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Robyn Webb
Chief Parliamentary Counsel
Dated 9 December 2020



TASMANIA

STRATA TITLES ACT 1998

No. 17 of 1998

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STRATA TITLES ACT 1998

No. 17 of 1998

**An Act to provide for the development of land by strata
and community title schemes and for related purposes**

[Royal Assent 22 May 1998]

Be it enacted by His Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Strata Titles Act 1998*.

2. Commencement

The provisions of this Act commence on a day
or days to be proclaimed.

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3. Interpretation

In this Act, unless the contrary intention appears –

authorised person means –

- (a) the Recorder; or
- (b) a person authorised by the Recorder to exercise the powers of an authorised person under this Act;

body corporate means a body corporate formed under this Act;

boundary structure means a wall, floor, ceiling or fence (with or without a gate) if the wall, floor, ceiling or fence separates a lot from another lot or common property;

common property has the meaning given by section 3A;

community development scheme means the scheme for the development of land created on registration of a plan under Part 4;

developer means the person by or on whose behalf a plan or scheme is lodged for registration;

exclusive use by-law means a by-law giving the owner of a lot exclusive rights to the use and enjoyment of, or other special

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rights in relation to, the common property or part of the common property;

lot, in respect of a site, means a part of the site –

- (a) allocated for separate occupation by the owner of the lot or a person deriving rights of occupation from the owner; or
- (b) consisting of land that, by virtue of a certificate under section 9A of the *Meander Dam Project Act 2003*, is to be treated as a lot;

mortgage means a mortgage, charge or other encumbrance securing a monetary obligation;

ordinary resolution of a body corporate means a resolution passed at a duly convened meeting of the members of the body corporate by a majority of the votes of members present and voting at the meeting;

original proprietor means the person registered as the proprietor of the site immediately before the registration of a plan relating to the site;

plan means –

- (a) a strata plan; or

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(b) the master plan for a staged development scheme; or

(c) the master plan for a community development scheme;

policy of insurance means an insurance policy required to be taken out and maintained under this Act;

prospective owner of a lot in a scheme means a person who has entered into a contract to purchase an existing or future lot in the scheme;

Recorder means the Recorder of Titles under the *Land Titles Act 1980*;

repealed legislation means Part XIA of the *Conveyancing and Law of Property Act 1884* repealed by this Act;

scheme means –

(a) a strata scheme; or

(b) a staged development scheme; or

(c) a community development scheme;

sealed plan means a final plan approved and sealed under Part 3 of the *Local Government (Building and Miscellaneous Provisions) Act 1993*;

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service infrastructure means cables, wires, pipes, sewers, drains, ducts, plant and equipment by which –

- (a) water, gas, electricity, heating or conditioned or unconditioned air is supplied to a lot or the common property; or
- (b) a lot or part of the common property is connected to a telephone, fax, cable television or other telecommunication service; or
- (c) a lot or part of the common property is connected to a sewerage or drainage system; or
- (d) a system for the removal or disposal of waste is provided; or
- (da) a system designed for fire safety for more than one lot or for the common property is provided; or
- (e) other systems or services designed to improve the amenity, or enhance the enjoyment, of the lots or common property are provided;

site means the whole of the land included in a plan (including lots and common property);

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staged development scheme means the scheme for the development of land by the registration of a series of strata plans;

statutory easement means an easement under section 13;

strata scheme means the complex of lots and common property (together with the system of administration and management) created on the registration of a strata plan;

Tribunal means the Resource Management and Planning Appeal Tribunal established under the *Resource Management and Planning Appeal Tribunal Act 1993*;

unanimous resolution of a body corporate means a resolution passed at a duly convened meeting of the members of the body corporate against which no member of the body corporate casts a dissentient vote (at the meeting or later as allowed by this Act);

unit entitlement has the meaning given in section 16.

3A. Meaning of “common property”

- (1) For the purposes of this Act, common property for a strata scheme or community development scheme consists of –

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- (a) all land within the scheme that is not within the boundaries of a lot; and
- (b) all other property administered by the body corporate for the relevant scheme –

and, in a case where the roof of a building forms part of the common property, the guttering attached to the roof or part of the roof is taken to be included in the common property.

- (2) The common property for a strata scheme or community development scheme does not include land designated for future development in the master plan for a staged development scheme or a community development scheme.

PART 2 – STRATA SCHEMES

Division 1 – Division of land by strata plan

4. Division of land by strata plan

- (1) Land under the *Land Titles Act 1980* may be divided into lots and common property by registering a strata plan as provided in this Part.
- (2) The land to be divided by a strata plan must consist of the whole of the land comprised in one or more folios of the Register.
- (3) If the land to be divided by a strata plan consists of the land comprised in 2 or more folios of the Register –
 - (a) an adhesion order under section 110 of the *Local Government (Building and Miscellaneous Provisions) Act 1993* is not necessary before registration of the strata plan; and
 - (b) the registration of the strata plan effects any necessary consolidation of the land.
- (4) Land may be divided both vertically and horizontally under this Act but vertical division of land into strata is not a necessary feature of a division of land by strata plan.
- (5) A lot may be created entirely on one level or partially on one level and partially on another or others.

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- (6) Where the use for which a lot is intended is shown expressly or by necessary implication on or by a scheme, an owner must not use his or her lot otherwise, or permit it to be so used.

Division 2 – Requirements for registration of plan

5. Requirements for strata plan

- (1) A strata plan must –
- (a) state the name of the strata scheme; and
 - (b) delineate the external surface boundaries of the site and the location of the buildings in relation to those boundaries; and
 - (c) state the title reference to the site and other particulars of its location; and
 - (d) include a drawing illustrating the lots and distinguishing them by numbers or other symbols; and
 - (e) define the boundaries of each lot; and
 - (f) show the approximate area of each lot; and
 - (g) state the unit entitlement of each lot; and
 - (h)
 - (i) state the name of the body corporate to be formed on registration of the plan and its address for service; and

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- (j) contain other information and features required by the Recorder.
- (2) If a lot is part of a building, the strata plan may define the boundaries of the lot by reference to boundary structures without necessarily delineating the boundaries or showing the dimensions of the lot.
- (3) If a lot is separated from another lot, or from common property, by a boundary structure, the boundary is, unless otherwise stipulated in the strata plan, the centre of the boundary structure.
- (4) A strata plan must be endorsed with a certificate of a registered surveyor, in a form approved by the Recorder, certifying that the building or buildings shown on the plan are within the boundaries of the site or that any encroachment beyond those boundaries is properly authorised according to law.
- (5) If the site is part of a piece of land subject to a highway adjoining the site, both the external boundary of the site and the boundary of the piece under or over the highway may be shown on the plan.

6. Lodgment of plan for registration

- (1) A person may lodge a strata plan with the Recorder for registration.
- (1A) The plan must be endorsed with a certificate of approval issued by the council for the area in which the site is situated.

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- (2) The plan must be accompanied by –
- (a)
 - (b) any certificates of title for the site; and
 - (c) any other documents that may be required by the Recorder; and
 - (d) the prescribed fee.
- (3) If satisfied that the requirements for registration have been complied with, the Recorder must register the plan.

7. Mortgages

- (1) On registration of a strata plan, a mortgage registered immediately before registration of the plan on the folio of the Register for the site is to be registered on the folio for each lot created on registration of the plan (but not on the folio for the common property).
- (2) If, before the registration of the strata plan, one part of the site is subject to one mortgage and another part of the site is subject to another mortgage –
- (a) the Recorder must not accept the strata plan for registration unless all mortgages, or all but one of the mortgages, are discharged; and
 - (b) if a mortgage remains, the mortgage extends to the whole of the site and it is to be registered in accordance with

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subsection (1) on the folio for each lot created on registration of the plan.

8. Effect of registration

- (1) A registered strata plan forms part of the Register.
- (2) On registration of the strata plan, the Recorder must create folios in the Register for –
 - (a) each of the lots created by the plan; and
 - (b) the common property.
- (3) The folio of the Register for each of the lots is to be issued in the name of the original proprietor and the folio for the common property is to be issued in the name of the body corporate.
- (4) The Recorder may issue certificates of title for the lots, but no certificate of title is to be issued for the common property.
- (5)

Division 3 – The common property

9. Common property

- (1) Subject to subsection (2), the common property consists of –
 - (a) parts of a site (including buildings or parts of buildings and improvements) that are not within a lot; and

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(b) the service infrastructure.

- (2) A part of the service infrastructure within a lot, and solely related to supplying services to the lot, is common property only if it is within a boundary structure separating the lot from another lot or from common property.

10. Ownership of common property

- (1) The body corporate holds the common property in trust for the owners of the lots.
- (2) The owners of the lots are, in equity, tenants in common of the common property in shares proportionate to the unit entitlements of their respective lots.
- (3) An owner's interest in a lot is inseparable from the owner's interest in the common property so that –
- (a) a dealing with the lot affects, without express mention, the interest in the common property; and
 - (b) an owner cannot separately deal with or dispose of the owner's interest in the common property.
- (4) The body corporate may deal with the common property on behalf of the owners of the lots as authorised under this Act.

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11. Rights and responsibilities for common property

- (1) The body corporate may sue and be sued for rights and liabilities related to the common property as if the body corporate were the owner and occupier of the common property.
- (2) If the body corporate grants rights of exclusive occupation of a particular part of the common property to another person, the body corporate's rights and liabilities as occupier of that part of the common property are, while the right of exclusive occupation continues, vested in the other person.

12. Disposal of interest in common property

- (1) If authorised by unanimous resolution, a body corporate may –
 - (a) sell or otherwise dispose of part of the common property; or
 - (b) grant or amend a lease over part of the common property.
- (2) A dealing to give effect to a transaction under this section may be registered only if accompanied by –
 - (a) a copy of the resolution authorising the transaction certified under the body corporate's common seal; and
 - (b) if the council's approval is required by law, a certificate issued under the authority of the council certifying that

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the transaction has been approved by the council; and

- (c) if the transaction is for the sale or disposal of part of the common property which does not result in its removal from the scheme, an amendment to the plan showing the new boundaries; and
- (d) if the transaction is for any other sale or disposal of part of the common property –
 - (i) where the common property is to be removed from the site, an amendment to the plan showing the new boundaries of the site; and
 - (ii) a sealed plan under the *Local Government (Building and Miscellaneous Provisions) Act 1993*.

(3) If the Recorder is satisfied that –

- (a) the sale or disposal is by way of an adjustment of boundaries; and
- (b) an amendment to the plan is not necessary in view of the information in it –

the Recorder may, on application by a person interested in the transaction, dispense with the requirement to amend the plan.

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Division 4 – Easements, covenants and profits a prendre

13. Statutory easements

- (1) Easements of lateral and subjacent support exist between lots or parts of the common property for which such support is necessary and lots or parts of the common property capable of providing such support.
- (2) An easement of shelter exists entitling the owner of a lot to have the owner's lot sheltered by buildings and structures on the site.
- (3) Easements exist over the lots and common property in favour of the body corporate and the owners of lots to the extent reasonably necessary for the installation, maintenance, operation, repair and replacement of service infrastructure.
- (4) The statutory easements confer and impose all ancillary rights and obligations reasonably necessary to make them effective.
- (5) The rights conferred by a statutory easement cannot be exercised in a way that unreasonably interferes with the enjoyment of a lot or the common property.

14. Creation, &c., of easements, covenants and profits a prendre

- (1) If authorised by unanimous resolution, a body corporate may –

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- (a) grant an easement burdening the common property, or accept the grant of an easement for the benefit of the common property; or
 - (ab) acquire, grant, surrender or otherwise deal with a profit a prendre in respect of the common property; or
 - (b) enter into a restrictive covenant burdening the common property or for the benefit of the common property; or
 - (c) surrender an easement or restrictive covenant for the benefit of the common property, or accept the surrender of an easement or restrictive covenant burdening the common property.
- (2) A dealing to give effect to a transaction under this section may only be registered if accompanied by –
 - (a) a copy of the resolution authorising the transaction certified under the body corporate's common seal; and
 - (ab) if the council's approval is required by law, a certificate issued under the authority of the council certifying that the transaction has been approved by the council; and
 - (b) if the Recorder considers necessary, a plan of the easement; and

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- (c) other documents required by the Recorder.

15. Commencement of easements

- (1) Statutory easements come into force on the registration of the strata plan.
- (2) Easements and restrictive covenants that are included in the strata plan, and burden land comprised in the site, come into force on the registration of the plan.
- (3) An easement or restrictive covenant created by a transaction authorised under this Division comes into force on registration of the dealing under which the easement or restrictive covenant is created.

Division 5 – Unit entitlements

16. Unit entitlements

- (1) Each lot created by a plan has a unit entitlement.
- (2) A unit entitlement –
 - (a) may be a general unit entitlement operating for all the purposes of this Act; or
 - (b) may be a special unit entitlement operating for any one or more of the following purposes:

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- (i) for fixing the proportionate contribution to be made by the owner of the lot to the body corporate;
 - (ii) for fixing the owner's proportionate interest in the common property;
 - (iii) for fixing the number of votes to be exercisable by the owner of the lot at a general meeting of the body corporate;
 - (iv) for fixing the proportion of the body corporate's income to be apportioned to the owner of the lot.
- (3) If a lot has a special unit entitlement for a particular purpose, it must also have a general unit entitlement for other purposes and a reference in this Act to the unit entitlement of the lot is to be taken, so far as relevant to a purpose for which the special unit entitlement was established, as a reference to the special unit entitlement but otherwise is to be taken to be a reference to the general unit entitlement of the lot.
- (4) A unit entitlement must be a whole number.
- (5) The unit entitlement, or a particular class of unit entitlement, may be the same for each lot or may vary from lot to lot.

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- (6) Unit entitlements must be fixed on a fair and equitable basis.

17. Change of unit entitlements

- (1) The unit entitlements of the lots created by a plan may be changed –
- (a) by unanimous resolution of the body corporate; or
 - (b) by order under Part 9; or
 - (c) if the total unit entitlements of the lots subject to the change are not affected, by agreement between the owners of the lots and with the consent of the registered mortgagees and lessees of the lots.
- (2) A change of unit entitlements under subsection (1) does not take effect until the plan is changed by registration of an amendment including the change.
- (3)

Division 6 – Amendment of strata plan

18. Amendment of plan

A strata plan may be amended by registration of an amendment under this Division.

