordings in the Register in certain circumstances	73

126 Certain recordings to be made by Registrar-General	73
127 Functions if resumed land remains in strata scheme.....	74
128 Functions if resumed land is excluded from strata scheme	74
Part 9 Variation or termination of strata schemes	75
Division 1 Preliminary	75
129 Definitions	75
Division 2 Variation of strata schemes	75
130 Application for order consequent on damage to or destruction of building	75
131 Order to vary strata scheme	75
132 When order takes effect.....	76
133 Direction of court to treat application differently	76
134 Costs	77
Division 3 Termination of strata schemes by order of court	77
135 Application for order to terminate strata scheme	77
136 Order to terminate strata scheme	77
137 When order takes effect.....	78
138 Effect of order	78
139 Dealing with disputes about value of improvements for leasehold strata schemes.....	79
140 Direction of court to treat application differently	79
141 Costs	80
Division 4 Termination of strata schemes by Registrar-General.....	80
142 Application to Registrar-General for termination of strata scheme	80
143 Decision about terminating strata scheme.....	81
144 When order takes effect.....	81
145 Registrar-General to record termination of strata scheme.....	81
146 Effect of order for freehold strata scheme.....	81
147 Effect of order for leasehold strata scheme	81
Division 5 Termination of leasehold strata schemes on expiry of leases	82
148 Termination on expiry of leases	82
149 Dispute about value of improvements.....	83
150 Order to continue owners corporation for specified purposes	83
Division 6 Miscellaneous	84
151 Interchangeability of notices	84
152 Consequences of making order	84
Part 10 Strata renewal process for freehold strata schemes	85

Division 1 Preliminary	85
153 Application and purpose of Part	85
154 Definitions	85
155 Application of Strata Schemes Management Act 2015	86
Division 2 Strata renewal proposals	86
156 Submission of strata renewal proposal	86
157 Strata committee to consider proposal	87
158 Convening general meeting to consider proposal	87
159 Lapsing of proposal	87
Division 3 Establishment, membership, function, operation and dissolution of strata renewal committees	
160 Establishment of committee	88
161 Election of members	88
162 Notice of decision to establish committee	88
163 Vacation of office	88
164 Function and operation of committee	89
165 Conflicts of interest	89
166 Period of operation of committee	90
167 Dissolution of committee	90
Division 4 Procedures of strata renewal committees	90
168 Meetings and voting	90
169 Minutes and record of decisions	91
Division 5 Strata renewal plans	91
170 Content of strata renewal plan	91
171 Requirements relating to sale of lots	92
172 Consideration of plan by owners corporation	92
173 Copy of plan to be given to owners	93
174 Notice of owner's decision to support plan	93
175 Withdrawal of support notice	94
176 Notice if required level of support obtained	94
177 Lapsing of plan	94
Division 6 Applying for orders to give effect to strata renewal plans	95
178 Decision to apply for order	95
179 Application for order	95
180 Objection to application	96
Division 7 Orders to give effect to strata renewal plans	97

181 Hearing of application	97
182 Decision of court	98
183 Court order and directions	99
184 Effect of order relating to collective sale	99
185 Effect of order relating to redevelopment	100
186 Ancillary orders	101
187 Order attaches to land and is binding	101
Division 8 Miscellaneous	102
188 Costs	102
189 Relationship between orders and strata renewal plans	102
190 Limitation on submitting strata renewal proposal	102
Part 11 Rates and charges relating to parcels	102
191 Definition	102
192 Rating of lots	102
193 Certain lots not rateable	103
194 Charge or fee for services	103
Part 12 General	104
195 Duty not payable for determination of lease	104
196 Notice to produce electronic form plans and other documents	104
197 Application of Act to electronic form plans and other documents	104
198 Recordings in Register or folios—generally	105
199 Act to bind Crown	105
200 Delegation by Secretary	105
201 Proceedings for offences	106
202 Regulations—general	106
203 Repeal of Acts	106
204 Review of Act	106
Schedule 1 Requirements for plans	107
Schedule 2 Requirements for schedules of unit entitlement	107
Schedule 3 Covenants implied in strata development contracts	109
Schedule 4 Strata management statements	111
Schedule 5 Rights and obligations implied in certain easements	114
Schedule 6 Compensation payable on termination of leasehold strata scheme	117
Schedule 7 Requirements for notices of meetings relating to strata renewal process	117

Schedule 8 Savings, transitional and other provisions 118

Schedule 9 (Repealed) 121

Historical notes 122

Strata Schemes Development Act 2015 No 51



An Act to create freehold strata schemes and leasehold strata schemes; to provide for dealings with lots and common property in the schemes and for varying, terminating and renewing the schemes; and to repeal the *Strata Schemes (Freehold Development) Act 1973* and the *Strata Schemes (Leasehold Development) Act 1986*.

Part 1 Preliminary

Division 1 Introduction

1 Name of Act

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

2 Commencement

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

3 Main objects of Act

The main objects of this Act are to provide for:

- (a) the subdivision of land, including buildings, into cubic spaces to create freehold strata schemes and leasehold strata schemes, and
- (b) the way in which lots and common property in strata schemes may be dealt with, and
- (c) the variation, termination and renewal of strata schemes.

Division 2 Interpretation

4 Definitions

(1) In this Act:

accepted lease or sublease means a lease or sublease, or a transfer of a lease or sublease, accepted by an owners corporation under section 25 (1).

accredited certifier—see section 67.

administration sheet means a document in the approved form that provides for administrative matters relating to the registration of plans under this Act.

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

the lots.

approved form means a form approved by the Registrar-General for use under this Act.

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 alteration plan means a plan that is registered as a building alteration plan, and includes any information, certificate or other document required by this Act or the regulations to be included with the plan before it may be registered.

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

chargee, in relation to a lot or development lot in a leasehold strata scheme, means a chargee of the leasehold estate of the lot.

common infrastructure means:

- (a) the cubic space occupied by a vertical structural member of a building, other than a wall, or
- (b) the pipes, wires, cables or ducts that are not for the exclusive benefit of one lot and are:
 - (i) in a building in relation to which a plan for registration as a strata plan was lodged with the Registrar-General before 1 March 1986, or
 - (ii) otherwise—in a building or in a part of a parcel that is not a building, or
- (c) the cubic space enclosed by a structure enclosing pipes, wires, cables or ducts referred to in paragraph (b).

common property, in relation to a strata scheme or a proposed strata scheme, means any part of a parcel that is not comprised in a lot (including any common infrastructure that is not part of a lot).

common property rights by-law has the same meaning as it has in the *Strata Schemes Management Act 2015*.

community scheme has the same meaning as it has in the *Community Land Development Act 1989*.

company nominee of a corporation has the same meaning as it has in the *Strata Schemes Management Act 2015*.

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

current plan means a current plan as defined in section 7A of the *Conveyancing Act 1919* that is registered, other than a strata plan, a strata plan of subdivision or a strata plan of consolidation.

current plan lot—see section 9 (4).

Department means the Department of Finance, Services and Innovation.

developer of a 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 has the same meaning as it has in the *Environmental Planning and Assessment Act 1979*.

development concern—see section 74.

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.

drainage reserve means land that is held by a local council for drainage purposes under section 49 of the *Local Government Act 1993*.

floor includes a stairway or ramp.

floor area of a lot means the area occupied on a horizontal plane by the base of the cubic space of the lot.

floor plan means a plan that:

- (a) defines by lines (each a **base line**) the base of the vertical boundaries of each cubic space forming the whole of a proposed lot, or the whole of a part of a proposed lot, to which the plan relates, and
- (b) shows:
 - (i) the floor area of each proposed lot, and
 - (ii) if a proposed lot has more than one part—the floor area of each part together with the aggregate of the floor areas of the parts, and
- (c) if a proposed lot or part of a proposed lot is superimposed on another proposed lot or part—shows the separate base lines of the proposed lots or parts, by reference to floors or levels, in the order in which the superimposition occurs.

folio means:

- (a) in relation to a lot or common property in a freehold strata scheme, a folio of the Register for the lot or common property, or
- (b) in relation to a lot or common property in a leasehold strata scheme, a folio of the Register for a lease of the lot or common property.

freehold strata scheme means a strata scheme in which no lots or common property in the scheme are subject to a lease or leases referred to in section 11.

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

initial period has the same meaning as it has in the *Strata Schemes Management Act 2015*.

leasehold strata scheme means a strata scheme in which all lots and common property in the scheme are subject to a lease or leases referred to in section 11.

lessee, in relation to a lot, development lot or common property in a leasehold strata scheme, means the lessee of the leasehold estate under a lease registered on the folio for the lot, development lot or common property, but does not include an owner of a lot.

lessor of a leasehold strata scheme means the person who holds the fee simple in the lots and common property in the scheme.

liabilities of an owners corporation in relation to the termination of a strata scheme under Part 9 or 10 means any liabilities, debts or obligations of the owners corporation (whether present or future, whether vested or contingent and whether personal or assignable).

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 the land for the purposes of this Act or any specified provision of this Act.

location plan means a plan that:

- (a) relates to land the subject of a proposed strata scheme, and
- (b) if the scheme does not relate to a proposed part strata parcel—delineates the perimeter of the land and the location, in relation to the perimeter, of each:
 - (i) building on the land, and
 - (ii) proposed lot or part of a proposed lot not within a building, and
- (c) if the scheme relates to a proposed part strata parcel:
 - (i) delineates the perimeter of the site of the building of which the proposed part strata parcel forms part and the location, in relation to the perimeter, of the building and proposed part strata parcel, and
 - (ii) delineates the location, in relation to the perimeter of the proposed part strata parcel, of the part of the building the subject of the proposed strata scheme and each proposed lot or part of a proposed lot not within the building, and
- (d) shows the particulars prescribed by the regulations.

lodge means lodge with the Registrar-General.

lot, in relation to a strata scheme, means one or more cubic spaces shown as a lot on a floor plan relating to the scheme, but does not include any common infrastructure, unless the common infrastructure is described on the plan, in the way prescribed by the regulations, as a part of the

lot.

mortgagee, in relation to a lot or development lot in a leasehold strata scheme, means a mortgagee of the leasehold estate of the lot.

notice of conversion means a notice that is registered as a notice of conversion, and includes any information, certificate or other document required by this Act or the regulations to be included with the notice before it may be registered.

notice of resumption means a notice, notification or other instrument publication of which vests land described in the notice, notification or instrument in a resuming authority by way of resumption.

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

original owner:

- (a) of a freehold strata scheme means the person who held the fee simple in the parcel the subject of the 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 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), but does not include a sublessee of a lot in a leasehold strata scheme.

Note. Under section 43 (1), a lessor of a leasehold strata scheme may be taken to be the owner of a lot in the scheme if the lessor is entitled to immediate possession of the lot.

owners corporation of a strata scheme means the owners corporation constituted under the *Strata Schemes Management Act 2015* for the scheme.

parcel means:

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

part strata parcel means a parcel created by a subdivision permitted by section 9 (1) (b).

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.

planning authority, in relation to a planning approval, means the entity or person authorised under the *Environmental Planning and Assessment Act 1979* to grant the approval.

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

public place means land that is a drainage reserve, public reserve or public road.

public reserve has the same meaning as it has in the [Local Government Act 1993](#).

public road has the same meaning as it has in the [Roads Act 1993](#).

qualified valuer means a person who:

- (a) has membership of the Australian Valuers Institute (other than associate or student membership), or
- (b) has membership of the Australian Property Institute (other than student or provisional membership), acquired in connection with his or her occupation as a valuer, or
- (c) has membership of the Royal Institution of Chartered Surveyors as a chartered valuer, or
- (d) is of a class prescribed by the regulations.

registered means registered by the Registrar-General.

registered building management statement has the same meaning as it has in section 196C of the [Conveyancing Act 1919](#).

registered land surveyor means a person who is registered as a land surveyor under the [Surveying and Spatial Information Act 2002](#).

relevant planning approval that is in force—see section 52.

replacement lease for a proposed strata plan of subdivision or strata plan of consolidation in relation to a leasehold strata scheme means a lease:

- (a) relating to a proposed lot comprised in the plan, and
- (b) containing provisions to the effect that the lease is in substitution for a lease determined or otherwise affected by the proposed subdivision or consolidation, and
- (c) having terms all of which are expressed to commence on registration of the plan and to expire at the same time as any lease to be determined, and
- (d) if the lease confers rights of renewal—having the same renewal terms as any lease to be determined.

restrictive use condition—see section 63.

resuming authority means an entity that may resume land by way of resumption.

resumption means the compulsory acquisition of land under an Act or an Act of the Commonwealth authorising compulsory acquisition of land.

rights of an owners corporation in relation to the termination of a strata scheme under Part 9 or 10 means any rights or powers of the owners corporation (whether present or future, whether

vested or contingent and whether personal or assignable).

schedule of unit entitlement, in relation to a strata scheme, means the schedule recorded as the schedule of unit entitlement in the folio for the common property in the scheme.

Secretary means the Secretary of the Department.

special resolution has the same meaning as it has in the [Strata Schemes Management Act 2015](#).

statutory interest means a charge or other proprietary interest (whether or not it is recorded in the Register) that:

- (a) is created by an Act or an Act of the Parliament of the Commonwealth, and
- (b) affects a lot or common property, and
- (c) is enforceable against an owner of the lot or an owners corporation.

strata certificate means a certificate in the approved form issued under Part 4 that authorises the registration of a strata plan, strata plan of subdivision or notice of conversion.

strata committee of an owners corporation means the strata committee of the owners corporation under the [Strata Schemes Management Act 2015](#).

strata development contract means a strata development contract registered under Part 5.

strata management statement means a strata management statement that complies with section 100.

strata plan means a plan that is registered as a strata plan, and includes any information, certificate or other document required by this Act or the regulations to be included with the plan before it may be registered.

strata plan of consolidation means a plan that is registered as a strata plan of consolidation, and includes any information, certificate or other document required by this Act or the regulations to be included with the plan before it may be registered.

strata plan of subdivision means a plan that is registered as a strata plan of subdivision, and includes any information, certificate or other document required by this Act or the regulations to be included with the plan before it may be registered.

strata roll has the same meaning as it has in the [Strata Schemes Management Act 2015](#).

strata scheme means:

- (a) the way a parcel is subdivided under this Act into lots or lots and common property, and
- (b) the way unit entitlements are allocated under this Act among the lots, and
- (c) the rights and obligations, between themselves, of owners of lots, other persons having proprietary interests in or occupying the lots and the owners corporation, as conferred or imposed under this Act or the [Strata Schemes Management Act 2015](#).

subdivision of a lot or common property—see section 7.

surveyor's certificate, in relation to a proposed strata plan, strata plan of subdivision or strata plan of consolidation, means a certificate in the approved form given by a registered land surveyor and certifying that each applicable requirement of Schedule 1 for the proposed strata plan, strata plan of subdivision or strata plan of consolidation has been met.

unanimous resolution has the same meaning as it has in the [Strata Schemes Management Act 2015](#).

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 scheme.

utility lot has the same meaning as it has in the [Strata Schemes Management Act 2015](#).

valuer's certificate, in relation to a proposed schedule of unit entitlement, means a certificate of valuation in the approved form given by a qualified valuer and certifying that the unit entitlements of lots to which the proposed schedule of unit entitlement relates are apportioned as required under Schedule 2.

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

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

water supply authority means:

- (a) the Sydney Water Corporation, the Hunter Water Corporation or a water supply authority within the meaning of the [Water Management Act 2000](#), or
- (b) a council or county council exercising water supply, sewerage or stormwater drainage functions under Division 2 of Part 3 of Chapter 6 of the [Local Government Act 1993](#).

Note. The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

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

5 Contiguous land

In this Act, land is contiguous to other land even if it is divided, or separated from the other land, by a natural feature (for example, a watercourse), a railway, a road, a public reserve or a drainage reserve.

6 Boundaries of lot

- (1) For the purposes of this Act, the boundaries of a lot shown on a floor plan are:
 - (a) except as provided by paragraph (b):
 - (i) for a vertical boundary in which the base of a wall corresponds substantially with a base line—the inner surface of the wall, and
 - (ii) for a horizontal boundary in which a floor or ceiling joins a vertical boundary of the

lot—the upper surface of the floor and the under surface of the ceiling, or

- (b) the boundaries described on the floor plan relating to the lot, in the way prescribed by the regulations, by reference to a wall, floor or ceiling in a building to which the plan relates or to common infrastructure within the building.

- (2) In this section:

base line—see paragraph (a) of the definition of **floor plan** in section 4 (1).

7 Meaning of “subdivision” of a lot or common property

- (1) In this Act, **subdivision** of a lot or common property means the alteration of the boundaries of:

- (a) one or more lots to create only 2 or more different lots, or
- (b) one or more lots to create one or more different lots and common property, or
- (c) one or more lots and common property to create one or more different lots or one or more different lots and common property, or
- (d) common property to create one or more lots.

- (2) However, **subdivision** of a lot or common property does not include the consolidation of 2 or more lots into one lot or the conversion of one or more lots into common property.

8 Relationship with [Real Property Act 1900](#)

- (1) This Act is to be read and interpreted with the [Real Property Act 1900](#) as if it formed part of that Act, and that Act applies to lots and common property in the same way as it applies to other land.
- (2) However, if a provision of this Act is inconsistent with a provision of the [Real Property Act 1900](#), this Act prevails to the extent of the inconsistency.
- (3) Words and expressions used in this Act have the same meanings as in the [Real Property Act 1900](#) unless they are defined differently in this Act or the context or subject-matter otherwise indicates or requires.

Part 2 Creation of lots and common property in strata schemes

Division 1 Strata plans

9 Subdivision of land by strata plan

- (1) The following land may be subdivided into lots, or lots and common property, by the registration of a plan as a strata plan:
 - (a) land including the whole of a building and consisting of one current plan lot or 2 or more contiguous current plan lots,
 - (b) land including part only of a building and consisting of one current plan lot or 2 or more current plan lots (whether contiguous or not).

- (2) For the purpose of creating a leasehold strata scheme, land that is subject to a lease or leases may be subdivided under this section.

- (3) Land that is a development lot in a strata plan cannot be subdivided under this section.

Note. See section 14 for subdivision of land that is a development lot.

- (4) In this section:

current plan lot means an existing lot within the meaning of the *Conveyancing Act 1919*, other than a lot as defined in this Act.

land means land under the *Real Property Act 1900* that is held in fee simple, other than land comprised in a limited folio or qualified folio.

10 General requirements for strata plan

- (1) A plan intended to be registered as a strata plan must:

(a) include a location plan, a floor plan and an administration sheet, and

(b) specify or be accompanied by proposed by-laws as follows:

(i) if model by-laws are proposed to be adopted for the strata scheme—specify the model by-laws to be adopted and, if the model by-laws include any alternative versions of any by-law, specify the version to be adopted,

(ii) if by-laws other than model by-laws are proposed to be adopted for the strata scheme—be accompanied by a copy of the other by-laws in the approved form and signed by the persons required to sign the plan under section 22 (1), and

Note. For the matters in relation to which by-laws other than model by-laws may be made, see Part 7 of the *Strata Schemes Management Act 2015*.

(c) if the proposed strata plan is intended to create a development lot—be accompanied by:

(i) the strata development contract relating to the lot, and

(ii) the certificate of the planning authority given under section 75 (2), unless the plan is lodged by the Crown, and

(d) if the proposed strata plan is intended to create a part strata parcel—be accompanied by a strata management statement, unless the requirement for a strata management statement is waived under section 99 (2), and

(e) indicate whether the proposed strata plan is intended to create a freehold strata scheme or a leasehold strata scheme.

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

- (3) The administration sheet for the proposed strata scheme must include the following:

(a) a proposed schedule of unit entitlement relating to the scheme that complies with clause 2 of

Schedule 2,

- (b) the address for service of documents on the proposed owners corporation,
- (c) a strata certificate for the proposed strata plan,
- (d) a surveyor's certificate for the proposed strata plan,
- (e) a valuer's certificate for the proposed schedule of unit entitlement,
- (f) any other information or document prescribed by the regulations.

Note. Subsection (3) (c) does not apply to a plan lodged by the Crown. See section 199 (2).

- (4) The Registrar-General may refuse to register a plan as a strata plan if the Registrar-General considers that the boundaries of the land over which the plan is to be registered are not sufficiently defined in a plan registered under Division 3 of Part 23 of the *Conveyancing Act 1919*.
- (5) In this section:

model by-law means a model by-law prescribed by the regulations under the *Strata Schemes Management Act 2015*.

11 Requirements for leasehold strata scheme

- (1) If a proposed strata plan is intended to create a leasehold strata scheme, the Registrar-General must not register the plan unless:
 - (a) separate leases for, or that correspond to, each lot and the common property shown on the plan are registered, or have been lodged for registration, under the *Real Property Act 1900*, and
 - (b) the separate leases are all expressed to expire at the same time and, if the leases confer rights of renewal, the renewal terms are the same, and
 - (c) if the separate leases have been lodged for registration under the *Real Property Act 1900*—the terms of the leases are all expressed to commence on registration of the plan.
- (2) A plan that, under this Act, is lodged for registration as a strata plan for a leasehold strata scheme and is required to be accompanied by a lease or leases to be registered under the *Real Property Act 1900* is taken to have been registered only when the lease or leases are registered under that Act.

12 Effect on leases of registration of strata plan for leasehold strata scheme

- (1) Subsection (2) applies if, immediately before registration of a strata plan for a leasehold strata scheme, the whole of the parcel was subject to a lease or leases registered under the *Real Property Act 1900* (each a **registered lease**) and intended to be wholly or partly replaced by leases (each a **replacement lease**) of the lots and the common property shown on the plan.
- (2) On registration of the strata plan:
 - (a) each registered lease is determined (each a **determined lease**) to the extent it related to the

lots and common property, and

- (b) any estate, interest or caveat affecting a determined lease affects a replacement lease to the extent it relates to the lots, and
- (c) all rights and obligations of the lessee, under a determined lease, existing immediately before the registration continue to be exercisable, or may be discharged, by that lessee as if the lease had not been determined, other than to the extent that the rights and obligations are:
 - (i) inconsistent with the provisions of a replacement lease, or
 - (ii) varied by the relevant parties.
- (3) Subsection (4) applies if, immediately before registration of a plan as a strata plan for a leasehold strata scheme, the parcel was subject to 2 or more registered leases intended to subsist after registration of the plan as leases of the lots shown on the plan.
- (4) On registration of the strata plan:
 - (a) each lease that, immediately before the registration, was a lease of a part of the parcel that corresponds to a lot shown on the plan becomes a lease of that lot for the remainder of the term of the lease, subject to any estate, interest or caveat affecting the lease immediately before the registration, and
 - (b) if any part of the parcel comprised in the plan is shown as common property, a lease affecting that part immediately before the registration is determined to the extent it relates to the common property.

Division 2 Strata plans of subdivision and consolidation

13 Subdivision of lots and common property

- (1) A lot or common property may be subdivided by the registration of a plan as a strata plan of subdivision.
- (2) In subsection (1):
 - common property* does not include common property the subject of an accepted lease or sublease.
 - lot* does not include a development lot.
- (3) The plan must:
 - (a) include a location plan (if required by the Registrar-General), a floor plan and an administration sheet, and
 - (b) if the plan is for a leasehold strata scheme—be accompanied by the replacement leases for the plan.
- (4) If land comprised in the plan is held by the original owner of the strata scheme, the plan must not be registered unless:

- (a) the initial period has expired, or
 - (b) the original owner owns all lots in the scheme, or
 - (c) an order has been made under section 27 of the *Strata Schemes Management Act 2015* authorising the registration of the plan.
- (5) If the proposed strata plan of subdivision is intended to subdivide common property to which a common property rights by-law relates, the by-law must be repealed or amended so it does not relate to the common property intended to be subdivided.
- (6) The administration sheet for the plan must include the following:
- (a) a proposed schedule of unit entitlement relating to the strata scheme that complies with clause 3 or 4 of Schedule 2,
 - (b) a strata certificate for the proposed strata plan of subdivision,
 - (c) a surveyor's certificate for the proposed strata plan of subdivision,
 - (d) a valuer's certificate for the proposed schedule of unit entitlement,
 - (e) any other information or document prescribed by the regulations.

Note. Subsection (6) (b) does not apply to a plan lodged by the Crown. See section 199 (2).

14 Subdivision of development lot

- (1) A development lot may be subdivided into lots, or lots and common property, by the registration of a plan as a strata plan of subdivision that complies with the relevant development contract.
- (2) The plan must:
- (a) include a location plan, a floor plan and an administration sheet, and
 - (b) if the plan is for a leasehold strata scheme—be accompanied by the replacement leases for the plan.
- (3) The administration sheet for the plan must include the following:
- (a) a proposed schedule of unit entitlement relating to the strata scheme that complies with clause 5 of Schedule 2,
 - (b) a strata certificate for the proposed strata plan of subdivision,
 - (c) a surveyor's certificate for the proposed strata plan of subdivision,
 - (d) a valuer's certificate for the proposed schedule of unit entitlement,
 - (e) any other information or document prescribed by the regulations.

Note. Subsection (3) (b) does not apply to a plan lodged by the Crown. See section 199 (2).

- (4) In this section:

lot includes a development lot.

