

(Reprint No. 1)

SOUTH AUSTRALIA

STRATA TITLES ACT, 1988

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 2 April 1992.

It should be noted that the Act has not been revised (for obsolete references, etc.) by the Commissioner of Statute Revision since its last reprinting on 24 December 1990.

SUMMARY OF PROVISIONS

PART I

PRELIMINARY

- | | |
|---------|--|
| Section | |
| 1. | Short title |
| 3. | Interpretation |
| 4. | This Act and the Real Property Act to be read together as a single Act |

PART II

DIVISION OF LAND BY STRATA PLAN

DIVISION I—THE STRATA PLAN

- | | |
|----|---|
| 5. | Nature of strata plan and requirements with which it must conform |
| 6. | Unit entitlement |

DIVISION II—DEPOSIT OF STRATA PLAN

- | | |
|----|--|
| 7. | Application for deposit of strata plan |
| 8. | Deposit of strata plan |

DIVISION III—PROPRIETARY INCIDENTS ARISING FROM DEPOSIT OF STRATA PLAN

- | | |
|-----|---------------------------------------|
| 9. | Easements |
| 10. | Common property |
| 11. | Vesting of public land in the council |

DIVISION IV—AMENDMENT OF DEPOSITED STRATA PLAN

- | | |
|-----|-----------------------------|
| 12. | Application for amendment |
| 13. | Amendment by order of Court |

DIVISION V—PLANNING APPROVALS

- | | |
|-----|--|
| 14. | Approvals required for deposit or amendment of strata plan |
| 15. | Appeal to Planning Appeal Tribunal |

DIVISION VI—AMALGAMATION

- | | |
|-----|--------------------------------|
| 16. | Amalgamation of adjacent sites |
|-----|--------------------------------|

DIVISION VII—CANCELLATION OF STRATA PLAN

- | | |
|-----|--------------|
| 17. | Cancellation |
|-----|--------------|

DIVISION VIII—SUPPLEMENTARY

- | | |
|------|---|
| 17a. | Procedure where the whereabouts of certain persons is unknown |
| 17b. | Creation of easements |

PART III

THE STRATA CORPORATION

DIVISION I—CONSTITUTION OF STRATA CORPORATION

- | | |
|-----|---|
| 18. | Name of strata corporation |
| 19. | The articles |
| 20. | Binding character of the articles |
| 21. | Unit holders are guarantors of strata corporation's liabilities |
| 22. | Restriction of payment by strata corporation to its members |
| 23. | Officers of strata corporation |
| 24. | Contractual formalities |

DIVISION II—GENERAL FUNCTIONS, POWERS AND DUTIES

- | | |
|-----|----------------------|
| 25. | Functions |
| 26. | General powers |
| 27. | Power to raise money |

DIVISION III—SPECIAL POWERS OF STRATA CORPORATION TO MAINTAIN THE INTEGRITY OF THE STRATA SCHEME

- | | |
|-----|--|
| 28. | Power to enforce duties of maintenance or repair |
| 29. | Alterations and additions |

DIVISION IV—DUTY TO INSURE

- 30. Duty to insure
- 31. Duty to insure against liability
- 32. Right of unit holders to satisfy themselves as to insurance

DIVISION V—GENERAL MEETINGS

- 33. Holding of general meetings
- 34. Voting rights at general meetings

DIVISION VI—MANAGEMENT COMMITTEE

- 35. Management committee
- 36. Validity of acts

DIVISION VII—APPOINTMENT OF ADMINISTRATOR

- 37. Administrator of strata corporation's affairs

DIVISION VIII—SUPPLEMENTARY

- 38. Duties of the original proprietor in relation to strata corporation
- 39. Power to require handing over of property
- 40. Record keeping
- 41. Information to be furnished

PART IIIA

RESOLUTION OF DISPUTES

- 41a. Resolution of disputes, etc.

PART IV

MISCELLANEOUS

- 42. Unit holder's power of entry
- 43. Insurance by unit holder
- 44. Dealing with part of unit
- 44a. Body corporate may act as officer, etc.
- 45. Persons under disability, etc.
- 46. Relief where unanimous resolution required
- 47. Vicarious liability of management committee members
- 48. Applications, etc.
- 49. Service
- 50. Proceedings for offences
- 51. Regulations

SCHEDULE

STRATA TITLES ACT, 1988

being

Strata Titles Act, 1988, No. 13 of 1988 [Assented to 7 April 1988]¹

as amended by

Strata Titles Act Amendment Act, 1989, No. 16 of 1989 [Assented to 20 April 1989]²
Strata Titles Act Amendment Act, 1990, No. 13 of 1990 [Assented to 12 April 1990]³
Statute Law Revision Act (No. 2), 1990, No. 54 of 1990 [Assented to 22 November 1990]⁴
Strata Titles (Resolution of Disputes) Amendment Act 1991 No. 78 of 1991 [Assented to 12 December 1991]⁵

An Act to provide for the division of land by strata plan; and for other purposes.

The Parliament of South Australia enacts as follows:

PART I PRELIMINARY

Short title

1. This Act may be cited as the *Strata Titles Act, 1988*.

* * * * *

Interpretation

3. (1) In this Act, unless the contrary intention appears—

“allotment” means the whole of the land comprised in a certificate of title:

“building” includes a fixed structure:

“ceiling” includes a false or suspended ceiling:

“the Commission” means the South Australian Planning Commission:

“council” means—

(a) in relation to a local government area—a municipal or district council;

(b) in relation to the parts of the State that lie outside local government areas—the Outback Areas Community Development Trust:

¹Came into operation 1 September 1988: *Gaz.* 21 July 1988, p. 420.

²Came into operation 4 May 1989: *Gaz.* 27 April 1989, p. 1152.