19. Application for amendment

- (1) An application for registration of an amendment to a strata plan may be made –
 - (a) if the body corporate is authorised by ordinary resolution to make the application, by the body corporate; or
 - (b) jointly by the owners of lots affected by the amendment.
- (2) The application must be accompanied by the following:
 - (a) if the application is made by the body corporate, a copy of the resolution authorising the application certified under the body corporate's common seal;
 - (b) if the amendment affects the boundaries of lots or common property –
 - (i) a plan showing the amendment certified, in a form approved by the Recorder, by a registered surveyor; and
 - (ii) a certificate of approval issued under the authority of the council for the area in which the site is situated; and
 - (iii) evidence that the registered mortgagees of any lots affected by the amendment consent to the amendment;

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- (c) if the amendment affects unit entitlements, a revised schedule of unit entitlements;
 - (d) if the Recorder so requires, any certificates of title affected by the amendment;
 - (e) the prescribed fee.
- (3) The Recorder may dispense with a registered mortgagee's consent under subsection (2)(b)(iii) if satisfied that the interests of the mortgagee would not be prejudiced by registration of the amendment or that the mortgagee has unreasonably withheld consent.

19A. Alteration or addition of buildings

Where –

- (a) a building on a lot or on common property is altered; or
- (b) a new building is added to a lot or common property –

and the alteration or addition requires the approval of the council, an amendment to the strata plan is to be lodged with the Recorder for registration under this Division.

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20. Acquisition of land

- (1) If authorised by unanimous resolution, a body corporate may acquire land in fee simple to incorporate it in the site.
- (2) If the land is not already under the provisions of the *Land Titles Act 1980*, the transaction for the acquisition of the land is not to be completed until the land has been brought under those provisions.
- (3) A dealing to give effect to the acquisition of title to land by the body corporate under this section may be registered only if accompanied by –
 - (a) the dealing to give effect to the transfer; and
 - (b) a copy of the resolution authorising the acquisition of the land certified under the body corporate's common seal; and
 - (c) an application for amendment to the plan in accordance with this Division incorporating the land in the site.
- (4) On registration of the amendment the land merges with the site to form common property or common property and lots in accordance with the amendment to the plan.

21.

Division 7 – Consolidation of plans

22. Consolidation of plans

Two or more strata plans may be consolidated under this Division.

23. Application for consolidation

- (1) An application for the consolidation of two or more strata plans may be made to the Recorder by the bodies corporate for the relevant strata schemes.
- (2) The application must be accompanied by the following:
 - (a) copies of the resolutions authorising the application, each certified under the common seal of the body corporate by which it was passed to be a unanimous resolution of the body corporate;
 - (b) a consolidated plan to be substituted for the existing registered plans certified, in a form approved by the Recorder, by a registered surveyor;
 - (c) the written consents of all owners and registered mortgagees of lots;
 - (d) a certificate of approval issued under the authority of the council in which the scheme is situated;
 - (e) a revised schedule of unit entitlements;

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- (f) the certificates of title for all existing lots;
 - (g) the prescribed fee.
- (3) The consolidated plan must show the name of the strata scheme to be formed by the consolidation and the address of the body corporate.
- (4) The Recorder may dispense with a registered mortgagee's consent under subsection (2)(c) if satisfied that the interests of the mortgagee would not be prejudiced by the consolidation or that the mortgagee has unreasonably withheld consent.

24. How consolidation is effected

- (1) The Recorder may consolidate the strata plans by –
- (a) cancelling the existing plans and the existing folios in the Register for the strata schemes subject to the consolidation; and
 - (b) registering the new plan and creating new folios in the Register for the consolidated scheme.
- (2) The issue of new folios of the Register does not affect mortgages over the land and those registered on the old folios are to be transferred to the new folios.

25. Effect of consolidation

On consolidation of the plans, the bodies corporate that applied for the consolidation are dissolved and their assets and liabilities vest in the body corporate formed on registration of the new plan.

Division 8 – Cancellation of plan

26. Cancellation of plan

The Recorder may cancel a strata plan on an application under this Division.

27. Application for cancellation

- (1) An application for the cancellation of a strata plan may be made by the relevant body corporate.
- (2) The application must be accompanied by the following:
 - (a) a copy of the resolution authorising the application certified under the common seal of the relevant body corporate to be a unanimous resolution of the body corporate;
 - (b) the written consents of all registered mortgagees of lots;
 - (c) the certificates of title for all existing lots;

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- (d) a certificate of approval issued under the authority of the council in which the scheme is situated;
 - (e) the prescribed fee.
- (3) The Recorder may dispense with a registered mortgagee's consent under subsection (2)(b) if satisfied that the interests of the mortgagee would not be prejudiced by cancellation of the plan or that the mortgagee has unreasonably withheld consent.

28. Effect of cancellation

On cancellation of the strata plan –

- (a) the site vests in the former owners of the lots, as tenants in common, in shares proportional to the respective unit entitlements of their lots; and
- (b) the body corporate is dissolved and any outstanding rights and liabilities attach to the owners in shares proportional to the respective unit entitlements of their lots; and
- (c) any mortgage or other encumbrance registered over a lot attaches to the interest of the former owner of the lot in the site.

29. Registration of cancellation

On cancelling a strata plan, the Recorder must –

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- (a) cancel existing folios and certificates of title related to the former plan; and
- (b) create a new folio in the Register to give effect to this Division.

Division 9 – Council certificate of approval

30. Requirement for council’s certificate of approval

A council’s certificate of approval is required for –

- (a) a strata plan; or
- (b) an amendment to a strata plan; or
- (c) a consolidation of strata plans; or
- (d) a cancellation of a strata plan.

31. Application for, and grant of, certificate of approval

- (1) Before a proposal for which a council’s certificate of approval is required is registered or otherwise carried into effect, the applicant must apply to the council for the area in which the site (or proposed site) is situated for a certificate of approval.
- (2) The application must be accompanied by –
 - (a) any sketches, plans or models necessary for a proper understanding of the proposal; and
 - (b) any prescribed documents; and

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- (ba) evidence, satisfactory to the council, that is sufficient to enable the council to be satisfied as to the matters specified in subsection (3) in relation to the application; and
 - (c) the prescribed fee.
- (2A) The council must, within 30 business days after the day on which it receives the application, issue, or refuse to issue, a certificate of approval in relation to the application.
- (2B) The council may –
 - (a) within 15 business days after the day on which it receives the application, give to the applicant notice in writing specifying that the council requires further information in order to determine the application; and
 - (b) within 8 business days after the day on which it receives further information requested under paragraph (a) or subparagraph (ii) –
 - (i) decide that the information is satisfactory; or
 - (ii) give to the applicant notice in writing specifying that the information is not satisfactory and require the applicant to provide further information necessary to satisfy the council.

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- (2C) The period of 30 business days referred to in subsection (2A) does not run in relation to an application during the period beginning on the day on which a notice is given by the council under subsection (2B) in relation to the application and ending on the day on which the council receives from the person who made the application information that it decides is satisfactory.
- (3) Before issuing a certificate of approval, the council must satisfy itself –
- (a) that any requirements of a planning scheme under the *Land Use Planning and Approvals Act 1993* have been complied with; and
 - (b) if the proposal involves building work, that certificates for the relevant buildings have been issued under the *Building Act 2016*; and
 - (c) if the proposal relates to an existing building for which a change of use is proposed, that all requirements under the *Building Act 2016* for a change of use have been complied with and that there has been substantial compliance with all other requirements under that Act relating to the scheme and to any buildings existing at the date of the application and in particular with –

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- (i) any safety requirements, including provision for fire exits; and
 - (ii) requirements for sanitary facilities; and
 - (d) if the proposal relates to a lot without a building, that the proposal is capable of being carried into effect.
- (4) If the council refuses an application for a certificate of approval, the council must return any sketches, plans and models submitted by the applicant.
- (5) Where a permit for use or development is required, under the relevant planning scheme approved under the *Land Use Planning and Approvals Act 1993*, for the proposed use of the lots, a certificate of approval may be issued only if –
- (a) the required permit has been issued; and
 - (b) any separation of buildings would not contravene that planning scheme.
- (6) A council must refuse an application for a certificate of approval if the council reasonably considers that the proposal is for a subdivision within the meaning of Part 3 of the *Local Government (Building and Miscellaneous Provisions) Act 1993*.

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31AA. Requirement for staged development scheme

Where an application for a certificate of approval is made wholly or partly in respect of vacant land, the council may refuse the application on the ground that an application for a staged development scheme under section 38 should be made.

31A. Lot taken not to be subdivision

A lot in a strata scheme is not a lot for the purposes of a subdivision within the meaning of Part 3 of the *Local Government (Building and Miscellaneous Provisions) Act 1993*.

Division 10 – Miscellaneous

32. Reinstatement of buildings

- (1) If a building on the site is damaged or destroyed, a scheme for reinstating the building in whole or in part may be approved under this section.
- (2) A reinstatement scheme referred to in subsection (1) may be approved –
 - (a) by agreement in writing between all interested parties; or
 - (b) by order of the Supreme Court made on application by an interested party.
- (3) A reinstatement scheme may –

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- (a) direct how insurance money is to be applied; and
 - (b) direct payment by the body corporate or any one or more owners of lots; and
 - (c) direct changes to the plan; and
 - (d) require the body corporate to compensate the owners of lots prejudiced by changes to the plan; and
 - (e) deal with incidental or ancillary matters.
- (4) The interested parties are –
- (a) the body corporate; and
 - (b) the insurer; and
 - (c) the owners and registered mortgagees of lots affected by the scheme; and
 - (ca) the council in the municipal area of which the relevant land is situated; and
 - (d) all other persons who appear from the Register to have an interest in the scheme.

33. Apportionment of statutory charge

If a liability to a public authority or council exists, and the liability is a charge on the whole or part of the site, the charge is apportioned among the lots (or the lots in that part of the site) in the same proportions as the unit entitlement of

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each lot bears to the total unit entitlement of all the lots in the site or the relevant part of the site.

PART 3 – STAGED DEVELOPMENT SCHEMES

Division 1 – Nature of staged development scheme

34. Staged development schemes

A staged development scheme consists of –

- (a) a master plan for developing land in stages by a series of strata plans; and
- (b) a disclosure statement that conforms with the requirements of this Part.

35. Form and contents of scheme

(1) The master plan forming part of a staged development scheme –

- (a) must identify the site by reference to the relevant folio of the Register and delineate the site; and
- (b) must contain a plan for each proposed stage of the development (identifying its location by reference to the site) –
 - (i) showing the location of existing and proposed buildings; and
 - (ii) identifying the boundaries of the proposed lots and common property; and
 - (iii) indicating proposed construction zones, access zones and the

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nature of the use that may be
made of them; and

(c - d)

(e) must contain any other information or
material required by the Recorder.

(2) A disclosure statement that forms part of a
staged development scheme must include –

(a) a warning in the form and terms required
by the Recorder; and

(b) the name and address of the developer;
and

(c) a description of the proposed
development and the stages in which it is
to be carried out; and

(d) a statement of times for commencing and
completing each stage of the proposed
development (which may be fixed by
reference to the calendar, by reference to
the completion of a previous stage of the
development, by reference to progress in
the sale of lots, or on any other
reasonable basis); and

(e) a schedule of the working hours during
which work is to proceed on the second
and any subsequent stage of the proposed
development; and

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- (f) a description of the amenities to be provided as part of the proposed development and a statement of –
 - (i) the purposes for which the amenities are to be provided; and
 - (ii) the extent the amenities are to be available for use by the owners and occupiers of lots and their invitees; and
 - (iii) the arrangements for providing and maintaining the amenities and defraying the cost of their provision or maintenance; and
 - (fa) a schedule of material and finishes to be used in the building work involved in carrying out proposed development work; and
 - (fb) a schedule of the proposed unit entitlements for each proposed lot as at the completion of each stage of the proposed development; and
 - (g) any other information or materials required by the Recorder.

Division 2 – Approval of scheme in principle

36. Application for council approval

- (1) The developer under a staged development scheme may apply to the council for the area in

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which the site is situated for approval of the scheme in principle.

- (2) The application must be accompanied by –
 - (a) the proposed staged development scheme; and
 - (b) any other document required by the council; and
 - (c) the prescribed fee.
- (3) An application may be made whether the site is wholly undeveloped or partially developed.

37. Approval of scheme in principle

- (1) Before approving a proposed staged development scheme in principle, the council may exercise either or both of the following powers:
 - (a) the council may require specified changes to the proposed scheme;
 - (b) the council may require the demolition or alteration of buildings on the site of the proposed staged development scheme.
- (2) The council may –
 - (a) approve the staged development scheme unconditionally; or
 - (b) approve the staged development scheme subject to specified conditions, which

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may include a condition requiring the developer to proceed with the proposed development work in accordance with specified time limits; or

- (c) refuse to approve the staged development scheme.
- (3) A condition imposed under subsection (2)(b) cannot require the developer to commence work earlier than 6 months after the date of the council's approval in principle.
- (4) If the council approves the proposed staged development scheme, the council must issue a certificate of approval.
- (5) Subject to subsection (6), a certificate of approval under Part 2 is required in accordance with this Act in respect of each strata plan by which the various stages of the development are to be implemented.
- (6) An approval under this section may exempt the developer from the requirement for a certificate of approval under Part 2 in respect of a particular stage or particular stages of the development if stipulated conditions are complied with.

Division 3 – Registration of scheme

38. Lodgment of staged development scheme

- (1) The Recorder may, on application by the developer under a staged development scheme, register the scheme.

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- (2) An application for registration of a staged development scheme must be accompanied by –
- (a) the staged development scheme; and
 - (b) a certificate issued under the authority of the council for the area in which the site is situated certifying that the council has approved the scheme in principle and stating any conditions to which the approval is subject; and
 - (c) the certificates of title to the land affected by the scheme; and
 - (d) the prescribed fee.

39. Commencement of scheme

A staged development scheme comes into force on registration.

Division 4 – Development rights

40. Development rights

- (1) The developer under a staged development scheme is entitled to reasonable access to, and use of, the site for –
- (a) the purposes of carrying out the proposed development; and
 - (b) for other purposes related to development stated in the disclosure statement except subdivision of common property.

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- (2) The rights of others in relation to the site (including rights in relation to lots and common property) are subordinate to the rights of the developer under this section.
 - (3) The by-laws cannot limit the rights of the developer under this section.

Division 5 – Progressive development of land subject to scheme

41. Progressive development

- (1) The land subject to a staged development scheme is to be progressively developed, in stages, in accordance with the master plan.
- (2) The council may refuse to approve a particular stage in a staged development scheme if an earlier stage of the scheme has not been completed as required under the terms of the registered scheme.
- (3) As land is progressively developed in accordance with a staged development scheme –
 - (a) a strata scheme created at an earlier stage of the development expands to incorporate lots and common property created at later stages of the development; or
 - (b) if the master plan so provides, a new strata scheme that remains separate and independent from the strata scheme or schemes created at earlier stages of the

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development is established incorporating the lots and common property created on registration of the strata plan for a later stage of the development.