15 Consolidation of lots

- (1) Two or more lots may be consolidated into one lot by the registration of a plan as a strata plan of consolidation.
- (2) The plan must:
 - (a) include an administration sheet, and
 - (b) if the plan is for a leasehold strata scheme—be accompanied by the replacement leases for the plan.
- (3) The administration sheet for the plan must include a surveyor's certificate for the proposed strata plan of consolidation.
- (4) Subsection (5) applies in relation to the consolidation of lots if the owners corporation of the strata scheme:
 - (a) agrees to the consolidation by special resolution, and
 - (b) signs the proposed strata plan of consolidation.
- (5) Any common property in a wall, floor or ceiling that is a boundary between any of the lots being consolidated ceases to be common property and vests in the owner of the consolidated lot on registration of the plan as a strata plan of consolidation.

16 Effect of registration of strata plan of subdivision or consolidation for leasehold strata scheme

- (1) On the registration of a plan as a strata plan of subdivision or strata plan of consolidation for a leasehold strata scheme:
 - (a) a lease of a development lot, or other lot the subject of the subdivision or consolidation, is determined (each a **determined lease**), and
 - (b) a lease of common property ceases to apply to a lot created by the subdivision or consolidation, and
 - (c) any estate, interest or a caveat affecting a determined lease affects the replacement leases accompanying the plan to the extent they relate to lots, and
 - (d) the leasehold estate in any common property created vests in the owners corporation as lessee for the remainder of the term of the lease of the common property, and
 - (e) all rights and obligations of the lessee, under a determined lease, existing immediately before the registration continue to be exercisable, or may be discharged, by the lessee as if the lease had not been determined, other than to the extent that the rights and obligations are:
 - (i) inconsistent with the provisions of a replacement lease, or
 - (ii) extinguished or varied by the relevant parties.
- (2) A plan that, under this Act, is lodged for registration as a strata plan of subdivision for a

leasehold strata scheme and is required to be accompanied by a lease or leases to be registered under the *Real Property Act 1900* is taken to have been registered only when the lease or leases are registered under that Act.

Division 3 Notices of conversion

17 Conversion of lots into common property

- (1) One or more lots in a strata scheme may be converted into common property by the registration of a notice as a notice of conversion, if the owners corporation, by special resolution, authorises the proposed conversion.
 - (2) The notice must:
 - (a) be in the approved form, and
 - (b) be signed by:
 - (i) the owners corporation, and
 - (ii) the owner of the lot or lots to be converted, and
 - (iii) if the notice is for a leasehold strata scheme—the lessor of the strata scheme, and
 - (c) be accompanied by a strata certificate for the notice of conversion.
- Note.** Subsection (2) (c) does not apply to a notice lodged by the Crown. See section 199 (2).
- (3) However, if part or all of the land to be converted is held by the original owner, the notice must not be registered unless:
 - (a) the initial period has expired, or
 - (b) the original owner owns all lots in the strata scheme, or
 - (c) an order has been made under section 27 of the *Strata Schemes Management Act 2015* authorising the registration of the notice.
 - (4) Also, the Registrar-General must not register a notice of conversion unless each mortgage, charge, covenant charge, lease, caveat or writ recorded in the folio for the lot or lots to be converted has been discharged, surrendered, withdrawn or otherwise disposed of.

18 Effect of conversion of lots in leasehold strata scheme

On the registration of a notice of conversion for a leasehold strata scheme:

- (a) the lease of a lot converted into common property is determined, and
- (b) the lot vests in the owners corporation as lessee for the remainder of the term specified in the lease of the common property.

Division 4 Building alteration plans

19 Alteration of building affecting lot boundary

- (1) This section applies if a building of a strata scheme is altered:
 - (a) by demolishing a wall, floor, ceiling or common infrastructure, and a boundary of a lot was, immediately before the alteration:
 - (i) the inner surface or any part of the wall, the upper surface or any part of the floor or the under surface or any part of the ceiling, or
 - (ii) defined in terms of or by reference to the wall, floor, ceiling or common infrastructure, or
 - (b) by constructing a wall, floor or ceiling so that a boundary of a lot coincides with the inner surface or any part of the wall, the upper surface or any part of the floor or the under surface or any part of the ceiling.
- (2) The owner of the lot must, within one month after the demolition or construction is completed, lodge a plan complying with subsection (3) for registration as a building alteration plan.

Maximum penalty: 5 penalty units.
- (3) The plan must:
 - (a) define by lines the base of each vertical boundary of the lot after the alteration of the building, and
 - (b) include an administration sheet.
- (4) The administration sheet must include:
 - (a) a certificate in the approved form given by a registered land surveyor certifying that:
 - (i) the wall, floor, ceiling or common infrastructure has been demolished or constructed, and
 - (ii) any wall, floor or ceiling referred to in subsection (1) (b) is wholly within the perimeter of the parcel other than to the extent of any encroachment onto a public place or, if any part of the building encroaches on land other than a public place, that an appropriate easement exists, and
 - (b) any other information or document prescribed by the regulations.

20 Registrar-General to give plan to local council

- (1) On the registration of a building alteration plan showing an encroachment onto a public place, the Registrar-General must give a copy of the plan to the local council for the place.
- (2) The copy may be on a scale that is different from the original plan.

Division 5 Additional requirements for registration of plans and notices

21 Requirement for certificate of title for common property

- (1) The Registrar-General may refuse to register a proposed strata plan of subdivision, strata plan of consolidation, notice of conversion or building alteration plan unless it is accompanied by the certificate of title for the common property in the strata scheme.
- (2) The Registrar-General may waive the requirement for the certificate of title under subsection (1) if:
 - (a) the proposed plan or notice does not affect common property, and
 - (b) within 21 days after written notice served on the owners corporation by the person lodging the plan or notice, the certificate of title has not been lodged or an application under section 111 of the *Real Property Act 1900* for a new certificate of title has not been made.

22 Plans to be signed or consented to

- (1) The Registrar-General must not register a plan as a strata plan unless it is signed by all of the following:
 - (a) the registered proprietor of the land comprised in the plan,
 - (b) each registered mortgagee, chargee or covenant chargee of the land,
 - (c) if the plan is for a leasehold strata scheme:
 - (i) each lessee under a registered lease of the land or part of it, and
 - (ii) each registered mortgagee or chargee under a mortgage of, or charge affecting, a lease referred to in subparagraph (i).
- (2) The Registrar-General must not register a plan as a strata plan of subdivision, strata plan of consolidation or building alteration plan unless it is signed by all of the following:
 - (a) the registered owner of the land comprised in the plan,
 - (b) each registered mortgagee, chargee or covenant chargee of the land,
 - (c) if the plan relates to common property—the owners corporation of the strata scheme,
 - (d) if the plan is for a leasehold strata scheme—the lessor of the scheme.
- (3) Also, the Registrar-General may refuse to register a plan referred to in subsection (1) or (2) unless written consent to its registration is lodged and is signed by each of the following the Registrar-General considers appropriate in the circumstances:
 - (a) the judgment creditor under any writ recorded in a folio for the land,
 - (b) the caveator under a caveat affecting any estate or interest in the land,
 - (c) the registered lessee of the land.
- (4) Despite subsection (1) or (2), the Registrar-General may, without giving notice to any person,

waive the requirement for a person mentioned in the subsections to sign a plan.

Division 6 Common property

23 Dealing with common property—general

Common property may be dealt with only in accordance with this Act and the *Strata Schemes Management Act 2015*.

24 Effect of creation of common property by registration of plans or notices

- (1) This section applies if common property in a strata scheme is created by registration of a strata plan, strata plan of subdivision or notice of conversion.
- (2) On registration of the plan or notice, the common property:
 - (a) vests in the owners corporation of the strata scheme, and
 - (b) is freed and discharged from any mortgage, charge, covenant charge, writ or caveat affecting the land, and
 - (c) if the common property is land in a freehold strata scheme—is freed and discharged from any lease affecting the land immediately before registration of the plan or notice, other than a lease that is necessary for the purpose of providing a service to the scheme.
- (3) The Registrar-General must, on registration of a strata plan, create a folio for the estate or interest of the owners corporation in the common property.
- (4) Subsection (2) does not affect a right or remedy that may be exercised otherwise than in relation to common property by a person who is a mortgagee, chargee, covenant chargee, lessee, judgment creditor or caveator, even if the person signed or consented to the registration of the plan or signed the notice creating the common property.

25 Acquisition of additional common property

- (1) For the purpose of creating or creating additional common property, the owners corporation of a strata scheme may, by special resolution, accept a lease or sublease, or a transfer of a lease or sublease, of land if:
 - (a) the land is contiguous to the parcel or the owners corporation considers the land is otherwise relevant to the strata scheme (whether or not the land is within the parcel or is contiguous to the parcel), and
 - (b) the land is not subject to a mortgage, charge, covenant charge or writ, and
 - (c) if the strata scheme is a leasehold strata scheme—the term of the lease or sublease does not expire after the term of the lease of the common property.
- (2) Also, for the purpose of creating or creating additional common property, the owners corporation of a freehold strata scheme may, by special resolution, accept a transfer of land that:
 - (a) is contiguous to the parcel, and
 - (b) is not subject to a mortgage, charge, covenant charge or writ.

- (3) If the strata scheme forms part of a community scheme, the Registrar-General may refuse to register a transfer of land creating or creating additional common property in the scheme unless the community scheme is appropriately amended by any necessary dealings registered under the *Community Land Development Act 1989*.

- (4) In this section:

land means land under the *Real Property Act 1900* (other than land comprised in a limited folio or qualified folio or a perpetual lease from the Crown), but does not include a leasehold interest in land evidenced by a lease that is not registered under that Act.

26 Registration and effect of dealings

- (1) As soon as practicable after accepting a dealing under section 25, the owners corporation must lodge the dealing evidencing the transaction for registration under the *Real Property Act 1900*.
- (2) The dealing must be accompanied by:
- (a) the certificate of title for the land the subject of the dealing, and
 - (b) the certificate of title for the common property, and
 - (c) a certificate under the seal of the owners corporation certifying that it authorised the dealing by special resolution.
- (3) If the dealing is a transfer of land, it may be registered only if a plan showing the transferred land and the original parcel as a single lot is registered under the *Conveyancing Act 1919*.
- (4) On the registration of an accepted lease or sublease, the leasehold interest becomes common property.
- (5) On the registration of a transfer of land, the land becomes common property.

27 Surrender of lease or sublease of common property

An owners corporation may, by special resolution and with the lessor's or sublessor's agreement, surrender an accepted lease or sublease.

28 Holding common property and dealing with lots and common property

- (1) The owners corporation of a strata scheme holds the common property in the scheme as agent for the owners as tenants in common in shares proportional to the unit entitlement of the owners' lots.
- (2) An owner's interest in the common property cannot be severed from, or dealt with separately from, the owner's lot.
- (3) A dealing or caveat relating to an owner's lot affects the owner's interest in the common property even if the common property is not expressly referred to in the dealing or caveat.

29 Requirement for folio if no common property

- (1) If a strata plan that does not contain common property is registered, the Registrar-General must create a folio and record in it in the way the Registrar-General considers appropriate:

- (a) a statement that the strata scheme does not contain common property, and
 - (b) the name of the owners corporation and the address for service of notices on it, and
 - (c) the schedule of unit entitlement for the scheme, and
 - (d) particulars of the by-laws specified in the strata plan for the scheme.
- (2) During any period in which a folio created under subsection (1) or section 24 (3) does not contain common property, the Registrar-General must record in the folio:
- (a) any change in the address for service of notices on the owners corporation, notice of which has been lodged under section 265 of the *Strata Schemes Management Act 2015*, and
 - (b) any change in the by-laws for the strata scheme, notification of which has been lodged under section 141 of the *Strata Schemes Management Act 2015*, and
 - (c) any other matter that, by or under this Act or any other Act, the Registrar-General is required or authorised to make in the folio.

30 References to folios and certificates of title

- (1) A reference in this Act to a folio includes a reference to a folio created under section 24 (3) or 29 (1) during any period in which it does not contain common property.
- (2) A reference in this Act to a certificate of title includes a reference to a certificate of title in relation to a folio referred to in subsection (1).
- (3) To the extent a provision of the *Real Property Act 1900* can apply to a folio or certificate of title referred to in subsection (1) or (2), a reference in the provision:
 - (a) to a folio includes a reference to a folio referred to in subsection (1) during any period for which it does not contain common property, or
 - (b) to a certificate of title includes a reference to a certificate of title in relation to a folio referred to in subsection (1).

31 Requirement for folio if there is common property

- (1) In a folio for common property, it is sufficient that the land comprised in the common property is described as the common property in a designated strata plan without defining its area or dimensions.
- (2) A folio for common property is taken to certify title to the common property, other than common property the subject of an accepted lease or sublease, in the strata scheme as the common property may exist from time to time.
- (3) The Registrar-General must, in the way the Registrar-General considers appropriate, record the following in a folio for common property in a strata scheme:
 - (a) the name of the owners corporation,
 - (b) the address for service of notices on the owners corporation,

- (c) the schedule of unit entitlement for the scheme,
- (d) any easement benefiting or burdening the parcel and any restriction on the use of land or positive covenant burdening the parcel,
- (e) particulars of the by-laws specified in the strata plan for the scheme, and any change in the by-laws, notification of which has been lodged under section 141 of the *Strata Schemes Management Act 2015*,
- (f) any other matter that, by or under this Act or another Act, the Registrar-General is required or authorised to make in the folio.

32 Recording particular matters relating to common property

- (1) The Registrar-General must not record the following in the folio for a lot in a strata scheme:
 - (a) an easement that burdens the common property in the scheme or benefits the common property or the whole parcel,
 - (b) an easement acquired by resumption, to the extent that it affects common property,
 - (c) a restriction on the use of land or a positive covenant that burdens the common property or the whole parcel.
- (2) The Registrar-General must record an easement, restriction or positive covenant referred to in subsection (1) in the folio for the common property in the strata scheme.
- (3) However, the easement, restriction or positive covenant affects a lot in the strata scheme:
 - (a) to the extent that it can affect the lot, and
 - (b) as if it were recorded in the folio for the lot.
- (4) The Registrar-General must not record a mortgage, charge, covenant charge or writ in the folio for the common property in a strata scheme.

33 Transfer or lease of common property

- (1) The owners corporation of a freehold strata scheme may:
 - (a) by special resolution, transfer or lease common property, other than common property the subject of an accepted lease or sublease, and
 - (b) by special resolution, and if not prevented by the terms of the lease or sublease, transfer an accepted lease or sublease of common property or grant a sublease of that lease or sublease, and
 - (c) by special resolution, and in accordance with section 55A of the *Real Property Act 1900*, execute a variation of a lease or sublease granted or transferred under paragraph (a) or (b).
- (2) The owners corporation of a leasehold strata scheme may:
 - (a) by special resolution, and with the lessor's consent and if not prevented by the terms of the lease, transfer a lease of part of the common property or grant a sublease of the part, and

- (b) by special resolution, and with the lessor's consent, execute a variation of a lease or sublease referred to in paragraph (a) in accordance with section 55A of the *Real Property Act 1900*.
- (3) The owners corporation of any strata scheme may, by special resolution:
 - (a) accept a surrender of a lease or sublease granted under this section, or
 - (b) re-enter the lease or sublease, if otherwise authorised.
- (4) If the strata scheme forms part of a community scheme, the Registrar-General may refuse to register a transfer of common property unless the community scheme is appropriately amended by any necessary dealings registered under the *Community Land Development Act 1989*.

34 Creation or variation of easements, restrictions and positive covenants

- (1) The owners corporation of a strata scheme may, by special resolution:
 - (a) execute a dealing creating or varying an easement that burdens the common property in the scheme, or a restriction on the use of land or a positive covenant that burdens the common property or the whole parcel, or
 - (b) execute a dealing releasing or varying an easement, a restriction on the use of land or a positive covenant that benefits the common property or the whole parcel.
- (2) The owners corporation of a strata scheme may, by ordinary resolution:
 - (a) accept a dealing creating an easement, a restriction on the use of land or a positive covenant that benefits the common property in the scheme or the whole parcel, or
 - (b) accept a dealing releasing an easement that burdens the common property, or a restriction on the use of land or a positive covenant that burdens the common property or the whole parcel.

35 Dedication of common property

- (1) The owners corporation of a strata scheme may, by special resolution, dedicate common property in the scheme as a public road, public reserve or drainage reserve by registration of a plan under Division 3 of Part 23 of the *Conveyancing Act 1919*.
- (2) However, common property may be dedicated as public reserve only if there is an adjoining public road or other public place giving access to the reserve by the public.
- (3) Also, common property in a leasehold strata scheme may be dedicated under this section only with the consent of the lessor of the scheme.
- (4) If the strata scheme forms part of a community scheme, the Registrar-General may refuse to register a plan referred to in subsection (1) unless the community scheme is appropriately amended by any necessary dealings registered under the *Community Land Development Act 1989*.

36 Restrictions on dealings under this Division

- (1) An owners corporation of a strata scheme must not execute a dealing for the purposes of this Division that disposes of common property in the scheme unless:

- (a) any common property rights by-law that relates to the common property being disposed of has been repealed or amended so it does not relate to the common property, and
 - (b) each registered interest in the common property being disposed of has been released or the dealing has been made subject to the interest, and
 - (c) each statutory interest, or other interest that is not registered, in the common property being disposed of and of which the owners corporation has been notified has been released.
- (2) A dealing lodged for registration under the *Real Property Act 1900* or the *Conveyancing Act 1919* for the purposes of this Division must not be registered unless it is accompanied by a certificate under the seal of the owners corporation certifying that:
 - (a) the resolution authorising the dealing was a special resolution or ordinary resolution (as required under this Division), and
 - (b) the resolution was passed after the expiration of the initial period, and
 - (c) subsection (1) (c) has been complied with.
- (3) Subsection (2) (b) does not apply to a dealing if:
 - (a) the original owner owns all lots in the strata scheme, or
 - (b) an order has been made under section 27 of the *Strata Schemes Management Act 2015* authorising the registration of the dealing.
- (4) The certificate is conclusive evidence of the facts stated in the certificate in favour of the Registrar-General and any person taking under the dealing or benefiting by the registration of the dealing.
- (5) This section does not prevent:
 - (a) the execution in accordance with section 87 of a dealing by an owners corporation, or by a developer on behalf of the owners corporation, to give effect to a decision about a development concern, or
 - (b) the registration of a dealing referred to in paragraph (a).

37 Effect of dealings under this Division

- (1) A dealing executed by an owners corporation for the purposes of this Division is as valid and effective as it would be if it were also executed by the owners of all the lots in the strata scheme.
- (2) The receipt of the owners corporation for an amount payable to it in relation to a dealing is a sufficient discharge for the payment and exonerates each person paying the amount from any responsibility for its application.

Division 7 Miscellaneous

38 Application of certain provisions of Conveyancing Act 1919

- (1) Section 88B of the *Conveyancing Act 1919* applies to a strata plan, strata plan of subdivision and strata plan of consolidation in the same way it applies to a plan referred to in that section relating

to land under the *Real Property Act 1900*.

- (2) Sections 195F, 195H, 195J, 196 and 196AA of the *Conveyancing Act 1919* apply in relation to a plan lodged for registration as a strata plan, strata plan of subdivision, strata plan of consolidation or building alteration plan in the same way the sections apply to plans referred to in the sections.

39 Encroachments shown on plans

- (1) If an encroachment is shown on a proposed strata plan, strata plan of subdivision or building alteration plan, this Act applies to the encroachment:
 - (a) to the extent it is designated for use with a lot—as if it were part of the lot, or
 - (b) otherwise—as if it were common property.
- (2) However, this section does not apply to a provision of this Act relating to ownership and certification of title.

40 When by-laws for strata scheme have effect

- (1) The proposed by-laws for a strata scheme have no effect until the strata plan and any proposed by-laws that are required to accompany it are registered.
- (2) However, registration does not give effect to by-laws that have not been lawfully made.

Part 3 Provisions relating to leases in leasehold strata schemes

Division 1 Leases of lots and common property

41 Provisions generally applicable to leases

- (1) The provisions of the *Conveyancing Act 1919* relating to leases of land apply to a lease of a lot or common property in a leasehold strata scheme other than to the extent the provisions are inconsistent with this Act or the regulations.
- (2) The lessor of a leasehold strata scheme may be the owner of any lot in the scheme despite any law relating to the merger of leasehold and reversionary estates in land.

42 Dealings in lease of lot or common property

Except as expressly provided by Division 6 of Part 2, a provision in the lease of a lot or common property in a leasehold strata scheme that purports to require the consent of the lessor of the scheme to any dealing with the lease is void.

43 Powers of lessor if no current lease

- (1) For the purposes of this Act, a lessor of a leasehold strata scheme who is entitled to immediate possession of a lot in the scheme because of the determination of a lease is taken to be the owner of the lot.
- (2) Subsection (1) does not confer or impose on the lessor a right or obligation created by a lease, sublease, mortgage, charge or covenant charge to which a former owner was subject.

44 Further leases of lots and common property

- (1) Subject to subsection (4) and section 122 of the *Conveyancing Act 1919*, the lessor of a leasehold strata scheme may grant further leases of a lot in the scheme, including a further lease to the lessor, at any time before the scheme is terminated.
 - (2) If a lease is granted under subsection (1) to commence when the lease of the common property expires, the lessor must also grant a further lease of the common property to the owners corporation.
 - (3) Subsection (4) applies if, in relation to a leasehold strata scheme:
 - (a) the owners of lots the sum of whose unit entitlements is at least four-fifths of the aggregate unit entitlement and the owners corporation have, at least 6 months before the expiration of the terms of the leases, given written notice in accordance with subsection (5) to the lessor of their intention to exercise their rights to renew their leases, and
 - (b) the right to a further lease containing specified provisions has been granted, in writing signed by the lessor, to the owners and owners corporation by the lessor.
 - (4) The lessor must, at least 3 months before the terms of the leases expire, grant:
 - (a) further leases of the lots to the owners, and
 - (b) a further lease of the common property to the owners corporation.
- Note.** However, see section 45 for when a lessor may refuse to grant a further lease.
- (5) The notice referred to in subsection (3) (a) must be accompanied by a lease, for execution by the lessor, in the approved form and contain the specified provisions referred to in subsection (3) (b).
 - (6) The terms of all leases granted under this section in relation to a parcel, other than a further lease that commences during the term of another lease of the lot or the common property and that is expressed to expire at the same time as the other lease, must:
 - (a) commence at the expiration of the terms of the leases they are intended to replace, and
 - (b) expire at the same time.
 - (7) If a lease granted under this section confers on the owner a right of renewal, the renewal term must be the same as that to which each other owner of a lot in the strata scheme is entitled.
 - (8) The lessor of the strata scheme may execute a further lease of common property in the scheme as agent for the owners corporation, unless the lease is granted under subsection (4).
 - (9) A right to a further lease of a lot or common property may not be exercised otherwise than in accordance with this section.

45 Lessor may refuse to grant further leases

- (1) The lessor of a leasehold strata scheme may refuse to grant a further lease of a lot to an owner if:
 - (a) the owner has breached a provision of the lease of the lot and the breach has not been

remedied, or

- (b) the owner has not complied with a provision of the lease for the renovation of improvements comprised in the lot.
- (2) The lessor of a leasehold strata scheme may refuse to grant a further lease of the common property to the owners corporation if:
 - (a) the owners corporation has breached a provision of the lease of the common property and the breach has not been remedied, or
 - (b) the owners corporation has not complied with a provision of the lease for the renovation of improvements comprising common property.
- (3) If a lessor refuses to grant a further lease of the common property in a leasehold strata scheme, the lessor must also refuse to grant further leases of lots in the scheme.
- (4) This section applies despite section 44 (4).

Division 2 Re-entry or forfeiture of leases of lots

46 Restriction on re-entry or forfeiture

- (1) This section applies:
 - (a) if the lease of a lot in a leasehold strata scheme is subject to a registered mortgage, charge or covenant charge, and
 - (b) despite section 129 (6) of the *Conveyancing Act 1919*.
- (2) A right of re-entry or forfeiture under the lease for a breach of a covenant, condition or agreement (express or implied) in the lease may not be exercised unless the lessor has served on the mortgagee, chargee or covenant chargee a copy of the notice relating to the breach served on the owner under section 129 of the *Conveyancing Act 1919*.

47 Order about re-entry or forfeiture

- (1) If a lessor has brought legal proceedings to enforce a right of re-entry or forfeiture under a lease of a lot in a leasehold strata scheme, the Supreme Court may, on application by a mortgagee, chargee or covenant chargee of the lot make an order:
 - (a) staying the proceedings on the terms the Supreme Court considers just and equitable, and
 - (b) vesting, for the remaining term of the lease or a shorter term, the lease of the lot in the mortgagee, chargee or covenant chargee on the conditions the court considers just and equitable, including, for example, conditions relating to:
 - (i) the execution of a dealing or other document, or
 - (ii) the payment of rent, or
 - (iii) costs, expenses, damages or compensation, or
 - (iv) the giving of a security.

- (2) The order may be made:
 - (a) in proceedings brought for the purpose by the mortgagee, chargee or covenant chargee, or
 - (b) in the proceedings brought by the lessor that are already in the Supreme Court.