³Ss. 6(b) and 27 came into operation 1 September 1988: s. 2(2); remainder of Act came into operation 2 August 1990: *Gaz.* 26 July 1990, p. 397.

⁴Came into operation (except Scheds. 2, 3 and 4) 22 November 1990: s. 2(1); Sched. 2 came into operation 1 August 1990: s. 2(2); Sched. 4 came into operation 24 December 1990: *Gaz.* 6 December 1990, p. 1685.

⁵Came into operation 2 April 1992: *Gaz.* 19 March 1992, p. 876.

Note: 1. Asterisks indicate repeal or deletion of text.

2. For the legislative history of the Act see Appendix. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.

“the Court” means the Supreme Court of South Australia:

“deposited” in relation to a strata plan means deposited in the Lands Titles Registration Office by the Registrar-General:

“easement” includes a right of way:

“encumbrance” includes—

- (a) a life estate or a lease;
- (b) a mortgage or charge;
- (c) a claim or lien;
- (d) an easement;

or

- (e) a caveat:

“fence” includes a gate:

“floor” includes a stairway or ramp:

“occupier” in relation to a unit means a person who occupies the unit on a temporary or permanent basis (either solely or jointly with other persons) and includes a person who is unlawfully in occupation of a unit:

“original registered proprietor” in relation to a strata scheme means the person who was, immediately before the deposit of the strata plan, the registered proprietor of an estate in fee simple in the land:

“owner” in relation to land means the proprietor of an estate in fee simple in the land:

“public land” means—

- (a) land vested in a council;
- (b) land controlled or managed by a council:

“registered encumbrance” means an encumbrance registered or entered on a certificate of title:

“site” means the land comprised in a strata plan (as distinct from the buildings and other improvements to that land):

“special resolution” in relation to a strata corporation means a resolution as to which the following conditions are satisfied:

- (a) at least 14 days’ written notice, setting out the terms of the proposed resolution, is given to the unit holders;
- (b) the resolution is supported at a duly convened general meeting of the strata corporation by a number of votes equal to, or exceeding, two-thirds of the total number of votes that could be exercised at a general meeting of the corporation assuming that all unit holders attended and exercised their right to vote:

“statutory encumbrance” means—

- (a) an agreement relating to the development, preservation or conservation of land registered by the Registrar-General under the *Planning Act, 1982*;
- (b) a proclamation relating to open space noted on a certificate of title under the *Planning Act, 1982*;
- (c) an agreement relating to the development, preservation or conservation of land registered by the Registrar-General under the *City of Adelaide Development Control Act, 1976*;

(d) a heritage agreement entered into under the *South Australian Heritage Act, 1978*;

(e) an endorsement relating to a retirement village made on a certificate of title under the *Retirement Villages Act, 1987*;

(f) any other encumbrance created by statute and prescribed by the regulations for the purposes of this definition:

“the strata community” means those who reside or work at the units in a strata scheme:

“strata corporation” means a body corporate created under this Act on the deposit of a strata plan:

“strata scheme” means—

(a) the land comprised in a strata plan;

and

(b) the buildings and other improvements on that land:

“unanimous resolution” in relation to a strata corporation means a special resolution passed without any dissentient vote at a general meeting of the corporation:

“unit” means an area shown on a strata plan as a unit:

“unit holder” means—

(a) a person registered as proprietor of an estate in fee simple in the unit;

(b) if the fee simple is divided into a life estate with a remainder or reversionary interest—the person registered as the proprietor of the life estate:

“wall” includes a door or window.

(2) For the purposes of this Act, land will be regarded as being adjacent to other land if the land—

(a) abuts on the other land;

or

(b) is separated from the other land only by—

(i) a road, street, footpath, railway or thoroughfare;

or

(ii) a reserve or other similar open space.

Note: For definition of divisional penalties see Appendix 2.

This Act and the Real Property Act to be read together as a single Act

4. This Act and the *Real Property Act, 1886*, will be read together and construed as if the two Acts constituted a single Act.

PART II

DIVISION OF LAND BY STRATA PLAN

DIVISION I—THE STRATA PLAN

Nature of strata plan and requirements with which it must conform

5. (1) A strata plan is a plan dividing land into—
- (a) units (of which there must be at least two);
 - and
 - (b) common property.
- (2) A strata plan must comprise the whole of one or more allotments.
- (3) A strata plan—
- (a) must define the units to be created by the plan in a manner that allows the boundaries of each unit to be ascertained;
 - (b) must assign to each unit a distinguishing number;
 - (c) must include a schedule of unit entitlements in relation to the units;
 - (d) must delineate the boundaries of the land comprised in the plan;
 - (e) must delineate in relation to those boundaries the external lateral boundaries of all buildings on the land;
- and
- (f) must comply with any other requirements stipulated by the Registrar-General.
- (4) A unit—
- (a) must consist of, or include, the whole or a part of a building;
 - (b) need not be wholly within one or more buildings;
 - (c) may be below, on or above the surface of land;
 - (d) may be wholly on one storey or level or partly on one storey or level and partly on another or others;
 - (e) may include an area (a “unit subsidiary”)—
 - (i) for the separate use of the occupier of the unit;
- and
- (ii) appurtenant to the portion of the unit designed for separate occupation.
- (5) Subject to any explicit statement to the contrary in a strata plan, the following principles apply to the definition of a unit by strata plan—
- (a) where a boundary is defined by reference to a wall or fence—the boundary is the inner surface of the wall or fence;
 - (b) where a boundary is defined by reference to a floor—the boundary is the upper surface of the floor;
 - (c) where a boundary is defined by reference to a ceiling or roof—the boundary is the under surface of the ceiling or roof.