Division 6 – Variation of scheme

42. Application for variation of scheme

- (1) The developer under a registered staged development scheme may apply for the variation of the scheme.
- (2) The application is to be made in the first instance to the council for the area in which the site is situated.
- (3) The application must indicate how the scheme is to be varied.
- (4) The application must be accompanied by –
 - (a) the written consents of all present and prospective owners of lots in the scheme; and
 - (b) the prescribed fee.
- (5) The council may dispense with the consent of a present or prospective owner if –
 - (a) the council is satisfied that the owner would not be adversely affected by the variation; or
 - (b) the council is satisfied that the whereabouts of the owner or prospective

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owner is unknown to, and not reasonably ascertainable by, the applicant; or

- (c) if less than 25% of the present and prospective owners have refused or failed to consent, the council is satisfied that consent has been unreasonably withheld.

(6) The council may –

- (a) approve the variation unconditionally; or
- (b) approve the variation subject to specified conditions; or
- (c) refuse to approve the variation.

43. Registration of variation

- (1) The Recorder may, on application by the developer under a staged development scheme, register a variation to the scheme.
- (2) An application for registration of a proposed variation of a staged development scheme must be accompanied by –
 - (a) the proposed scheme as varied indicating the variations; and
 - (b) a certificate issued under the authority of the relevant council certifying that the council has approved the proposed variation and stating any conditions subject to which the approval was granted; and

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- (c) if land not formerly within the scheme is to be brought within the ambit of the scheme by the variation and the Recorder requires production of the certificates of title to the land, the certificates of title; and
 - (d) the prescribed fee.
- (3) The variation comes into force on registration.

44. Variation of scheme by the Supreme Court

- (1) The Supreme Court may, on application by an interested person, make an order for variation of a staged development scheme if satisfied that it is impossible or impracticable to complete the scheme as proposed in the master plan.
- (2) Each of the following is an interested person:
 - (a) the developer;
 - (b) each owner and each prospective owner of a lot;
 - (c) the Recorder;
 - (d) any other person who has, in the opinion of the Supreme Court, a proper interest in the matter.
- (3) The applicant must give notice of an application under this section to all other interested persons.
- (4) A person entitled to notice under this section may appear and be heard in the proceedings.

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- (5) The Supreme Court may make an order –
 - (a) deferring the time for completion of a particular stage or stages of the scheme;
or
 - (b) changing the order in which the various stages of the scheme are to be completed;
or
 - (c) varying the scheme in other ways to ensure (as far as practicable) its successful completion.
- (6) An order under this section may also –
 - (a) provide for the payment of compensation in addition to, or instead of, damages or compensation to which a person would be otherwise entitled; and
 - (b) vary rights and obligations arising under this Act in relation to the scheme; and
 - (c) make any other provision the Supreme Court considers just and equitable.
- (7) The Supreme Court may, on application by an interested person, vary or revoke an order under this section.
- (8) A copy of an order under this section (including an order varying or revoking an earlier order) must be served on the Recorder.
- (9) The Recorder must register the order and on registration it becomes part of the scheme.

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Division 7 – Enforcement of scheme

45. Injunction

- (1) The Supreme Court may, on application by an interested person, grant a mandatory injunction requiring the developer under a staged development scheme to complete the scheme in accordance with the terms of the scheme.
- (2) The following are interested persons:
 - (a) an owner or prospective owner of a lot;
 - (b) a body corporate for a strata scheme within the staged development scheme;
 - (c) the council for the relevant area.

46. Implied term in contract for sale of lot or proposed lot in staged development scheme

- (1) The developer under a staged development scheme warrants to any person who enters into a contract to purchase a lot or a proposed lot in the scheme that the development will be carried out in accordance with the scheme.
- (2) A warranty under subsection (1) –
 - (a) is enforceable in the same way as a contractual warranty; but
 - (b) cannot be limited or excluded by contract.

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- (3) Without limiting the damages that may be recovered for breach of the statutory warranty, the owner of a lot may recover damages for the deferment or loss of a reasonably expected capital appreciation of the lot that would have resulted from completion of the development in accordance with the terms of the scheme.

Division 8 – Transfer of title to land subject to registered scheme

47. Acquisition of title to land subject to registered scheme

A person who acquires title to land subject to a registered staged development scheme that is yet to be developed in accordance with the scheme becomes bound to develop the land in accordance with the scheme.

48. Assignment of developer's interest

If the owner of land subject to a registered staged development scheme proposes to sell or dispose of land subject to the scheme –

- (a) the owner must give written notice of the proposed transaction to the council for the area in which the site is situated; and
- (b) the person who is to acquire title to the land in consequence of the transaction must –
 - (i) give to the council a written undertaking to develop the land

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in accordance with the registered scheme; and

- (ii) give the council any security required by the council, within 28 days after notice of the transaction was given to the council, for the development of the land in accordance with the scheme.

49. Registration of dealing

- (1) A dealing for the sale or disposal of land that is yet to be developed and is subject to a registered staged development scheme takes effect on registration.
- (2) When submitted for registration, the dealing must be accompanied by –
 - (a) a copy of the undertaking to complete the development in accordance with the registered scheme; and
 - (b) a statutory declaration to the effect that the council has made no requirement under this Division for security for completion of the development in accordance with the registered scheme or that such a requirement has been complied with; and
 - (c) the prescribed fee.

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50. Effect of registration

On registration of a dealing for the sale or disposal of land subject to a registered staged development scheme, the rights and obligations of the developer under the scheme, so far as they relate to land subject to the dealing, pass to the person who acquires title to the land.

Division 9 – Miscellaneous

50A. Lot taken not to be subdivision

The creation of a lot in a staged development scheme is taken not to be a subdivision within the meaning of Part 3 of the *Local Government (Building and Miscellaneous Provisions) Act 1993*.

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Part 4 – Community development schemes

PART 4 – COMMUNITY DEVELOPMENT SCHEMES

Division 1 – Nature of community development scheme

51. Community development schemes

- (1) A community development scheme consists of –
 - (a) a master plan for developing land involving two or more of the elements mentioned in subsection (2) or for combining two or more of those elements if no further development is intended whether in either case the elements are of the same kind or not; and
 - (b) a management statement that conforms with the requirements of this Part; and
 - (c) the constituent documents for the body corporate to be formed on registration of the scheme; and
 - (d) the by-laws of the body corporate.
- (2) A community development scheme must include two or more of the following elements, whether of the same kind or not:
 - (a) a strata scheme;
 - (b) a sealed plan;
 - (c) some other form of land division;
 - (d) the establishment of a retirement village;
 - (e) a marina or water-based development.

52. Form and contents of management statement

- (1) The master plan forming part of a community development scheme –
 - (a) must delineate the site and show the location of each element of the scheme; and
 - (b) must contain a sketch showing the expected appearance of the completed development; and
 - (c) must include a description of the general theme (if any) of the development, the architectural style and the nature of the landscaping; and
 - (d) must include a plan or description of land within the site that is not to be subject to private occupation and a statement of the extent to which it is to be available for the use and enjoyment of the owners and occupiers of lots and their invitees; and
 - (e) must contain any other information or material required by the Recorder.
- (2) A management statement that forms part of a community development scheme must include –
 - (a) a warning in the form and terms required by the Recorder; and
 - (b) the name and address of the developer; and

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- (c) a description of the stages, and the sequence of stages, in which the development is to be carried out; and
- (d) a description or plan of construction zones, access zones and the nature of the use that may be made of them; and
- (e) a schedule of times for commencing and completing each element of the proposed development (which may be fixed by reference to the calendar, by reference to the completion of a previous element, by reference to progress in the sale of lots, or on any other reasonable basis); and
- (f) a schedule of the working hours during which work is to proceed on the second and any subsequent stage of the proposed development; and
- (g) the constituent documents for the managing body corporate that is to be formed on registration of the community development scheme; and
- (h) if a body corporate or bodies corporate are to be constituted (otherwise than on registration of a strata plan) in relation to any elements of the scheme, the constituent documents for those bodies corporate; and
- (i) a description of the amenities to be provided as part of the proposed development and a statement of –

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- (i) the purposes for which the amenities are to be provided; and
 - (ii) the extent the amenities are to be available for use by owners and occupiers of lots and their invitees; and
 - (iii) the arrangements for providing and maintaining the amenities and defraying the cost of their provision and maintenance; and
 - (j) any other information or materials required by the Recorder.
- (3) The constituent documents for the managing body corporate are the documents setting out –
- (a) the basis of membership of the body corporate; and
 - (b) the powers and functions of the body corporate; and
 - (c) how its affairs are to be administered.
- (4) The powers of the managing body corporate may include the following:
- (a) planning and developing the project;
 - (b) managing the project both during the development stage and afterwards;
 - (c) the making of by-laws for the project as a whole;

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- (d) the levying of contributions against owners of lots;
- (e) the management and administration of property;
- (f) insurance;
- (g) powers reasonably incidental to any of those mentioned above.

Division 2 – Approval of scheme in principle

53. Application for approval of scheme in principle

- (1) The developer under a community development scheme must apply to the council for the area in which the site is situated for approval of the scheme in principle.
- (2) The application must be accompanied by –
 - (a) the proposed community development scheme; and
 - (b) any other document required by the council; and
 - (c) the prescribed fee.
- (3) An application may be made whether the site is wholly undeveloped or partially developed.

54. Approval of scheme

- (1) Before approving a proposed community development scheme in principle, the council

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may exercise either or both of the following powers:

- (a) the council may require specified changes to the proposed scheme;
 - (b) the council may require the demolition or alteration of buildings on the site of the proposed scheme.
- (2) The council may –
 - (a) approve the proposed community development scheme unconditionally; or
 - (b) approve the proposed community development scheme subject to specified conditions, which may include a condition requiring the developer to proceed with the proposed development work in accordance with specified time limits; or
 - (c) refuse to approve the proposed community development scheme.
- (3) A condition imposed under subsection (2)(b) cannot require the developer to commence work earlier than 6 months after the date of the council's approval in principle.
- (4) If the council approves the proposed community development scheme, the council must issue a certificate of its approval.
- (5) Subject to subsection (6), an approval of a community development scheme does not

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obviate the need for permits, approvals or certificates required under this Act or any other Act in respect of the various elements of the development.

- (6) An approval under this section may exempt the developer from the requirement for a permit, approval or certificate (which the council has power to grant under this Act or another Act) in respect of a particular element or particular elements of the development if stipulated conditions are complied with.

Division 3 – Registration of scheme

55. Registration of community development scheme

- (1) The Recorder may, on application by the developer under a community development scheme, register the scheme.
- (2) An application for registration of a community development scheme must be accompanied by –
 - (a) the community development scheme; and
 - (b) a certificate issued under the authority of the council for the area in which the site is situated certifying that the scheme has been approved in principle under this Division and stating any conditions subject to which the approval was granted; and
 - (c) the certificates of title to the land affected by the scheme; and

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- (d) the prescribed fee.

Division 4 – Development rights

56. Development rights

- (1) The developer under a community development scheme is entitled to reasonable access to, and use of, the site for –
 - (a) the purposes of carrying out the proposed development; and
 - (b) for other purposes related to development stated in the management statement except subdivision of the common property.
- (2) The rights of others in relation to the site (including rights in relation to lots and common property) are subordinate to the rights of the developer under this section.
- (3) The by-laws cannot limit the rights of the developer under this section.

Division 5 – Progressive development of land subject to scheme

57. Progressive development

- (1) The land subject to a community development scheme is to be progressively developed in accordance with the terms of the scheme.

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- (2) The council may refuse to approve the development of a particular stage of the scheme if an earlier stage of the scheme has not been completed as required under the terms of the registered scheme.

Division 6 – Variation of scheme

58. Application for variation of scheme

- (1) The developer under a registered community development scheme may apply for the variation of the scheme.
- (2) The application is to be made in the first instance to the council for the area in which the site is situated.
- (3) The application must indicate how the scheme is to be varied.
- (4) The application must be accompanied by –
 - (a) the written consents of all present and prospective owners of lots in the scheme; and
 - (b) the prescribed fee.
- (5) The council may dispense with the consent of a present or prospective owner if –
 - (a) the council is satisfied that the owner would not be adversely affected by the variation; or

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- (b) the council is satisfied that the whereabouts of the owner or prospective owner is unknown to, and not reasonably ascertainable by, the applicant; or
 - (c) if less than 25% of the present and prospective owners have refused or failed to consent – the council is satisfied that consent has been unreasonably withheld.
- (6) The council may –
- (a) approve the variation unconditionally; or
 - (b) approve the variation subject to conditions; or
 - (c) refuse to approve the variation.

59. Registration of variation

- (1) The Recorder may, on application by the developer under a community development scheme, register a variation to the scheme.
- (2) An application for registration of a variation of a community development scheme must be accompanied by –
 - (a) the proposed scheme as varied indicating the variations; and
 - (b) a certificate issued under the authority of the relevant council certifying that the council has approved the proposed variation and stating any conditions

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subject to which the approval was granted; and

- (c) the certificates of title to any land not formerly within the scheme that is affected by the variation; and
- (d) the prescribed fee.

60. Variation of scheme by the Supreme Court

- (1) The Supreme Court may, on application by an interested person, make an order for variation of a community development scheme if satisfied that it is impossible or impracticable to complete the scheme as proposed in the master plan.
- (2) Each of the following is an interested person:
 - (a) the developer;
 - (b) each owner and each prospective owner of a lot;
 - (c) the Recorder;
 - (ca) the council in the municipal area of which the relevant land is situated;
 - (d) any other person who has, in the opinion of the Supreme Court, a proper interest in the matter.
- (3) The applicant must give notice of an application under this section to all other interested persons.

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- (4) A person entitled to notice under this section may appear and be heard in the proceedings.
 - (5) The Supreme Court may make an order –
 - (a) deferring the time for completion of a particular stage or stages of the scheme;
or
 - (b) changing the order in which the various stages of the scheme are to be completed;
or
 - (c) varying the scheme in other ways to ensure (as far as practicable) its successful completion.
 - (6) An order under this section may also –
 - (a) provide for the payment of compensation in addition to, or instead of, damages or compensation to which a person would be otherwise entitled; and
 - (b) vary rights and obligations arising under this Act in relation to the scheme; and
 - (c) make any other provision the Supreme Court considers just and equitable.
 - (7) The Supreme Court may, on application by an interested person, vary or revoke an order under this section.
 - (8) A copy of an order under this section (including an order varying or revoking an earlier order) must be served on the Recorder.

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- (9) The Recorder must register the order and on registration it becomes part of the scheme.