Division 3 Conversion of leasehold strata schemes to freehold strata schemes

48 Procedure for conversion

- (1) If:
 - (a) under the leases of the lots in a leasehold strata scheme, the owners have rights to acquire the lessor's reversion in the lots, or
 - (b) the lessor otherwise confers on the owners rights to acquire the lessor's reversion in the lots, the owners corporation may, by special resolution at a meeting convened to determine whether the rights are to be exercised and held before the scheme is terminated under section 148 or otherwise, authorise the conversion of the scheme into a freehold strata scheme.
- Note.** Under section 148, a leasehold strata scheme may be terminated if all leases of lots and common property in the scheme expire or are otherwise determined.
- (2) The rights referred to in subsection (1) may not be exercised unless a special resolution is passed in accordance with the subsection.
 - (3) If the special resolution is passed, each owner may exercise the right to acquire from the lessor the reversion in the owner's lot.
 - (4) Despite section 25, if an owner has not, within 6 weeks after the date of the meeting, acquired the reversion in the owner's lot, the owners corporation may, by unanimous resolution, acquire the reversion in and the lease of the lot.
 - (5) If the reversion in a lot has not, within 3 months after the date of the meeting, been acquired by the owner of the lot or the owners corporation, the lessor may acquire the lease of the lot.
 - (6) If there is no outstanding reversion in a lot in the leasehold strata scheme, the lessor must immediately give the Registrar-General notice in the approved form of:
 - (a) the passing of the special resolution authorising the conversion of the scheme, and
 - (b) the disposal of the reversionary estates in all lots in the scheme.
 - (7) If the reversion in any lot has not, within 6 months after the date of the meeting, been disposed of in accordance with this section, the lessor must give the Registrar-General notice in the approved form of:
 - (a) the passing of the special resolution authorising the conversion of the scheme, and
 - (b) the disposal of the reversionary estates in the lots the reversion in which has been acquired or the leases of which have been acquired in accordance with this section, and

- (c) the identity of each lot the reversion in which, or lease of which, has not been acquired.
- (8) A notice required to be given under this section by the lessor may be given by the owners corporation, an owner or another person.

49 Effect of merger of leasehold estate with lessor's reversion

- (1) This section applies if the Registrar-General receives a notice given under section 48 and an application in the approved form before the leasehold strata scheme to which the notice and application relate is terminated.
- (2) The Registrar-General must, if satisfied that the application has been properly made, record in the Register the matters the Registrar-General considers appropriate to effect the merger of the leasehold and reversionary estates.
- (3) When the Registrar-General makes the record:
 - (a) the leasehold strata scheme becomes a freehold strata scheme, and
 - (b) the strata plan for the leasehold strata scheme becomes a strata plan for the freehold strata scheme, and
 - (c) subject to paragraph (e), each former lot in the leasehold strata scheme vests in the former owner of the lot for an estate in fee simple, and
 - (d) the former common property in the leasehold strata scheme, other than common property under an accepted lease or sublease, vests in the owners corporation for an estate in fee simple, and
 - (e) the fee simple estate in a lot in relation to which a merger has not been recorded in the Register is held subject to the former lease of the lot, and
 - (f) a registered mortgage, charge, covenant charge, easement, restriction on the use of land or positive covenant conferring or imposing rights or obligations in relation to the former leases of lots or the former lots confers or imposes equivalent rights or obligations in relation to the lots created, and
 - (g) a registered easement, restriction on the use of land or positive covenant conferring or imposing rights or obligations in relation to the former common property confers or imposes equivalent rights or obligations in relation to the common property created, and
 - (h) subject to paragraph (e), the former leases of each former lot and the former lease of the former common property are determined.

Part 4 Strata certificates

Division 1 Preliminary

50 Definitions

In this Part:

certificate of compliance of a water supply authority means a certificate of compliance issued by the

authority in accordance with the Act under which it is constituted.

court means the Land and Environment Court.

order, requirement or notice means an order, requirement or notice of a kind referred to in, or given under, any of the following:

- (a) an order of the kind referred to in item 2, 4, 8 or 9 of the table to section 121B of the *Environmental Planning and Assessment Act 1979*,
- (b) an order of the kind referred to in item 21, 22, 23, 24 or 25 of the table to section 124 of the *Local Government Act 1993*,
- (c) provisions of regulations made under the *Environmental Planning and Assessment Act 1979* or the *Local Government Act 1993* that are prescribed for the purposes of this definition.

51 Relationship with other Acts

- (1) Subject to this Act, a provision of the *Conveyancing Act 1919*, the *Environmental Planning and Assessment Act 1979* or another Act relating to the way land is divided does not apply to a subdivision effected under Part 2.
- (2) This section does not affect a requirement to obtain planning approval for a subdivision.

52 When relevant planning approval is in force

- (1) For the purposes of this Act, a **relevant planning approval is in force** for a proposed strata plan or strata plan of subdivision if:
 - (a) planning approval is required, and has been granted, for the subdivision the subject of the proposed plan and has not lapsed, or
 - (b) planning approval under paragraph (a) is not required but planning approval is required for the building, and has been granted for building work in relation to a building, or a change of use of a building, having proposed lots designed for separate occupation as illustrated by the plan, and has not lapsed.
- (2) For the purposes of this Act, a **relevant planning approval is in force** for a notice of conversion if:
 - (a) planning approval is required, and has been granted, to the conversion the subject of the notice and has not lapsed, or
 - (b) planning approval under paragraph (a) is not required but planning approval is required, and has been granted, for building work or a change of use associated with the conversion and has not lapsed.

53 Who may apply for strata certificate

An application for a strata certificate may be made only by:

- (a) if the certificate relates to a strata plan—the registered proprietor of the land to which the application relates, or another person with the proprietor’s written consent, or

- (b) if the certificate relates to a strata plan of subdivision or notice of conversion—the registered owner of the land to which the application relates, or another person with the owner’s written consent.

Division 2 Issue of strata certificates by local councils

54 Strata certificate for strata plans and subdivision of development lots

- (1) A local council must, on application made to it for a strata certificate in relation to a proposed strata plan that does not include a development lot, issue a strata certificate for the plan if:
 - (a) for land proposed to be subdivided that is within a water supply authority’s area of operations—the water supply authority has issued a certificate of compliance for the proposed subdivision, and
 - (b) the following requirements of subparagraphs (i)–(iii) or the following requirements of subparagraphs (iv)–(viii) are satisfied:
 - (i) a construction certificate has been issued under the *Environmental Planning and Assessment Act 1979* in relation to the erection of each building containing a proposed lot to which the plan relates,
 - (ii) each proposed lot in the plan substantially corresponds with a part of any such building shown in the building plans accompanying the construction certificate and is designated in the building plans as being intended for separate occupation,
 - (iii) each building referred to in subparagraph (i) was completed not more than 12 months, or a longer period fixed by the local council in any particular case, before the application for the strata certificate was made,
 - (iv) separate occupation of the proposed lots in the plan will not contravene the *Environmental Planning and Assessment Act 1979* or an environmental planning instrument,
 - (v) any consent required under that Act or instrument has been given in relation to the separate occupation of the proposed lots,
 - (vi) having regard to the circumstances of the case and the public interest, the local council is satisfied that the subdivision to which the plan relates will not interfere with the existing or likely future amenity of the neighbourhood,
 - (vii) the land proposed to be subdivided is not the subject of an outstanding order, requirement or notice,
 - (viii) if an order of the kind referred to in item 6 of the table to section 121B of the *Environmental Planning and Assessment Act 1979* is in force in relation to the land proposed to be subdivided—the order has been complied with.
- (2) A local council must, on application made to it for a strata certificate in relation to a proposed strata plan that includes a development lot, or of a proposed strata plan of subdivision of a development lot, issue a strata certificate for the plan if:
 - (a) the requirements of subsection (1) (a) and (b) are satisfied, and

- (b) the plan and each building to which the plan relates:
 - (i) satisfy the conditions of any planning approval relating to the plan and building, and
 - (ii) give effect to the stage of the strata development contract to which the plan and building relate.
- (3) However, for the purposes of subsections (1) (b) and (2) (a), if there is a relevant planning approval in force in relation to the proposed subdivision, the local council need not consider the requirement specified in subsection (1) (b) (vi).
- (4) Subsections (1) and (2) apply subject to this Part.

55 Strata certificate for subdivision not involving development lot

- (1) A local council must, on application made to it for a strata certificate in relation to a proposed strata plan of subdivision (other than a subdivision of a development lot) that does not subdivide or create common property in a strata scheme, send notice of the proposed subdivision by registered post to the owners corporation.
- (2) The notice must invite the owners corporation to give its views on the proposed subdivision within the period, of not less than 21 days after the notice was sent, specified in the notice (the *specified period*).
- (3) Subsection (1) does not apply to a local council if the application was accompanied by a certificate under the seal of the owners corporation certifying that the owners corporation has, by resolution, agreed to the proposed subdivision.
- (4) A local council may issue the strata certificate after considering:
 - (a) if the local council sent a notice referred to in subsection (1)—the representations, if any, made to it by the owners corporation within the specified period and whether the proposed subdivision would be likely:
 - (i) to detract from the external appearance of the building containing the lot the subject of the proposed subdivision, or
 - (ii) to render inadequate existing services to other lots in the strata scheme, or
 - (iii) to detract from the amenity or value of any other lot in the strata scheme by increasing the number and decreasing the size of lots within the building referred to in subparagraph (i), and
 - (b) if paragraph (a) does not apply in relation to the application—the requirements of section 54 (1) (b) (iv)–(vi) as if the reference in that section to a proposed strata plan were a reference to the proposed strata plan of subdivision.
- (5) A local council may, on application made to it for a strata certificate in relation to a proposed strata plan of subdivision (other than a subdivision of a development lot) that subdivides or creates common property, issue the certificate:
 - (a) if the plan, on lodgment with the council, was accompanied by a certificate under the seal of the owners corporation certifying that it has, by special resolution, agreed to the proposed

subdivision, and

- (b) after taking into consideration the requirements of section 54 (1) (b) (iv)–(vi) as if the reference in that section to a proposed strata plan were a reference to the proposed strata plan of subdivision.
- (6) However, if a relevant planning approval is in force in relation to the proposed subdivision, the local council need not consider:
 - (a) for the purposes of subsection (4)—the matters referred to in subsection (4) (a) or a requirement specified in section 54 (1) (b) (vi), and
 - (b) for the purposes of subsection (5)—a requirement specified in section 54 (1) (b) (vi).

56 Strata certificate for notices of conversion

- (1) A local council may, on application made to it for a strata certificate in relation to a proposed notice of conversion, issue the certificate if:
 - (a) the notice, on lodgment with the council, was accompanied by a certificate under the seal of the owners corporation certifying that it has, by special resolution, agreed to the proposed conversion, and
 - (b) the council is satisfied, having regard to the circumstances of the case and the public interest, that the proposed conversion will not interfere with the existing or likely future amenity of the neighbourhood.
- (2) However, the council need not be satisfied about the matter referred to in subsection (1) (b) if a relevant planning approval is in force in relation to the notice of conversion.

57 Restriction on issue of strata certificate

- (1) A local council must not issue a strata certificate unless:
 - (a) it complies with the regulations relating to the issue of strata certificates by a local council, and
 - (b) it is satisfied that any inspections prescribed by the regulations have been carried out.
- (2) Also, a local council must not issue a strata certificate in relation to a proposed strata plan, strata plan of subdivision or notice of conversion for which a relevant planning approval is not in force or is not required unless it has considered:
 - (a) whether the following will be appropriate to the proposed use of the building the subject of the plan or notice:
 - (i) the structural strength and load-bearing capacity of the building,
 - (ii) the measures to protect persons using the building, and to facilitate their egress from the building, in the event of fire,
 - (iii) the measures to restrict the spread of fire from the building to other buildings nearby, and

- (b) whether the building complies, or will comply when completed, with the Category 1 fire safety provisions applicable to the building's proposed use.
- (3) This section applies despite any other provision of this Division.
- (4) In subsection (2), *Category 1 fire safety provisions* means the provisions prescribed by the regulations.

Division 3 Issue of strata certificates by accredited certifiers

58 Strata certificate for strata plans and subdivision of development lots

- (1) An accredited certifier must, on application made to the certifier for a strata certificate in relation to a proposed strata plan that does not include a development lot, issue a strata certificate for the plan if:
 - (a) a relevant planning approval is in force in relation to the plan, and
 - (b) all conditions of the planning approval that are required to be complied with before a strata certificate may be issued have been complied with, and
 - (c) if the land proposed to be subdivided is within a water supply authority's area of operations—the water supply authority has issued a certificate of compliance for the proposed subdivision, and
 - (d) the following requirements of subparagraphs (i)–(iii) or the following requirements of subparagraphs (iv)–(vii) are satisfied:
 - (i) a construction certificate has been issued under the *Environmental Planning and Assessment Act 1979* in relation to the erection of each building containing a proposed lot to which the plan relates,
 - (ii) each proposed lot in the plan substantially corresponds with a part of any such building shown in the building plans accompanying the construction certificate and is designated in the building plans as being intended for separate occupation,
 - (iii) each building referred to in subparagraph (i) was completed not more than 12 months, or a longer period fixed by the relevant local council in any particular case, before the application for the strata certificate was made,
 - (iv) separate occupation of the proposed lots in the plan will not contravene the *Environmental Planning and Assessment Act 1979* or an environmental planning instrument,
 - (v) any consent required under that Act or instrument has been given in relation to the separate occupation of the proposed lots,
 - (vi) the land proposed to be subdivided is not the subject of an outstanding order, requirement or notice,
 - (vii) if an order of the kind referred to in item 6 of the table to section 121B of the *Environmental Planning and Assessment Act 1979* is in force in relation to the land proposed to be subdivided—the order has been complied with.

- (2) An accredited certifier must, on application made to the certifier for a strata certificate in relation to a proposed strata plan that includes a development lot or a proposed strata plan of subdivision of a development lot, issue a strata certificate for the plan if:
- (a) the requirements of subsection (1) (a)–(d) are satisfied, and
 - (b) the plan and each building containing a proposed lot to which the plan relates:
 - (i) satisfy the applicable planning approval conditions, and
 - (ii) give effect to the stage of the strata development contract to which the plan and building relate.

59 Strata certificate for subdivision not involving development lot

An accredited certifier must, on application made to the certifier for a strata certificate in relation to a proposed strata plan of subdivision (other than a subdivision of a development lot) issue a strata certificate in relation to the plan if:

- (a) the requirements of section 58 (1) (a), (b) and (d) (iv) and (v) are satisfied, and
- (b) if the subdivision does not subdivide or create common property in a strata scheme—the owners corporation has certified that it has, by resolution, agreed to the proposed subdivision, and
- (c) if the subdivision subdivides or creates common property in a strata scheme—the owners corporation has certified that it has, by special resolution, agreed to the proposed subdivision.

60 Strata certificate for notices of conversion

An accredited certifier must, on application made to the certifier for a strata certificate in relation to a proposed notice of conversion, issue the certificate if:

- (a) the requirements of section 58 (1) (a) and (b) are satisfied, and
- (b) the owners corporation has certified that it has, by special resolution, agreed to the proposed conversion.

61 Restrictions on issue of strata certificate

Despite any other provision of this Division, an accredited certifier must not issue a strata certificate unless:

- (a) the certifier complies with the regulations relating to the issue of strata certificates by an accredited certifier, and
- (b) the certifier is satisfied that any inspections prescribed by the regulations have been carried out.

Division 4 Strata certificates relating to encroachments onto public places, and to utility lots

62 Issue of strata certificates relating to encroachments

- (1) This section applies to a proposed strata plan or strata plan of subdivision if a building to which the plan relates encroaches on a public place.

- (2) A local council may refuse to issue a strata certificate for the plan unless:
 - (a) the plan clearly indicates the existence, nature and extent of the encroachment, and
 - (b) the council is satisfied that retention of the encroachment in its existing state will not endanger public safety or unreasonably interfere with the amenity of the neighbourhood.
- (3) An accredited certifier must refuse to issue a strata certificate for the plan unless:
 - (a) the plan clearly indicates the existence, nature and extent of the encroachment, and
 - (b) either:
 - (i) the building complies with a relevant planning approval in force in relation to the building with the encroachment, or
 - (ii) a relevant planning approval in force in relation to the subdivision the subject of the plan specifies the existence of the encroachment.
- (4) A strata certificate for the plan issued by a local council must refer to the existence of the encroachment and indicate that the local council does not object to the encroachment.
- (5) A strata certificate for the plan issued by an accredited certifier must refer to the existence of the encroachment and indicate that:
 - (a) the local council has granted a relevant planning approval that is in force for the building with the encroachment, or
 - (b) the local council has granted a relevant planning approval that is in force for the subdivision the subject of the plan specifying the existence of the encroachment.

63 Restriction on use of utility lot

- (1) If the registration of a plan for which a strata certificate is sought from a local council would result in the creation of a utility lot, the council may impose a condition (a ***restrictive use condition***) on the strata certificate restricting the use of the utility lot to use by an owner or occupier of a lot or proposed lot (other than a utility lot) in the strata scheme to which the plan relates.
- (2) If:
 - (a) the registration of a plan for which a strata certificate is sought from an accredited certifier would result in the creation of a utility lot, and
 - (b) the relevant planning approval contains a condition (also a ***restrictive use condition***) restricting the use of the utility lot to use by an owner or occupier of a lot or proposed lot (other than a utility lot),the certifier must note the restriction on the strata certificate.
- (3) A restriction on use imposed or noted under subsection (1) or (2) must:
 - (a) designate each utility lot burdened by the restriction, and
 - (b) describe the restriction by reference to this section.

- (4) Section 88 of the *Conveyancing Act 1919* does not apply to a restriction referred to in subsection (1) or (2).

64 Release of restriction on use of utility lot

A local council that imposes a restrictive use condition may, on application made by the owner or a registered mortgagee of the utility lot to which the condition relates, execute an instrument in the approved form that provides that the lot is released from the restriction.

Note. On the Registrar-General recording the instrument in the Register, the utility lot is released from the restriction. See section 124.

Division 5 Notice of decisions and appeals

65 Notice of decision

- (1) A local council or accredited certifier must give notice of the council's or certifier's decision on an application for a strata certificate to the applicant.
- (2) If a local council refuses to issue a strata certificate, the notice must state:
- (a) the grounds of refusal, and
 - (b) that the applicant may appeal to the court against the refusal, and
 - (c) the period within which the appeal may be made.
- (3) If a local council issues a strata certificate subject to a restrictive use condition, the notice must state:
- (a) that the applicant may appeal to the court against the imposition of the condition, and
 - (b) the period within which the appeal may be made.
- (4) If an accredited certifier refuses to issue a strata certificate, the notice must state the grounds of refusal.

66 Appeal to Land and Environment Court

- (1) The applicant for an application for a strata certificate made to a local council may appeal to the court against a decision of the council:
- (a) to refuse the application, or
 - (b) to issue the strata certificate subject to a restrictive use condition.
- (2) For the purposes of an appeal under this section, a local council is taken to have refused an application if the council does not decide the application within 14 days after:
- (a) if the application is for a strata certificate referred to in section 54 (1) and, in relation to the application, the council has given notice under that section to an owners corporation—the end of the period specified in the notice within which the owners corporation may give its views on the proposed subdivision to which the certificate relates, or
 - (b) otherwise—the day the council receives the application.

- (3) An appeal must be made within 12 months after:
 - (a) the day the applicant receives notice of the decision, or
 - (b) if the local council is taken to have refused the application—the day the council is taken to have refused it.
- (4) However, the court may, if it considers it appropriate in the circumstances, extend the period for making the appeal.
- (5) A decision of the court on an appeal is taken to be the final decision of the local council and is to be given effect as if it were the decision of the council.

Division 6 Application of [Building Professionals Act 2005](#)

67 Accredited certifiers

- (1) For the purposes of this Act, an **accredited certifier** is the holder of a certificate of accreditation as an accredited certifier for the purposes of this Act.
- (2) The relevant provisions apply with any necessary changes, and any changes prescribed by the regulations, to the following:
 - (a) the accreditation of accredited certifiers for the purposes of this Act,
 - (b) accredited certifiers,
 - (c) the exercise of functions under this Act by accredited certifiers.
- (3) In this section:

relevant provisions means the provisions of Parts 2–5 and Divisions 1, 3 and 4 of Part 6 and Parts 7 and 8 of the [Building Professionals Act 2005](#), and the regulations made under that Act for the purposes of the provisions.

68 Insurance of accredited certifiers

- (1) The relevant provisions apply with any necessary changes, and any changes prescribed by the regulations, to accredited certifiers exercising functions under this Act in the same way that the provisions apply to accredited certifiers exercising the functions of a certifying authority within the meaning of the [Environmental Planning and Assessment Act 1979](#).
- (2) In this section:

relevant provisions means the provisions of Division 2 of Part 6 of the [Building Professionals Act 2005](#), and the regulations made under that Act for the purposes of the provisions.

Note. The relevant provisions relate to a requirement to have insurance.

Division 7 Miscellaneous

69 Satisfaction about compliance with conditions precedent to issue of strata certificates

- (1) A person who exercises functions under this Act or another Act in reliance on a strata certificate:

- (a) is entitled to assume that:
 - (i) the certificate was properly issued, and
 - (ii) all conditions precedent to the issue of the certificate have been complied with, and
 - (iii) all things that are stated in the certificate as existing or having been done do exist or have been done, and
 - (b) is not liable for any loss or damage arising from a matter in relation to which the certificate was issued.
- (2) This section does not apply to an accredited certifier in relation to a strata certificate issued by the accredited certifier.

70 Regulations

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

- (a) applications for and the issue of strata certificates,
- (b) the matters to be notified by accredited certifiers to local councils in relation to strata certificates,
- (c) the inspections to be carried out by local councils and accredited certifiers in relation to the issue of strata certificates,
- (d) the records to be kept by local councils and accredited certifiers in relation to strata certificates issued, or refused, by local councils and accredited certifiers.

Part 5 Staged development

Division 1 Preliminary

71 Purpose and scope of Part

- (1) The purpose of this Part is to facilitate the development in stages of a parcel subject to a strata scheme.
- (2) This Part does not prevent the development of a parcel otherwise than in accordance with the Part.

72 Definitions

In this Part:

court means the Land and Environment Court.

development concern—see section 74.

permitted development—see section 73 (4).

warranted development—see section 73 (3) (a).

73 Explanation of staged development

- (1) The proposed development in stages of a parcel subject to a strata scheme consists of:
 - (a) the progressive improvement of the parcel by the construction of buildings or the carrying out of works on development lots, and
 - (b) the subsequent subdivision of each development lot and the consequential adjustment of the unit entitlement of lots in the scheme.
- (2) A development lot may be situated wholly or partly above, below or alongside the building to which the strata scheme initially relates, but must be identified as a development lot in the strata plan for the scheme when the plan is registered or in a strata plan of subdivision of a development lot.
- (3) The development is carried out subject to a strata development contract that describes separately:
 - (a) any proposed development that the developer for the development lot warrants will be carried out and may be compelled to carry out (*warranted development*), and
 - (b) any other proposed development that the developer will be authorised but cannot be compelled to carry out (*authorised proposals*).
- (4) Warranted development and authorised proposals are referred to as *permitted development* because the owners corporation of the strata scheme and other persons having estates or interests in lots included in the parcel must allow it to be carried out in accordance with the strata development contract.

74 Meaning of “development concern”

- (1) A *development concern*, in relation to a strata development contract, is:
 - (a) doing any of the following in accordance with the contract:
 - (i) erecting structures, carrying out works or effecting other improvements,
 - (ii) creating easements, dedicating land, making by-laws or entering into covenants or management or other agreements,
 - (iii) creating or using common property,
 - (iv) adding land to the parcel,
 - (v) using water, sewerage, drainage, gas, electricity, oil, garbage, conditioned air, telephone or other services available to the parcel, or installing additional services,
 - (vi) providing and using means of access or egress to or from a development lot, or to or from common property,
 - (vii) subdivision of a development lot, or excising a development lot from the parcel, and
 - (b) carrying out any other development that is permitted to be carried out because it is included in the contract.

- (2) However, a *development concern* does not include:
- (a) subdivision of common property, or
 - (b) amendment of a strata development contract, regardless of whether the subject-matter involved is, or relates to, a development concern.

Division 2 Restriction on granting planning approval

75 Obligations of planning authorities

- (1) A planning authority must not grant planning approval for the subdivision of land by a strata plan for the purposes of the development in stages of a parcel under this Part unless:
- (a) the proposed strata plan includes a development lot, and
 - (b) the application for the planning approval is accompanied by a proposed strata development contract.
- (2) When a planning authority grants a planning approval in accordance with this section, it must certify in the approved form that carrying out the permitted development would not contravene:
- (a) any condition subject to which the approval was granted, or
 - (b) the provisions of any environmental planning instrument in force when the approval was granted, except to the extent, if any, specified in the certificate.
- (3) A planning approval that purports to have been granted in contravention of this section is invalid.

Division 3 Strata development contracts and registration of contracts and amendments

76 Form and content of strata development contract

- (1) A strata development contract must be in the approved form.
- (2) A strata development contract must include:
- (a) a concept plan that complies with section 77, and
 - (b) a description of the following:
 - (i) the land comprising the parcel, identifying separately the development lot or lots,
 - (ii) any land proposed to be added to the parcel at a later time,
 - (iii) any part of the common property in relation to which the developer is to have a right to occupy to carry out the proposed development,
 - (iv) any part of the proposed development that the developer is permitted by the contract to carry out and may be compelled to carry out (identified in the contract as “warranted development—proposed development subject to a warranty”),
 - (v) any part of the proposed development that the developer is permitted by the contract to

carry out but cannot, merely because it is described in the contract, be compelled to carry out (identified in the contract as “authorised proposals—proposed development not subject to a warranty”), and

(c) any other information or document prescribed by the regulations.

- (3) A strata development contract must predict a time, not more than 10 years after the day on which the contract is registered, for the conclusion of the development scheme to which it relates.
- (4) A strata development contract that relates to development of a part strata parcel must include a description of the part of the building and its site outside the part strata parcel.
- (5) A strata development contract cannot provide for the subdivision of common property in a strata scheme without the consent, by special resolution, of the owners corporation.