- (6) The common property comprises—
- (a) any land or space that is not within a unit;
 - (b) any pipe, cable, wire, duct or drain that is not for the exclusive use of a unit;
 - (c) any structure that is not for the exclusive use of a unit installed before the deposit of the strata plan;
 - (d) any structure installed by a strata corporation as part of the common property;
 - (e) any other structure on the site committed to the care of a strata corporation as part of the common property.

(7) Subject to any explicit statement to the contrary in the strata plan, a wall or fence between a building that forms part of a unit and a unit subsidiary to that unit is part of the common property.

(8) The plan must conform with any requirements of the regulations as to the design of the strata scheme.

Unit entitlement

6. (1) The unit entitlement of a unit is a number assigned to the unit that bears in relation to the aggregate unit entitlements of all of the units defined on the relevant strata plan (within a tolerance of ± 10 per cent) the same proportion that the capital value of the unit bears to the aggregate capital value of all of the units.

(2) The unit entitlement of a unit must be expressed as a whole number.

(3) The aggregate unit entitlements of all units defined on a strata plan must, if the regulations so provide, be a number fixed in the regulations.

DIVISION II—DEPOSIT OF STRATA PLAN

Application for deposit of strata plan

7. (1) Subject to subsection (2), an application for the deposit of a strata plan may only be made by the owner of the land to which the plan relates.

(2) Where a person makes an application under subsection (1) and before the plan is deposited—

(a) title to the land to which the plan relates is transferred;

or

(b) a mortgagee becomes entitled to exercise a power of sale in relation to the land, the successor in title to the land, or the mortgagee, is entitled to proceed with the application and must, within one month of becoming so entitled, inform the Registrar-General of that fact and whether he or she proposes to proceed with the application.

(3) The applicant must provide evidence to the satisfaction of the Registrar-General that any person with an encumbrance registered in relation to the land consents to the application.

(4) The application must be accompanied by—

(a) the strata plan to which it relates;

(b) the duplicate certificate of title for the land to which the plan relates;

(c) appropriate certificates of approval issued under Division V by the Commission and the council for the area in which the land is situated;

(d) a certificate by a licensed surveyor in the prescribed form (which may be endorsed on the plan) certifying that the plan has been correctly prepared to a prescribed scale in accordance with this Act;

(e) a certificate from a licensed valuer certifying that the schedule of unit entitlements is correct;

(f) any instrument, duly executed, that is to be registered on the deposit of the plan; and

(g) such other documentary material as the Registrar-General may require.

(5) An applicant for the deposit of a strata plan must furnish the Registrar-General with such further information as the Registrar-General may require.

(6) If it appears from a strata plan that any part of a building encroaches over land not included in the site, the application for deposit of the plan can only be accepted if—

(a) no part of a unit to be created by the plan forms part of the encroachment;

and

(b) (i) the encroachment is over public land and the council within whose area the land is situated consents to the encroachment;

(ii) the encroachment consists of the protrusion of footings, or footings and associated structures of a prescribed nature, by not more than the prescribed distance beyond the boundaries of the site, and the owner of the land over which the encroachment occurs consents to the encroachment;

or

(iii) it is established to the Registrar-General's satisfaction that the encroachment is otherwise authorized by law.

(7) Where an application affected by an encroachment is accepted by the Registrar-General—

(a) unless the encroachment is over public land, the Registrar-General will, on the deposit of the strata plan, enter the encroachment on any relevant certificate of title;

and

(b) any consent given in relation to the encroachment is binding on present and subsequent owners and occupiers of the land.

Deposit of strata plan

8. (1) Where—

(a) application is made for the deposit of a strata plan in accordance with this Act;

(b) the requirements made by or under this Act in relation to the application have been satisfied;

and

(c) the plan conforms with the requirements of this Act,

the Registrar-General will deposit the plan in the Lands Titles Registration Office and assign a number to it.

(2) On the deposit of a strata plan under subsection (1)—

(a) an appropriate note must be entered on any certificate of title for the land to which the plan relates;

(b) the existing certificates for the land must then be cancelled and new certificates issued for the units and common property created by the plan;

and

(c) a strata corporation with the powers and functions conferred or assigned by this Act is created.

(3) The certificates of title for the units will be issued in the name of the registered proprietor of the land to which the plan relates and the certificate for the common property will be issued in the name of the strata corporation.

(4) Subject to subsection (5), where land to which a strata plan relates is subject to a registered easement, the easement will be registered on the relevant certificates of title issued under this section.

(5) Where the land (or part of the land) to which a strata plan relates is either the servient tenement or the dominant tenement of a registered easement, the Registrar-General may, on the application of the registered proprietor of the land, or on the Registrar-General's own initiative, and with the consent of—

(a) the proprietor of the easement;

(b) the registered proprietor of the servient tenement;

and

(c) any person registered as the holder of an encumbrance over the servient tenement or the dominant tenement (if any),

discharge or vary the easement.

(6) Subject to subsection (7), where land to which a strata plan relates is subject to a registered encumbrance (other than an easement) that is to continue after the deposit of the plan, the encumbrance—

(a) will be registered on the certificate of title for each unit;

but

(b) will not be registered on the certificate for the common property (and the encumbrance will be taken to be discharged to the extent to which the encumbrance is not registered on that certificate).

(7) The Registrar-General must, in relation to a statutory encumbrance, make such notes or other endorsements on the certificate of title for any unit, or for the common property, as may be appropriate according to the nature and extent of the encumbrance.