Division 7 – Enforcement of scheme

61. Injunction

- (1) The Supreme Court may, on application by an interested person, grant a mandatory injunction requiring the developer under a community development scheme to complete the scheme in accordance with the terms of the scheme.
- (2) The following are interested persons:
- (a) an owner or prospective owner of a lot;
 - (b) a body corporate for the community development scheme;
 - (c) a body corporate for a strata scheme within the community development scheme;
 - (d) the council for the relevant area.

62. Implied term in contract for sale of lot or proposed lot in community development scheme

- (1) The developer under a community development scheme warrants to any person who purchases a lot or a proposed lot in the scheme that the development will be carried out in accordance with the scheme.
- (2) A warranty under subsection (1) –

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- (a) is enforceable in the same way as a contractual warranty; and
 - (b) cannot be limited or excluded by contract.
 - (3) Without limiting the damages that may be recovered for breach of the statutory warranty, the owner of a lot may recover damages for the loss of a reasonably expected capital appreciation of the lot that would have resulted from completion of the development in accordance with the terms of the scheme.

63. Disposition of security

- (1) If a developer has given a security for due completion of the scheme, an owner of a lot who has suffered a loss as a result of the developer's failure to complete the development in accordance with the terms of the scheme may apply to the Supreme Court for an order under this section.
- (2) On an application under this section, the Supreme Court may order that the whole or part of the amount of the security –
 - (a) be applied as directed by the Court towards completion of the scheme; or
 - (b) be distributed among owners of lots who have suffered loss on a basis determined by the Court.

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Division 8 – Transfer of title to land subject to registered scheme

64. Acquisition of title to land subject to registered scheme

A person who acquires title to land subject to a registered community development scheme that is yet to be developed in accordance with the scheme becomes bound to develop the land in accordance with the scheme.

65. Assignment of interest in land subject to scheme

If the owner of land subject to a registered community development scheme proposes to sell or dispose of land subject to the scheme –

- (a) the owner must give written notice of the proposed transaction to the council for the area in which the site is situated; and
- (b) the person who is to acquire title to the land in consequence of the transaction must –
 - (i) give to the council a written undertaking to develop the land in accordance with the registered scheme; and
 - (ii) give the council any security required by the council, within 28 days after notice of the transaction was given to the council, for the development of

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the land in accordance with the scheme.

66. Registration of dealing

- (1) A dealing for the sale or disposal of land subject to a registered community development scheme takes effect on registration.
- (2) When submitted for registration, the dealing must be accompanied by –
 - (a) a copy of the undertaking to complete the development in accordance with the registered scheme; and
 - (b) a statutory declaration to the effect that the council has made no requirement under this Division for security for completion of the development in accordance with the registered scheme or that such a requirement has been complied with; and
 - (c) the prescribed fee.

67. Effect of registration

On registration of a dealing for the sale or disposal of land subject to a registered community development scheme, the rights and obligations of the developer under the scheme, so far as they relate to land subject to the dealing, pass to the person who acquires title to the land.

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Part 5 – Names of strata and community schemes

**PART 5 – NAMES OF STRATA AND COMMUNITY
SCHEMES**

68. Name of strata or community scheme

- (1) The name of a strata or community scheme is the name shown on the registered plan.
- (2) The name of the scheme is to be –
 - (a) the street number and address of the building followed by the name of the city, suburb, town or locality in which the building is situated; or
 - (b) a name approved by the Recorder.
- (3) The Recorder may refuse to register a plan if the name of the scheme shown on the plan –
 - (a) is the same as the name of the scheme shown on another registered plan; or
 - (b) is the same as a name reserved under this Part for a person other than the applicant; or
 - (c) is unlawful; or
 - (d) is, in the Recorder's opinion, undesirable.

69. Reservation of name

- (1) The Recorder may, on application, reserve a name stated in the application as the name of a proposed strata or community scheme.

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- (2) The Recorder must reserve the name if satisfied that the name is acceptable for registration under this Act.
 - (3) The Recorder must maintain a register (to be known as the “Reserved Names Register”) for the purposes of this section.
 - (4) Subject to any regulation about how the register is to be kept, the register may be kept wholly or partly –
 - (a) on paper, microfilm or another medium approved by the Recorder; or
 - (b) by means of a device for storing and processing information approved by the Recorder.
 - (5) The Recorder may, with the written permission of the State Archivist given in accordance with section 20(2)(b) of the *Archives Act 1983*, sell, destroy or otherwise dispose of records, or any class of documents, relating to proceedings under this Part that the Recorder considers to be of no value for the purposes of the register.
 - (6) Before selling or disposing of a record, the Recorder must mark it as no longer valid.

70. Period of reservation

- (1) The reservation of a name is for an initial period of 2 years and may be extended by the Recorder for an additional period of one year.

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Part 5 – Names of strata and community schemes

- (2) The extension may be granted on an application made within the initial period by the person for whom the name is reserved.
- (3) A reservation lapses if –
 - (a) the person for whose benefit the name was reserved withdraws the reservation;
or
 - (b) a plan is registered in which the reserved name is given to the scheme.

PART 6 – BODIES CORPORATE

Division 1 – Establishment of body corporate

71. Establishment of body or bodies corporate

- (1) On registration of a strata plan, a body corporate is established under the name Strata Corporation No. with the addition of the name of the strata scheme.
- (2) On registration of a community development scheme, a body corporate is established under the name stated in the registered scheme.
- (3) A body corporate established under this section –
 - (a) has perpetual succession and a common seal; and
 - (b) may sue or be sued in its corporate name.
- (4) A body corporate established under this Act is declared to be an excluded matter for the purposes of section 5F of the Corporations Act in relation to the whole of the Corporations legislation.
- (5) A body corporate must, as soon as practicable after it is established, appoint a chairperson, secretary and treasurer.

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Part 6 – Bodies corporate

72. Merger and division of bodies corporate

- (1) A body corporate may be divided into 2 or more separate bodies corporate by unanimous resolution of the body corporate.
- (1A) A division of a body corporate does not affect the ownership of the common property.
- (2) Any rights and liabilities that had accrued to the body corporate before the division takes effect attach to the bodies corporate formed by the division jointly and severally.
- (3) Two or more bodies corporate established in relation to the same scheme may merge to form a single body corporate.
- (4) Any rights and liabilities that had accrued to the bodies corporate subject to the merger before the merger takes effect attach to the body corporate formed by the merger.
- (5) The merger of bodies corporate, or the division of a body corporate, under this section does not take effect until the merger or division is recorded on the folio or folios of the common property.
- (6) If 2 or more bodies corporate are established in relation to the same scheme, constituent documents for the bodies corporate must be lodged with the Recorder.
- (7) The constituent documents –

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- (a) must define the functions and responsibilities of each body corporate and, in doing so, may create an administrative hierarchy with one or more bodies corporate at each level of the hierarchy; and
 - (b) must provide for the resolution of disputes between the bodies corporate; and
 - (c) must ensure that the powers of a body corporate under this Act insofar as they relate to a lot within the scheme are directly exercisable in relation to each lot within the scheme by one, and only one, body corporate.

Division 2 – Common seal

73. Common seal

- (1) A body corporate's common seal must include the name of the body corporate.
- (2) The seal is not to be affixed to a document unless its use has been authorised by a resolution of the body corporate or its committee of management and its affixation must be attested by at least 2 members of the body corporate (unless there is only one member, in which case the affixation of the seal must be attested by that member).
- (3) The body corporate must take reasonable steps to prevent unauthorised use of the seal.

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- (4) If a document appears to bear the common seal of a body corporate and the affixation of the seal appears to have been attested as required by this section –
 - (a) a person dealing with the body corporate without notice of irregularity is entitled to assume that the seal was duly affixed; and
 - (b) in any legal proceedings or proceedings before an official of the government or a council, it is to be presumed, in the absence of evidence to the contrary, that the seal was duly affixed.
- (5) This section is not to be taken to imply that a body corporate cannot act through agents and without the use of its seal.

Division 3 – Membership and general meetings

74. Membership of body corporate

- (1) In the case of a strata scheme for which a single body corporate is constituted, each owner of a lot is a member of the body corporate and entitled to vote personally or by proxy at general meetings of the members of the body corporate.
- (2) In the case of a strata scheme for which 2 or more bodies corporate are constituted, or a community scheme, the membership and the voting rights of the members of a body corporate are to be determined in accordance with the

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constituent documents for the body corporate registered under this Act.

- (3) If a mortgagee is in possession of a lot under the mortgage, the mortgagee becomes entitled to exercise any voting rights the owner may have, to the exclusion of the rights of the owner.

75. General meetings of body corporate

- (1) It is the duty of the original proprietor to call and hold the first annual general meeting of the body corporate, which must be held –
- (a) within 3 months after the registration of the strata plan; or
 - (b) on the sale of at least one-half of the lots contained in that plan –

whichever is the earlier.

Penalty: Fine not exceeding 50 penalty units.

- (1A) On giving notice for the first annual general meeting of the body corporate, the original proprietor must specify in the notice the nature of the business to be transacted at the meeting and must, at the meeting, produce a policy or policies of insurance.
- (2) An annual general meeting of the body corporate (other than the first annual general meeting of the body corporate) must be held within 15 months after the last annual general meeting of the body corporate.

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- (3) The committee of management or the secretary to a body corporate may call a special general meeting of the body corporate at any time and must do so if required by not less than one-third of the total number of members of the body corporate.
- (4) The secretary to the body corporate must, at least 7 days before a general meeting of the body corporate, give to each member of the body corporate written notice –
 - (a) setting out the date, time and place of the general meeting; and
 - (b) stating the nature of the business to be transacted; and
 - (c) if a unanimous resolution is to be put before the general meeting, setting out the terms of the proposed resolution.
- (5) In a case where a lot is owned jointly or in common by 2 or more persons, the notice may be addressed to the co-owners jointly and given or sent to any one of them.
- (6)

76. Voting at general meeting

- (1) A member of the body corporate may vote personally or by proxy on matters arising for decision at a general meeting.
- (2) Voting may be by show of hands but, if a poll is demanded, voting is –

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- (a) in the case of a strata scheme, proportionate to the unit entitlement of the member's lot; or
 - (b) in any other case, in accordance with the constituent documents of the body corporate.
- (3) Co-owners may vote by proxy jointly appointed by them and, in the absence of such a proxy, are not entitled to vote on a show of hands (except on a motion for a unanimous resolution) but any one co-owner may require a poll and on the poll a co-owner is entitled to voting rights proportionate to the co-owner's interest in the lot.

77. Voting on behalf of persons under disability

- (1) If a member of a body corporate is not of full age and capacity, or the member is, for some other reason, unable to exercise a right to vote, the voting rights of the member may be exercised by –
 - (a) a guardian; or
 - (b) a person who is authorised to administer the member's property; or
 - (c) a person appointed to exercise the relevant voting rights by the Guardianship and Administration Board under the *Guardianship and Administration Act 1995*.

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- (2) An application for an appointment under subsection (1)(c) may be made by –
 - (a) the body corporate; or
 - (b) any other person who has, in the Guardianship and Administration Board's opinion, a proper interest in the matter.

78. Voting on unanimous resolution

- (1) If a unanimous resolution is required for a particular purpose under this Act or the constituent documents of the body corporate, a member of the body corporate may vote on the resolution –
 - (a) at the general meeting of the body corporate at which the resolution is proposed; or
 - (b) by giving the body corporate written notice of the member's vote within 28 days after the date of that meeting.
- (2) If the Recorder is satisfied, on application by a body corporate, that a resolution is urgently required, the Recorder may, in relation to the relevant matter, exclude the operation of subsection (1)(b) or reduce the period within which voting rights may be exercised after the conclusion of the general meeting.

Division 4 – Management

79. Committee of management

- (1) A body corporate may, by ordinary resolution –
 - (a) appoint a committee of management to transact business on behalf of the body corporate; or
 - (b) change the membership of a committee of management; or
 - (c) overrule a decision of the committee of management (to the extent it has not been acted on); or
 - (d) remove a committee of management from office.
- (2) A committee of management may, subject to limitations and directions imposed or given by the body corporate in general meeting, exercise any powers of the body corporate except powers that may only be exercised by unanimous resolution of the body corporate.
- (3) A committee of management –
 - (a) must consist of at least 3 members of the body corporate; and
 - (b) may consist of members representing sectional interests in the scheme.
- (4) Subject to any rules to the contrary determined by the body corporate in general meeting –

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- (a) a majority of the total number of the members of the committee of management constitutes a quorum of the committee; and
 - (b) a decision in which a majority of the members present at a meeting of the committee agree is a decision of the committee.
- (5) Any rules determined by the body corporate under subsection (4) must be fair and reasonable.
 - (6) The committee must keep proper minutes of its proceedings and must make them available on request for inspection by any member of the body corporate.

80. Appointment of manager

- (1) The body corporate may appoint a manager and delegate to the manager functions related to the administration, management and control of the common property.
- (2) A manager is subject to control and direction by the body corporate acting in general meeting or through a committee of management.

Division 5 – Functions and duties

81. Functions of body corporate

- (1) A body corporate established for a strata scheme has the following functions:

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- (a) to enforce the by-laws;
 - (b) to control, manage and improve the common property;
 - (c) to maintain the common property in good condition and keep it in good and serviceable repair;
 - (d) to maintain the insurance required under this Act and any further insurance that may be required by ordinary resolution of the owners;
 - (da) to allocate spaces to lots for vehicle parking on the common property;
 - (e) to carry out other functions for the benefit of the owners.
- (2) If 2 or more bodies corporate are established for a strata scheme, the functions referred to in subsection (1) are to be divided between them in accordance with the relevant constituent documents.
- (3) A body corporate established for a community scheme has the functions and duties assigned to it by the constituent documents of the body corporate that form part of the registered scheme.
- (4) A body corporate may establish and operate a business situated on the common property or, with the owner's consent, on a lot if –
- (a) the business –

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- (i) is conducted according to law;
and
 - (ii) is related to use and enjoyment of
the lots and common property by
owners or occupiers of lots; and
 - (iii) is not conducted outside the site;
and
 - (iv) does not prevent the reasonable
use and enjoyment of the site by
the owners or occupiers of lots;
and
 - (b) separate records of the business are kept.
- (5) A body corporate may operate a retirement village, within the meaning of the *Retirement Villages Act 2004*, subject to that Act and to subsection (4) of this section.

82. Fund for meeting financial obligations

- (1) A body corporate must maintain a fund for the purpose of meeting its financial obligations under this Act.
- (2) All income must be paid into the fund and all expenditure must be made from the fund.
- (3) If the body corporate thinks fit, the fund may be subdivided into separate parts, one related to recurrent expenditure and the other related to capital expenditure.