77 Concept plan

A concept plan for a strata development contract must separately illustrate, in the way approved by the Registrar-General:

- (a) the sites proposed for, and the nature of, the buildings and works that would result from the carrying out of all permitted development under the contract, and
- (b) the sites proposed for, and the nature of, the buildings and works that would result from the carrying out of all warranted development.

78 Variation of liability for common property expenses

- (1) A strata development contract may apportion the liability for expenses relating to the use or maintenance of common property in the strata scheme differently from the way that liability would otherwise be apportioned by the schedule of unit entitlement for the scheme.
- (2) An apportionment under this section has effect despite the current schedule of unit entitlement, but does not apply to any liability that relates to the use or maintenance of the common property after the development scheme is concluded.

79 Signing and lodging strata development contract and amendments

- (1) The Registrar-General may register a strata development contract, or an amendment of a strata development contract, only if the contract or amendment is signed by all of the following:
 - (a) the developer for the development lot,
 - (b) each registered mortgagee, chargee, covenant chargee and lessee of the development lot,
 - (c) each registered mortgagee and chargee of a lease of the development lot,
 - (d) if the contract or amendment relates to a leasehold strata scheme—the lessor of the scheme,
 - (e) if the amendment is required, under section 84, to be supported by any resolution of the owners corporation of the strata scheme—the owners corporation.
- (2) A strata development contract, or an amendment of a strata development contract, must be lodged with the certificate required under section 75 (2) or 84 (7).

- (3) The Registrar-General may refuse to register a strata development contract or an amendment of a strata development contract if written consent to the registration has not been lodged and signed by any one or more of the following that the Registrar-General determines:
 - (a) the judgment creditor under any writ recorded in the folio for the development lot,
 - (b) the lessee of any common property in the strata scheme,
 - (c) the caveator under a caveat affecting any estate or interest in the development lot.
- (4) The same person may be more than one of the parties to a strata development contract.

80 Registering strata development contract and amendments

- (1) The Registrar-General may register a strata development contract or an amendment of a strata development contract by recording the contract or amendment in the Register.
- (2) The Registrar-General may refuse to register an amendment of a strata development contract if:
 - (a) the certificate of title for the owners corporation or the common property, if any, has not been given to the Registrar-General, or
 - (b) the contract does not include a revised concept plan that will comply with section 77 after the amendment is registered.
- (3) The Registrar-General must refuse to register a strata development contract or an amendment of a strata development contract that does not comply with this Part.

81 Effect of strata development contract

- (1) A strata development contract has effect as an agreement under seal containing the covenants specified in Schedule 3 entered into by the owners corporation and each person who for the time being is any of the following:
 - (a) the developer of the strata scheme,
 - (b) if the scheme is a leasehold strata scheme—the lessor of the scheme,
 - (c) an owner of a lot, other than the developer,
 - (d) a registered mortgagee, chargee, covenant chargee or lessee, or an occupier, of a lot.
- (2) The contract ceases to have effect:
 - (a) in relation to a person described in subsection (1) (a), (b), (c) or (d), when the person ceases to be a person so described, and
 - (b) in relation to all of the persons described in subsection (1), when the development scheme to which the contract relates is concluded.
- (3) Subsection (2) does not affect an obligation incurred by a person, or a right that accrued to a person, under the contract before it ceased to have effect in relation to the person.
- (4) A lessee entitled under a lease to immediate possession of a development lot is taken to be the developer, and the person who would otherwise be the developer is taken not to be the

developer, for the purposes of this Act, the regulations and the strata development contract.

- (5) A mortgagee, chargee or covenant chargee in possession of a development lot is taken to be the developer, and the person who would otherwise be the developer is taken not to be the developer, for the purposes of this Act, the regulations and the strata development contract.
- (6) A strata development contract does not permit development to be carried out in contravention of this Act or any other Act or law.
- (7) A provision in any other contract or instrument under which a strata development contract is excluded, modified or restricted is void.
- (8) A covenant entered into under a strata development contract does not merge on the transfer of a lot.
- (9) This section does not affect a right or remedy a person may have apart from a right or remedy under a strata development contract.
- (10) However, the *Strata Schemes Management Act 2015* does not apply in relation to matters arising under a strata development contract.

Note. A strata development contract for a strata scheme is void to the extent that it is inconsistent with a strata management statement for the scheme. See section 105 (7).

82 Use of common property and development lot by developer

- (1) A strata development contract may confer on a developer an exclusive, or any lesser, right to occupy common property specified in the contract.
- (2) When carrying out permitted development under a strata development contract, a developer is entitled to use common property or a development lot to which the contract relates:
 - (a) to the extent necessary to carry out the development, or
 - (b) to such other extent, if any, conferred by the contract in relation to specified common property.
- (3) A right conferred by this section may be exercised despite any other provision of this Act or any provision of the by-laws for the strata scheme or of an order under section 131 of the *Strata Schemes Management Act 2015*.
- (4) However, the right must be exercised in a way that does not cause unreasonable inconvenience to the occupier of any lot.
- (5) The provisions of a strata development contract that relate to the maintenance or upkeep of common property have effect despite any provision of the by-laws for the strata scheme or of an order under section 131 of the *Strata Schemes Management Act 2015*.

83 Adding land to a parcel subject to a strata development contract

- (1) Land may be added to a parcel containing a development lot by registration of a plan as a strata plan of subdivision.
- (2) The plan may be registered only if:

- (a) the land consisting of the former parcel and the additional land could be the subject of a strata plan had the land in the former parcel not already been subdivided under this Act, and
 - (b) the strata development contract, as in force when the plan is registered:
 - (i) provides for the land to be added to the parcel, and
 - (ii) states whether, on it being added to the parcel, the land will become common property, a further development lot or an addition to an existing development lot, or any specified combination of them, and
 - (c) a plan showing as a single lot the additional land and the former parcel has been lodged for registration under the *Conveyancing Act 1919*.
- (3) On registration of the plan as a strata plan of subdivision, the land becomes common property, a further development lot or an addition to an existing development lot, or any specified combination of them, as provided by the strata development contract.

Division 4 Amendment of strata development contracts

84 Amendment of strata development contract

- (1) A strata development contract for a strata scheme may be amended by the developer.
- (2) An amendment must be in the approved form and has effect only if it:
 - (a) is made in compliance with this Division, and
 - (b) is registered, and
 - (c) is not inconsistent with a registered strata management statement for the strata scheme.
- (3) A proposed amendment that involves a change in the basic architectural or landscaping design of the development, or in its essence or theme, may be made only if it is:
 - (a) approved by the planning authority, and
 - (b) supported by a unanimous resolution of the owners corporation of the strata scheme, unless the developer is the only owner of lots in the scheme.
- (4) An amendment proposed to give effect to a change in the law or a change in the requirements of a planning authority, and that does not involve a change referred to in subsection (3), may be made only if:
 - (a) it is approved by the planning authority, and
 - (b) notice of the amendment is given to:
 - (i) the owners corporation of the strata scheme, and
 - (ii) the owner of each lot in the scheme, other than the developer, and
 - (iii) each registered mortgagee, chargee, covenant chargee and lessee of a lot in the scheme.
- (5) Any other proposed amendment that would require a change in the terms of a planning approval

may be made only if it is:

- (a) approved by the planning authority, and
 - (b) supported by a special resolution of the owners corporation of the strata scheme.
- (6) Any other proposed amendment that would not require a change in the terms of a planning approval may be made only if:
- (a) it is supported by a resolution of the owners corporation of the strata scheme, and
 - (b) the application for registration, or the contract as intended to be amended, is accompanied by a certificate, given in the approved form by the planning authority to the effect that a change in the terms of any planning approval is not required.
- (7) A planning authority that approves an amendment of a strata development contract must give the applicant for the approval a copy of the instruments, plans and drawings that describe and illustrate the amendment and a certificate in the approved form to the effect that:
- (a) the copy describes and illustrates the approved amendment, and
 - (b) the contract, if amended as approved, would not be inconsistent with any related planning approval.

Note. An amendment is not required to be supported by a resolution of the owners corporation if the amendment is approved by the court under section 86.

85 Notice of particular decision, and appeal

- (1) If a planning authority does not approve an amendment of a strata development contract, the authority must give the applicant for the approval a notice stating:
 - (a) the grounds for the refusal, and
 - (b) that the applicant may appeal to the court against the refusal, and
 - (c) the period within which the appeal may be made.
- (2) The applicant may appeal to the court against the refusal within 12 months after receiving the notice.
- (3) However, the court may, if it considers it appropriate in the circumstances, extend the period for making the appeal.
- (4) A decision of the court on appeal is taken to be the final decision of the planning authority and is to be given effect as if it were the decision of the planning authority.

86 Approval of amendments by Land and Environment Court

- (1) Despite section 84, an amendment of a strata development contract is not required to be supported by a resolution of an owners corporation if the amendment is approved by the court.
- (2) The court may approve an amendment only if it is satisfied:
 - (a) that a motion supporting the amendment has been defeated, or

- (b) that the notice of intention to move a motion supporting the amendment has been given but a meeting to consider the motion has not been held within a reasonable time after the notice was given, or
 - (c) that the consent to the amendment of a mortgagee, chargee, covenant chargee or lessee has been sought but has been refused.
- (3) The developer must serve an application for the court's approval on all of the following:
- (a) each owner of a lot in the strata scheme, other than the developer,
 - (b) each person, other than the applicant, who is the owner of a development lot,
 - (c) each registered mortgagee, chargee, covenant chargee and lessee of a lot in the scheme,
 - (d) if the strata scheme is a leasehold strata scheme—the lessor (unless the lessor is the developer),
 - (e) the owners corporation,
 - (f) the planning authority.
- (4) Each person entitled to be served with the application is entitled to appear and be heard on the hearing of the application.

Division 5 Provisions relating to development concerns

87 Right to complete permitted development

- (1) The vote of a developer who is permitted to carry out development because it is included in a strata development contract is sufficient to pass or defeat a motion included in the notice for a meeting of the owners corporation or its strata committee if the passing or defeat of the motion would have the effect of making a decision about a development concern.
- (2) A decision about a development concern need not be supported by a special or unanimous resolution of an owners corporation, despite any other provision of this Act or the *Strata Schemes Management Act 2015*.
- (3) A dealing, plan or other instrument may be executed by the owners corporation or by a developer on behalf of the owners corporation for the purpose of giving effect to a decision about a development concern.
- (4) The regulations may impose requirements for the execution of dealings, plans and other instruments by owners corporations and developers and may require verification by statutory declaration of the circumstances in which they were executed.

88 Meetings of owners corporation relating to development concerns

- (1) A motion, the passing or defeat of which at a meeting of the owners corporation or its strata committee would have the effect of making a decision about a development concern, must be:
 - (a) identified as relating to a development concern in the notice for the meeting, and
 - (b) moved separately from any other kind of motion.

- (2) A general meeting of the owners corporation for the purpose of making a decision about a development concern may be convened under Schedule 1 to the *Strata Schemes Management Act 2015* by the developer or the owners of at least 25% of the lots in the strata scheme that are not development lots.
- (3) In convening the general meeting, the developer or any of the owners convening the meeting may give notice of the meeting on behalf of the strata committee of the owners corporation.
- (4) The presence of the developer (or if the developer is a corporation, of the company nominee of the corporation) constitutes a sufficient quorum for any meeting of the owners corporation or its strata committee of which notice has been properly given.
- (5) Subsection (4) applies only while business relating to a development concern is being dealt with.
- (6) For the purpose only of allowing development permitted by a strata development contract to be carried out, a developer (or if the developer is a corporation, the company nominee of the corporation) may exercise the functions of an owners corporation bound by the contract, or of another person having functions under the strata scheme, that are prescribed by the regulations.
- (7) This section has effect despite any other provision of this Act or the *Strata Schemes Management Act 2015*.

Division 6 Conclusion of development schemes

89 When development scheme is concluded

- (1) A development scheme to which a strata development contract relates is concluded when any of the following happens:
 - (a) any planning approval required for carrying out the scheme is revoked,
 - (b) a strata plan of subdivision that subdivides the last remaining unsubdivided development lot to which the contract relates, or subdivides the residue of that development lot after excision of part of the lot in accordance with the contract, is registered,
 - (c) the conclusion time for the development scheme arrives,
 - (d) a notice in the approved form, that complies with subsection (2) and stating that the development scheme to which the contract relates has concluded, is registered,
 - (e) the strata scheme to which the contract relates is terminated under Part 9 by an order of the Supreme Court.
- (2) For the purpose of subsection (1) (d), the notice must:
 - (a) be signed by the developer, and
 - (b) be signed by each registered mortgagee, chargee, covenant chargee and lessee of the development lot, and
 - (c) be lodged with a certificate, given in the approved form by the owners corporation of the strata scheme, certifying that the owners corporation has, by unanimous resolution, agreed that the development scheme has concluded.

- (3) In this section:

conclusion time for a development scheme means:

- (a) the time predicted by the contract for conclusion of the development scheme, or
- (b) if the time referred to in paragraph (a) is changed by an order under section 92—the time provided for under the order.

90 Revised schedule of unit entitlement

- (1) If, at the conclusion of a development scheme, the owners corporation considers that the schedule of unit entitlement for the strata scheme does not apportion the unit entitlements so as to reflect the market value of the lots in the strata scheme, the owners corporation may lodge a revised schedule of unit entitlement for the scheme.
- (2) The revised schedule of unit entitlement must be lodged within 2 years after the conclusion of the development scheme.
- (3) A revised schedule of unit entitlement must:
 - (a) be in the approved form, and
 - (b) be clearly identified as a revised schedule of unit entitlement, and
 - (c) show, as a whole number apportioned on a market value basis and totalling the unit entitlements, the unit entitlement of each lot, and
 - (d) be accompanied by a certificate in the approved form signed by a qualified valuer certifying that the unit entitlements of the lots are apportioned on a market value basis, and
 - (e) be accompanied by a certificate in the approved form signed by the owners corporation and certifying that it has, by special resolution, agreed to the substitution of the existing schedule of unit entitlement with the revised schedule.
- (4) In this section:

market value basis—see clause 1 of Schedule 2.

91 Registrar-General to record matters about conclusion of development scheme

- (1) The Registrar-General must record the conclusion of a development scheme in the folio for the owners corporation and the common property in the strata scheme.
- (2) If, after the conclusion of a development scheme, a revised schedule of unit entitlement for the scheme is lodged under section 90, the Registrar-General must record it as the schedule of unit entitlement in substitution for the existing schedule of unit entitlement for the scheme.

92 Order for extension or conclusion of development scheme

- (1) On application made to it by any person bound by a strata development contract, the court may, by order, do either or both of the following:
 - (a) defer, either generally or to a specified time, the time at which a development scheme would otherwise be concluded,

- (b) fix a time for the conclusion of a development scheme, whether it is an earlier or a later time than it would otherwise be.
- (2) The applicant for the order must serve notice of the application, in accordance with rules of court, on all of the following:
 - (a) the developer,
 - (b) each owner of a lot in the strata scheme, other than the developer,
 - (c) each registered mortgagee, chargee, covenant chargee and lessee of a lot in the scheme,
 - (d) if the strata scheme is a leasehold strata scheme—the lessor (unless the lessor is the developer),
 - (e) the owners corporation,
 - (f) the planning authority,
 - (g) the Registrar-General,
 - (h) any other person directed by the court.
- (3) Each person entitled to be served with notice of the application may appear and be heard on the hearing of the application.
- (4) An order under this section may:
 - (a) contain provisions relating to the strata scheme that the court considers necessary because of the conclusion of the development scheme, and
 - (b) require the payment of an amount to or by the owners corporation or the owners of lots to any one or more of them in addition to, or instead of, an award of damages in the exercise of the jurisdiction conferred by section 20 (2) (d) of the *Land and Environment Court Act 1979*, and
 - (c) contain other provisions and requirements the court considers just and equitable.
- (5) The court may, from time to time, vary an order under this section on the application of any person entitled to apply for an order. This section applies to an application for a variation of an order in the same way as it applies to an application for an order.

Division 7 Applications for assistance

93 Application for assistance

- (1) An owners corporation or an owner of a lot, other than the developer, may apply in writing to the Secretary for assistance to bring or defend proceedings before the court relating to:
 - (a) a strata development contract or an amendment of any such contract, or
 - (b) an agreement implied by section 81, or
 - (c) a planning approval granted in accordance with section 75 (1) or a modification of any such

approval.

- (2) After receiving an application, the Secretary:
 - (a) may require the applicant to give the Secretary further information about the application that the Secretary considers may assist investigation of the application, and
 - (b) may refuse to proceed with the application until the further information is given.
- (3) For the purpose of this Division, an application under subsection (1) is called an *application for assistance*.

94 Investigation of application

- (1) The Secretary may decide to proceed with an investigation of an application for assistance or, having proceeded with an investigation, decide to discontinue the investigation.
- (2) In making the decision, the Secretary must have regard to whether, in the opinion of the Secretary:
 - (a) the application is frivolous, vexatious, misconceived or lacking in substance, or
 - (b) the applicant has unreasonably delayed complying with a requirement for further information, or
 - (c) investigation, or further investigation, is a matter for a planning authority, or
 - (d) the applicant has an alternative and better means of redress.
- (3) The Secretary may have regard to other matters the Secretary considers appropriate.
- (4) If the Secretary decides to investigate an application, the Secretary must:
 - (a) inform the applicant of the decision, and
 - (b) inform the owners corporation of the decision and the subject-matter of the investigation, unless the owners corporation is the applicant, and
 - (c) inform the developer and the relevant planning authority of the decision and the subject-matter of the investigation, and
 - (d) invite each person referred to in paragraph (b) or (c), other than the applicant, to give the Secretary a written submission about the subject-matter within a specified period.
- (5) If the Secretary decides not to investigate an application or to discontinue an investigation, the Secretary must:
 - (a) inform the applicant of the decision, and
 - (b) if the decision is to discontinue an investigation—inform each other person the Secretary informed of the original decision to investigate the application.

95 Application of [Fair Trading Act 1987](#) to investigation

Sections 20–22 of the [Fair Trading Act 1987](#) apply to an investigation of an application for

assistance as if:

- (a) references in the sections to information, documents or evidence included references to information, documents or evidence relating to an application for assistance, and
- (b) references in the sections to an investigator included references to the Secretary and to any person who has been delegated the powers conferred on the Secretary in relation to an application for assistance, and
- (c) references in the sections to that Act included references to this Act.

Note. Sections 20–22 of the *Fair Trading Act 1987* provide for matters about obtaining information, documents or evidence in relation to an investigation, the inspection and copying of documents and the confidentiality of information, documents and evidence obtained.

96 Grant of legal assistance

- (1) Division 2, other than sections 12 and 15 (6), of Part 2 of the *Fair Trading Act 1987*, applies to an application for assistance in the same way as it applies to an application under section 12 of that Act.
- (2) The Secretary may, with the consent of the Minister administering the *Fair Trading Act 1987*, seek an interim restraining order under section 124 of the *Environmental Planning and Assessment Act 1979* in relation to the subject-matter of the application.
- (3) The Secretary may seek the order whether or not investigation of the application has been completed.
- (4) The order may be granted without any undertaking being given by the Secretary as to damages.
- (5) An interim restraining order sought by the Secretary is, for the purposes of subsection (1), taken to have been sought by the person who made the application for assistance and that person is taken to be an assisted person under Division 2 of Part 2 of the *Fair Trading Act 1987*.

97 Resolution authorising application by owners corporation

- (1) An owners corporation may, if authorised by resolution:
 - (a) make an application for assistance, or
 - (b) bring proceedings referred to in section 123 of the *Environmental Planning and Assessment Act 1979* or section 20 (1) (e) of the *Land and Environment Court Act 1979* relating to:
 - (i) a strata development contract or an amendment of any such contract, or
 - (ii) a planning approval granted in accordance with section 75 (1) of this Act or a modification of any such approval.
- (2) Any vote cast by the developer (whether as an owner of a lot or as a mortgagee, covenant chargee or proxy) or by a mortgagee of the developer (whether as a mortgagee, covenant chargee or proxy) is to be disregarded in determining whether a resolution has been passed.

Division 8 Miscellaneous

98 Functions of Secretary

The Secretary may:

- (a) give advice about the remedies available in relation to matters arising under this Part, and
- (b) try to bring the interested parties to an agreement that will settle any question, dispute or difficulty that arises from the operation of this Part, and
- (c) advise the relevant planning authority of any departure from the terms of a planning approval or strata development contract.

Part 6 Strata management statements and easements relating to part strata parcels

Division 1 Strata management statements

99 Requirement to register strata management statement

- (1) The Registrar-General must not register a plan as a strata plan that creates a part strata parcel unless the Registrar-General also registers a strata management statement for the building and its site or waives, under subsection (2), the requirement for a strata management statement.
- (2) The Registrar-General may waive the requirement for a strata management statement:
 - (a) if:
 - (i) the building is erected on a lot in a community scheme, and
 - (ii) only part of the building and site is to be subdivided by a strata plan, and
 - (iii) all of the residue of the building and site is to be community property within the meaning of the *Community Land Management Act 1989*, or
 - (b) if:
 - (i) the plan relates to part of a building that includes one or more part strata parcels, and
 - (ii) a strata management statement has already been registered for the building and its site, or
 - (c) if a registered building management statement is in force for the building and its site, or
 - (d) if the Minister, on the grounds the Minister considers sufficient, directs.

100 Form and content of strata management statement

A strata management statement must be in the approved form and comply with Schedule 4, and that Schedule applies to the statement.

101 Registration of strata management statement and amendment

- (1) The Registrar-General may register a strata management statement or an amendment of a strata management statement by recording the statement or amendment in the Register.
- (2) The Registrar-General may refuse to register a strata management statement or an amendment of a strata management statement if the application for registration does not comply with a requirement of this Act or the regulations.
- (3) The Registrar-General may register a strata management statement for a building and its site at any time part of the building is included in a part strata parcel but is not the subject of a strata management statement.

102 Recording information about strata management statement in folios

- (1) If a strata management statement is registered, the Registrar-General must record the following in the relevant folios:
 - (a) the existence of the statement and of each registered amendment of it,
 - (b) other information relating to the statement and each amendment that the Registrar-General considers appropriate.

- (2) In this section:

relevant folios means the folios for:

- (a) each owners corporation of a strata scheme for part of the building, and
- (b) each part of the building or site that does not form part of a part strata parcel.

103 Amendment of strata management statement

- (1) A registered strata management statement may be amended only if the amendment is:
 - (a) supported by the following:
 - (i) a special resolution of the owners corporation of each strata scheme for part of the building,
 - (ii) 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 a part strata parcel,
 - (iii) if the building is the subject of a leasehold strata scheme—each person in whom is vested a leasehold estate, recorded in a folio, in a part of the building or its site that is not included in a part strata parcel, or
 - (b) ordered under this Act or another Act by a court, or
 - (c) consequential on the revocation or modification, under section 103 of the *Environmental Planning and Assessment Act 1979*, of a planning approval.
- (2) An amendment of a strata management statement must be in the approved form and has effect under this Part only if it is recorded in the folio for:

- (a) each owners corporation of a strata scheme for part of the building, and
- (b) each part of the building or site that does not form part of a part strata parcel.

104 Signing of strata management statement and amendment

- (1) The Registrar-General may register a strata management statement or an amendment of a strata management statement only if the statement or amendment is:
 - (a) signed by the owners corporation of each strata scheme, if any, for a part of the building and is accompanied by evidence to show that it is supported by a special resolution of the owners corporation, and
 - (b) signed by 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 a part strata parcel, and
 - (c) if the building is the subject of a leasehold strata scheme—signed by each person in whom is vested a leasehold estate in a part of the building or its site that is not included in a part strata parcel, and
 - (d) signed by each registered mortgagee, chargee or covenant chargee of an estate referred to in paragraph (b) or (c).
- (2) The Registrar-General may refuse to register a strata management statement or an amendment of a strata management statement unless written consent to the registration has been lodged and signed by one or more of the following as the Registrar-General determines:
 - (a) the lessee under any lease, or the judgment creditor under any writ, recorded in a folio for an estate referred to in subsection (1) (b) or (c) or the folio relating to any common property affected by the statement or amendment,
 - (b) the caveator under a caveat affecting any estate or interest referred to in subsection (1) (b), (c) or (d).
- (3) The Registrar-General may, in a particular case, waive a requirement for a signature under this section without giving notice to any person.

105 Effect of strata management statement

- (1) A registered strata management statement for a building has effect as an agreement under seal containing the covenants referred to in subsection (2) entered into by each person who for the time being is:
 - (a) the owners corporation of a strata scheme for part of the building, or
 - (b) an owner, mortgagee in possession or lessee of a lot in a strata scheme for part of the building, or
 - (c) another person in whom is vested the fee simple of a part of the building or site affected by the statement, or
 - (d) the mortgagee in possession or lessee of a part of the building or site referred to in paragraph (c).