DIVISION III—PROPRIETARY INCIDENTS ARISING FROM DEPOSIT OF STRATA PLAN

Easements

9. The following easements exist, to the extent required by the nature of the strata scheme, between the units and between the units and common property:

(a) easements of support and shelter;

(b) easements allowing for the establishment and maintenance of pipes, ducts, cables and other equipment so that—

- (i) a unit may be supplied with water, gas, electricity, heating oil, or air-conditioned air;
- (ii) a unit may be connected to the telephone or to a radio or television antenna;
- (iii) a unit may be connected to sewerage, garbage, drainage or other similar services.

Common property

10. (1) The common property is held by the strata corporation in trust for the unit holders.

(2) An equitable share in the common property attaches to each unit and cannot be alienated or dealt with separately from the unit.

(3) The extent of the share is proportioned to the unit entitlement of the unit.

Vesting of public land in the council

11. (1) Any land shown on a deposited strata plan as a road, street, thoroughfare, reserve or similar open space (except any such land shown on the plan as an easement or excluded by regulation from the application of this section) is vested in the council in fee simple free of any encumbrance.

(2) Any road, street or thoroughfare that vests in a council under subsection (1) will be regarded, for all purposes, as a public road, street or thoroughfare.

DIVISION IV—AMENDMENT OF DEPOSITED STRATA PLAN

Application for amendment

12. (1) An application for the amendment of a deposited strata plan may be made only by the strata corporation.

(2) The applicant must provide evidence to the satisfaction of the Registrar-General—

- (a) that the application is made in pursuance of a unanimous resolution duly passed at a properly convened meeting of the strata corporation;
- (b) that any person with an encumbrance registered in relation to units or common property affected by the proposed amendment consents to the amendment.

(3) The application must be accompanied by—

- (a) any duplicate certificates of title affected by the amendment;
- (b) if the amendment affects the delineation of units or common property—appropriate certificates of approval issued under Division V by the Commission and the council for the relevant area;
- (c) if the amendment affects the delineation of units, common property or any buildings on the site—
 - (i) a plan indicating the changes to be effected by the amendment;
 - (ii) a certificate from a licensed surveyor in the prescribed form (which may be endorsed on the plan) certifying that the plan correctly delineates the units, the common property and the buildings on the site;

(iii) a certificate from a licensed valuer certifying the amount (if any) by which the value of any unit or the common property would be varied by the amendment;

(d) if the amendment—

(i) consists of a variation of the unit entitlements of the units;

or

(ii) affects the relative value of the units,

a fresh schedule of unit entitlements certified correct by a licensed valuer;

(e) an instrument providing for the discharge of any registered encumbrance shown on the original certificate or certificates of title of the units that should, in the opinion of the Registrar-General, be discharged;

and

(f) such other documentary material as the Registrar-General may require.

(3a) Where—

(a) the erection or alteration of a building on the site causes an encroachment on land not included in the site;

and

(b) the application for amendment relates (wholly or in part) to the erection or alteration of that building,

the application can only be accepted if—

(c) no part of a unit would, if the amendment were made, form part of the encroachment;

and

(d) (i) the encroachment is over public land and the council within whose area the land is situated consents to the encroachment;

(ii) the encroachment consists of the protrusion of footings, or footings and associated structures of a prescribed nature, by not more than the prescribed distance beyond the boundaries of the site, and the owner of the land over which the encroachment occurs consents to the encroachment;

or

(iii) it is established to the Registrar-General's satisfaction that the encroachment is otherwise authorized by law.

(4) Where due application is made for the amendment of a strata plan, the Registrar-General will, so far as the nature of this amendment requires—

(a) amend the plan in accordance with the application, or substitute a fresh strata plan;

(b) amend or endorse any certificate of title affected by the amendment, or cancel any such certificate and issue a new certificate or new certificates;

(c) substitute a fresh schedule of unit entitlements.

(4a) Where an application affected by an encroachment is accepted by the Registrar-General—

(a) unless the encroachment is over public land, the Registrar-General will, on the amendment of the plan, enter the encroachment on any relevant certificate of title;

and

(b) any consent given in relation to the encroachment is binding on present and subsequent owners and occupiers of the land.

(5) Where part of a unit is, on the amendment of the strata plan by the Registrar-General, transferred to another unit or to common property, then—

(a) the part is discharged from any encumbrance (other than an easement) registered over the unit from which it is transferred;

and

(b) if the part is being transferred to another unit—the part will be held subject to any encumbrance registered over the whole of that unit.

(5a) Where part of the common property is, on the amendment of the strata plan by the Registrar-General, transferred to a unit, then—

(a) the part is discharged from any encumbrance (other than an easement) registered over the common property;

and

(b) the part will be held subject to any encumbrance registered over the whole of the unit.

(6) Subject to subsection (6a), where an amendment provides for—

(a) the division of a unit into two or more units;

or

(b) the consolidation of two or more units into one unit,

any unit created by the amendment will be held subject to any registered encumbrance shown on the original certificate or certificates of title (unless an instrument providing for the discharge of the encumbrance is lodged with the Registrar-General).

(6a) Where land to which an amendment relates is either the servient tenement or the dominant tenement of a registered easement, the Registrar-General may, on the application of the registered proprietor of the land, or on the Registrar-General's own initiative, and with the consent of—

(a) the proprietor of the easement;

(b) the registered proprietor of the servient tenement;

and

(c) any person registered as the holder of an encumbrance over the servient tenement or the dominant tenement (if any),

discharge or vary the easement.

(7) An application for the amendment of a deposited strata plan that effects the transfer of an interest in land is a conveyance.

Amendment by order of Court

13. (1) The Court may, on application under this section, order the amendment of a strata plan.

(2) An application may be made under this section by—

- (a) the strata corporation;
 - (b) a unit holder;
 - (c) any other person who has a registered interest in a unit;
- or
- (d) an insurer of a unit or any of the common property.