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- (4) The fund must be maintained at a level sufficient to meet reasonably foreseeable expenditure to be incurred by the body corporate.

83. Contributions

- (1) The body corporate may from time to time levy contributions in respect of the lots for the purposes of raising an amount that the body corporate decides to be necessary to meet anticipated expenditure or for any other purpose as agreed by an ordinary resolution.
- (2) The contributions are –
- (a) in the case of a strata scheme, to be proportionate to the unit entitlements of the various lots; and
 - (b) in the case of a community scheme, to be levied on a basis fixed in the management statement registered under this Act.
- (3) A contribution falls due for payment on a date fixed by the body corporate and notified by written notice of the amount due given by the body corporate to the owners.
- (4) The owner of the lot as at the due date for payment is liable for the contribution and any person who later becomes an owner before the contribution is paid becomes jointly and severally liable for payment.

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- (4A) If a contribution for which an owner or other person is liable under subsection (4) is not paid, the owner or other person is taken to have failed to comply with a requirement of this Act while the contribution remains unpaid.
- (5) The body corporate must, on application by an owner or a person having an interest in a lot, certify –
- (a) the amount of any contribution payable by the owner; and
 - (b) the due date for payment of the contribution; and
 - (c) any amount by way of unpaid contribution that remains outstanding; and
 - (d) the amount of any other liability to the body corporate that remains outstanding from the owner; and
 - (e) information in relation to any funds of the body corporate administered by it; and
 - (f) information on any legal action to which the body corporate is a party; and
 - (g) any other matters that the body corporate considers relevant.
- (6) A certificate under subsection (5) is, in favour of a person dealing with the owner, conclusive evidence of the matters certified.

84. Interest on overdue contributions

- (1) Interest accrues on overdue contributions at a rate fixed by resolution of the body corporate.
- (2) The rate of interest must be fixed on a fair and reasonable basis.

Division 6 – Miscellaneous

85. Subrogation of contractual rights

- (1) If –
 - (a) building work was carried out for the developer under a registered scheme in anticipation of registration of the scheme or under the terms of the registered scheme; and
 - (b) the building work is defective –

the body corporate is subrogated to the contractual rights of the developer to damages in respect of those defects.
- (2) The body corporate may recover damages under this section on its own behalf (so far as the defects relate to common property) or on behalf of owners of lots affected by the defects.
- (3) The body corporate's right of subrogation under this section does not operate to the exclusion of the developer's rights and, if both the body corporate and the developer take action to recover damages for breach of contract, the

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damages may be apportioned between them as
may be just.

86.

87. Address for service

- (1) The address for service of a body corporate is the body corporate's address for service as registered by the Recorder.
- (2) A body corporate must give the Recorder notification of any change in its address for service and, on that notification, the Recorder is to change the address for service accordingly.

88. Mailbox

- (1) A body corporate must –
 - (a) maintain a mailbox clearly showing the body corporate's name in a suitable position at or near the street alignment of the site; or
 - (b) make suitable alternative arrangements for the receipt of mail.
- (2)

Division 7 – Appointment of administrator

89. Appointment of administrator

- (1) The Supreme Court may, on application by an interested person, appoint an administrator of the body corporate's affairs for a fixed period, or until further order by the Court.
- (2) An appointment may be made on terms and conditions that the Court thinks fit.
- (3) The administrator is to be remunerated on a basis determined by the Court and the remuneration and expenses of the administrator are payable from the body corporate's funds.
- (4) The administrator has the powers and functions of the body corporate (or such of those powers and functions as the Court may determine) to the exclusion of the powers and functions of the body corporate.
- (5) The administrator may delegate powers conferred under this section.
- (6) The Court may, on the application of an interested person, remove or replace the administrator.
- (7) If a person is appointed, removed or replaced as an administrator, the person must, within 7 days, give the Recorder written notice of the appointment, removal or replacement.
- (8) In this section,

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interested person means –

- (a) the body corporate; or
- (b) a creditor of the body corporate;
or
- (c) the owner or a registered mortgagee of a lot.

PART 7 – BY-LAWS

Division 1 – Making of by-laws

90. Power to make by-laws

- (1) The body corporate may make by-laws about –
 - (a) the administration, management and control of the common property; and
 - (b) the use and enjoyment of the lots and the common property.
- (2) A by-law may –
 - (a) adopt with or without modification the by-laws set out in Schedule 1; or
 - (b) amend or revoke a previous by-law.
- (3) The first by-laws of the body corporate are to be –
 - (a) the by-laws lodged with the relevant plan or scheme; or
 - (b) if no such by-laws are lodged with the plan or scheme, the by-laws set out in Schedule 1.
- (4) The by-laws lodged with a plan or scheme may include exclusive use by-laws.
- (5) If the by-laws of a body corporate do not deal with a subject dealt with by the by-laws set out in Schedule 1, the body corporate is taken to

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Part 7 – By-laws

have adopted the relevant by-law in that Schedule on the subject.

- (6) The first by-laws of the body corporate come into operation on the registration of the plan or scheme.

91. Limitations on by-law making power

- (1) Subject to subsection (2), a by-law cannot –
- (a) modify a statutory easement or prohibit or restrict the enjoyment of a statutory easement; or
 - (b) restrict an owner's right to use, deal with or dispose of a lot unless the restriction –
 - (i) is necessary to preserve the character of the scheme; and
 - (ii) is made in accordance with a disclosure statement or management statement included in the scheme.
- (2) A by-law may impose a minimum term (not exceeding 6 months) for the letting of lots.
- (3) A by-law is void if –
- (a) it is unreasonable; or
 - (b) it adversely and unfairly discriminates against any owner or occupier of a lot; or

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- (c) it adversely affects the health, welfare or safety of any person; or
- (d) it is inconsistent with the provisions of a scheme.

92. Registration and commencement of changes to by-laws

- (1) If a body corporate makes a by-law, the body corporate must, within 3 months after passing the resolution for making the by-law, lodge an application for registration of the by-law with the Recorder –
 - (a) setting out the text of the by-law; and
 - (b) stating the nature of the resolution by which the by-law was made; and
 - (c) stating the date when the resolution for making the by-law was passed.
- (2) If the application is not lodged within 3 months, the resolution lapses.
- (3) A by-law comes into force on the day the Recorder registers the by-law in the Register or a later date stated in the by-law.

93. Legal effect of by-laws

A by-law is binding on –

- (a) the body corporate; and
- (b) the owner of a lot; and

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- (c) the occupier of a lot; and
- (d) an invitee of the owner or occupier of a lot.

Division 2 – Exclusive use by-laws

94. Exclusive use by-laws

- (1) The body corporate may, by ordinary resolution, make, amend or rescind a by-law giving the owner of the lot exclusive rights to the use and enjoyment of, or other special rights in relation to, the common property or part of the common property.
- (2) An exclusive use by-law must –
 - (a) specifically identify or define the part of the common property to which the by-law applies; or
 - (b) set apart a particular part of the common property for allocation to the owners of lots by a person (who may be the original proprietor or the original proprietor's agent) authorised to make the allocation or provide for another method of allocation to the owners of lots.
- (3) An exclusive use by-law may give rights to the owner of a lot only if the owner agrees in writing before –
 - (a) the by-law is made; or

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- (b) the allocation to the owner of the part of the common property to which the rights relate.
- (4) If the owner to whom the rights are given in the first instance agrees in writing, an exclusive use by-law may impose conditions (which may include conditions requiring the owner to make a payment or periodic payments to the body corporate or the owners of other lots or both).
- (5) An exclusive use by-law is taken, in the absence of other specific provision in the by-law for maintenance, to make the owner of the lot responsible for maintenance of the part of the common property over which the rights are conferred by the by-law.
- (6) An exclusive use by-law may authorise the owner who has the benefit of the by-law to make specific improvements to the part of the common property to which the by-law applies (which may consist or include the installation of particular fixtures or the making of particular changes to the relevant part of the common property) and in the absence of a specific provision to that effect the by-law is not to be taken to authorise the owner to make improvements or changes to the common property.
- (7) If an exclusive use by-law imposes a monetary liability –
 - (a) the liability may be recovered as a debt; and

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- (b) the liability is enforceable jointly and severally against the person who was the owner of the lot when the liability arose and a successor in title.
- (8) An exclusive use by-law –
 - (a) lapses 5 years after it was made unless confirmed within the previous period of 5 years by ordinary resolution of the body corporate; and
 - (b) if not confirmed by ordinary resolution of the body corporate within the previous period of 5 years, lapses on the expiration of 5 years from its last confirmation.
- (9) Subsection (8) does not apply to an exclusive use by-law that is expressed to be of permanent effect.

Division 3 – Enforcement of by-laws

95. Compliance notices

- (1) If the owner or occupier of a lot contravenes a by-law, the body corporate may give a written notice requiring the person –
 - (a) in the case of a continuing contravention, to refrain from further contravention; and
 - (b) in any case, to take specified action to remedy the contravention within a specified period (which must be at least 30 days) stated in the notice.

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- (2) The body corporate may, in addition to or instead of taking action under subsection (1), apply for relief under Part 9.

96. Enforcement by Tribunal

- (1) If the owner or occupier of a lot fails to comply with a notice under this Division, the body corporate may apply to the Tribunal for an order for enforcement of the relevant by-law.
- (2) In any such proceeding, the Tribunal may exercise any one or more of the following powers:
- (a) impose a fine (not exceeding 50 penalty units) on the person in default;
 - (b) make other orders the Tribunal considers appropriate for the enforcement of the relevant by-law.
- (3) A fine imposed by the Tribunal under this section is recoverable by the body corporate as a debt.
- (4) A person must comply with an order under subsection (2)(b).

Penalty: Fine not exceeding 50 penalty units.

- (5) The Tribunal may adjourn proceedings under this section and refer the matter to be dealt with in proceedings under Part 9.

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Division 4 – Copies of by-laws to be provided

97. Body corporate to provide copy of by-laws for inspection

- (1) The body corporate must, at the request of the owner or occupier of a lot or a person authorised by the owner or occupier to make the request, provide a copy of the by-laws of the body corporate for the time being in force.
- (2) The body corporate need not comply with a request under this section if it has previously provided a copy of the by-laws to the person making the request and the request is not, in the circumstances of the case, reasonable.

PART 8 – INSURANCE

98. Body corporate taken to have insurable interest in certain property

The body corporate is taken to have an insurable interest in property that it is required by or under this Act to insure.

99. Insurance of buildings, &c., by body corporate

- (1) The body corporate for a strata scheme must take out and maintain a policy of insurance for the buildings and other improvements (if any) on the site in accordance with this section.

Penalty: Fine not exceeding 50 penalty units.

- (2) The policy of insurance –
- (a) must cover –
 - (i) damage from fire, storm, tempest or explosion; and
 - (ia) any other prescribed risks; and
 - (ii) costs incidental to the reinstatement or replacement of the buildings, including the cost of removing debris and the fees of architects and other professional advisers; and

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- (b) must provide for the reinstatement of the buildings and improvements to their condition when new.
- (3) The body corporate for a community scheme must insure property in accordance with the requirements (if any) of the scheme.
- (3A) A body corporate may insure against –
 - (a) loss from dishonesty, negligence or other wrongful conduct; or
 - (b) other risks.
- (4) Despite any provision of the policy of insurance but subject to subsection (5), the body corporate (and not the owner of a lot) is liable to pay an amount payable, by way of excess, under the policy taken out by the body corporate under this section and any contribution that has to be made to the cost of reinstatement or repair because the insurance is not for the full replacement value of the insured property.
- (5) If an amount payable by way of excess under a policy of insurance taken out by the body corporate under this section arises from an event affecting only one lot, the owner of the lot is liable to pay the excess unless the body corporate decides, by ordinary resolution, that it would be unreasonable that he or she alone be required to pay the excess.
- (6) If an insurer of the body corporate accepts a claim by the body corporate based on an act or omission by an owner of a lot, the insurer has no

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right of subrogation in respect of the owner unless it is proved that the act or omission was wilful.

- (7) It is a defence to a charge for an offence against subsection (1) if the body corporate can show that, despite the body corporate having taken all reasonable steps available to it to comply with that subsection, no insurer is willing to enter into a policy of insurance, on reasonable terms, that meets the obligations imposed by this section.

100. Owner or occupier may be required to comply with requirement to ensure that insurance may be obtained on reasonable terms

- (1) If the body corporate is unable to obtain insurance for a building or part of it on reasonable terms because –
- (a) the owner or occupier of a lot is carrying on a particular activity on the lot; or
 - (b) work is required in relation to the lot to reduce the insurance risk to a reasonable level –

the body corporate may, by written notice given to the owner, require the owner to ensure that the activity ceases or to have the work carried out (as the case requires).

- (2) A notice under this section must give the owner the option of paying any additional insurance premium payable in the event of the continuance

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of the activity, or the non-performance of the work.

101. Other insurance

- (1) A body corporate must maintain public risk insurance (covering accidental death, personal injury and property damage) over the site for an amount at least equal to a minimum prescribed by regulation.

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102. Insurance by owner of lot

- (1) The owner of a lot may enter into a policy of insurance insuring the lot for an amount equal to the amount secured at the date of the future loss to which the policy relates by mortgages over the lot.
- (2) If such a policy of insurance is in force –
 - (a) payment must, subject to the terms of the policy, be made by the insurer to the mortgagees whose interests are noted in the policy in the order of their respective priorities; and
 - (b) subject to the terms and conditions of the policy, the insurer is liable to pay –
 - (i) the amount stated in the policy; or
 - (ii) the amount of the loss; or

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-
- (iii) an amount sufficient, at the date of the payment, to discharge the mortgages –

whichever is the least amount.

- (3) If the amount so paid by the insurer equals the amount necessary to discharge a mortgage over the lot, the insurer is entitled to an assignment of the mortgage, and if the amount is less than the amount necessary to discharge a mortgage over the lot, the insurer is entitled to obtain from the mortgagee a transfer of a proportion of the mortgagee's interest equal to the proportion that the amount of the payment bears to the amount owing under the mortgage immediately before the payment.
- (4) Money received under such a policy of insurance is not liable to be brought into contribution with any other money received under another policy of insurance, except where the other policy is in respect of damage to the same lot and relates to the same mortgage debt.

103. Default by body corporate in relation to insurance

- (1) If a body corporate is in breach of its obligation to take out and maintain insurance, the owner of any lot may take out and maintain the required insurance.
- (2) The insurance may be taken out in the name of the body corporate or in the owner's name.

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- (3) The costs incurred by an owner under this section may be recovered from the body corporate as a debt (and may be set off against any liabilities of the owner to the body corporate).