- (2) The covenants referred to in subsection (1) are:
 - (a) a covenant by which the persons jointly and severally agree to carry out their obligations under the registered strata management statement, and
 - (b) a covenant by which the persons jointly and severally agree to permit the carrying out of the obligations.
- (3) The agreement ceases to have effect under this Part:
 - (a) in relation to a person referred to in subsection (1) (b), (c) or (d), on the person ceasing to be that person, and
 - (b) in relation to all persons referred to in subsection (1), on the termination of all strata schemes to which the strata management statement relates.
- (4) Subsection (3) does not prejudice or affect an obligation incurred by, or a right that accrued to, a person under the agreement while it was in force.
- (5) A strata management statement has no effect to the extent that it is inconsistent with:
 - (a) a condition imposed on a planning approval relating to the site of the building to which the statement relates, or
 - (b) an order under Part 12 of the *Strata Schemes Management Act 2015*, or
 - (c) another Act or law.
- (6) Subject to this Act and the regulations, a provision in any instrument under which the agreement is excluded, modified or restricted is void.
- (7) Without limiting subsection (6), a provision of a strata development contract relating to a strata scheme is void to the extent that it is inconsistent with a provision of a strata management statement relating to the scheme.
- (8) A covenant entered into under the agreement does not merge in a transfer of a lot.
- (9) This section does not affect a right or remedy that a person may have under a strata management statement apart from a right or remedy under this Part.

Division 2 Easements

106 Easements on registration of strata plan that creates part strata parcel

- (1) On registration of a plan as a strata plan that creates a part strata parcel, the following easements are implied in relation to the lots and common property comprising the part strata parcel and situated within a building:
 - (a) an easement benefiting the lots and common property for their subjacent and lateral support and burdening other parts of the building capable of affording support,
 - (b) an easement burdening the lots and common property for subjacent and lateral support and benefiting other parts of the building capable of enjoying support,

- (c) an easement benefiting the lots and common property for their shelter and burdening all other parts of the building capable of affording shelter,
 - (d) an easement burdening the lots and common property for shelter and benefiting other parts of the building capable of being sheltered by the lots and common property.
- (2) All ancillary rights and obligations reasonably necessary to make easements effective apply in relation to the easements.
- (3) An easement for support or shelter:
 - (a) entitles the owner of the dominant tenement to enter the servient tenement to replace, renew or restore the support or shelter, and
 - (b) subsists until the easement is extinguished.
- (4) The Registrar-General must record the easements in the Register.
- (5) This section applies despite section 88 of the *Conveyancing Act 1919*.

107 Other easements in particular strata schemes

- (1) This section applies if an instrument lodged with a strata plan that creates a part strata parcel purports to create any of the following easements burdening or benefiting the part strata parcel or the land comprised in the part strata parcel:
 - (a) a right of vehicular access,
 - (b) a right of personal access,
 - (c) an easement for a specified service.
- (2) The rights and obligations conferred or imposed by the easement are the rights and obligations specified in Schedule 5, other than to the extent the rights or obligations are varied or negated under this section or in the instrument.
- (3) The terms of an easement referred to in subsection (1) may be varied under section 47 of the *Real Property Act 1900*, to the extent the terms relate to:
 - (a) the responsibility for maintaining in good order or repairing the access or other things required for enjoyment of the easement, or
 - (b) the proportions in which the persons having the benefit or burden of the easement are liable to contribute to the cost of maintaining in good order or repairing the access or other things.
- (4) On application by a person who has an estate or interest in land that has the benefit or burden of an easement to which this section applies, the Supreme Court may, by order, vary the terms of the easement to the extent the terms relate to a matter referred to in subsection (3) (a) or (b).
- (5) The Registrar-General must, on application made in the approved form, make all necessary recordings in the Register to give effect to an order.
- (6) On registration under subsection (5), an order is binding on all persons entitled or later becoming entitled to the easement, whether of full age or capacity or not and whether the persons are

parties to the proceedings or have been served with notice or not.

- (7) Despite section 88 of the *Conveyancing Act 1919*, the site of an easement for a specified service need not be identified on the strata plan.

- (8) In this section:

drainage includes the product of rain, a storm, soakage, a spring or seepage.

service means a water, sewerage, drainage, gas, electricity, oil, garbage, conditioned air, telephone, television or radio impulses or signals service or another service prescribed by the regulations.

Division 3 Miscellaneous

108 Registered building management statement taken to be strata management statement

- (1) This section applies if the Registrar-General:
- (a) registers a plan as a strata plan that creates a part strata parcel, and
 - (b) under section 99 (2), waives the requirement for a strata management statement because a registered building management statement is in force for the building and its site.
- (2) On registration of the plan, the building management statement is taken to be the registered strata management statement for the building and its site.

109 Obligation of lessee to comply with particular management statements

In a lease of a lot or common property in a strata scheme that is part of a community scheme, an agreement by the lessee to comply with the following is implied:

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

110 Obligation to give information about particular management statements

If it is proposed to grant a lease of a lot or common property in a strata scheme that is part of a community scheme, the lessor must include a copy of the following with the copy of the lease to be signed by the lessee:

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

Maximum penalty: 1 penalty unit.

Part 7 Compulsory acquisition of lots and common property

111 Application of Part

This Part does not apply to:

- (a) an easement, or
- (b) land in a strata scheme that is part of a community scheme.

112 Restriction on resumptions affecting parcels

(1) A resuming authority cannot resume land:

- (a) comprising solely common property, unless the resumed land is defined in the notice of resumption as a lot in a current plan, or
- (b) comprising or including all the lots in a strata scheme, unless:
 - (i) the resumed land also includes all common property in the scheme and the notice of resumption states whether the resumed land is to be excluded from the strata scheme or to remain in the scheme, and
 - (ii) if any resumed land is to be excluded from the scheme—the resumed land is defined in the notice of resumption as a lot in a current plan, and
 - (iii) if any resumed land is a lot that is to remain in the scheme—the resumed land is defined in the notice of resumption as one or more lots in a strata plan, strata plan of subdivision or strata plan of consolidation, or
- (c) comprising some, but not all, of the lots in a strata scheme and any common property in the scheme, unless:
 - (i) the notice of resumption states whether the resumed land is to be excluded from the strata scheme or to remain in the scheme, and
 - (ii) if any resumed land is to be excluded from the scheme—the resumed land is defined in the notice of resumption as a lot in a current plan, and
 - (iii) if any resumed land is a lot that is to remain in the scheme—the resumed land is defined in the notice of resumption as one or more lots in a strata plan, strata plan of subdivision or strata plan of consolidation.

(2) This section applies despite any other Act.

113 Requirements for registration of plans to effect resumption

- (1) The Registrar-General must not register a plan that relates to a parcel and is lodged by a resuming authority to effect a resumption referred to in section 112 (1) unless:
 - (a) the notice of resumption complies with that subsection, and
 - (b) the plan includes a statement or otherwise indicates that registration of the plan is required to effect the resumption, and

- (c) if the plan is lodged for registration as a current plan that relates to all the lots and all the common property in a strata scheme—it is accompanied by a certified or office copy of the minute of an order made under section 136 in relation to the resumption, and
 - (d) if the plan is lodged for registration as a current plan that does not relate solely to common property and is not a plan to which paragraph (c) applies—it is accompanied by a certified or office copy of the minute of an order made under section 115, 131 or 136, or an order dismissing the application for any such order, in relation to the resumption.
- (2) Despite section 22, a plan that is intended to effect a resumption and is lodged for registration as a strata plan of subdivision may be registered if it is signed or sealed by or on behalf of the resuming authority.
- (3) Despite section 195D (1) of the *Conveyancing Act 1919*, a plan that is intended to effect a resumption and is lodged for registration as a current plan may be registered if it is signed or sealed by or on behalf of the resuming authority.

114 Effect of resumption

- (1) If land was common property immediately before its resumption, the land ceases to be common property and this Act ceases to apply to the land on its resumption.
- (2) However, subsection (1) does not apply to a resumption of all lots and all common property in a strata scheme if the notice of resumption states the resumed land is to remain in the scheme.
- (3) If a notice of resumption states that any resumed lots in a strata scheme are to be excluded from the scheme, the lots cease to be subject to the strata scheme, and this Act ceases to apply to the lots, on the resumption.
- (4) If a notice of resumption states that any resumed land is to remain in the scheme, this Act applies in relation to the resuming authority and the resumed land as if the resuming authority had acquired the land by registration under the *Real Property Act 1900* of a transfer.
- (5) Subsection (4) applies despite any other Act.

115 Readjustment of strata scheme for purposes of resumption

- (1) A resuming authority may apply to the Supreme Court for an order under subsection (4) if the resuming authority:
 - (a) proposes to resume land in a parcel and the land does not consist solely of common property or of all the lots and all the common property comprised in the parcel, and
 - (b) proposes to exclude the land from the strata scheme.
- (2) Notice of the application must be served, in accordance with rules of court, on:
 - (a) each owner and registered mortgagee of a lot in the strata scheme, and
 - (b) if the strata scheme is a leasehold strata scheme—the lessor of the scheme, and
 - (c) the owners corporation, and
 - (d) if part of a lot is proposed to be resumed and the local council has not approved of a plan

- referred to in section 113 (1) (d) relating to the part—the local council, and
- (e) the Registrar-General, and
 - (f) any other person directed by the Supreme Court.
- (3) A person who is entitled to be served with a notice under subsection (2) and the resuming authority are entitled to appear and be heard on the hearing of the application.
- (4) The Supreme Court may, on an application made under subsection (1), make an order for or in relation to any one or more of the following matters:
- (a) amending the existing schedule of unit entitlement or substituting a new schedule of unit entitlement for the existing schedule of unit entitlement,
 - (b) if part of a lot is to be resumed and the resuming authority proposes to exclude the part from the strata scheme—designating as a lot the residue of the lot affected by the resumption,
 - (c) amending a strata development contract that relates to the parcel,
 - (d) requiring the resuming authority, when resuming the land referred to in its application, also to resume any residue referred to in paragraph (b) so that the residue will either be excluded from the strata scheme or remain subject to the scheme, according to the terms of the order,
 - (e) with the consent of the owner of a lot part of which is proposed to be resumed—vesting, freed and discharged from any mortgage, charge, covenant charge or writ, any other part of the lot in the owners corporation as common property,
 - (f) any matter in relation to which the Supreme Court considers it just and equitable, in the circumstances of the case, to make provision in the order.
- (5) An order made under subsection (4):
- (a) takes effect on the day on which the resumption referred to in the order takes effect, and
 - (b) has effect according to its tenor.
- (6) If, on an application made under subsection (1), the Supreme Court considers that an order should not be made under subsection (4):
- (a) the court may, on application made by any person entitled to appear and be heard on the hearing of the application or on its own initiative, direct that the application be treated as an application for an order under section 131 or 136, and
 - (b) if the court makes a direction referred to in paragraph (a):
 - (i) the application the subject of the direction is taken to be an application made under section 130 or 135 by a person entitled to make the application, and
 - (ii) the applicant under subsection (1), and any other person entitled to appear and be heard under those sections, is entitled to appear and be heard on the hearing of the application.

116 Costs

The costs of proceedings for an application under section 115 are payable by the resuming authority unless the Supreme Court otherwise orders.

117 Common property not to pass with lot or part of lot in certain circumstances

A resuming authority does not acquire any interest in common property in a strata scheme merely because it resumes the whole or part of a lot that immediately before the resumption was a lot in the scheme if the notice of resumption states that the lot is to be excluded from the scheme.

118 Severance of lots by resumption

For the purposes of any Act relating to the payment of compensation on the resumption of land:

- (a) a part of a lot that is resumed is taken to be severed from every other part of the lot, whether or not the part and any other part are contiguous, and
- (b) if the resumed land or any part of the resumed land is common property, the beneficial interests of the owners in the common property is taken to be vested in the owners corporation to the exclusion of the owners for the purposes of any claim for or the payment of compensation in relation to the resumption.

119 Resumption by authority bound by Act

- (1) Despite section 8 of the *Land Acquisition (Just Terms Compensation) Act 1991*, a resumption of land to which this Part and that Act apply must comply with this Part and that Act.
- (2) A resumption of land to which this Part applies and to which Part 12 of the *Roads Act 1993* applies must comply with this Part and that Part.
- (3) If there is an inconsistency between this Part and an Act referred to in subsection (1) or (2), this Part prevails to the extent of the inconsistency.

120 Resumption by authority not bound by Act

If a part of a parcel is resumed by a resuming authority that is not bound by this Act and does not comply with this Part, the owners corporation or a person affected by the resumption may apply under Part 9 for an order under section 131 (Order to vary strata scheme), as if the building had been damaged or destroyed, or for an order under section 136 (Order to terminate strata scheme).

Part 8 Particular functions of Registrar-General

121 Registration of plans and other instruments

- (1) The Registrar-General may, subject to and for the purposes of this Act, register a plan or other instrument lodged for registration.
- (2) A plan is registered as a strata plan, strata plan of subdivision, strata plan of consolidation or building alteration plan when the Registrar-General records on the plan, in the Register or in another record kept by the Registrar-General, the matters about the plan the Registrar-General considers appropriate.
- (3) Subsection (2) is subject to sections 11 (2) and 16 (2).

Note. Under sections 11 (2) and 16 (2), a plan that is lodged for registration as a strata plan or strata plan of subdivision for a leasehold strata scheme and is required to be accompanied by a lease or leases for registration under the [Real Property Act 1900](#) is taken to be registered only when the lease or leases are registered.

- (4) A notice is registered as a notice of conversion when the Registrar-General records the notice in the Register.
- (5) Despite any other provision of this Act, a plan or notice referred to in this section must not be registered unless all other plans or documents prescribed by the regulations are lodged with the plan or notice.

122 Provisions applying to plans and certain other documents

- (1) The Registrar-General may copy a document and certify the copy as a true copy of the document (a *certified copy*).
- (2) A certified copy has, for all purposes, the same validity and effect as the original document to which it relates.
- (3) If the Registrar-General certifies a document under subsection (1), the Registrar-General may destroy, or cease to keep in electronic form, the original document to which the certified copy relates.
- (4) In this section:

document means:

- (a) a plan, strata development contract or strata management statement, or amendment of a strata development contract or strata management statement, that is registered, or
- (b) a copy of a document referred to in paragraph (a), or
- (c) a strata plan or strata plan of resubdivision within the meaning of the repealed [Conveyancing \(Strata Titles\) Act 1961](#).

123 Power to adjust unit entitlements

- (1) If a whole number is obtained by dividing by a whole number the unit entitlements of the lots and proposed lots shown on a proposed schedule of unit entitlement for a strata scheme that accompanies a plan lodged for registration, or on a revised schedule of unit entitlement lodged under section 90, the Registrar-General may, in registering the plan, record in the folio for the common property:
 - (a) as the unit entitlement of each lot, the whole number obtained in relation to the lot, and
 - (b) as the aggregate unit entitlement, the appropriate aggregate unit entitlement.
- (2) If a whole number is obtained by dividing by a whole number the unit entitlement of each lot in a strata scheme, the Registrar-General may amend the schedule of unit entitlement recorded in the folio for the common property:
 - (a) by substituting for the unit entitlement of each lot a unit entitlement equal to the whole number obtained in relation to the lot, and

- (b) by substituting for the aggregate unit entitlement the appropriate aggregate unit entitlement.
- (3) The Registrar-General must, on making a recording or amendment under this section, give the owners corporation of the strata scheme written notice of the unit entitlements and aggregate unit entitlement recorded.

124 Recordings about restrictive use conditions

- (1) If a strata certificate issued by a local council is subject to a restrictive use condition, or a strata certificate issued by an accredited certifier has a notation of a restrictive use condition, the Registrar-General must, on creating a folio for the lot, record the condition in the folio.
- (2) A condition recorded under subsection (1) is an interest for the purposes of section 42 of the *Real Property Act 1900*.
- (3) On lodgment of an instrument referred to in section 64, the Registrar-General must record the instrument in the Register.
- (4) When the Registrar-General makes the record, the utility lot to which the instrument relates is released from the restriction referred to in the instrument.

125 Prohibition on recordings in the Register in certain circumstances

- (1) This section applies if the Registrar-General registers a strata plan of subdivision or a current plan in relation to a resumption referred to in section 112 (1).
- (2) Until the Registrar-General makes a recording in the Register under section 31A (3) of the *Real Property Act 1900* in relation to the resumption, the Registrar-General must not:
 - (a) create a folio for a lot comprised in the strata plan of subdivision or a current plan lot in the current plan, or
 - (b) make a recording in the Register by reference to any such lot or current plan lot.

126 Certain recordings to be made by Registrar-General

- (1) If the Registrar-General registers a strata plan of subdivision that is not a plan referred to in section 125, or registers a strata plan of consolidation, the Registrar-General must:
 - (a) cancel the folio for any former lot subdivided or consolidated by the registration of the plan, and
 - (b) create a folio for each new lot created by the subdivision or consolidation, and
 - (c) amend the schedule of unit entitlement recorded in the folio for the common property in the strata scheme by recording in the folio the matters the Registrar-General considers appropriate.
- (2) If the Registrar-General registers a notice of conversion of a lot into common property, the Registrar-General must:
 - (a) cancel the folio for the converted lot, and
 - (b) amend the schedule of unit entitlement recorded in the folio for the common property in the

strata scheme by recording in the folio the matters the Registrar-General considers appropriate.

127 Functions if resumed land remains in strata scheme

- (1) Subsection (2) applies if the whole of a lot, other than a lot in a strata plan of subdivision referred to in section 125, is resumed and the notice of resumption states that the resumed land is to remain in the strata scheme.
- (2) A recording in the Register that the Registrar-General is, under section 31A (3) of the *Real Property Act 1900*, authorised or required to make in relation to the resumption must be made in the folio for the resumed lot.
- (3) Subsection (4) applies if the whole of a lot in a strata plan of subdivision referred to in section 125 is resumed and the notice of resumption states that the resumed land is to be excluded from the strata scheme.
- (4) The Registrar-General must, after making a recording in the Register under section 31A (3) of the *Real Property Act 1900*, in relation to the resumption:
 - (a) cancel the folio for the subdivided lot, and
 - (b) create a folio for each new lot, and
 - (c) amend the schedule of unit entitlement recorded in the folio for the common property in the strata scheme by recording in the folio the matters the Registrar-General considers appropriate.

128 Functions if resumed land is excluded from strata scheme

- (1) If land consisting solely of common property is resumed, any recording in the Register that, under section 31A (3) of the *Real Property Act 1900*, the Registrar-General is authorised or required to make must be made in the folio for the common property.
- (2) Subsection (3) applies if:
 - (a) the whole of a parcel or any part of a parcel that does not consist of common property is resumed, and
 - (b) the notice of resumption states that the resumed land is to be excluded from the strata scheme, and
 - (c) the Registrar-General makes a recording in the Register under section 31A (3) of the *Real Property Act 1900* in relation to the resumption.
- (3) The Registrar-General must make the recordings in the Register and create the folios the Registrar-General considers necessary or appropriate to give effect to the order made under section 115, 131 or 136 in relation to the resumed land and the strata scheme.

Part 9 Variation or termination of strata schemes

Division 1 Preliminary

129 Definitions

In this Part:

court means the Supreme Court.

section 115 termination application means an application made under section 115 that, under section 115 (6) or under sections 115 (6) and 133, is treated as an application for an order under section 136.

section 115 variation application means an application made under section 115 that, under section 115 (6) or under sections 115 (6) and 140, is treated as an application for an order under section 131.

termination order:

- (a) for Division 3—see section 136 (1), or
- (b) for Division 4—see section 143 (1) (a).

variation order—see section 131 (1).

Division 2 Variation of strata schemes

130 Application for order consequent on damage to or destruction of building

- (1) If a building the subject of a strata scheme is damaged or destroyed, any of the following persons may apply to the court for a variation order for the scheme:
 - (a) an owner of a lot in the scheme,
 - (b) a registered mortgagee or covenant chargee of a lot in the scheme,
 - (c) if the scheme is a leasehold strata scheme—the lessor of the scheme,
 - (d) the owners corporation.
- (2) Notice of the application must be served, in accordance with rules of court, on:
 - (a) each person referred to in subsection (1), other than the applicant, and
 - (b) the local council, and
 - (c) the Registrar-General, and
 - (d) any other person directed by the court.
- (3) The applicant and each person entitled to be served with notice of the application may appear and be heard on the hearing of the application.

131 Order to vary strata scheme

- (1) The court may, on an application made under section 130, make an order in relation to the

variation of an existing strata scheme or the substitution for the existing strata scheme of a new strata scheme (each a **variation order**).

- (2) A variation order may include directions about any of the following:
- (a) the substitution for the existing schedule of unit entitlement of a new schedule of unit entitlement,
 - (b) the reinstatement in whole or in part of the building or, in the case of a part strata parcel, of the part of the building subject to the scheme,
 - (c) the amendment of any strata development contract or strata management statement that relates to the parcel,
 - (d) the transfer to or vesting in the owners corporation, free from mortgages, charges, covenant charges and writs, of the interests of owners of lots that have been wholly or partly destroyed,
 - (e) the application of insurance amounts received by the owners corporation in relation to the damage to or destruction of the building,
 - (f) the payment of amounts to or by the owners corporation, an owner of a lot or a lessor of a leasehold strata scheme,
 - (g) if the order is made on a section 115 variation application—any matter referred to in section 115 (4),
 - (h) if the application for the order is authorised by section 120—any matter referred to in section 115 (4) (a), (b) or (e),
 - (i) any matter in relation to which the court considers it just and equitable, in the circumstances of the case, to make provision in the order.
- (3) A variation order has effect according to its tenor.
- (4) The court may, from time to time, change a variation order on the application of any person entitled to appear and be heard on the hearing of the application for the order.

132 When order takes effect

A variation order takes effect:

- (a) if the order is made on a section 115 variation application or an application authorised by section 120—on the day on which the resumption referred to in the order takes effect, or
- (b) otherwise—on the day specified in the order.

133 Direction of court to treat application differently

- (1) If the court considers that a variation order should not be made, it may, on application made by any person entitled to appear and be heard on the hearing of the application for the order or on its own initiative, direct that the application be treated as an application for an order under section 136.

- (2) If the court makes a direction under subsection (1):
 - (a) the application the subject of the direction is taken to be made under section 135 by a person entitled to make the application, and
 - (b) the applicant for the variation order, and any other person entitled to appear and be heard under that section, is entitled to appear and be heard on the hearing of the application.

134 Costs

Unless the court otherwise orders, the costs of proceedings under this Division on a section 115 variation application are payable by the resuming authority.

Division 3 Termination of strata schemes by order of court

135 Application for order to terminate strata scheme

- (1) Any of the following persons may apply to the court for a termination order for a strata scheme:
 - (a) an owner of a lot in the scheme,
 - (b) a mortgagee or covenant chargee of a lot in the scheme,
 - (c) if the scheme is a leasehold strata scheme—the lessor of the scheme,
 - (d) the owners corporation.
- (2) Notice of the application must be served, in accordance with rules of court, on:
 - (a) each person referred to in subsection (1), other than the applicant, and
 - (b) the local council, and
 - (c) the Registrar-General, and
 - (d) any other person (including creditors of the owners corporation) directed by the court.
- (3) The applicant and each person entitled to be served with notice of the application may appear and be heard on the hearing of the application.
- (4) An application under subsection (1) (b) may be made by a prescribed authority having the benefit of a positive covenant only if the authority has applied under section 88I of the [Conveyancing Act 1919](#) for an order that the land the subject of the strata scheme be transferred to the authority.
- (5) In subsection (4), **prescribed authority** means a prescribed authority within the meaning of section 88D or 88E of the [Conveyancing Act 1919](#).

136 Order to terminate strata scheme

- (1) The court may, on an application made under section 135, make an order terminating a strata scheme (a **termination order**).
- (2) A termination order may include directions about any of the following:

- (a) the sale or disposition of property of the owners corporation,
 - (b) the discharge of the liabilities of the owners corporation,
 - (c) the termination of any development scheme that relates to the parcel and the cancellation of the strata development contract,
 - (d) the termination or amendment of a strata management statement that relates to the parcel,
 - (e) the persons liable to contribute amounts required for the discharge of the liabilities of the owners corporation and the proportionate liability of the persons,
 - (f) the distribution of the assets of the owners corporation and the proportionate entitlement of each person under the distribution,
 - (g) the administration, powers, authorities, duties and functions of the owners corporation,
 - (h) the voting power at meetings of the owners corporation of persons referred to in paragraph (e) or (f),
 - (i) the winding up of the owners corporation, including the appointment, powers, authorities, duties and functions of any person to carry out the winding up,
 - (j) any matter in relation to which the court considers it just and equitable, in the circumstances of the case, to make provision in the order.
- (3) The court may, from time to time, change a termination order on the application of any person entitled to appear and be heard on the hearing of the application for the order.

137 When order takes effect

A termination order takes effect:

- (a) if the order is made on a section 115 termination application or an application authorised by section 120—on the day on which the resumption referred to in the order takes effect, or
- (b) otherwise—on the day specified in the order.

138 Effect of order

(1) When a termination order takes effect:

- (a) the estate or interest of the former owners in the part of the former parcel that consisted of common property vested in the owners corporation as agent for the former owners vests in the owners corporation as principal, subject only to an estate or interest recorded in:
 - (i) the folio, or on any registered lease or registered sublease, evidencing the estate or interest of the owners corporation in the common property, or
 - (ii) the relevant folio created under section 29 (1), and
- (b) the estate or interest of each person in the part of the former parcel that did not consist of common property vests in the owners corporation as principal, subject only to an estate or interest recorded in:

- (i) the folio evidencing the estate or interest of the owners corporation in the common property comprised in the former parcel, or
 - (ii) the relevant folio created under section 29 (1),to the extent the recorded estate or interest was capable of affecting a former lot, and
 - (c) each person who, immediately before the order took effect, was an owner of a lot in the strata scheme ceases to be an owner of a lot in the scheme, and
 - (d) each person whose estate or interest is divested by paragraph (b) has instead the rights and liabilities conferred or imposed on the person by the order, and
 - (e) if the strata scheme is a leasehold strata scheme and the leases or another agreement provide for the payment of compensation for the value of improvements comprised in the parcel—the former lessor under the scheme is liable to pay compensation to each former owner for the value of the improvements comprised in the former parcel that is attributable to the lot leased by the former owner.
- (2) Compensation payable under subsection (1) (e) is to be determined in accordance with the formula set out in Schedule 6 or as otherwise agreed by the former lessor and former owner.
- (3) A termination order has effect according to its tenor and despite any provision of this Act, other than this Division.