(3) Such an application may only be made—

- (a) for the purpose of correcting an error in the plan;
- (b) for the purpose of varying the unit entitlements of the units;
- (c) for the purpose of achieving amendments that have become desirable in view of damage to buildings within the strata scheme;
- (d) for the purpose of achieving any other amendments that are desirable in the circumstances of the particular case.

(4) The Court may, on an application under this section, make—

- (a) an order for amendment of the strata plan;
- (b) any further orders that may be necessary to achieve justice between those affected by the amendment;
- (c) incidental or ancillary orders.

(5) Where an order for the amendment of a strata plan is made, the Registrar-General will, on lodgement of the order and any other documentary material the Registrar-General requires, amend the plan in accordance with the order.

DIVISION V—PLANNING APPROVALS**Approvals required for deposit or amendment of strata plan**

14. (1) An application for the deposit of a strata plan, or for the amendment of a deposited strata plan, cannot be made unless approved by the Commission and the council.

(2) Approval is not required under this section for an amendment that does not alter the delineation of units or common property.

(3) An application for approval must be in the prescribed form and accompanied by the prescribed fee.

(4) The Commission will approve an application if it is satisfied—

- (a) that the division of land in accordance with the plan or the amendment is consistent with—
 - (i) the *Planning Act, 1982*, and the Development Plan under that Act;
 - (ii) the regulations under this Act;
- and
- (iii) any other laws of the State that are relevant to strata subdivision;

- (b) that no other ground exists (being a ground stated in the regulations) on which the Commission should refuse its approval to the application;
- and
- (c) in the case of an application for the deposit of a strata plan or an amendment increasing the number of units—that the appropriate contribution, as required by the regulations, has been made to the Planning and Development Fund.
- (5) The Commission may, if it thinks fit, remit the contribution payable under subsection (4)(c) wholly or in part.
- (6) The Commission may refuse to approve an application if it considers—
- (a) that the division of land in accordance with the plan is unsuitable because a building or buildings shown on the plan as forming part of a unit or units are not of sufficient substance or quality;
- or
- (b) that an application to divide the land should instead be made under Part XIXAB of the *Real Property Act, 1886*.
- (7) The council will approve an application if—
- (a) it approves any unit to be created or affected by the plan or the amendment for separate occupation;
- (b) it is satisfied that the division of land in accordance with the plan or the amendment is consistent with—
- (i) (A) in the case of land within the City of Adelaide—the *City of Adelaide Development Control Act, 1976*, and The Principles of Development Control under that Act;
- (B) in any other case—the *Planning Act, 1982*, and the Development Plan under that Act;
- (ii) the regulations under this Act;
- and
- (iii) any other laws of the State that are relevant to strata subdivision;
- (c) if the plan or the amendment involves any encroachment over land of the council—it consents to the encroachment;
- (d) if the plan or the amendment involves the vesting of land in the council—it consents to the vesting;
- (e) no other ground exists (being a ground stated in the regulations) on which the council should refuse its approval.
- (8) The council may refuse to approve an application if it considers that any building shown on the plan is not structurally sound or is not in good condition.
- (9) The Commission or the council may, subject to such conditions as it thinks fit, grant provisional approval in relation to a proposed strata plan or amendment, and if the conditions are complied with within the period stipulated by the Commission or the council, it must not subsequently refuse its approval to an application for deposit of the strata plan or the amendment.
- (10) The approval of the Commission or a council under this section will be given by certificate in a form prescribed by the regulations.

(11) Subject to subsection (12), a certificate of approval issued under this section will lapse if it is not lodged with the Registrar-General (together with the application to deposit a strata plan or to amend the strata plan to which it relates) within 12 months of the date of its issue.

(12) The Commission or a council may, on due application made before the expiration of the period referred to in subsection (11), extend the period within which a certificate that it has issued may be lodged with the Registrar-General.

(13) A council must, when giving a certificate of approval under this section in relation to a strata plan, fix the address of the building or buildings erected on the site (and that address must be included in the notification of approval).

Appeal to Planning Appeal Tribunal

15. (1) An applicant for approval or provisional approval of the Commission or a council under this Division who is dissatisfied with—

(a) the failure of the Commission or council to make a decision on the application within the prescribed time;

(b) a decision made on the application;

or

(c) the failure of the Commission or council to issue a certificate of approval after the applicant has complied with the conditions of a provisional approval within the period stipulated by the Commission or council,

may appeal to the Planning Appeal Tribunal.

(2) Subject to subsection (3), the appeal must be commenced within two months after—

(a) the expiration of the prescribed time;

(b) the date on which the appellant receives notice of the decision to which the appeal relates;

or

(c) if the appellant has complied with the conditions of a provisional approval within the period stipulated by the Commission or council—the refusal of the Commission or council to issue a certificate of approval.

(3) The Planning Appeal Tribunal may allow an extension of time for commencing an appeal under this section.

(4) On an appeal under this section, the Planning Appeal Tribunal may—

(a) if no decision has been made on the appellant's application—determine whether approval or provisional approval should be given and give appropriate directions to the Commission or council;

(b) confirm, vary or reverse a decision under appeal (and if the Tribunal reverses the decision, issue the appropriate certificate);

(c) remit any matter for further consideration by the Commission or council;

(d) make any incidental or ancillary orders.

DIVISION VI—AMALGAMATION

Amalgamation of adjacent sites

16. (1) Where the sites comprised in two or more deposited strata plans are adjacent to each other, the strata plans may be amalgamated to form a single strata plan.