104. Production of policies of insurance for inspection

- (1) The body corporate must at the request of the owner of a lot produce for inspection by the owner the policies of insurance currently maintained by the body corporate under this Act.
- (2) The body corporate need not comply with a request under this section if it has previously produced the policies of insurance for inspection by the person making the request and the request is not, in the circumstances of the case, reasonable.

PART 9 – DISPUTE RESOLUTION

Division 1 – Applications for relief

105AA. Application to certain buildings in Hobart

This Part applies to a building to which Division 2 of Part XI of the *Conveyancing and Law of Property Act 1884* applies.

105. Application for relief

- (1) An application for relief under this Part –
 - (a) must be made in writing to the Recorder;
and
 - (b) must set out in detail the grounds on which the applicant claims relief; and
 - (c) must state the general nature of the relief that the applicant seeks; and
 - (d) must be accompanied by the prescribed fee.
- (2) The Recorder may require an applicant –
 - (a) to provide further information or materials that the Recorder requires for determination of the application; or
 - (b) to provide a more formal application identifying with greater particularity the legal rights on which the application is founded, and the nature of the relief

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sought, and complying with any other requirements imposed by the Recorder.

- (3) The Recorder may decline to proceed until the applicant has complied with a requirement under subsection (2).
- (4) In respect of any proceedings under this Part, the Recorder may apply to the Tribunal for directions on any matter arising in the course of the proceedings.

106. Notice of application

- (1) The Recorder must, after receiving an application for relief under this Part, give written notice of the application, the grounds of the application and the nature of relief sought to –
 - (a) the body corporate; and
 - (b) any other person who would, in the Recorder's opinion, be affected if the relief sought in the application were granted.
- (2) The body corporate must, after receiving notice under this section, give a copy of the notice to –
 - (a) every owner affected by the application; and
 - (b) a mortgagee who has given written notice of the mortgagee's interest to the body corporate; and

- (c) any occupier who would be affected if the order sought were made.

107. Amendment of application

The Recorder may allow the amendment of an application for relief under this Part on conditions the Recorder thinks fit.

Division 2 – Powers and procedures

108. Investigations

- (1) The Recorder must make such investigations as the Recorder considers necessary for the proper determination of an application for relief under this Part.
- (2) The Recorder may (but need not) hold a hearing for the purpose of receiving evidence and representations.
- (3) In conducting an investigation, the Recorder –
 - (a) must proceed as expeditiously and with as little formality and technicality as is consistent with the requirements of this Act and the proper investigation of the matter; and
 - (b) is not bound by the rules of evidence and may gather information in any way the Recorder considers appropriate; and

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- (c) may, subject to this Act and the rules of natural justice, determine the procedures to be followed.

109. Power to dismiss proceedings

- (1) The Recorder may dismiss an application for relief under this Part if –
 - (a) the application is frivolous, vexatious, misconceived or lacking in substance; or
 - (b) the applicant has, without reasonable excuse, failed to comply with an order or direction given by the Recorder.
- (2) If the Recorder dismisses an application before notice of the application is given under this Part, notice of the application is not required to be given under this Part.

110. Powers to obtain information

- (1) For the purposes of an investigation, the Recorder may by summons exercise one or both of the following powers:
 - (a) require the attendance of any person before the Recorder;
 - (b) require a person to produce books, papers and documents.
- (2) The Recorder may inspect any books, papers or documents produced, retain them for such reasonable time as the Recorder thinks fit, and

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make copies of any of them or any of their contents.

- (3) The Recorder may require any person appearing before the Recorder (whether summoned to appear or not) –
 - (a) to make an oath or affirmation to answer relevant questions truthfully; and
 - (b) to answer relevant questions.
- (4) A person must not, without reasonable excuse, refuse or fail to comply with a requirement under this section.

Penalty: Fine not exceeding 50 penalty units.

111. Power of entry

- (1) The Recorder (or a delegate of the Recorder) may enter on any site, and any lot, to which an application relates for the purpose of carrying out an investigation.
- (2) The power conferred by subsection (1) may be exercised at any reasonable time after notice of the proposed entry has been given to the body corporate and to the owner of any lot that is to be entered.

112. Obstruction

A person must not obstruct or hinder the Recorder (or a delegate of the Recorder) in the exercise of powers under this Part.

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Division 3 – Specific forms of relief

113. Orders by Recorder

- (1) If, on an application for relief under this Part, the Recorder is satisfied that a person has contravened or failed to comply with a requirement of this Act or the by-laws, the Recorder may make an order –
 - (a) requiring a person to pay any contributions properly levied by the body corporate or to take, or refrain from taking, any other specified action; or
 - (b) require a party to proceedings to pay monetary compensation (not exceeding \$5,000) to another party to the proceedings.
- (2) An order –
 - (a) may require immediate compliance with the order or fix a period for compliance; and
 - (b) may be made subject to conditions specified in the order.
- (3) An order may be made on an interim basis if necessary to preserve the subject matter of the application, or to prevent prejudice to a party while the application is investigated and determined.
- (4) If an order is made on an interim basis, it operates for a period (not exceeding 3 months)

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fixed in the order and may be renewed from time to time for a further period (not exceeding 3 months).

114. Order in relation to common property

If, on an application by the owner of a lot for relief under this Part, the Recorder is satisfied that the body corporate has unreasonably failed to implement a proposal by an owner –

- (a) for repairing damage to the common property or other property of the body corporate; or
- (b) for making alterations to the common property –

the Recorder may order the body corporate to make or allow the repairs or alterations on terms and conditions the Recorder considers reasonable.

115. Order with respect to acquisition of personal property

- (1) If, on application by the owner of a lot for relief under this Part, the Recorder is satisfied that an acquisition or proposed acquisition of personal property by the body corporate is unreasonable, the Recorder may order –

- (a) if the property has not yet been acquired, that the property be not acquired; or

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- (b) if the property has been acquired, that the body corporate sell or dispose of it within a specified time and deal with any proceeds of sale as directed in the order.
- (2) If, on an application for relief under this Part, the Recorder is satisfied that the body corporate has unreasonably refused to acquire personal property for the benefit of owners and occupiers of lots, the Recorder may order the body corporate to acquire the property.

116. Order to make or pursue insurance claim

If, on an application for relief under this Part, the Recorder is satisfied that the body corporate has unreasonably refused to make or pursue an insurance claim in respect of property insured by the body corporate, the Recorder may order the body corporate to make or pursue the claim.

117. Order varying rate of penalty interest

If, on an application for relief under this Part, the Recorder is satisfied that the rate of interest fixed by a body corporate for late payment of a contribution is unreasonable, the Recorder may make an order varying the rate of interest and remitting accrued interest wholly or in part.

118. Order to supply information or documents

If, on an application for relief under this Part, the Recorder is satisfied that the body corporate, or an officer of the body corporate, has wrongfully

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withheld information to which the applicant is entitled, or refused or failed to make available for inspection records that the applicant is entitled to inspect, the Recorder may order the body corporate, or the officer, to provide the information or to make the record available for inspection (as the case may require).

119. Orders in relation to animals

(1) If, on an application for relief under this Part, the Recorder is satisfied that –

- (a) the owner or occupier of a lot is keeping an animal on a lot or common property, contrary to the by-laws; or
- (b) an animal kept on a lot or common property causes a nuisance, hazard or unreasonable interference with the use or enjoyment of a lot or common property –

the Recorder may order the person keeping the animal to have the animal removed from the site within a specified time and thereafter to keep the animal away from the site.

(2) The Recorder may, instead of making an order for removal of the animal in the case mentioned in subsection (1)(b), order the person keeping the animal to take specified action that will in the Recorder's opinion avoid the nuisance, hazard or unreasonable interference.

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120. Order relating to by-laws

- (1) If, on an application for relief under this Part, the Recorder is satisfied that a by-law –
 - (a) was made without power; or
 - (b) was not made in accordance with this Act or any other requirement that should have been observed; or
 - (c) should not have been made having regard to the interests of the owners and occupiers of lots in the use and enjoyment of the lots and common property –the Recorder may make an order under this section.
- (2) An order under this section may –
 - (a) declare the by-law to be invalid; or
 - (b) repeal the by-law; or
 - (c) reinstate any former by-law amended or repealed by the by-law in question.
- (3) An order under this section has effect in accordance with its terms.
- (4) This section does not apply to a by-law conferring on an owner rights to the exclusive use and enjoyment of, or special privileges in respect of, a specified part of the common property.

121. Order granting licence

- (1) If, on an application by the owner of a lot for relief under this Part, the Recorder is satisfied that –
 - (a) a licence of a particular kind in relation to the common property is necessary for the reasonable use or enjoyment of the lot; and
 - (b) such a licence could be granted without unduly interfering with the rights of owners or occupiers of other lots to the use and enjoyment of their lots and the common property; and
 - (c) the body corporate has unreasonably refused to grant such a licence –

the Recorder may make an order conferring rights in terms specified in the order on the owner or occupier for the time being of the lot.

- (2) An order under this section operates as if it were a licence granted by the body corporate.

122. Order making by-laws

- (1) If, on an application for relief under this Part, the Recorder is satisfied that the body corporate has unreasonably refused to make a by-law that is reasonably required for the proper enjoyment of a lot or common property, or the proper administration of a scheme, the Recorder may

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make an order in the terms on which the by-law should have been made.

- (2) An order under this section operates as a by-law.

123. Order invalidating proceedings

- (1) If, on an application for relief under this Part, the Recorder is satisfied that the provisions of this Act or the by-laws have not been complied with in relation to the calling or conduct of a meeting of the members of the body corporate, the Recorder may, by order, invalidate a resolution of, or election held by, the persons present at the meeting.
- (2) The Recorder need not make an order under subsection (1) if satisfied –
- (a) that the failure to comply with the provisions of this Act or the by-laws did not prejudicially affect any person; or
 - (b) that the resolution would have been passed, or the election would have had the same result, even if the relevant provisions had been complied with.
- (3) An application seeking relief under this section must be made within 30 days after the date of the meeting.

124. Order reallocating unit entitlements

If, on application for relief under this Part, the Recorder is satisfied that the unit entitlements of

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lots or, if various classes of unit entitlements have been fixed, the unit entitlements of a particular class have been fixed on a basis that is not fair and equitable, the Recorder may, by order under this section, redetermine unit entitlements or unit entitlements of the relevant class on a basis that the Recorder considers fair and equitable.

125. Order for variation of amount or manner of payment of contributions

- (1) If, on an application for relief under this Part, the Recorder is satisfied that the contributions to be levied by the body corporate under this Act are inadequate or excessive, the Recorder may, by order –
 - (a) redetermine the contributions on a basis that the Recorder considers reasonable; and
 - (b) give directions in relation to payment of any additional amount that becomes payable as a result of the order, or the refund of any amount overpaid.
- (2) If, on an application for relief under this Part, the Recorder is satisfied that the manner of payment of contributions determined by the body corporate is unreasonable, the Recorder may, by order, redetermine the manner in which the contributions are to be paid.

126. Orders regarding insurance

- (1) If, on an application for relief under this Part, the Recorder is satisfied that the amount for which the body corporate has taken out insurance is unreasonable, the Recorder may order the body corporate to increase or decrease the amount of the insurance.
- (2) If, on an application for relief under this Part, the Recorder is satisfied that an owner of a lot has taken out or maintained insurance following a breach by the body corporate of its obligation to do so, the Recorder may order the body corporate to reimburse the owner the cost of that insurance.

127. Appointment of administrator

- (1) If, on an application for relief under this Part, the Recorder is satisfied –
 - (a) that the body corporate has failed in the proper performance of a duty; and
 - (b) the applicant has a proper interest in the due performance of the relevant duty; and
 - (c) the circumstances are sufficiently serious to justify the appointment of an administrator under this section –

the Recorder may, by order, appoint an administrator.

- (2) The appointment of an administrator –

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-
- (a) is not to be made unless the proposed appointee consents in writing to the appointment; and
 - (b) is to be made on such terms and conditions (which may include terms and conditions for the remuneration of the administrator out of the funds of the body corporate) as the Recorder specifies in the order.
 - (3) The administrator has, in accordance with the terms of the order, power –
 - (a) to administer the affairs of the body corporate generally; or
 - (b) to carry out the function or functions of the body corporate or its officers specified in the order.
 - (4) If an administrator has power to administer the affairs of the body corporate generally, the administrator's powers operate to the exclusion of the powers of the body corporate and its officers and if an administrator has power to carry out a specified function or functions the powers of the body corporate are excluded so far as they relate to those functions.
 - (5) An act or omission of an administrator done or made in the course of exercising powers under this section is to be regarded as an act or omission of the body corporate.
 - (6) The administrator must give the body corporate written notice of the exercise of powers under

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this section as soon as practicable after the powers are exercised.

128. Convening meeting of members of body corporate

- (1) If, on an application for relief under this Part, the Recorder is satisfied that the body corporate has failed to hold a general meeting of its members as required under this Act or the by-laws, the Recorder may, by order, appoint a person to convene a general meeting of the members of the body corporate.
- (2) The order may –
 - (a) provide for the giving of notice of the meeting; and
 - (b) appoint a person to preside at the meeting; and
 - (c) provide (in an appropriate case) that the meeting is to be treated as the first general meeting of the body corporate (even though the time for holding that meeting may have expired); and
 - (d) deal with the business to be placed before the meeting and any incidental or consequential matters.
- (3) The provisions of an order under this section prevail over inconsistent provisions of this Act or the by-laws.

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130. Order for terminating contract for services to the body corporate

(1) If, on an application for relief under this Part, the Recorder is satisfied that an agreement for the provision of services to the body corporate –

(a) is unfair to the owners of 25% or more of the lots; or

(b) is for an excessively long term –

the Recorder may make an order terminating or shortening the term of the agreement.

(2) An order under this section may also require a party to the agreement pay a specified amount to another party for the purpose of adjusting the rights of the parties in consequence of the termination or shortening of the term of the agreement.

131. Orders relating to new building or structural alteration or addition to lot

(1) If, on an application for relief under this Part, the Recorder is satisfied that a consent, approval or authorisation of the body corporate is required under the by-laws of the body corporate for –

(a) making or permitting a change to the exterior character, design or finish of buildings or structural improvements on a lot; or

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- (b) constructing any new building or make any structural improvements on a lot –

and the consent, approval or authorisation has been unreasonably withheld, the Recorder may make an order authorising the relevant change, construction or improvements on terms and conditions specified in the order.

- (2) If, on an application for relief under this Part, the Recorder is satisfied that a change, construction or improvements are being, or have been, made contrary to the by-laws, the Recorder may order the owner of the lot to restore the lot to its former condition.