139 Dealing with disputes about value of improvements for leasehold strata schemes

- (1) If, in relation to a former lot in a leasehold strata scheme that is terminated by a termination order, there is a dispute about the amount of compensation to be paid for the value of improvements attributable to the lot, the dispute must be resolved:
- (a) if provided for under the lease of the lot or the parties to the dispute otherwise agree—by arbitration under the *Commercial Arbitration Act 2010*, or
 - (b) otherwise—by order of the court.
- (2) An application for an order of the court may be made by any party to the dispute.
- (3) Notice of the application must be served, in accordance with rules of court, on the persons directed by the court.
- (4) As far as practicable, all applications relating to the same leasehold strata scheme must be heard together.

140 Direction of court to treat application differently

- (1) If the court considers that a termination order should not be made, it may, on application made by any person entitled to appear and be heard on the hearing of the application for the order or on its own initiative, direct that the application be treated as an application for a variation order.
- (2) If the court makes a direction under subsection (1):
- (a) the application the subject of the direction is taken to be made under section 130 by a person entitled to make the application, and

- (b) the applicant for the termination order, and any other person entitled to appear and be heard under that section, is entitled to appear and be heard on the hearing of the application.

141 Costs

Unless the court otherwise orders, the costs of proceedings under this Division in relation to the following applications are payable by the resuming authority:

- (a) a section 115 termination application,
- (b) an application made under section 135 in relation to a proposed resumption of all the lots and all the common property in a strata scheme.

Division 4 Termination of strata schemes by Registrar-General

142 Application to Registrar-General for termination of strata scheme

- (1) A person may apply to the Registrar-General for termination of a strata scheme, unless the scheme relates to a parcel that is subject to a strata development contract.
- (2) Unless the Registrar-General otherwise agrees, the applicant must, at least 14 days before the application is made, publish details of the proposed termination, and a statement of intention to make the application:
 - (a) in a daily newspaper circulating generally in the State, and
 - (b) in a local newspaper circulating generally in the area in which the parcel is situated.
- (3) Unless the Registrar-General otherwise agrees, the application must be signed by all of the following:
 - (a) each owner of a lot in the scheme,
 - (b) if the scheme is a leasehold strata scheme—the lessor of the scheme,
 - (c) each registered lessee of a lot in the scheme,
 - (d) each registered mortgagee, chargee and covenant chargee of a lot or of a registered lease of a lot or of the common property, if any, in the scheme.
- (4) Also, the application must be signed by the planning authority, if any, for subdivision of the land to which it relates.
- (5) The application must be accompanied by:
 - (a) the certificates of title for all the lots and common property in the scheme, unless the Registrar-General otherwise agrees, and
 - (b) the other documents, consents and evidence the Registrar-General requires, and
 - (c) if required by the Registrar-General, a plan for the parcel acceptable for registration as a deposited plan and signed or consented to as required by Division 3 of Part 23 of the *Conveyancing Act 1919*.

143 Decision about terminating strata scheme

- (1) On receiving an application to terminate a strata scheme, the Registrar-General may:
 - (a) make an order terminating the scheme (a *termination order*), or
 - (b) refuse to terminate the scheme.
- (2) A refusal by the Registrar-General to terminate a strata scheme does not prevent an application being made under section 135 for termination of the scheme.

144 When order takes effect

A termination order takes effect when it is recorded by the Registrar-General in the folio for the land comprising the parcel.

145 Registrar-General to record termination of strata scheme

On recording a termination order, the Registrar-General must:

- (a) cancel the folios for the lots and common property in the former parcel, and
- (b) if the strata scheme is a freehold strata scheme—create a folio or folios for the land in the former parcel.

146 Effect of order for freehold strata scheme

When a termination order relating to a freehold strata scheme takes effect:

- (a) the owners corporation is dissolved and the strata scheme is terminated, and
- (b) the land in the former parcel immediately before the scheme was terminated and the assets of the former owners corporation vest in the former owners as tenants in common in shares proportional to the unit entitlements of their former lots (or in the former owners or in the other proportions set out in the application), and
- (c) the estate or interest of the former owners in land vested by this section is subject to any estate or interest registered or recorded, immediately before termination of the scheme, in the folios for the lots and the common property in the former parcel, and
- (d) the former owners of lots are liable for the liabilities of the owners corporation in shares proportional to the unit entitlements of their former lots, and
- (e) any legal proceedings begun by or against the owners corporation may be completed by or against the former owners.

147 Effect of order for leasehold strata scheme

When a termination order relating to a leasehold strata scheme takes effect:

- (a) the owners corporation is dissolved and the strata scheme is terminated, and
- (b) the former leases of each former lot and the former lease of the common property are determined, and

- (c) the persons who, immediately before the order took effect, were owners or lessees of the lots in the scheme cease to be owners or lessees of the lots, and
- (d) the former owners of the lots are liable for the liabilities of the owners corporation in shares proportional to the unit entitlements of their former lots, and
- (e) any legal proceedings begun by or against the owners corporation may be completed by or against the former owners, and
- (f) the assets of the former owners corporation immediately before the order took effect vest in the former lessor of the scheme or, if the application so provides, in the former owners as tenants in common in shares proportional to the unit entitlements of their former lots (or in the former owners or in the other proportions set out in the application), and
- (g) the land that comprises the former parcel is vested in the former lessor of the scheme freed and discharged from any mortgage or charge registered, immediately before termination of the scheme, in the folio for a lease of a lot or the common property in the former scheme.

Division 5 Termination of leasehold strata schemes on expiry of leases

148 Termination on expiry of leases

- (1) When all leases of the lots and common property in a leasehold strata scheme expire or are otherwise determined without being wholly or partly replaced by further leases of the lots or common property registered under the *Real Property Act 1900*:
 - (a) the scheme is terminated, and
 - (b) the owners corporation is dissolved, and
 - (c) if the leases or another agreement provide for the payment of compensation for the value of improvements comprised in the parcel—the former lessor of the scheme is liable to pay compensation to each former owner for the value of the improvements that is attributable to the former owner's lot, and
 - (d) all rights vested in the owners corporation immediately before its dissolution that, but for the dissolution, would have survived the expiry of the leases are vested in the former owners, and
 - (e) the former owners become jointly and severally liable for all of the liabilities of the owners corporation subsisting immediately before its dissolution, and
 - (f) legal proceedings begun by or against the owners corporation may be completed by or against the former owners.
- (2) Compensation payable under subsection (1) (c) is to be determined in accordance with the formula set out in Schedule 6 or as otherwise agreed by the former lessor and former owner.
- (3) As soon as practicable after the termination of a leasehold strata scheme, the Registrar-General must, on application of the former lessor:
 - (a) cancel the folios for the leases of the lots and common property in the scheme, and

- (b) cancel the strata plan for the scheme, and
- (c) record on the folio for the parcel that was the subject of the scheme the fact that the scheme is terminated.

(4) Subsection (1) is subject to section 150.

149 Dispute about value of improvements

- (1) If there is a dispute about the amount of compensation to be paid to an owner or former owner for the value of improvements attributable to a lot, the dispute must be resolved:
 - (a) in the way provided for under the lease of the lot or agreed to by the parties to the dispute (for example, by arbitration under the *Commercial Arbitration Act 2010*), or
 - (b) otherwise—by order of the court.
- (2) An application for an order of the court may be made by any party to the dispute.
- (3) Notice of the application must be served, in accordance with rules of court, on the persons directed by the court.
- (4) As far as practicable, all applications relating to the same leasehold strata scheme must be heard together.

150 Order to continue owners corporation for specified purposes

- (1) At any time before the expiry of the leases of the lots and common property in a leasehold strata scheme, an owner of a lot in the scheme, the owners corporation or a creditor of the owners corporation may apply to the court for an order under subsection (4).
- (2) Notice of the application must be served, in accordance with rules of court, on each person referred to in subsection (1), other than the applicant, and on the other persons directed by the court.
- (3) The applicant and any person on whom notice must be served under subsection (2) is entitled to appear and be heard on the hearing of the application.
- (4) At the hearing of the application, the court may make an order to the effect that, despite the expiry of the leases of the lots and common property in the scheme, the owners corporation continues in existence for the purposes specified in the order until the date specified in the order or in a further order of the court.
- (5) The order may include directions relating to any of the following matters:
 - (a) the sale or disposition of property of the owners corporation,
 - (b) the discharge of the liabilities of the owners corporation,
 - (c) the termination of any development scheme,
 - (d) the persons liable to contribute money for the discharge of the liabilities of the owners corporation and the proportionate liability of the persons,

- (e) the distribution of the assets of the owners corporation and the proportionate entitlement of each person under the distribution,
 - (f) the administration and functions of the owners corporation,
 - (g) pending legal proceedings that have been brought by or against the owners corporation,
 - (h) the voting power at meetings of the owners corporation of persons referred to in paragraphs (d) and (e),
 - (i) the winding up of the owners corporation, including the appointment and functions of a person to carry out the winding up,
 - (j) another matter in relation to which the court considers it is just and equitable to make provision in the order.
- (6) The order has effect despite any other provision of this Act.
- (7) The court may vary an order made under subsection (4) on the application of any person who was entitled to appear and be heard on the hearing of the application for the order.

Division 6 Miscellaneous

151 Interchangeability of notices

A notice served under section 115, 130 or 135 may, if it relates to an application that is required to be treated as an application under another of those sections, be taken to be a notice served under the other section.

152 Consequences of making order

- (1) Subject to section 128 (3), on receiving a certified or office copy of the minute of a variation order or a termination order under Division 3 (including an order relating to an amendment or cancellation of a strata development contract), the Registrar-General must make appropriate recordings in the Register to give effect to the order.
- (2) If, on receiving a certified or office copy of the minute of a termination order under Division 3, the Registrar-General is required by subsection (1) to make recordings in the Register, the Registrar-General must:
 - (a) cancel the folios that evidence title to the lots and common property in the former strata scheme, and
 - (b) if the scheme is a freehold strata scheme—create a folio for the estate or interest in the former parcel that is vested in the owners corporation on the order taking effect, and
 - (c) if the scheme is a leasehold strata scheme—record in the folio evidencing the lessor's reversion in the former parcel that the owners corporation is the lessee of the part of the parcel that contained the former lots and common property in the scheme, together with any other estates or interests to which the leasehold estate of the owners corporation in that part continues to be subject.

Part 10 Strata renewal process for freehold strata schemes

Division 1 Preliminary

153 Application and purpose of Part

- (1) This Part applies to freehold strata schemes other than the following schemes:
 - (a) a scheme relating to a parcel that is the subject of a development contract,
 - (b) a scheme in which one or more of the lots in the scheme are, or form part of, a retirement village within the meaning of the *Retirement Villages Act 1999*.
- (2) The purpose of this Part is to facilitate the collective sale or redevelopment of freehold strata schemes in accordance with the process set out in this Part.

154 Definitions

In this Part:

ancillary order—see section 186 (1).

collective sale of a strata scheme means a sale of the whole strata scheme.

compensation value, in relation to a lot, means:

- (a) the compensation to which the owner of the lot would be entitled as determined under section 55 of the *Land Acquisition (Just Terms Compensation) Act 1991* (subject to any modifications prescribed by the regulations), or
- (b) if the regulations prescribe a different method of determining that value—the value of the lot determined in accordance with that method.

court means the Land and Environment Court.

developer means a person or group of persons proposing to carry out a redevelopment of a strata scheme in accordance with a strata renewal plan.

dissenting owner, in relation to a strata renewal plan, means an owner of a lot in relation to which a support notice is not in effect under this Part for the plan.

independent valuer means a qualified valuer who:

- (a) has appropriate experience or expertise to undertake valuations for the purpose of this Part, and
- (b) has no pecuniary or other interest that could reasonably be regarded as capable of affecting the qualified valuer's ability to give the valuations in good faith.

market value, in relation to a building and its site, means the value of the building and its site determined in accordance with the regulations.

objection means an objection filed in the court in accordance with section 180.

operational period of a strata renewal committee means the period for which the committee may,

under section 166, exercise its function.

qualified request means a qualified request under section 19 of the *Strata Schemes Management Act 2015*.

redevelopment of a strata scheme means a redevelopment of the whole strata scheme in a way that alters the scheme to the extent that its termination and replacement by a further strata plan is necessary.

required level of support, in relation to a strata renewal plan for a strata scheme, means the support (given in support notices that are in effect under this Part) of the owner or owners of at least 75% of the lots, other than utility lots, in the scheme.

returning officer for a strata renewal plan means a person who is appointed as the returning officer for the strata renewal plan in accordance with the regulations.

strata renewal committee means a strata renewal committee established under section 160.

strata renewal plan means a strata renewal plan prepared in accordance with this Part for a strata scheme.

strata renewal proposal—see section 156 (1).

support notice—see section 174 (1).

155 Application of *Strata Schemes Management Act 2015*

- (1) If there is an inconsistency between the *Strata Schemes Management Act 2015* and this Part or an order of the court made under this Part, this Part and the order prevail to the extent of the inconsistency.
- (2) To remove doubt, but subject to subsection (1):
 - (a) Schedule 1 to the *Strata Schemes Management Act 2015* applies in relation to a meeting of an owners corporation under this Part, and
 - (b) Schedule 2 to the *Strata Schemes Management Act 2015* applies in relation to a meeting of a strata committee under this Part.

Division 2 Strata renewal proposals

156 Submission of strata renewal proposal

- (1) Any person (whether or not the person is the owner of a lot) may give a written proposal for the collective sale or redevelopment of a strata scheme (a **strata renewal proposal**) to the owners corporation of the scheme.
- (2) A strata renewal proposal must include the information or other matters prescribed by the regulations.

Note. Under section 190, particular strata renewal proposals cannot be given to an owners corporation.

157 Strata committee to consider proposal

- (1) As soon as practicable (but no later than 30 days) after the owners corporation receives a strata renewal proposal, the strata committee of the owners corporation must consider it at a meeting of the committee.
- (2) The secretary of the owners corporation, or any other member of the strata committee, may convene the meeting.
- (3) The purpose of the meeting is to decide whether or not the strata committee considers the strata renewal proposal warrants further consideration by the owners corporation.
- (4) The minutes of the meeting must include:
 - (a) a complete copy of the strata renewal proposal, and
 - (b) detailed reasons for the decision.
- (5) The strata committee must give each owner of a lot in the strata scheme a copy of the minutes within 14 days after the meeting.

158 Convening general meeting to consider proposal

- (1) If the strata committee decides that the strata renewal proposal warrants further consideration by the owners corporation, it must, as soon as practicable (but no later than 30 days) after making the decision, convene a general meeting of the owners corporation to further consider the proposal.
- (2) Also, a general meeting of the owners corporation may be convened to consider the strata renewal proposal on a qualified request, whether or not the strata committee has considered the proposal or decided it warrants further consideration.
- (3) The purpose of the general meeting is to decide whether or not the owners corporation considers the strata renewal proposal warrants investigation by a strata renewal committee.
- (4) Notice of the general meeting must:
 - (a) comply with clause 1 of Schedule 7, and
 - (b) be given to each owner at least 14 days before the meeting.

159 Lapsing of proposal

- (1) This section applies if:
 - (a) the strata committee decides a strata renewal proposal does not warrant further consideration by the owners corporation and a qualified request to consider the proposal at a general meeting of the owners corporation has not been made within 44 days after the day the strata committee made the decision, or
 - (b) the owners corporation, under Division 3, decides a strata renewal proposal does not warrant investigation by a strata renewal committee.
- (2) The strata renewal proposal lapses for the purpose of this Part when the decision is made.

Division 3 Establishment, membership, function, operation and dissolution of strata renewal committees

160 Establishment of committee

- (1) If the owners corporation passes a motion that the strata renewal proposal warrants investigation by a strata renewal committee, the owners corporation must, by resolution at a meeting:
 - (a) establish a strata renewal committee to prepare a strata renewal plan for the strata scheme, and
 - (b) elect its members.
- (2) A person who has a financial interest in more than 25% of the lots (other than utility lots) in the strata scheme must not vote in a resolution to establish a strata renewal committee or be elected as a member of the committee unless the person has disclosed that fact to the owners corporation.
- (3) The strata renewal committee must consist of a chairperson and the number of other members, not more than 8, determined by the owners corporation.
- (4) A strata renewal committee is taken to be established on the day its members are first elected under this Division.
- (5) A motion for the resolution to establish a strata renewal committee may include forms of motion for the matters the owners corporation considers appropriate, including the matters referred to in clause 2 of Schedule 7.

161 Election of members

- (1) The owners corporation may elect, as members of the strata renewal committee, persons who are eligible for appointment or election to the strata committee of the owners corporation.
- (2) Before election under subsection (1), a person must disclose to the owners corporation any pecuniary or other interest the person may have relating to the strata renewal proposal that could conflict with the proper performance of the strata renewal committee's function.
- (3) A person may be a member of both the strata committee and the strata renewal committee.
- (4) Nomination for election as a member of a strata renewal committee may be made before or at the meeting at which it is established.

162 Notice of decision to establish committee

- (1) If a strata renewal committee is established for a strata scheme, the secretary of the owners corporation must, within 14 days after it is established, give written notice of the decision to the owner of each lot in the scheme.
- (2) The notice must include the information prescribed by the regulations.

163 Vacation of office

- (1) A person vacates office as a member of the strata renewal committee if the person:

- (a) is no longer eligible for appointment or election to the strata committee of the owners corporation, or
 - (b) was not an owner when elected as a member, or was a company nominee, and the individual who nominated the person for election, or the corporation for which the person is a company nominee, ceases to be an owner or notifies the owners corporation in writing that the person's office is vacated, or
 - (c) resigns office by written notice given to the owners corporation, or
 - (d) is removed from office by special resolution of the owners corporation.
- (2) The owners corporation may elect a person who is eligible to be a member of the strata renewal committee to fill a vacancy in the office of a member of the committee.

164 Function and operation of committee

- (1) The function of the strata renewal committee is to prepare a strata renewal plan, relating to the strata renewal proposal for the strata scheme, for consideration by the owners corporation and the owners in accordance with this Part.
- (2) In exercising its function, the strata renewal committee:
- (a) must not spend more than the amount that the committee has, by resolution of the owners corporation made from time to time, approval to spend in preparing the strata renewal plan, and
 - (b) may engage persons to help it prepare the strata renewal plan (for example, a person who gave the strata renewal proposal to the owners corporation), if the owners corporation has delegated to the committee the authority to do so.
- (3) The strata renewal committee may at any time ask the secretary of the owners corporation to convene a general meeting to approve:
- (a) amounts that may be spent by the committee in preparing a strata renewal plan, or
 - (b) any other matter relating to the operation of the committee or the exercise of its function.
- (4) If, when an act or proceeding of the strata renewal committee was done, taken or commenced, there was:
- (a) a vacancy in the office of a member of the committee, or
 - (b) any defect in the election of a member,
- any act or proceeding of the committee done in good faith is as valid as if the vacancy or defect did not exist and the committee were fully and properly constituted.

165 Conflicts of interest

- (1) If:
- (a) a member of a strata renewal committee has a pecuniary or other interest in the proposed collective sale or redevelopment under a strata renewal proposal, and

- (b) the interest may raise a conflict with the proper performance of the committee's function, the member must, as soon as practicable after becoming aware of the potential conflict, disclose the nature of the interest to a meeting of the strata committee.
- (2) On being informed of a matter under subsection (1), the strata committee must refer the matter to a meeting of the owners corporation for a decision by the owners corporation (having regard to the nature of the interest):
 - (a) to remove the member from office, or
 - (b) to allow the member to remain in the office and to require the member to abstain from voting at, or participating in, a meeting of the strata renewal committee on a matter relating to the member's interest, or
 - (c) to take no further action in relation to the matter and to allow the member to remain in the office.
- (3) A member of a strata renewal committee must comply with any requirement made under subsection (2) (b).

166 Period of operation of committee

Unless the strata renewal committee is earlier dissolved, the committee may exercise its function:

- (a) for 1 year after the day it is established, or
- (b) if the owners corporation, by special resolution made before the end of the period referred to in paragraph (a), extends that period—for the extended period.

167 Dissolution of committee

A strata renewal committee is dissolved on the earliest of the following days:

- (a) the day the owners corporation, by resolution, dissolves the committee,
- (b) the day the strata renewal plan prepared by the committee lapses under this Part,
- (c) the day the operational period of the committee ends, unless the required level of support for the strata renewal plan prepared by the committee has been obtained before that day,
- (d) the day the owners corporation decides to apply to the court for an order to give effect to the strata renewal plan prepared by the committee.

Division 4 Procedures of strata renewal committees

168 Meetings and voting

- (1) A strata renewal committee may hold its meetings at the times and in the way it decides.
- (2) The quorum for a meeting of a strata renewal committee is a majority of its members.
- (3) A decision supported by a majority of votes cast at a meeting of a strata renewal committee at which a quorum is present is the decision of the committee.

169 Minutes and record of decisions

- (1) A strata renewal committee must keep minutes of its meetings and a record of its decisions.
- (2) Within 14 days after a meeting of the strata renewal committee, the chairperson of the committee must:
 - (a) give a copy of the minutes of the meeting to the secretary of the owners corporation and to each member of the committee, and
 - (b) if the owners corporation has a notice board, place a copy of the minutes of the meeting on that notice board.
- (3) If asked by an owner of a lot in the strata scheme, the secretary of the owners corporation must give the owner a copy of the minutes of a meeting within 14 days after the request is made.
- (4) Nothing in this section requires the chairperson to give a copy of the minutes to himself or herself.

Division 5 Strata renewal plans

170 Content of strata renewal plan

- (1) A strata renewal plan for a strata scheme must include the following information:
 - (a) a general overview of the strata renewal proposal to which it relates,
 - (b) a full and frank statement by the proposed purchaser or developer of their intended use of the strata parcel,
 - (c) if the plan is for a collective sale of the scheme:
 - (i) the name of the purchaser, if known, or a proposal for marketing the parcel for sale by public auction or tender, and
 - (ii) the sale price (if known), or a minimum reserve price for the sale or details of the way in which a minimum reserve price for the sale is to be set, and
 - (iii) the proposed completion day for the sale, and
 - (iv) the proposed day on which the owners of the lots are to provide vacant possession of their lots, and
 - (v) the details, prescribed by the regulations, about costs and expenses to be deducted from the sale price, and
 - (vi) any other terms and conditions of the proposed sale that the strata renewal committee considers are significant,
 - (d) if the plan is for a redevelopment of the scheme:
 - (i) the name of the proposed developer, and
 - (ii) details of any planning approvals, or other authorisations under an Act or otherwise,

required before the redevelopment can start, and

- (iii) an estimate of the period from the start to completion of the redevelopment, and
 - (iv) details of any periods during which the owners of lots will be required to provide vacant possession because of the redevelopment, and
 - (v) details of arrangements for financing the redevelopment, and
 - (vi) details of the terms of settlement and the amounts to be paid to each dissenting owner for the purchase of the owner's lot, and
 - (vii) details of the terms of settlement for each supporting owner including the amount and timing of any payments to be made to the owner and, if the owner has a right to buy back into any future scheme, details of that right,
- (e) any other information or document about the proposed collective sale or redevelopment prescribed by the regulations.
- (2) Subsection (1) does not limit the matters that may be included in a strata renewal plan.
- (3) If a strata renewal plan is for a collective sale of a strata scheme, the plan must provide for the purchase of each owner's lot at not less than the compensation value for the lot.
- (4) If a strata renewal plan is for a redevelopment of a strata scheme, the plan must provide for each dissenting owner's lot to be purchased at not less than the compensation value for the lot.

171 Requirements relating to sale of lots

- (1) If a strata renewal plan is for a collective sale of a strata scheme, the amount paid for the sale of the lots and common property in the scheme must be apportioned among the owners of the lots in the same proportions as the unit entitlements of the owners' lots.
- (2) If a strata renewal plan is for a redevelopment of a strata scheme, the amount to be paid for the sale of a dissenting owner's lot must not be less than the compensation value of the lot.

172 Consideration of plan by owners corporation

- (1) On preparing a strata renewal plan, the strata renewal committee must convene a general meeting of the owners corporation to consider the plan.
- (2) Notice of the general meeting must:
- (a) comply with clause 3 of Schedule 7, and
 - (b) be given to each owner at least 14 days before the meeting.
- (3) The owners corporation may, by resolution, amend the strata renewal plan or decide to return the plan to the strata renewal committee for amendment.
- (4) If, under subsection (3), the strata renewal plan is returned to the strata renewal committee for amendment, subsections (1) and (2) apply in relation to the plan on completion of the amendments.

- (5) The owners corporation may, by special resolution, decide to give the strata renewal plan, whether or not amended in accordance with this section, to the owners for their consideration.
- (6) A motion under this section is not a motion for which a priority vote can be cast under clause 24 of Schedule 1 to the *Strata Schemes Management Act 2015*.
- (7) A strata renewal plan is not given any force or effect merely because of a decision made under subsection (5).