(2) An application for amalgamation—

- (a) must be under the common seals of the strata corporations affected by the proposed amalgamation;
- (b) must be endorsed with a statement to the effect that the application is made in pursuance of unanimous resolutions duly passed at properly convened meetings of the strata corporations;
- (c) must be endorsed with the consent of all persons (other than unit holders) with registered interests in the units;

and

(d) must be accompanied by—

- (i) a fresh strata plan prepared in accordance with this Act covering the proposed new site;
- (ia) a certificate from a licensed valuer certifying that the schedule of unit entitlements included in the fresh strata plan is correct;
- (ii) the duplicate certificates for all of the units and common properties;
- (iii) the articles proposed for the corporation to be created by the proposed amalgamation (unless the articles are to be in accordance with schedule 3);

and

- (iv) such other documentary material as the Registrar-General may require.

(3) If the Registrar-General deposits the fresh strata plan in pursuance of an application under this section—

- (a) the existing deposited strata plans will be cancelled and the fresh plan deposited in substitution for them;
- (b) a new number will be assigned to the fresh plan;
- (c) appropriate amendments will be made to the certificates for the units, or new certificates issued;
- (d) a new certificate will be issued for the common property;
- (e) the existing strata corporations will be dissolved and a new strata corporation created;
- (f) the assets and liabilities of the strata corporations will vest in or attach to the strata corporation created on deposit of the fresh plan.

DIVISION VII—CANCELLATION OF STRATA PLAN

Cancellation

17. (1) A deposited strata plan may be cancelled—

- (a) by lodging an instrument of cancellation with the Registrar-General;

or

(b) by order of the Court.

(2) An instrument of cancellation must be under the seal of the strata corporation and endorsed with the approval of—

(a) all unit holders;

(b) all other persons with registered interests in a unit or the common property.

(3) An instrument of cancellation must be accompanied by—

(a) unless the Registrar-General otherwise directs—the duplicate certificate of title for every unit and the common property and any duplicate instrument for any registered interest in a unit or the common property;

and

(b) such other documentary material as the Registrar-General may require.

(4) An application for an order of the Court cancelling a strata plan may be made by—

(a) the strata corporation;

(b) a unit holder;

(c) any other person who has a registered interest in a unit.

(5) If the Court makes an order for the cancellation of a strata plan, the strata corporation must lodge with the Registrar-General—

(a) a copy of the order together with an application to note the order;

(b) the duplicate certificates of title for the units and common property and any duplicate instruments relating to registered interests in the units and common property (except any such duplicate certificates and instruments exempted from production by the Court).

(6) The Registrar-General must, if satisfied that all terms of the order that are to be complied with before the cancellation of the plan (if any) have been complied with, cancel the strata plan by making an endorsement to that effect on the strata plan and making a note of the cancellation in the Register Book on every certificate affected by the cancellation.

(7) On cancellation of a strata plan—

(a) all land comprised in the plan (other than land vested in the council) vests in fee simple in the former registered proprietors of the units as tenants in common in proportions fixed by reference to the unit entitlements of their respective units;

(b) the strata corporation is dissolved;

(c) the liabilities of the former strata corporation will attach directly to the former registered proprietors jointly and severally (but they will be entitled to contribution amongst each other in proportions determined by reference to the unit entitlements of the former units);

(d) subject to any order of the Court, the assets of the former strata corporation will be divided between the former registered proprietors in proportions determined by reference to the unit entitlements of the former units.

(7a) The estate vested in a former registered proprietor of a unit under subsection (7)(a) will be subject to—

(a) any estate or interest that was, immediately prior to the cancellation of the strata plan, entered on the original certificate of his or her unit;

and

(b) at the request of the registered proprietor of the servient tenement and the dominant tenement (if any)—any easement that was discharged when the strata plan was originally deposited in the Lands Titles Registration Office.

(8) For the purposes of subsection (7), the former registered proprietor of a unit is the person who was the registered proprietor of the unit immediately before the cancellation of the plan.

DIVISION VIII—SUPPLEMENTARY

Procedure where the whereabouts of certain persons is unknown

17a. (1) Where—

(a) application is made to the Registrar-General under Division II or IV;

(b) a person's consent to the application, or in respect to some other related matter under the relevant Division, is required;

(c) the Registrar-General is satisfied by such evidence as the Registrar-General may require—

(i) that the applicant has been unable, after making reasonable inquiries, to ascertain the whereabouts of the person;

(ii) that the applicant has complied with the notice requirements under subsection (2);

(iii) that at least 28 days have elapsed since the applicant complied with those requirements;

and

(iv) that no objection has been lodged by the person;

and

(d) the Registrar-General determines (in his or her absolute discretion) that it is reasonable to proceed without the consent,

the person will be taken to have given his or her consent, and, notwithstanding the *Real Property Act, 1886*, the Registrar-General may, if he or she thinks fit, dispense with the requirement that a duplicate certificate of title be produced for the purpose of any dealing to which the person's consent is taken to have been given if the duplicate certificate of title would normally be produced by that person.

(2) The notice requirements referred to in subsection (1)(c)(ii) are that the applicant has—

(a) posted to the person whose consent is required, at the last address of the person appearing in the Register Book, a notice containing the prescribed information;

(b) published a copy of the notice in a newspaper circulating generally throughout the State;

and

(c) in a case involving an encroachment, left a copy of the notice in a conspicuous place on or near the land over which the encroachment has occurred.

Creation of easements

17b. (1) Where it appears that land within a site is intended to be the dominant or servient tenement of an easement created on the deposit or amendment of a strata plan, the applicant for the deposit or amendment of the plan must lodge with the Registrar-General an instrument, in a form approved by the Registrar-General—

- (a) describing the land (if any) to which the easement will be appurtenant;
 - (b) describing the land that will be subject to the easement;
- and
- (c) setting out the terms of the easement.

(2) The instrument referred to in subsection (1) must be executed by the registered proprietor of the land to which the easement will be appurtenant and by the registered proprietor of the land that will be subject to the easement.