132. Development contemplated by staged development or community development scheme

- (1) If, on an application for relief under this Part, the Recorder is satisfied that a developer under a staged development scheme or a community development scheme (or an agent, employee or contractor acting on behalf of the developer) is carrying out, or has carried out, work contrary to the requirements of –
 - (a) the relevant disclosure statement or management statement for the scheme; or
 - (b) by-laws relevant to the way the work is to be carried out –

the Recorder may order the developer to ensure compliance with those requirements and, if

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necessary, to take specified action to remedy past non-compliance.

- (2) If, on an application for relief under this Part, the Recorder is satisfied that a person has obstructed the proper carrying out of development work contemplated by a staged development scheme or a community development scheme, the Recorder may make an order restraining the person from further obstruction of the work.

133. Imposition of penalties

- (1) A body corporate may apply to the Recorder or the Tribunal for an order that a person bound by the by-laws pay a penalty to the body corporate for breach of a by-law.
- (2) A person bound by the by-laws may apply to the Recorder or the Tribunal for an order that the body corporate pay a penalty to the applicant for breach of a by-law.
- (3) The Recorder or the Tribunal may make an order for the payment of a penalty on an application under this section if satisfied that –
- (a) the by-law provides for a penalty for breach; and
 - (b) the person against whom the order is sought has wilfully and persistently breached the by-law.
- (4) The maximum penalty that may be imposed by the Recorder under this section is 20 penalty

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units and the maximum penalty that may be imposed by the Tribunal is 50 penalty units.

- (5) On application under this section, the Recorder or the Tribunal may order the payment of the costs of the application by or against the applicant.
- (6) If an application is made to the Recorder under this section, but the Recorder considers that it would be more appropriately dealt with by the Tribunal, the Recorder may refer the application to the Tribunal for hearing and determination.
- (7) If an application under this section is made or referred to the Tribunal, the chairperson of the Tribunal may –
 - (a) refer any questions arising out of the application to the Recorder for investigation and report; and
 - (b) act on the Recorder's report without further inquiry.

134.

Division 4 – Service and enforcement of orders

135. Copy of order to be served

- (1) An order made by the Recorder –
 - (a) must be in writing; and

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-
- (b) must set out the reasons on which it is based.
 - (2) The Recorder must have a copy of the order served on –
 - (a) the relevant body corporate; and
 - (b) the applicant for relief; and
 - (c) any person who was entitled to make, and made a written submission to, the Recorder in relation to the application; and
 - (d) any person who is required to do, or refrain from doing, a specified act by the order.
 - (3) In this section,
order includes –
 - (a) the variation of an order; and
 - (b) an interim order; and
 - (c) the renewal or revocation of an interim order.

136. Penalty for contravention

- (1) A person must not contravene an order under this Part to do or refrain from doing a specified act.

Penalty: Fine not exceeding 50 penalty units plus, in the case of a continuing

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contravention, a further penalty not exceeding 1 penalty unit for each day the contravention continues.

- (2) In proceedings for contravention of an order, an apparently genuine document purporting to be a copy of the order is admissible, in the absence of evidence to the contrary, as proof of the making and terms of the order.

137. Enforcement of orders

- (1) If a person is required by an order to take or refrain from taking specified action, and the person fails to comply with the order within the time allowed by the order, any other person with a proper interest in the matter may apply to the Recorder for an order –
 - (a) authorising the applicant to take or refrain from taking the necessary action; and
 - (b) if appropriate, requiring the person in default to reimburse the applicant for the cost of taking the relevant action.
- (2) An order cannot be made under this section if the time for commencing an appeal against the original order has not yet expired or, if an appeal has been commenced, until the appeal has been determined, withdrawn or discontinued.

138. Enforcement of orders for payment of money

- (1) If the Recorder makes an order for the payment of money, the order may be registered in a court having jurisdiction for the recovery of debts up to the amount ordered to be paid.
- (2) Proceedings for the enforcement of an order registered under subsection (1) may be taken as if the direction were a judgment of the court in which the order is registered.

139. Order may have effect as resolution of body corporate

- (1) An order under this Part may provide that the order or a specified part of the order is to have effect as a unanimous resolution or an ordinary resolution passed at a duly convened meeting of the members of the body corporate.
- (2) If an order contains such a provision, it operates, or the specified part of the order operates, as a unanimous resolution or an ordinary resolution of the body corporate accordingly.

Division 5 – Miscellaneous

140. Registry

- (1) The Recorder must maintain a register (to be known as the “Relief Register”) for keeping records of proceedings taken under this Part.

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- (2) Subject to any regulation about how the register is to be kept, the register may be kept wholly or partly –
 - (a) on paper, microfilm or another medium approved by the Recorder; or
 - (b) by means of a device for storing and processing information approved by the Recorder.
- (3) The Recorder may, with the written permission of the State Archivist given in accordance with section 20(2)(b) of the *Archives Act 1983*, sell, destroy or otherwise dispose of records, or any class of documents, related to proceedings under this Part that the Recorder considers to be of no value for the purposes of the register.
- (4) Before selling or disposing of a record, the Recorder must mark it as no longer valid.

141. Inquiries to Recorder

The Recorder must, on receiving a written inquiry accompanied by the prescribed fee, give the inquirer a notice in writing informing the inquirer whether or not an order of a prescribed class has been made with respect to a particular scheme referred to in the inquiry or an application for such an order that is yet to be finally determined has been made with respect to the scheme and, if so, give particulars of the order or application (as the case may require).

142. Recording of certain orders

- (1) If an order under this Part affects –
 - (a) the administration or management of a scheme; or
 - (b) the rights of owners or occupiers of lots –the Recorder must register the order.
- (2) The Recorder may –
 - (a) of his or her own motion; or
 - (b) on application by an interested person and on payment of the prescribed fee –cancel in such manner as he or she thinks proper any recording in the register of title referred to in section 33 of the *Land Titles Act 1980* which he or she is satisfied does not affect or has ceased to affect the land to which it purports to relate and may, for that purpose, call in and cancel or correct any certificate of title, grant or duplicate registered dealing.
- (3) For the purposes of this section, each of the following is an interested person:
 - (a) the developer;
 - (b) the body corporate;
 - (c) each owner and each prospective owner of a lot;
 - (d) each occupier of a lot;

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- (e) the council in the municipal area of which the relevant land is situated;
- (f) any other person who has, in the opinion of the Recorder or the Tribunal, a proper interest in the matter.

143. Recorder may determine questions relating to title to land

The Recorder may determine any question of title to land that arises in the course of proceedings before the Recorder under this Act.

PART 10 – APPEALS

144. Right of appeal

- (1) An interested person may appeal to the Tribunal against –
 - (a) a decision or order made by the Recorder on an application under this Act; or
 - (b) a decision by a council on an application for approval under this Act, unless the decision relates to building work, within the meaning of the *Building Act 2016*, in which case an appeal lies to the Resource Management and Planning Appeal Tribunal established under the *Resource Management and Planning Appeal Tribunal Act 1993*.
- (2) The following are interested persons for the purposes of this section:
 - (a) the applicant for the decision or order;
 - (b) in the case of a decision or order under Part 9, a person who was entitled to make, and made, written submissions to the Recorder in connection with the application for relief;
 - (c) in the case of an order, a person required by the order to do, or refrain from doing, a specified act;
 - (d) any other person classified by the regulations as an interested person in

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relation to a decision or order of a specified kind.

- (3) An appeal is commenced by lodging a notice of appeal, accompanied by the prescribed fee, within 30 days after the date of the order, with the Recorder.
- (4) A notice of appeal lodged under subsection (3) must specify –
 - (a) the name and address of the appellant; and
 - (b) the order appealed against; and
 - (c) the grounds of the appeal; and
 - (d) any other prescribed matter.
- (5) On receiving a notice of appeal, the Recorder must forward to the Tribunal –
 - (a) the notice of appeal; and
 - (b) the Recorder's records (if any) relating to the decision or order appealed against; and
 - (c) a note of the names and addresses of all interested persons.
- (6) The Tribunal must give written notice of the appeal, and the time and place appointed by the Tribunal for hearing the appeal, to all interested persons.

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- (7) In the case of an order made by the Recorder under Part 9 –
- (a) the order cannot be challenged except by way of an appeal under this Part; and
 - (b) the Recorder is not to be a party to the appeal.

145. Stay of operation of order

The Tribunal may on application by an interested person stay the operation of an order subject to appeal until the determination of the appeal.

146. Powers of the Tribunal on appeal

- (1) On an appeal, the Tribunal may –
- (a) confirm, vary or revoke the decision or order under appeal; and
 - (b) make any further or other decision or order that may be appropriate in the circumstances.
- (2) The Tribunal must give written notice of its decision on an appeal to the Recorder and all persons interested in the appeal.

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147. Application of *Resource Management and Planning Appeal Tribunal Act 1993*

The *Resource Management and Planning Appeal Tribunal Act 1993* applies in relation to an appeal under this Part.

PART 11 – MISCELLANEOUS

148. Protection of the Recorder

Neither the Recorder, nor any person acting under the Recorder's authority, is personally liable for or in respect of any act or omission done or made in good faith and in the exercise or purported exercise of powers under this Act.

149. Certificates issued by body corporate

If a certificate is issued under the common seal of a body corporate –

- (a) certifying that a particular resolution was passed by the body corporate on a date specified in the certificate; and
- (b) certifying the nature of the resolution –

the Recorder or a council is entitled to rely on the certificate and is not bound to inquire whether the resolution has been duly passed.

150. Action to be taken by the Recorder for registration, &c., of documents

- (1) When the Recorder registers a plan or scheme, an amendment or variation to a plan or scheme or cancellation of a plan or scheme, the Recorder must take action to ensure that persons searching relevant folios of the Register receive notice of the plan, scheme, amendment, variation or cancellation.

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- (2) When the Recorder receives an application, notice or other document relating to a particular scheme, the Recorder must take action to ensure that a person searching the folio of the Register relating to the common property of the scheme receives notice of the application, notice or other document.

151. General provision about use of lots

- (1) The owner or occupier of a lot established by a scheme under this Act must not use the lot or permit its use –
 - (a) for a purpose other than a purpose for which the lot is established as indicated in the relevant registered plan or scheme; or
 - (b) contrary to a restriction indicated in the relevant registered plan or scheme.
- (2) A notation on a registered plan or scheme under this section may be endorsed on part or all of a lot or part or all of the common property.
- (3) A deletion or alteration to a notation on a registered plan or scheme under this section may be effected only by an amendment under Division 6 of Part 2.

152. Rights and remedies conferred by this Act to be in addition to those existing apart from this Act

- (1) The rights and remedies conferred by this Act are not exclusive of rights and remedies that may exist apart from this Act.
- (2) If a court is of the opinion that proceedings brought before the court could more appropriately have been brought under this Act, the court may order the plaintiff to pay the defendant's costs to an extent determined by the court.

153. Easements not affected by unity of seisin

Unity of seisin does not destroy an easement created or implied in relation to lots, or lots and common property, under this Act.

154. Service, &c., of notices

- (1) A notice under this Act may be served on, or given to, a person –
 - (a) by posting it in accordance with the regulations to the person's address for service or the person's last known place of residence or business; or
 - (b) by leaving it at the person's address for service or last known place of residence or business.
- (2) Any of the following addresses may be treated as a person's address for service:

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- (a) the address of the person as shown in any dealing by which the person becomes a registered proprietor or in any caveat lodged by or on behalf of the person;
 - (b) the address of the person as shown in a valuation roll prepared under the *Valuation of Land Act 2001*;
 - (c) the address of the person as shown in an electoral roll kept under the *Electoral Act 2004*.
- (3) Despite the foregoing provisions, the Recorder may direct that a notice be given or served in a specified manner either in addition to, or in substitution for, the giving or service of the notice under those provisions.

155. Service on body corporate

- (1) A notice or other document (including legal process) may be given to, or served on, the body corporate by giving to or serving the notice or other document on the chairperson, secretary or other member of the committee of management of the body corporate.
- (2) A notice or other document (including legal process) that is capable of being served or given by post may be given to, or served on, the body corporate by sending the notice by prepaid post to the address of the body corporate as shown in the registered plan.

156. Service on owners of lots

- (1) A notice or other document that is capable of being served by post may be served on the owner of a lot by sending it by prepaid post to the owner's address as shown in the records maintained by the body corporate or, if there is no such record of the owner's address, to the address of the owner's lot.
- (2) If a notice or other document is to be given to the owners of lots generally, it may be given to or served on the body corporate as representative of all the owners and in that case –
 - (a) the body corporate must take steps to bring the notice or other document to the attention of all the owners; and
 - (b) the notice or other document is taken to have been given to or served on each owner.

157. Powers of entry in certain cases

- (1) If an authorised person believes on reasonable grounds that an offence against this Act or a breach of the by-laws has been, or is being, committed on any part of the site, the authorised person may at any reasonable time after giving reasonable notice to the occupier, enter the relevant part of the site for the purpose of ascertaining whether the offence or breach has been or is being committed.

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- (2) If an authorised person thinks fit, the authorised person may, when exercising a power under subsection (1), be accompanied by –
 - (a) a member of the body corporate's committee of management; or
 - (b) the administrator, if any, of the scheme; or
 - (c) any other person the Recorder thinks fit.
- (3) A person must not obstruct or hinder the Recorder, or a person accompanying the Recorder, when acting under this section.

Penalty: Fine not exceeding 50 penalty units.

158. Power of entry by public or local authority

If a public or local authority, or a person authorised by it, has a statutory right to enter on any part of a site, the authority or person is entitled to enter on any other part of the site to the extent necessary or expedient for the exercise of the statutory powers.

158A. Prescribed fees

- (1) The fees prescribed in Schedule 1A are payable under this Act for the matters to which they respectively relate.
- (2) If a fee prescribed in Schedule 1A is payable to the Recorder, subsections (2) and (3) of section 169E of the *Land Titles Act 1980* have the same

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application to the payment of that fee as they have to the payment of a prescribed fee under that Act.

158B. Validation

No regulation that prescribed a fee for the purposes of this Act before the commencement of the *Registration and Related Fees Act 2001* is to be taken as having ever been invalid by reason only of the amount of the fee so prescribed.

159. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Regulations made under this Act may –
 - (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; or
 - (b) in respect of any such offence, provide for the imposition of a fine not exceeding 50 penalty units.
- (3)
- (4) Regulations made under this Act may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (5) A provision referred to in subsection (4) may take effect on a day proclaimed under section 2 or a later day.

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160. Transitional provisions

The transitional provisions set out in Schedule 2 have effect.

160A. Transitional matters arising under the *Building and Construction (Regulatory Reform Amendments) Act (No. 2) 2020*

(1) In this section –

amending Act means the *Building and Construction (Regulatory Reform Amendments) Act (No. 2) 2020*.