173 Copy of plan to be given to owners

- (1) If the owners corporation decides by special resolution under section 172 (5) to give the strata renewal plan to the owners for their consideration, the secretary of the owners corporation must within 14 days give a copy of the plan to each owner.
- (2) The copy of the plan must be accompanied by the information or documents prescribed by the regulations.

174 Notice of owner's decision to support plan

- (1) An owner may, at least 60 days after receiving a copy of the strata renewal plan but before the plan lapses, give the returning officer for the plan a notice in the approved form (a **support notice**) that:
 - (a) states the owner supports the plan, and
 - (b) is signed by the owner and each registered mortgagee or covenant chargee of the owner's lot.
- (2) If a lot is owned by more than one person, each of those persons must sign the support notice.
- (3) The signature of an owner, registered mortgagee or covenant chargee (the **relevant person**) must be witnessed by a person who:
 - (a) is at least 18 years of age, and
 - (b) is not a party to the proposed collective sale or redevelopment to which the support notice relates.
- (4) A notice referred to in subsection (1) has effect as a support notice under this Part in relation to the owner's lot on the day it is given to the returning officer.
- (5) In giving a support notice, an owner agrees to participate in the proposed collective sale or redevelopment under the strata renewal plan to which the notice relates.
- (6) In signing a support notice, a mortgagee or covenant chargee merely consents to the owner giving the notice in relation to the owner's lot and is not bound in any way by the strata renewal plan.
- (7) The returning officer must:
 - (a) keep a record showing the number of lots for which a support notice has been given and is in effect, and

- (b) if asked by an owner, advise the owner of the number of lots for which a support notice has been given and is in effect.

Note. A support notice may be withdrawn under section 175, and ceases to have effect if it is withdrawn.

175 Withdrawal of support notice

- (1) An owner who has given a support notice for a strata renewal plan may, by notice in the approved form given to the returning officer for the plan, withdraw the support notice.
- (2) However, an owner cannot withdraw a support notice after the day a notice has been given under section 176 (2).
- (3) If a support notice is withdrawn, it ceases to have effect as a support notice under this Part in relation to the owner's lot on the day the notice of the withdrawal is given to the owners corporation.

176 Notice if required level of support obtained

- (1) If the required level of support for a strata renewal plan is obtained before the plan lapses the returning officer for the plan must give written notice of that fact to the secretary of the owners corporation.
- (2) The secretary must, within 14 days after receiving the notice give written notice that the required level of support for the strata renewal plan has been obtained to:
 - (a) each owner of a lot in the strata scheme, and
 - (b) the Registrar-General.
- (3) On receiving the notice, the Registrar-General must make appropriate recordings in the folio for the common property in the strata scheme to show that the scheme is the subject of a strata renewal plan.
- (4) If requested by the Registrar-General, the owners corporation must give the Registrar-General the information about the strata renewal plan the Registrar-General requires to make the recordings referred to in subsection (3).
- (5) On and from the making of the recordings referred to in subsection (3), a support notice that is in effect for the strata renewal plan is taken to have been given under this Part by any subsequent owner, registered mortgagee or covenant chargee of the lot in relation to which the support notice was given.

177 Lapsing of plan

- (1) A strata renewal plan lapses if:
 - (a) the owners corporation decides under this Division not to give the plan to the owners for their consideration, or
 - (b) within 3 months after the day the owners corporation decided to give the plan to the owners for their consideration, the required level of support for the plan has not been obtained, or
 - (c) the owners corporation decides not to apply to the court under Division 6 for an order to

give effect to the plan, or

- (d) if an application is made under Division 6 to the court for an order to give effect to the plan—the court decides not to make the order.
- (2) If a strata renewal plan lapses under subsection (1), it ceases to have any force or effect for the purpose of this Part.
- (3) The owners corporation must, as soon as practicable after the strata renewal plan lapses, give written notice of that fact to the Registrar-General.
- (4) On receiving the notice, the Registrar-General must make appropriate recordings in the folio for the common property in the strata scheme to show that the scheme is no longer the subject of a strata renewal plan.

Division 6 Applying for orders to give effect to strata renewal plans

178 Decision to apply for order

- (1) If the required level of support for a strata renewal plan for a strata scheme is obtained:
 - (a) the secretary of the owners corporation, or a member of the strata renewal committee, must convene a general meeting of the owners corporation for the purpose of deciding whether to apply to the court for an order to give effect to the plan, and
 - (b) the owners corporation may, by resolution, decide to apply to the court for the order.
- (2) To remove doubt, an application for an order may be made by the owners corporation even if an owner of a lot in the strata scheme at the time the application is made is not an owner who gave a support notice for the strata renewal plan.

Note. Under section 176 (5), a subsequent owner of a lot may be taken to have given a support notice under this Part.

- (3) However, the owners corporation must not apply for an order unless it is satisfied that the strata renewal plan complies with section 170.
- (4) The secretary of the owners corporation must, within 14 days after a decision is made to apply for an order, give written notice of the decision to each tenant of a lot in the strata scheme whose name has been notified to the owners corporation as a tenant of the lot in accordance with the *Strata Schemes Management Act 2015*.

179 Application for order

- (1) An application for an order to give effect to the strata renewal plan must be accompanied by the following:
 - (a) a copy of the plan,
 - (b) a copy of each support notice that is in effect under this Part for the plan,
 - (c) the names of each dissenting owner and each registered mortgagee and covenant chargee of a dissenting owner's lot,

- (d) a declaration given by the owners corporation identifying the steps taken in preparing the plan and obtaining the required level of support in accordance with this Part,
 - (e) if the plan is for a collective sale of a strata scheme:
 - (i) a declaration given by the purchaser, if known, disclosing the nature of any relationship, whether personal or commercial, the purchaser may have with the owner of any lot in the scheme, and
 - (ii) a report of an independent valuer that includes details of the market value of the whole building and its site (at its highest and best use) and details of the compensation value of each lot,
 - (f) if the plan is for a redevelopment of a strata scheme:
 - (i) a declaration given by the developer disclosing the nature of any relationship, whether personal or commercial, the developer may have with an owner of any lot in the scheme, and
 - (ii) a document specifying the amount to be paid to each dissenting owner for the owner's lot, and
 - (iii) a report of an independent valuer that includes details of the market value of the whole building and its site (at its highest and best use) and details of the compensation value of each dissenting owner's lot, and
 - (iv) a document detailing enough financial information to show there is a secure source of finance for the carrying out of the proposed redevelopment under the plan,
 - (g) any other information or document about the proposed collective sale or redevelopment prescribed by the regulations.
- (2) Notice of the application must be served, in accordance with rules of court, on:
- (a) each owner of a lot in the strata scheme, and
 - (b) each registered mortgagee or covenant chargee of a dissenting owner's lot, and
 - (c) if the strata renewal plan is for a collective sale of a strata scheme—the proposed purchaser (if known), and
 - (d) if the strata renewal plan is for a redevelopment of a strata scheme—the local council and the proposed developer (if known), and
 - (e) any other person directed by the court.

180 Objection to application

- (1) Any of the following persons may file an objection to the application for an order to give effect to the strata renewal plan:
- (a) a dissenting owner,
 - (b) a person on whom notice of the application must be served under section 179 (2) (b)–(e).

- (2) The objection must be filed in the court within 21 days after notice of the application is served on the person filing the objection.
- (3) A person who files an objection need not be a party in proceedings before the court relating to the strata renewal plan.

Division 7 Orders to give effect to strata renewal plans

181 Hearing of application

- (1) The court must hear and dispose of an application for an order in proceedings before the court.
- (2) If the court orders mediation or arranges a conciliation conference in relation to the application:
 - (a) the court may terminate the mediation or conference at any time and hear, or continue to hear, the proceedings, or
 - (b) any party to the mediation or conference may, at least 90 days after the day the first mediation or conference session starts, ask the court to terminate the mediation or conference and hear, or continue to hear, the proceedings, or
 - (c) if the parties reach an agreement at mediation or the conciliation conference and the strata renewal plan is varied under the agreement—the court may hear, or continue to hear, the proceedings in relation to the varied plan.
- (3) The court must hear, or continue to hear, the proceedings whether or not the parties reach an agreement at mediation or a conciliation conference.
- (3A) Subsection (3) has effect despite section 34 (3) (a) of the *Land and Environment Court Act 1979*.
- (4) If a strata renewal plan is varied at mediation or a conciliation conference, the varied plan is taken to be the strata renewal plan under this Act.
- (5) However, the court must not make an order in relation to a strata renewal plan that is varied at mediation or a conciliation conference unless:
 - (a) written agreement to the variation has been given by the owner of each lot in relation to which a support notice has been given for the plan, and
 - (b) written notice of the variation has been served by the owners corporation on the following (unless otherwise directed by the court):
 - (i) each dissenting owner,
 - (ii) each person on whom notice of the application must be served under section 179 (2) (b)–(e).
- (6) Any of the following persons may be joined as a party to the proceedings:
 - (a) a person who has filed an objection to the application and applies to be a party to the proceedings,
 - (b) a person directed by the court to be joined.

(7) In this section:

conciliation conference means a conciliation conference under section 34 of the *Land and Environment Court Act 1979*.

mediation means mediation in accordance with the *Civil Procedure Act 2005*.

182 Decision of court

- (1) The court must make an order giving effect to the strata renewal plan if satisfied of the following matters:
 - (a) the relationship, if any, between the owners of lots and the purchaser or a developer has not prevented the plan being prepared in good faith,
 - (b) the steps taken in preparing the plan and obtaining the required level of support were carried out in accordance with this Act,
 - (c) all notices required to be served under sections 179 and 181 have been served,
 - (d) if the plan is for a collective sale—the proposed distribution of the proceeds of sale apportioned to each lot is not less than the compensation value of the lot and the terms of the settlement under the plan are just and equitable in all the circumstances,
 - (e) if the plan is for a redevelopment—the amount to be paid to a dissenting owner is not less than whichever of the following is greater:
 - (i) the compensation value of the owner's lot,
 - (ii) an amount equal to the total consideration that would accrue to the dissenting owner under the plan in relation to the redevelopment and the owner's lot if that owner had given a support notice for the plan,
 - (f) if the plan is for a redevelopment—the terms of the settlement under the plan, as those terms apply to any dissenting owner, are just and equitable in all the circumstances,
 - (g) any other matter prescribed by the regulations.
- (2) The court may, on its own initiative, vary the strata renewal plan and make an order giving effect to the varied plan if satisfied of the matters referred to in subsection (1).
- (3) However, the court cannot vary a strata renewal plan under subsection (2) unless:
 - (a) the variation is of a minor nature that does not affect the plan in any substantial way, and
 - (b) written agreement to the variation has been given by the owner of each lot in relation to which a support notice for the plan has been given.
- (4) The court must not make an order giving effect to the strata renewal plan if the court is not satisfied about the matters referred to in subsection (1).
- (5) The court must give written reasons for its decision to make, or not to make, an order.
- (6) This section applies subject to section 181 (5).

183 Court order and directions

- (1) If the court makes an order giving effect to a strata renewal plan for a strata scheme, the order may include directions about any of the following matters:
 - (a) the termination of the scheme, including, for example, the day on which the scheme is to be terminated and the day on which vacant possession of lots and common property in the scheme is to be given,
 - (b) the winding up of the owners corporation of the scheme,
 - (c) the discharge of the liabilities of the owners corporation,
 - (d) the persons liable to contribute amounts required for the discharge of the liabilities of the owners corporation and the proportionate liability of the persons,
 - (e) the distribution of the assets of the owners corporation and the proportionate entitlement of each person under the distribution,
 - (f) any other matter prescribed by the regulations.
- (2) The owners corporation must lodge the order for registration within 7 days after it is made.
- (3) The Registrar-General must record the order on the folio for the common property and for each lot in the strata scheme.
- (4) The order has effect under this Part when the Registrar-General makes the record under subsection (3).

184 Effect of order relating to collective sale

- (1) This section applies if the court makes an order giving effect to a strata renewal plan for a collective sale of a strata scheme.
- (2) The owner of each lot in the strata scheme must sell the owner's lot in accordance with the strata renewal plan and the order.
- (3) The strata scheme is terminated on:
 - (a) the day on which all the dealings effecting the transfer of all lots and common property in the scheme are registered, or
 - (b) if the order specifies a later day for that purpose—the later day.
- (4) On termination of the strata scheme:
 - (a) the owners corporation is dissolved, and
 - (b) the rights and liabilities of the owners corporation vest in the purchaser, unless the order otherwise provides, and
 - (c) any legal proceedings begun by or against the owners corporation may be completed by or against the purchaser, and

- (d) the purchaser must give the Registrar-General notice of the termination in the approved form.
- (5) On receiving the notice, the Registrar-General must:
 - (a) cancel the folios for the lots and common property in the strata scheme, and
 - (b) create a folio for the land in the former parcel, and
 - (c) record in the Register the matters the Registrar-General considers appropriate to give effect to the order.
- (6) A lease of a lot in the strata scheme is terminated on the day stated in the strata renewal plan for giving vacant possession of the lot to the purchaser or on such later day as may be specified in the order.
- (7) Subject to this Part, the termination of a lease under this section does not affect a right or remedy a person may have under the lease.

Note. It is expected that leases would generally be terminated in accordance with the terms of the lease (or under legislation such as Division 2 of Part 5 of the [Residential Tenancies Act 2010](#)) and not under this section.

185 Effect of order relating to redevelopment

- (1) This section applies if the court makes an order giving effect to a strata renewal plan for a redevelopment of a strata scheme.
- (2) Each dissenting owner of a lot in the strata scheme must sell the owner's lot in accordance with the strata renewal plan and the order.
- (3) The strata scheme is terminated on the day stated in the order for that purpose.
- (4) On termination of the strata scheme:
 - (a) the owners corporation is dissolved, and
 - (b) the rights and liabilities of the owners corporation vest in the developer or the former owners in accordance with the strata renewal plan and the order, and
 - (c) land in the former parcel vests in the former owners as tenants in common in shares proportional to the unit entitlement of their former lots, unless the strata renewal plan otherwise provides, and
 - (d) any legal proceedings begun by or against the owners corporation may be completed by or against the developer, and
 - (e) the developer must give the Registrar-General notice of the termination in the approved form.
- (5) On receiving the notice, the Registrar-General must:
 - (a) cancel the folios for the lots and common property in the strata scheme, and
 - (b) create a folio for the land in the former parcel, and

- (c) record in the Register the matters the Registrar-General considers appropriate to give effect to the order.
- (6) The order does not permit development to be carried out in contravention of this Act or any other Act or law.
- (7) A lease of a lot in the strata scheme is terminated on the day stated in the strata renewal plan for giving vacant possession of the lot to the developer or on such later day as may be specified in the order.
- (8) Subject to this Part, the termination of a lease under this section does not affect a right or remedy a person may have under the lease.

Note. It is expected that leases would generally be terminated in accordance with the terms of the lease (or under legislation such as Division 2 of Part 5 of the [Residential Tenancies Act 2010](#)) and not under this section.

- (9) In this section:

former owner does not include a dissenting owner.

186 Ancillary orders

- (1) The court may make an order to provide for any ancillary or consequential matter (an *ancillary order*) that it considers appropriate or necessary to ensure the effectiveness of the order giving effect to a strata renewal plan.
- (2) Without limiting subsection (1), an ancillary order may include directions about the following matters:
 - (a) the appointment of a trustee for the sale of an owner's lot,
 - (b) the vesting of an owner's lot in the trustee for the purpose of selling the lot and distributing the proceeds of sale to the owner,
 - (c) the delivery of an owner's certificate of title for the owner's lot to the trustee,
 - (d) the distribution of the assets of the owners corporation and the proportionate entitlement of each person under the distribution,
 - (e) the reallocation of unit entitlements among the lots that are subject to the strata scheme for a reason set out in section 236 (1) of the [Strata Schemes Management Act 2015](#),
 - (f) the payment of compensation to a person because of the termination of a lease under section 184 (6) or 185 (7).
- (3) An ancillary order may be made when or at any time after the order giving effect to the strata renewal plan is made.
- (4) An ancillary order may be made on application by any person with the leave of the court.

187 Order attaches to land and is binding

An order giving effect to a strata renewal plan and an ancillary order relating to that order:

- (a) attaches to the parcel for the strata scheme to which the plan relates, and
- (b) binds the owners corporation of the strata scheme and each person who for the time being is:
 - (i) an owner or registered mortgagee or covenant chargee of a lot in the parcel, or
 - (ii) the purchaser or a developer under the plan, and
- (c) binds any person claiming through or under or in trust for or in succession to an owner, or who is a subsequent owner or occupier to the owner, of a lot in the scheme.

Division 8 Miscellaneous

188 Costs

- (1) Unless the court otherwise orders:
 - (a) the reasonable costs of proceedings for an application for an order to give effect to a strata renewal plan that are incurred by a dissenting owner are payable by the owners corporation, and
 - (b) the owners corporation cannot levy a contribution for any part of the costs on a dissenting owner.
- (2) The regulations may prescribe other matters for or with respect to the costs of proceedings for an application for an order to give effect to a strata renewal plan.

189 Relationship between orders and strata renewal plans

If there is an inconsistency between a strata renewal plan and an order giving effect to the plan or an ancillary order, the order and ancillary order prevail to the extent of the inconsistency.

190 Limitation on submitting strata renewal proposal

- (1) If a strata renewal proposal or a strata renewal plan for a strata renewal proposal lapses under this Part, a person cannot give the proposal, or another strata renewal proposal that is substantially similar to that proposal, to an owners corporation within 12 months after the day the proposal or plan lapses.
- (2) An owners corporation is not required to deal with a strata renewal proposal under this Part if it is given in contravention of this section.

Part 11 Rates and charges relating to parcels

191 Definition

In this Part:

rate means a rate payable under the [Local Government Act 1993](#).

192 Rating of lots

- (1) A rate on a rateable parcel or a rateable part of a parcel must not be made or levied on the owners corporation but, subject to this section, must be made and levied in relation to each lot

comprised in the parcel as if:

- (a) the owner of each lot were the owner in fee simple in possession of the lot and it were a separate parcel of land having a value equal to the appropriate value apportioned to it under paragraph (c), and
 - (b) the owner were, subject to any exemptions or concessions applying to the owner or to the owner's lot, liable for any rate made and levied by the rating authority on the owners of land, and
 - (c) the value of each lot were an amount that bears to the corresponding value worked out in accordance with section 26A of the *Valuation of Land Act 1916* of the rateable parcel or the rateable part of the parcel, (after deducting from the corresponding value any allowance applicable under Division 3 of Part 1B of the *Valuation of Land Act 1916*) the same proportion as the unit entitlement of that lot bears to the aggregate unit entitlement.
- (2) If part only of a lot is rateable for any rate, the rate in relation to the lot must be made and levied on the rateable part as if the value of that part were an amount that bears to the appropriate value of the lot, worked out under subsection (1) (c), the same proportion as the rental value of the rateable part bears to the rental value of the lot.
- (3) A reference in this section to a rateable parcel, or a rateable part of a parcel, in relation to any rate, is a reference to a parcel or part of a parcel that is rateable as to that rate or would be so rateable but for any exemption or concession applicable to any portion of that parcel or part (not being, in the case of a rate for water, sewerage or drainage services, an exemption or concession applicable to that portion by reason of its situation in relation to the services).
- (4) In this section:

rating authority means an authority authorised to make and levy rates on land.

value, in relation to a parcel or a lot, means land value, improved value, improved capital value or assessed annual value.

193 Certain lots not rateable

- (1) This section applies if, for the purpose of effecting a resumption referred to in Part 7:
- (a) a strata plan of subdivision has been registered, or
 - (b) a plan has been registered under the *Conveyancing Act 1919*.
- (2) Unless the resumption has been effected, a rate may not be made or levied on a lot in the strata plan of subdivision or in the registered plan.
- (3) This section does not prevent a rate from being made or levied on land of which a lot referred to in subsection (2) forms part.

194 Charge or fee for services

A charge or fee for water, sewerage, drainage or effluent services, other than a stormwater management service within the meaning of the *Local Government Act 1993*, rendered in relation to a parcel or part of a parcel otherwise than exclusively for the use and benefit of a particular lot:

- (a) must be worked out as if any rates in relation to the lots comprised in the parcel were payable by the owners corporation as the rateable person under the *Local Government Act 1993* for the parcel, and
- (b) is payable by the owners corporation.

Part 12 General

195 Duty not payable for determination of lease

No duty is payable under the *Duties Act 1997* in relation to the determination or partial determination of a lease under this Act.

196 Notice to produce electronic form plans and other documents

- (1) As soon as practicable after a written demand requiring its production is served on a person who has lodged a plan or other document in electronic form for the purposes of this Act, the person is required to give the Registrar-General:
 - (a) an electronically formatted version or a hard copy version of the plan, as directed by the Registrar-General, or the original hard copy version of the other document, as the plan or document was when it was lodged electronically, and
 - (b) for a plan—the approved form for signatures on which the signatures, seals, certificates, consents or other approvals required to authenticate, or to authorise the registration or recording of, the plan were endorsed.

- (2) In this section:

written demand means a written demand of the Registrar-General served:

- (a) for a plan or other document lodged for registration or recording—while the plan or other document is lodged, or
- (b) for a plan or other document lodged other than for registration or recording—before the period prescribed by the regulations (or a shorter period agreed to by the Registrar-General) has expired after the plan or other document was lodged, or
- (c) for a plan or other document that is registered or recorded—before the period prescribed by the regulations (or a shorter period agreed to by the Registrar-General) has expired after the plan or other document was registered or recorded.

197 Application of Act to electronic form plans and other documents

- (1) This section applies to:
 - (a) a plan lodged for the purposes of this Act, and
 - (b) another document, other than a certificate of title or an office copy of a court order, that:
 - (i) is required under this Act or another Act to be lodged with the plan, or
 - (ii) is of a class prescribed by the regulations as a document that may be lodged in electronic form.

- (2) A reference in this Act:
 - (a) to a plan or another document includes a reference to an electronic data file containing a plan or another document in an electronic form, and
 - (b) to the lodging of a plan or another document includes a reference to the electronic lodging of a plan or another document in an electronic form approved by the Registrar-General.
- (3) If a plan is lodged electronically, any other document that is required to be lodged with the plan must also be lodged electronically in an electronic form approved by the Registrar-General, other than:
 - (a) a certificate of title or an office copy of a court order, and
 - (b) another document excepted from this requirement by the regulations under this Act or another Act or by the Registrar-General.
- (4) A signature, seal, certificate, consent or other approval required to authenticate, or to authorise the registration or recording of, a plan proposed to be lodged in electronic form must be endorsed on an administration sheet.
- (5) When a plan referred to in subsection (4) is lodged, the administration sheet must also be lodged electronically in an electronic form approved by the Registrar-General.
- (6) This Act applies in relation to plans and other documents lodged in electronic form in the same way as it applies to other plans and documents, subject to any modifications prescribed by the regulations, the *Conveyancing Act 1919*, the *Real Property Act 1900* or the regulations under those Acts.

198 Recordings in Register or folios—generally

If a provision of this Act requires or provides for the Registrar-General to record a thing in the Register or a folio and the provision does not specify how it is to be recorded, the Registrar-General may make the record by recording the matters about the thing the Registrar-General considers appropriate.

199 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, a requirement under this Act for an administration sheet for a plan or notice of conversion to include a strata certificate does not apply in relation to a plan or notice lodged by the Crown.

200 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 person employed in the Department, or
- (b) any person, or any class of persons, authorised for the purposes of this section by the regulations.

201 Proceedings for offences

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

202 Regulations—general

- (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) Without limiting subsection (1), the Governor may make regulations for or with respect to any of the following:
 - (a) the preparation of plans and documents for the purposes of this Act,
 - (b) the plans and documents that under this Act may be lodged with the Registrar-General,
 - (c) the registration by the Registrar-General of plans and documents,
 - (d) the fees to be paid in relation to the lodgment with, and registration by, the Registrar-General of plans and documents and the supply by the Registrar-General of copies of registered or other plans and documents,
 - (e) the forms to be used for the purposes of this Act.
- (3) A regulation may impose a penalty not exceeding 2 penalty units for an offence under the regulation.
- (4) The regulations may include provision for or with respect to the increase on an annual or other basis in accordance with a formula prescribed by the regulations of fees prescribed by the regulations.
- (5) A fee can be prescribed by the regulations either as a specified amount or an amount calculated or determined in a specified manner.

203 Repeal of Acts

The *Strata Schemes (Freehold Development) Act 1973* and the *Strata Schemes (Leasehold Development) Act 1986* are repealed.

204 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 the 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 Requirements for plans

(Section 4 (1), definition of "surveyor's certificate")

1 Floor plans

- (1) Each wall, the inner surface or any part of which corresponds substantially to a line shown on the floor plan as a boundary of a proposed lot, must exist.
- (2) Each floor or ceiling, the upper or under surface or any part of which forms a boundary of a proposed lot, must exist.
- (3) Each wall, floor, ceiling or common infrastructure, by reference to which any boundary of a proposed lot is determined, must exist.

2 Location plans—no part strata parcel

- (1) This clause applies if the proposed parcel will not be a part strata parcel.
- (2) The building erected on the land comprising the proposed parcel and each proposed lot shown on the location plan must be wholly within the perimeter of that land.
- (3) This clause does not apply to so much of any encroachment that is an encroachment on to a public place or an encroachment by the building on to land other than a public place.