(3) On the deposit or amendment of the strata plan (as the case may be), the easement may vest in the registered proprietor of the dominant tenement (if any) notwithstanding that he or she may also be the registered proprietor of the servient tenement.

(4) The easement will not be discharged or varied except—

- (a) as provided by subsection (5);

or

- (b) as otherwise provided by this or any other Act.

(5) The Registrar-General may, on application by the proprietor of the easement and the registered proprietor of the servient tenement, made with the consent of the appropriate planning authority, discharge or vary the easement and make consequential entries in the Register Book as the Registrar-General thinks fit.

(6) In subsection (5)—

“appropriate planning authority” means the council in whose area the land is situated or where the land is not situated in the area of a council, means the Commission.

PART III

THE STRATA CORPORATION

DIVISION I—CONSTITUTION OF STRATA CORPORATION

Name of strata corporation

18. (1) The name of a strata corporation is “Strata Corporation No. Incorporated” (the number being the number of the deposited strata plan).

(2) The abbreviation “Inc.” may be used in place of the word “Incorporated”.

(3) The strata corporation must have a common seal bearing its name.

(4) All the unit holders of the units are members of the strata corporation.

The articles

19. (1) Subject to this section, the articles of a strata corporation will be as set out in schedule 3.

(2) A strata corporation may by special resolution—

(a) adopt articles in substitution for those set out in schedule 3;

or

(b) revoke or vary articles previously so adopted.

(3) A resolution under subsection (2) has no effect until a copy of the resolution certified in the prescribed manner and accompanied (where appropriate) by the substituted articles, or the variation to the articles, is lodged with the Registrar-General.

(4) The articles of a strata corporation cannot—

(a) prevent or restrict alienation of a unit by a unit holder;

(b) prevent or restrict a unit holder from leasing or granting rights of occupation in respect of a unit;

(c) prevent an occupier of a unit who is blind or deaf from keeping a guide dog at the unit, or restrict the use of a guide dog by such a person.

Binding character of the articles

20. (1) The articles of a strata corporation are binding on—

(a) the corporation;

(b) the unit holders;

and

(c) insofar as they affect the use of units or the common property—occupiers of units who are not unit holders.

(2) A unit holder or mortgagee in possession of a unit must take reasonable steps to ensure that an occupier of the unit who is not a unit holder complies with the articles of the strata corporation.

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Unit holders are guarantors of strata corporation’s liabilities

21. (1) If a strata corporation defaults in payment of a pecuniary liability, the liability is enforceable against the unit holders jointly and severally.

(2) The unit holders have amongst themselves a right of contribution determined by reference to the respective unit entitlements of the various units.

Restriction of payment by strata corporation to its members

22. (1) Except as authorized by or under this Act, or by order of the Court, a strata corporation must not make any payment to any of its members.

(2) Subsection (1) does not prevent—

(a) reasonable payments to a member for services provided to the strata corporation by that member;

(b) the reimbursement of costs or expenses incurred by a member on behalf of the strata corporation.

Officers of strata corporation

23. (1) A strata corporation must have the following officers:

(a) a presiding officer (to preside at meetings of the corporation);

(b) a secretary;

and

(c) a treasurer.

(1a) Unless all of the units comprised in the strata scheme consist of non-residential premises, the officers of a strata corporation must be unit holders.

(2) Any two or more of the above offices may be held simultaneously by the same person.

(3) Until the first appointments are made to the above offices, they will be held by the original proprietor (or, if the original proprietor is a body corporate, by its nominee or in the absence of a nominee, by its secretary).

(4) Appointments to the above offices must be made by the strata corporation at a general meeting of the corporation.

(5) A strata corporation must not allow any of the above offices to remain vacant for more than six months.

(6) A strata corporation may appoint or engage a person to assist any person appointed under this section as an officer of the corporation.

Contractual formalities

24. A strata corporation contracts as follows:

(a) a contract may be entered into under the common seal of the corporation;

or

(b) a contract may be entered into by an officer or agent authorized by the corporation to enter into the contract on its behalf.

DIVISION II—GENERAL FUNCTIONS, POWERS AND DUTIES

Functions

25. The functions of the strata corporation are as follows:

- (a) to administer and maintain the common property for the benefit of the unit holders and, to such extent as may be appropriate, other members of the strata community;
 - (b) to administer all other property of the corporation;
- and
- (c) to enforce the articles of the corporation.

General powers

26. (1) For the purpose of carrying out its functions, a strata corporation may—

- (a) acquire, deal with and dispose of real and personal property (including an interest in a unit) and rights in relation to real and personal property;
- (b) borrow money and obtain other forms of financial accommodation;
- (c) open and maintain accounts at banks, building societies and credit unions;
- (d) invest money not immediately required for its purposes—
 - (i) in investments in which trustees are authorized by statute to invest trust funds;or
 - (ii) in any prescribed investment;
- (e) enter into any kind of contract or arrangement;
- (f) do anything reasonably incidental to its functions under this Act.

(2) A strata corporation cannot acquire property unless—

- (a) the property is reasonably required for the purposes of the corporation or for the use or benefit of the strata community;
- (b) in the case of real property, the property is a unit within the site or is adjacent to the site.

(3) A strata corporation cannot acquire, deal with or dispose of real property unless authorized by unanimous resolution of the corporation.

(4) The strata corporation may, if authorized to do so by unanimous resolution of the corporation, grant to a unit holder an exclusive right to occupy part of the common property for a specified period.

(5) A strata corporation may only dispose of real property that has been held as common property if the property no longer forms part of the site.

(6) If a strata corporation sells real property, any money received in respect of the sale must, after paying the costs of the sale and any associated expenses, be paid into the funds of the corporation and used to meet any outstanding administrative expenses or other liabilities of the corporation and any remaining balance may then, by unanimous resolution of the corporation, be divided between the unit holders in proportion to the unit entitlements of their respective units.