(2) The amendments to this Act made by the amending Act do not apply, and this Act, as in force immediately before the day on which those amendments commence, applies, in relation to an application received by a council under section 31 before that day.

161. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Environment and Land Management; and
- (b) the Department responsible to the Minister for Environment and Land Management in relation to the administration of this Act is the

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Department of Environment and Land
Management.

162. *See Schedule 3.*

SCHEDULE 1 – MODEL BY-LAWS

Section 90(3)

1. Duty to keep lot in good order and repair

- (1) The owner of a lot must keep buildings and structural improvements on the lot in a state of good repair and to a standard in keeping with other buildings and structural improvements on the site.
- (2) The owner must carry out any work in relation to the owner's lot that the owner is required to carry out by –
 - (a) a public or local authority; or
 - (b) the body corporate.
- (3) The owner of a lot must not, without the written permission of the body corporate –
 - (a) make or permit a change to the exterior character, design or finish of buildings or structural improvements on the lot; or
 - (b) construct any new building or make any structural improvements on the lot unless they conform to the exterior character, design and finish of any existing buildings or structural improvements on the site.

2. Duty to prevent nuisance

The owner or occupier of a lot must not use the lot, or permit its use, in a way that causes a nuisance to the owner or occupier of any other lot.

3. Duty to allow access for maintenance and repair of common property

- (1) The body corporate is entitled to reasonable access to a lot for the purpose of maintaining, repairing or replacing the common property.
- (2) A person authorised by the body corporate may enter the lot for that purpose –
 - (a) after giving reasonable notice of intention to exercise the rights of access to the occupier of the lot; or
 - (b) in an emergency, without notice.

4. Duty to pay rates and taxes

The owner of a lot must pay all rates, taxes and charges that may be payable in relation to the owner's lot.

5. Use of common property

- (1) The occupier of a lot must not behave in a way likely to interfere with the reasonable use and enjoyment of another lot or the common property by the owner or occupier of another lot

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or the invitees of the owner or occupier of another lot.

- (2) An owner or occupier of a lot must take reasonable steps to ensure that invitees do not behave in a way likely to interfere with the reasonable use and enjoyment of another lot or the common property by the owner or occupier of another lot or the invitees of the owner or occupier of another lot.

6. Duty to provide information

The owner of a lot must give the body corporate written notice of any change in the ownership of the lot.

7. Keeping of animals

- (1) Subject to subclause (2), the occupier of a lot must not, without the body corporate's written approval –
- (a) bring an animal onto, or keep an animal on, the lot or the common property; or
 - (b) permit an invitee to bring an animal onto, or keep an animal on, the lot or the common property.
- (2) If a person reasonably requires the assistance of a guide-dog by reason of impairment of sight or hearing, the person is entitled to be accompanied by a guide-dog while on a lot or the common property and, if the person is the owner or

occupier of a lot, is entitled to keep a guide-dog on the lot.

8. Body corporate's duties in relation to common property

The body corporate must –

- (a) administer, manage and control the common property reasonably and for the benefit of the owners and occupiers of the lots; and
- (b) establish and maintain (where appropriate) suitable lawns and gardens on the common property; and
- (c) maintain the service infrastructure in good and serviceable order and condition.

9. Parking of motor vehicles

Where a space for vehicle parking has been allocated to a lot under section 81(1)(da), only the owner or occupier of that lot or his or her invitee may park a vehicle in that space.

10. Quorum

A quorum at a meeting of the body corporate is a majority of the total number of the members of the body corporate.

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SCHEDULE 1A – PRESCRIBED FEES

Section 158A

Item	Matter for which fee is payable	Fee \$
1.	Lodgment of strata plan for registration	505.00
	In addition, for each lot shown on the plan	50.50
2.	Application to amend registered strata plan –	
	(a) where the amendment results in the creation of additional lots	505.00
	(b) where the amendment does not result in the creation of additional lots	90.50
3.	Application to consolidate 2 or more strata plans	505.00
4.	Application to cancel strata plan	90.50
5.	Lodgment of application for registration of –	
	(a) staged development scheme	505.00
	(b) community development scheme	505.00

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Item	Matter for which fee is payable	Fee \$
6.	(c) conversion of existing strata scheme into staged development scheme	505.00
	Lodgment of final approved detail of a stage in a development scheme, or of an element in a community development scheme, where the stage or element is lodged separately from the scheme, or a fee is not payable for the lodgment of the element under the <i>Land Titles Act 1980</i> –	
	(a) where the number of lots in the scheme is more than 5	505.00 (plus 50.50 for each lot in the stage or element)
7.	(b) where the number of lots in the scheme is 5 or less	50.50 (plus 50.50 for each lot in the stage or element)
	Registration of variation to staged development scheme or community development scheme –	

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Item	Matter for which fee is payable	Fee \$
	(a) where the variation results in the creation of additional lots	373.00
	(b) where the variation does not result in the creation of additional lots	90.50
8.	Registration of dealing for sale or disposal of land subject to registered staged development scheme or registered community development scheme	131.00
9.	Application for relief under Part 9	25.00
10.	Inquiry under section 141	15.10
11.	Lodgment of order under section 142	90.50
12.	Lodgment of notice of appeal under section 144	252.00
13.	Application to Tribunal under section 96(1), section 133(1) or section 145	90.50
14.	Application to council under section 31(1), section 36(1), section 42(1), section 53(1) or section 58(1)	90.50

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Item	Matter for which fee is payable	Fee
		\$
15.	Lodgment with Recorder of dealing, instrument or application not provided for elsewhere in this Schedule	90.50
16.	Lodgment with Recorder of plan not provided for elsewhere in this Schedule	505.00 (plus 50.50 for each lot shown on the plan)

SCHEDULE 2 – TRANSITIONAL PROVISIONS

Section 160

1. Plans registered under repealed legislation

- (1) A plan registered under the repealed legislation is taken to be a plan registered under this Act.
- (2) An amendment to a registered plan registered under the repealed legislation, or a notification of change of by-laws under the repealed legislation, is taken to be an amendment to the plan registered under this Act.

2. Proceedings for registration of plans

Proceedings for registration of a plan, or an amendment to a plan, that had been commenced before the commencement of this Act may be continued and completed –

- (a) under the repealed legislation; or
- (b) under this Act; or
- (c) if the Recorder so determines, to an extent determined by the Recorder under the repealed legislation and to an extent determined by the Recorder under this Act.

3. Strata companies

A strata company created on registration of a stratum plan under the repealed legislation

continues in existence as a body corporate under this Act without change to its corporate identity.

4. Reservation of names

A name reserved under the repealed legislation is taken to be a name reserved under the corresponding provision of this Act.

5. Conversion of existing strata schemes into staged development schemes

- (1) A body corporate for a strata scheme created on registration of a stratum plan under the repealed legislation (or a developer authorised by the body corporate to make the application) may, within 3 years after the commencement of this Act, apply for the conversion of the strata scheme into a staged development scheme or the incorporation of the strata scheme into a staged development scheme as a part of that scheme.
- (2) An application under this section must be accompanied by –
 - (a) a copy of the resolution authorising the application certified under the body corporate's common seal; and
 - (b) the documents that would be required for a new staged development scheme; and
 - (c) any further documents or material required by the Recorder; and
 - (d) the prescribed fee.

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- (3) The Recorder may, on an application under this clause, register the conversion or incorporation of the strata scheme into a staged development scheme and, on registration, the conversion or incorporation takes effect.

6. Conversion of existing scheme for dividing building into strata scheme

(1) If –

- (a) a building is divided in title; and
- (b) a company exists for purposes similar to those of a body corporate for a strata scheme; and
- (c) a strata plan is registered in relation to the whole of the land comprised in the certificates of title relating to the building –

the company is dissolved on registration of the strata plan and its rights and liabilities become rights and liabilities of the body corporate formed on registration of the strata plan.

(2) If –

- (a) a company is the owner of land; and
- (b) the shareholders of the company are entitled to the occupation of separate parts of the land by reason of long-term leases or rights attaching to their shares in the company; and

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- (c) a strata plan in relation to the land is registered with the consent of the company, the shareholders and all other persons with registered interests in the land (or the leases) –

folios of the Register for the lots are to be issued in the names of the persons who formerly had rights of occupation by reason of the leases or rights attaching to their shares and the company is dissolved and its rights and liabilities (apart from those relating to the lots formed on registration of the plan) become rights and liabilities of the body corporate formed on registration of the plan.

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SCHEDULE 3

The amendments effected by Section 162 and this Schedule have been incorporated into authorised versions of the following Acts:

- (a) *Conveyancing and Law of Property Act 1884;*
- (b) *Local Government (Building and Miscellaneous Provisions) Act 1993.*

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NOTES

The foregoing text of the *Strata Titles Act 1998* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 30 November 2020 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Strata Titles Act 1998</i>	No. 17 of 1998	5.6.1998 (remainder, see SR No. 58 of 1998) 31.7.1998 (Part 9)
<i>Strata Titles (Miscellaneous Amendments) Act 2000</i>	No. 10 of 2000	28.4.2000
<i>Corporations (Consequential Amendments) Act 2001</i>	No. 42 of 2001	15.7.2001
<i>Strata Titles Amendment Act 2001</i>	No. 55 of 2001	19.9.2001
<i>Registration and Related Fees Act 2001</i>	No. 98 of 2001	1.1.2002
<i>Valuation of Land Act 2001</i>	No. 102 of 2001	28.6.2002 (remaining provisions)
<i>Building (Consequential Amendments) Act 2003</i>	No. 26 of 2003	1.7.2004
<i>Electoral (Consequential Amendments) Act 2004</i>	No. 53 of 2004	16.2.2005
<i>Retirement Villages Act 2004</i>	No. 50 of 2004	1.7.2005
<i>Water Legislation Amendment Act 2005</i>	No. 30 of 2005	11.7.2005
<i>Strata Titles Amendment Act 2006</i>	No. 33 of 2006	18.12.2006
<i>Taxation and Related Legislation (Miscellaneous Amendments) Act (No. 2) 2008</i>	No. 46 of 2008	18.11.2008
<i>Building Amendment Act 2012</i>	No. 20 of 2012	28.11.2012
<i>Building (Consequential Amendments) Act 2016</i>	No. 12 of 2016	1.1.2017
<i>Building and Construction (Regulatory Reform Amendments) Act (No. 2) 2020</i>	No. 31 of 2020	30.11.2020

TABLE OF AMENDMENTS

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Provision affected	How affected
Section 3	Amended by No. 10 of 2000, s. 20, No. 30 of 2005, s. 20 and No. 33 of 2006, s. 4
Section 3A	Inserted by No. 33 of 2006, s. 5
Section 4	Amended by No. 10 of 2000, s. 21 and No. 33 of 2006, s. 6
Section 5	Amended by No. 33 of 2006, s. 7
Section 6	Amended by No. 33 of 2006, s. 8
Section 8	Amended by No. 33 of 2006, s. 9
Section 12	Amended by No. 10 of 2000, s. 22
Section 14	Amended by No. 10 of 2000, s. 23 and No. 33 of 2006, s. 11
Section 17	Amended by No. 33 of 2006, s. 12
Section 19	Amended by No. 33 of 2006, s. 13
Section 19A	Inserted by No. 33 of 2006, s. 14
Section 21	Repealed by No. 46 of 2008, s. 35
Section 31	Amended by No. 10 of 2000, s. 24, No. 26 of 2003, Sched. 1, No. 33 of 2006, s. 15, No. 12 of 2016, Sched. 1 and No. 31 of 2020, s. 22
Section 31AA	Inserted by No. 33 of 2006, s. 16
Section 31A	Inserted by No. 10 of 2000, s. 25 Substituted by No. 33 of 2006, s. 17
Section 32	Amended by No. 10 of 2000, s. 26
Section 35	Amended by No. 10 of 2000, s. 27
Section 49	Amended by No. 10 of 2000, s. 28
Section 50A of Part 3	Inserted by No. 10 of 2000, s. 29
Section 51	Amended by No. 10 of 2000, s. 30
Section 60	Amended by No. 10 of 2000, s. 31
Section 69	Amended by No. 10 of 2000, s. 32
Section 71	Amended by No. 42 of 2001, Sched. 1 and No. 33 of 2006, s. 18
Section 72	Amended by No. 10 of 2000, s. 33 and No. 33 of 2006, s. 19
Section 75	Amended by No. 33 of 2006, s. 20
Section 79	Amended by No. 33 of 2006, s. 21
Section 80	Amended by No. 33 of 2006, s. 22
Section 81	Amended by No. 50 of 2004, s. 48 and No. 33 of 2006, s. 23
Section 83	Amended by No. 55 of 2001, s. 4 and No. 33 of 2006, s. 24
Section 86	Repealed by No. 33 of 2006, s. 25
Section 87	Amended by No. 33 of 2006, s. 26
Section 88	Amended by No. 33 of 2006, s. 27
Section 89	Amended by No. 33 of 2006, s. 28
Section 90	Amended by No. 33 of 2006, s. 29
Section 94	Amended by No. 10 of 2000, s. 34 and No. 33 of 2006, s. 30
Section 99	Amended by No. 33 of 2006, s. 31
Section 101	Amended by No. 33 of 2006, s. 32

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Provision affected	How affected
Section 105AA	Inserted by No. 10 of 2000, s. 35 Amended by No. 98 of 2001, s. 24
Section 105	Amended by No. 10 of 2000, s. 36
Section 113	Amended by No. 10 of 2000, s. 37
Section 126	Substituted by No. 33 of 2006, s. 33
Section 129	Repealed by No. 33 of 2006, s. 34
Section 131	Substituted by No. 33 of 2006, s. 35
Section 134	Repealed by No. 33 of 2006, s. 36
Section 137	Amended by No. 33 of 2006, s. 37
Section 139	Amended by No. 33 of 2006, s. 38
Section 142	Substituted by No. 10 of 2000, s. 38
Section 144	Amended by No. 10 of 2000, s. 39, No. 26 of 2003, Sched. 1, No. 20 of 2012, s. 129 and No. 12 of 2016, Sched. 1
Section 151	Substituted by No. 33 of 2006, s. 39
Section 154	Amended by No. 102 of 2001, Sched. 2 and No. 53 of 2004, Sched. 1
Section 158A	Inserted by No. 98 of 2001, s. 25
Section 158B	Inserted by No. 98 of 2001, s. 25
Section 159	Amended by No. 98 of 2001, s. 26
Section 160A	Inserted by No. 31 of 2020, s. 23
Schedule 1	Amended by No. 33 of 2006, s. 40
Schedule 1A	Inserted by No. 98 of 2001, s. 27