3 Location plans for part strata parcels

- (1) This clause applies if the proposed parcel will be a part strata parcel.
- (2) The proposed parcel must include part of a building and another part of the building must be outside the proposed parcel.
- (3) The proposed parcel and that building must be wholly within the perimeter of the site of the building.
- (4) Each part of that building and so much, if any, of the site as constitute the proposed lots and common property, if any, must be wholly within the proposed parcel.
- (5) Subclauses (3) and (4) do not apply to so much of any encroachment that is an encroachment on to a public place or an encroachment by the building on to land other than a public place.

4 Location plans—encroachments on private land

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

Schedule 2 Requirements for schedules of unit entitlement

(Section 4 (1), definition of "valuer's certificate")

1 Definitions

In this Schedule:

market value basis, in relation to the proposed unit entitlement of a lot or development lot, means the basis for determining the value of the lot or development lot prescribed by the regulations.

valuation day, in relation to apportioning unit entitlements, means the day prescribed by the regulations as the valuation day for the purposes of the clause in which the term is used.

2 Schedule of unit entitlement for strata plan

- (1) A schedule of unit entitlement for a strata scheme that does not include a development lot must show as whole numbers:
 - (a) the aggregate unit entitlement of all lots, and
 - (b) apportioned on a market value basis at the valuation day and totalling the aggregate unit entitlement of all lots, the proposed unit entitlement of each lot.
- (2) A schedule of unit entitlement for a strata scheme that includes a development lot must show as whole numbers:
 - (a) the aggregate unit entitlement of all lots, whether or not a development lot, and
 - (b) apportioned on the basis of land value (within the meaning of the *Valuation of Land Act 1916*) and totalling the aggregate unit entitlement referred to in paragraph (a):
 - (i) the proposed unit entitlement of each development lot, and
 - (ii) the aggregate proposed unit entitlement of all lots that are not development lots, being the unit entitlement attributable to the residue of the land in the proposed parcel, and
 - (c) apportioned on a market value basis at the valuation day and totalling the proposed unit entitlement of all lots that are not development lots, the proposed unit entitlement of each lot that is not a development lot.

3 Schedule of unit entitlement for strata plan of subdivision not involving common property or development lot

- (1) A schedule of unit entitlement for a proposed strata plan of subdivision altering the boundaries of one or more lots to create only two or more different lots, other than a plan to which clause 5 applies, must:
 - (a) show the proposed aggregate unit entitlement, and
 - (b) show as a whole number the proposed unit entitlement of:
 - (i) each lot comprised in the parcel that is not a lot the subject of the proposed subdivision, and
 - (ii) each proposed lot.
- (2) A number relating to a lot other than a proposed lot must bear to the proposed aggregate unit entitlement the same proportion that the unit entitlement of the lot bore, immediately before the plan was registered, to the aggregate unit entitlement.
- (3) The sum of the numbers relating to the proposed lots must bear to the proposed aggregate unit

entitlement the same proportion that the unit entitlement or the sum of the unit entitlements of the lot or lots the subject of the proposed subdivision bore, immediately before the plan was registered, to the aggregate unit entitlement.

4 Schedule of unit entitlement for strata plan of subdivision involving common property

A schedule of unit entitlement for a proposed strata plan of subdivision, other than a plan to which clause 3 or 5 applies, must:

- (a) show the proposed aggregate unit entitlement, and
- (b) show as a whole number the proposed unit entitlement, apportioned on a market value basis at the valuation day, of:
 - (i) each lot comprised in the parcel that is not a lot the subject of the proposed subdivision, and
 - (ii) each proposed lot, and
- (c) be accompanied by a certificate under the seal of the owners corporation certifying that it has, by the special resolution referred to in section 55 (5) (a) or 59 (c), agreed to each proposed unit entitlement and the proposed aggregate unit entitlement shown in the schedule.

5 Schedule of unit entitlement for strata plan of subdivision for development lot

A schedule of unit entitlement for a proposed strata plan of subdivision for a development lot must show as whole numbers:

- (a) the current unit entitlement of the development lot intended to be subdivided, and
- (b) apportioned on a market value basis at the valuation day and totalling the unit entitlement of the development lot, the proposed unit entitlement of each lot or development lot to be created on registration of the plan.

Schedule 3 Covenants implied in strata development contracts

(Section 81 (1))

1 Warranted development

The developer agrees with the other parties jointly, and with each of them severally:

- (a) that the developer must carry out the development, if any, described and identified as “warranted development—proposed development subject to a warranty” in the strata development contract, and
- (b) that the developer must carry out the development in accordance with the covenants set out and implied in the contract.

2 Permission to carry out warranted development and authorised proposals

The parties, other than the developer, jointly and severally agree with the developer that the developer is permitted to carry out, in accordance with the covenants set out or implied in the contract:

- (a) the warranted development, if any, and

- (b) other development described and identified as “authorised proposals—proposed development *not* subject to a warranty” in the contract.

3 Owners corporation expenses

The developer agrees with the owners corporation that the developer will pay the reasonable expenses incurred by the owners corporation:

- (a) in repairing damage to the common property caused in carrying out the permitted development, other than damage due to normal wear and tear, and
- (b) for any water, sewerage, drainage, gas, electricity, oil, garbage, conditioned air or telephone service, and any other service prescribed by the regulations, used in carrying out the permitted development, and
- (c) for additional administrative costs connected with the permitted development, including the cost of giving notice of and holding any meeting required to obtain approval of a strata plan of subdivision, and
- (d) for any amounts due under the strata management statement that are connected with the carrying out of the permitted development.

4 Standard of development

The developer agrees with the other parties that:

- (a) the standard of materials used, finishes effected, common property improvements, landscaping, roadways and paths, and
- (b) the heights of buildings, other structures and works and the density of development,

in all development permitted to be carried out by the contract must not be inferior to or substantially different from those of the completed buildings and other structures and works forming part of the parcel, other than to the extent, if any, specified in the contract.

5 Unauthorised use of the parcel

The developer agrees with the other parties that the developer will not use any part of the parcel or cause any part of the parcel to be used other than:

- (a) to the extent necessary to carry out the development permitted to be carried out by the strata development contract, or
- (b) to the extent specified in the contract.

6 Restoration of common property

The developer agrees with the other parties to make good, as soon as practicable, any damage to the common property or any part of the building and its site that is not subject to the strata scheme arising out of performance of the contract, whether or not the contract contemplates or permits the damage.

7 Restoration of development lot

- (1) The developer agrees with the other parties to make good, as soon as practicable, any damage to a development lot or any part of the building and its site that is not subject to the strata scheme arising out of performance of the contract, whether or not the contract contemplates or permits the damage.
- (2) For the purposes of this covenant, **damage** does not include damage necessarily resulting from having carried out, in accordance with the contract, development that is permitted by the contract to be carried out.

8 Additional covenants for vertical staged development

If the contract permits development to be carried out within a development lot that is wholly or partly directly above or below a part of the parcel, or the building or site, that is not a development lot, the developer agrees with the other parties:

- (a) to minimise any disruption caused to other occupiers of the parcel or other occupiers of a building of which the development lot forms part by the carrying out of permitted development or otherwise, and
- (b) to ensure that, while permitted development is being carried out, shelter and subjacent and lateral support, consistent with proper engineering and building practices, are provided to other parts of the parcel, or other parts of the building and its site, that are capable of being sheltered or of enjoying the support, and
- (c) to keep the developer insured, while permitted development is being carried out, under a policy of indemnity (that complies with the matters prescribed by the regulations) with an approved insurer within the meaning of the *Strata Schemes Management Act 2015* against claims for damage to property, or for death or personal injury, arising out of or resulting from the carrying out of permitted development.

Schedule 4 Strata management statements

(Section 100)

1 Form of strata management statement

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

- (a) the conditions imposed on a planning approval relating to the site of the building to which the statement relates, or
- (b) this Act or any other Act or law.

2 Matters that must be included

- (1) A strata management statement must provide for:
 - (a) the establishment and composition of a building management committee and its office holders, and
 - (b) the functions of the committee and the office holders in managing the building and its site,

and

- (c) the way in which the statement may be amended, and
 - (d) the settlement of disputes, or the rectification of complaints, about the management of the building or its site, whether by requiring reference of disputes or complaints to the Secretary or Tribunal or, with the person's consent, to any other person for a recommendation or decision or otherwise, and
 - (e) the fair allocation of the costs of shared expenses relating to parts of the building, and
 - (f) a review process to ensure that the allocation of those costs remains fair with any such review taking place as soon as practicable after any change in the shared facilities or services (including any change in the use of those shared facilities or services), with at least one such review occurring every 5 years even if no such change has occurred, and
 - (g) the manner in which notices and other documents may be served on the committee.
- (2) A strata management statement must include details of the method used to apportion the costs of shared expenses referred to in subclause (1) (e).
 - (3) Nothing in a strata management statement requires the Secretary or the Tribunal to do anything without the consent of the Secretary or the Tribunal.
 - (4) In this clause, *Tribunal* means the Civil and Administrative Tribunal.

3 Building management committee

- (1) Subject to subclauses (2) and (3), the members of the building management committee are:
 - (a) each owners corporation for part of the building, and
 - (b) each person who holds:
 - (i) an estate in fee simple in a part of the building or its site that does not form part of a part strata parcel, or
 - (ii) if the strata scheme is a leasehold strata scheme—a leasehold estate, directly from the person who holds an estate in fee simple, in a part of the building or its site that does not form part of a part strata parcel.
- (2) An owners corporation is not required to be a member of the building management committee if the owners corporation decides, by special resolution, not to be a member and all the other members agree.
- (3) A person, other than an owners corporation, is not required to be a member of the building management committee if the person, by written notice given to the committee, asks not to be a member and all the other members agree.
- (4) An owners corporation or other corporation that is a member of a building management committee may be represented for the purposes of the committee by a person appointed by, or selected in accordance with, a special resolution or by-law made by the owners corporation or a resolution made by the other corporation.

- (5) A person appointed or selected as mentioned in subclause (4) and whose term of office as a representative has not expired or been terminated is, while representing the owners corporation or other corporation for the purposes of the committee, taken to be the owners corporation or other corporation.

4 Other matters

- (1) A strata management statement may include provisions regulating, or providing for the regulation of, any one or more of the following:
 - (a) the location, control, management, use and maintenance of a part of the building or its site that is a means of access,
 - (b) the storage and collection of garbage on and from the various parts of the building,
 - (c) meetings of the building management committee,
 - (d) the keeping of records of proceedings of the committee.
- (2) A strata management statement may include particulars relating to any one or more of the following:
 - (a) safety and security measures,
 - (b) the appointment of a managing agent,
 - (c) the control of unacceptable noise levels,
 - (d) prohibiting or regulating trading activities,
 - (e) service contracts,
 - (f) an architectural code to preserve the appearance of the building.
- (3) This clause does not limit the matters that may be included in a strata management statement.
- (4) A strata management statement may incorporate plans and other instruments as part of the statement.

5 Implied provisions

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

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

Schedule 5 Rights and obligations implied in certain easements

(Section 107 (2))

1 Definitions

(1) In this Schedule:

pipes includes cables, tubes, wires and conduits of all kinds.

service has the same meaning as it has in section 107 (8).

(2) For the purposes of this Schedule, a reference to a person entitled to the benefit of a right of vehicular or personal access, or of an easement for a specified service, is a reference to:

(a) if a part strata parcel is the dominant tenement:

- (i) an owner of a lot within the parcel, or
- (ii) the owners corporation of the strata scheme, or
- (iii) any person authorised by the owner or owners corporation, or
- (iv) any person who is, under an Act, entitled to immediate possession of the lot, or

(b) if a part strata parcel is the servient tenement:

- (i) a person entitled to an estate or interest in possession in the dominant tenement, or
- (ii) if the strata scheme is a leasehold strata scheme—the lessor of the scheme, or
- (iii) any person authorised by a person referred to in subparagraph (i) or (ii).

2 Right of vehicular access

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

- (a) to pass and repass, with or without vehicles, machinery, implements and other equipment of any kind, over the roadways, ramps and land over which the right of access is created, and
- (b) to carry out an inspection of the roadways, ramps and land.

3 Right of personal access

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

- (a) to pass and repass, without vehicles but with or without hand tools, hand implements and other equipment capable of being carried by hand, over the stairs, escalators, lifts, passages, corridors, shafts and other areas over which the right of access is created, and
- (b) to carry out an inspection of the stairs, escalators, lifts, passages, corridors, shafts and other areas.

4 Obligations relating to rights of access

(1) If a right of vehicular or personal access is created to burden or benefit a part strata parcel, the

roadways, ramps, land, stairs, escalators, lifts, passages, corridors, shafts and other areas to which the right relates must be maintained in good order and be repaired:

- (a) by the owners corporation, or by another person shown in the instrument by which the right is created, or in any instrument in an approved form by which the instrument is varied, as having responsibility for the matters, or
- (b) if an instrument referred to in paragraph (a) does not show who is responsible for the matters, by the person or, if more than one, jointly by the persons entitled to an estate or interest in possession in the dominant tenement.

(2) If an owners corporation or another person:

- (a) fails to carry out a responsibility imposed by subclause (1), and
- (b) at least 7 days have passed since the failure first arose,

the owners corporation or other person may take all lawful steps necessary to ensure that the responsibility is carried out.

5 Easements for services

(1) Each person entitled to the benefit of an easement for a specified service has at all times an unrestricted right:

- (a) to the passage of the service, to any extent consistent with the rights of other persons having the same or similar rights, along or through any existing line of pipes or any existing apparatus that is for the time being within the burdened land, other than when it is necessary to stop the service for essential maintenance or repairs relating to the service, and
- (b) to inspect the pipes or apparatus to which the easement relates, and
- (c) for the purpose of maintaining the efficiency of the pipes or apparatus:
 - (i) to enter the part of the burdened land in relation to which the easement is created by a route that is reasonable in the circumstances, and
 - (ii) to remain on the part of the burdened land for the time reasonably necessary for the purpose of replacing, inspecting, cleaning, repairing, maintaining or renewing the pipes or apparatus or any part of the pipes or apparatus and of making reasonably necessary excavations.

(2) Subclause (1) (c) is subject to the conditions that:

- (a) the burdened land is disturbed as little as possible, and
- (b) any excavated surface is restored as nearly as possible to its original state, and
- (c) any other damage attributable to the operations referred to in this clause is repaired.

(3) In this clause, a reference to burdened land is a reference to:

- (a) if a part strata parcel is the dominant tenement, so much of the following that is not part of a parcel:

- (i) the building, part of which is subject to the strata scheme,
- (ii) the site of the building, or
- (b) if a part strata parcel is the servient tenement, the parcel.

6 Obligations relating to an easement for the provision of services

- (1) If an easement for services is created to burden or benefit a part strata parcel, the pipes or apparatus to which the easement relates must be maintained in good order and be repaired:
 - (a) by the owners corporation, or by another person shown in the instrument by which the easement is created, or in any instrument in the approved form by which the easement is varied, as having responsibility for the matters, or
 - (b) if an instrument referred to in paragraph (a) does not show who is responsible for the matters, by the person or, if more than one, jointly by the persons entitled to an estate or interest in possession in the dominant tenement.
- (2) If an owners corporation or another person:
 - (a) fails to carry out a responsibility imposed by subclause (1), and
 - (b) at least 7 days have passed since the failure first arose,the owners corporation or other person may take all lawful steps necessary to ensure that the responsibility is carried out.

7 Sharing of costs of maintenance and repair

- (1) The costs of maintenance and repair of a right of vehicular or personal access or an easement for services to which this Schedule applies are to be borne by the owners corporation, lessor (in the case of a leasehold strata scheme) or other person:
 - (a) in the proportions specified in the instrument by which the easement was created or, if the proportions have been varied, the proportions as varied, or
 - (b) if no proportions are specified in accordance with paragraph (a)—in equal proportions.
- (2) If a person (whether or not the owners corporation) incurs costs referred to in subclause (1), the person may demand in writing the amount that the owners corporation, lessor or other person referred to in the subclause is liable to contribute to the costs.
- (3) A demand made under subclause (2) must be accompanied by receipts or invoices or copies of receipts or invoices that evidence the expenditure to which the demand relates.
- (4) If the owners corporation, lessor or other person fails to comply with a demand within 7 days after it is made, the amount demanded may be recovered in a court of competent jurisdiction as a debt due to the owners corporation, lessor or other person.

8 Ancillary rights and powers

An easement to which this Schedule applies carries with it the ancillary rights and powers necessary to render the easement effective.

Schedule 6 Compensation payable on termination of leasehold strata scheme

(Sections 138 (2) and 148 (2))

For the purposes of sections 138 (2) and 148 (2), the formula is:

$$A = B - (C - D)$$

where:

A represents the value, at the date of termination of the leasehold strata scheme, of the improvements attributable to a lot.

B represents the market value, at that date, of the lot, being the value of the lot at that date calculated on the basis that the lot:

- (a) is held for an estate in fee simple in possession, and
- (b) may be used, whether or not only with planning approval, for any purpose the use of the lot for which is not at that date prohibited.

C is obtained from the calculation of the formula:

$$C = E \times \frac{U_1}{U_n}$$

where:

E represents the site value, at that date, of the parcel the subject of that leasehold strata scheme, being the value of the land included in that parcel at that date calculated on the basis that the land:

- (a) is held for an estate in fee simple in possession, and
 - (b) may be used for the purpose of a site for the building or part of the building subject to the scheme,
- but excluding the value at that date of all improvements within the parcel.

U₁ represents the unit entitlement of the lot.

U_n represents the aggregate unit entitlement for that leasehold strata scheme.

D represents the part of factor “B”, if any, attributable to the value, at that date, of improvements to the lot effected by the lessor.

Schedule 7 Requirements for notices of meetings relating to strata renewal process

(Sections 158 (4), 160 (5) and 172 (2))

1 Notice of general meeting to consider strata renewal proposal

A notice of a general meeting of an owners corporation to consider whether a strata renewal proposal warrants investigation by a strata renewal committee must:

- (a) clearly indicate that the purpose of the meeting is to consider a strata renewal proposal, and
- (b) identify the proposed purchaser, if known, or proposed developer under the strata renewal proposal, and
- (c) disclose the nature of any interest a proposed purchaser or proposed developer may have in the strata scheme, and
- (d) include a brief summary of the strata renewal proposal, and
- (e) include a form of motion that the owners corporation decide whether the strata renewal proposal warrants investigation by a strata renewal committee, and
- (f) be accompanied by a complete copy of the strata renewal proposal.

2 Forms of motion for general meeting to establish strata renewal committee

For the purposes of section 160 (5), the matters are:

- (a) determining the number of members of the strata renewal committee, and electing its members, and
- (b) a budget for, or limitations on amounts to be spent on, preparing a strata renewal plan, and
- (c) considering whether to delegate to the committee the authority to engage persons to help it prepare a strata renewal plan.

3 Notice of general meeting to consider strata renewal plan

A notice of a general meeting of an owners corporation to consider a strata renewal plan must:

- (a) clearly indicate that the purpose of the meeting is to consider a strata renewal plan, and
- (b) identify the proposed purchaser, if known, or developer under the strata renewal plan, and
- (c) disclose the nature of any interest a proposed purchaser or developer may have in the strata scheme, and
- (d) include a brief summary of the strata renewal proposal, and
- (e) include a form of motion that the owners corporation decide whether the strata renewal plan should be given to the owners for their consideration, and
- (f) be accompanied by a copy of the strata renewal plan.

Schedule 8 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) The regulations under this Part have effect despite anything to the contrary in this Schedule.
- (4) The regulations under this Part may make separate savings and transitional provisions or amend this Schedule to consolidate the savings and transitional provisions.
- (5) 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.

Part 2 Provisions consequent on enactment of this Act

2 Definitions

In this Part:

former Act means the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*.

repeal day means the day on which the former Acts are repealed.

3 General savings

- (1) Any act, matter or thing done or omitted to be done under a provision of a former Act and having any force or effect immediately before the commencement of a provision of this Act that replaces that provision, is, on the commencement, taken to have been done or omitted to be done under the provision of this Act.
- (2) This clause does not apply to the extent that its application:
 - (a) is inconsistent with any other provision of this Schedule or a provision of a regulation made under this Schedule, or
 - (b) would be inappropriate in a particular case.

4 Existing strata schemes

On the repeal day, each of the following is taken to be a strata scheme under this Act:

- (a) a strata scheme in existence under the *Strata Schemes (Freehold Development) Act 1973* immediately before the repeal day,
- (b) a leasehold strata scheme in existence under the *Strata Schemes (Leasehold Development) Act 1986* immediately before the repeal day.

5 Continuation of plans and notices

- (1) On the repeal day, a plan or a notice of conversion that, immediately before the repeal day, is

registered under a former Act is taken to be registered under this Act.

(2) In this clause:

plan means a strata plan, strata plan of subdivision, strata plan of consolidation or building alteration plan.

6 Continuation of certificates

A certificate given by a registered land surveyor in relation to a strata plan, strata plan of subdivision or strata plan of consolidation under a former Act before the repeal day, and certifying that requirements under the former Act about the plan have been met, is taken to be a surveyor's certificate for the purposes of this Act.

7 Continuation of strata certificates

A strata certificate issued under a former Act and in effect on the repeal day is taken to be a strata certificate issued under this Act.

7A Schedules of unit entitlement

A schedule of unit entitlement is taken to comply with this Act if:

- (a) it was prepared under and in accordance with a former Act before the repeal day, and
- (b) it relates to a strata plan or a strata plan of subdivision for which a strata certificate was issued before the repeal day.

8 Application of Part 10 to existing freehold strata schemes

- (1) Part 10 applies to a freehold strata scheme in existence immediately before the commencement of that Part only if the owners corporation has, by resolution, decided the Part applies to the scheme.
- (2) Despite subclause (1), a person may give a strata renewal proposal under Part 10 to the owners corporation before the resolution is passed.
- (3) The resolution may be passed before or at a general meeting convened to consider a strata renewal proposal.
- (4) If the resolution is passed at a general meeting convened to consider a strata renewal proposal, it must be passed before the proposal is considered.
- (5) The owners corporation must record details of the resolution on the strata roll.
- (6) A resolution referred to in this clause cannot be revoked.

9 Existing proceedings

Any proceedings commenced but not determined or finalised under a provision of a former Act are to be dealt with and determined as if the former Acts had not been repealed.

10 Former lots in particular strata schemes

- (1) This clause applies in relation to a lot in a strata scheme that has a boundary that:

- (a) under section 4 (2) of the repealed *Conveyancing (Strata Titles) Act 1961*, was the centre of a floor, wall or ceiling, and
 - (b) under clause 3 (1) of Part 1 of Schedule 4 to the *Strata Schemes (Freehold Development) Act 1973* was taken to be the upper surface of the floor, the inner surface of the wall or the under surface of the ceiling, because the strata plan or strata plan of resubdivision did not state otherwise.
- (2) The boundary referred to in subclause (1) (a) is taken to continue to be the upper surface of the floor, the inner surface of the wall or the under surface of the ceiling.
- (3) This clause does not limit section 30 (2) (d) of the *Interpretation Act 1987*.
- (4) In this clause:
- lot** does not include any common infrastructure unless the common infrastructure was specified in the strata plan or strata plan of subdivision under the *Conveyancing (Strata Titles) Act 1961* as forming a part of the lot.

Note. This clause continues, for the purposes of this Act, the effect of clause 3 (1) and (2) of Part 1 of Schedule 4 to the *Strata Schemes (Freehold Development) Act 1973*.

11 Accredited certifiers

On the repeal day, a person who is an accredited certifier under a former Act immediately before the repeal day is taken to be an accredited certifier for the purposes of this Act.

Schedule 9 (Repealed)

Historical notes

The following abbreviations are used in the Historical notes:

Am	amended	LW	legislation website	Sch	Schedule
Cl	clause	No	number	Schs	Schedules
Cll	clauses	p	page	Sec	section
Div	Division	pp	pages	Secs	sections
Divs	Divisions	Reg	Regulation	Subdiv	Subdivision
GG	Government Gazette	Regs	Regulations	Subdivs	Subdivisions
Ins	inserted	Rep	repealed	Subst	substituted

Table of amending instruments

Strata Schemes Development Act 2015 No 51. Assented to 5.11.2015. Date of commencement, 30.11.2016, sec 2 and 2016 (658) LW 4.11.2016. This Act has been amended as follows:

2016	No 46	<i>Land and Property Information NSW (Authorised Transaction) Act 2016</i> . Assented to 28.9.2016. Date of commencement of Sch 4, 19.5.2017, sec 2 (2) and 2017 (96) LW 24.3.2017.
	(659)	<i>Strata Schemes Development Regulation 2016</i> . LW 4.11.2016. Date of commencement, 30.11.2016, cl 2.
2017	No 22	<i>Statute Law (Miscellaneous Provisions) Act 2017</i> . Assented to 1.6.2017. Date of commencement of Sch 1.19, 7 days after assent, sec 2 (1).
	No 44	<i>Justice Legislation Amendment Act (No 2) 2017</i> . Assented to 25.9.2017. Date of commencement of Sch 1.23, assent, sec 2 (1).

This Act has been amended by sec 30C of the *Interpretation Act 1987 No 15*.

Table of amendments

Sec 4	Am 2016 No 46, Sch 4.5 [1] [2].
Sec 115	Am 2017 No 22, Sch 1.19.
Sec 181	Am 2017 No 44, Sch 1.23.
Sec 202	Am 2016 No 46, Sch 4.5 [3]–[6].
Sch 8	Am 2016 (659), Sch 8.
Sch 9	Rep 1987 No 15, sec 30C.