Power to raise money

27. (1) A strata corporation may raise such funds (including reserve funds for future expenditure of a capital nature) as it thinks necessary.

(2) For the purpose of raising funds the strata corporation may, by resolution, levy contributions against all unit holders.

(3) The contributions—

(a) will be proportional to the unit entitlements of the various units;

or

(b) will be determined on such other basis as the strata corporation decides by unanimous resolution.

(4) If a contribution is not paid on or before the date on which it becomes due and payable in accordance with a resolution of the strata corporation, it bears interest at a rate fixed by the corporation.

(5) The strata corporation may recover an unpaid contribution (and interest on any such contribution), as a debt, from the unit holder of the unit in respect of which the contribution is payable (whether or not that person was the unit holder when the liability arose).

(6) If the strata corporation carries out work that wholly or substantially benefits a particular unit or group of units, the corporation may, subject to any agreement to the contrary, recover the cost of that work as a debt from the unit holder or unit holders of the unit or units.

(7) Where the cost referred to in subsection (6) is recoverable from two or more unit holders, the extent of their liability will be proportioned according to the unit entitlements of their respective units.

(8) An amount paid by a person under this section is not recoverable by the person from the strata corporation when he or she ceases to be a unit holder.

DIVISION III—SPECIAL POWERS OF STRATA CORPORATION TO MAINTAIN THE INTEGRITY OF THE STRATA SCHEME**Power to enforce duties of maintenance or repair**

28. (1) A strata corporation may, by notice in writing to a unit holder, require the unit holder—

(a) to carry out specified work in pursuance of a duty of maintenance or repair imposed on the unit holder by the articles;

(b) to carry out specified work to remedy a breach of this Act or the articles on the part of the unit holder, a former unit holder, or an occupier or former occupier of the unit;

(c) to carry out specified work required to be carried out on the unit by a public authority or council.

(2) If the unit holder does not comply with a requirement imposed under this section within the time allowed in the notice, a person or persons authorized by the strata corporation may (using such force as may be reasonably necessary in the circumstances) enter the unit and carry out the specified work.

(3) A power of entry must not be exercised under subsection (2) unless the unit holder has been given reasonable notice of the proposed entry.

(4) Any cost reasonably incurred by the strata corporation in having work carried out under this section may be recovered as a debt from the unit holder.

(5) Where—

(a) the strata corporation recovers costs from a unit holder under subsection (4);

and

(b) the circumstances out of which the work was required are attributable to the act or default of another person,

the unit holder may in turn recover those costs from that other person as a debt.

Alterations and additions

29. (1) A person must not carry out prescribed work in relation to a unit unless the person is authorized to do so—

(a) where all of the units comprised in the strata scheme consist of non-residential premises—under the articles of the strata corporation;

or

(b) in any case—by special resolution of the strata corporation.

(2) Where a person acts in contravention of this section, the strata corporation may, by notice in writing to the unit holder, require him or her to carry out, within a reasonable period fixed in the notice, specified work—

(a) to remedy any structural deficiency caused by the work;

or

(b) to restore the unit to its previous state.

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* * * * *

(6) In this section—

“prescribed work” in relation to a unit means—

(a) the erection, alteration, demolition or removal of a building or structure;

(b) the alteration of the external appearance of a building or structure.

DIVISION IV—DUTY TO INSURE

Duty to insure

30. (1) A strata corporation must keep all buildings and building improvements on the site insured to their replacement value.

(2) The replacement value of buildings and building improvements is the cost of their complete replacement including the cost of any necessary preliminary demolition work, any necessary surveying, architectural or engineering work and any other associated or incidental costs.

(3) The insurance must be against—

(a) risks of damage caused by events (other than subsidence) declared to be prescribed events in relation to home building insurance under Part V of the *Insurance Contracts Act 1984* of the Commonwealth;

and

(b) risks against which insurance is required by the regulations.

(4) Any money to which a strata corporation is entitled under a contract of insurance in relation to damage to buildings or building improvements must, subject to any contrary order of the Court, be applied by it in reinstating or repairing those buildings or building improvements.

Duty to insure against liability

31. (1) A strata corporation must keep itself insured against liability in tort.

(2) The insurance cover must be for at least \$5 000 000 or such greater amount as the regulations may prescribe.

(3) A strata corporation must keep itself insured against any other liability—

(a) determined by special resolution of the corporation;

or

(b) prescribed by the regulations.

Right of unit holders to satisfy themselves as to insurance

32. (1) A strata corporation must, at the request of a unit holder, produce for inspection all current policies of insurance taken out by the corporation.

(2) A request under subsection (1) may be addressed to the secretary.

DIVISION V—GENERAL MEETINGS

Holding of general meetings

33. (1) A strata corporation may hold a meeting of its members (a “general meeting”) at any time.

(2) Such a meeting may be convened by—

(a) the secretary;

(b) if the corporation has a management committee—any two members of the committee;

(c) the unit holders of one-fifth or more of the total number of units;

or

(d) in the case of the first such meeting—the original registered proprietor.

(3) A meeting is convened by giving written notice of the day, time and place of the meeting to all unit holders at least 14 days before the date of the meeting.

(3a) A person or group of persons proposing to convene a meeting of the members of a strata corporation should take reasonable steps to ensure that the proposed day, time and place are reasonably convenient to a majority of members of the corporation.

(4) The corporation must hold at least one such meeting (the “annual general meeting”) in every calendar year and no more than 15 months after the last such meeting.

(5) Subject to subsection (6), no business may be transacted at a general meeting of the corporation unless a quorum, consisting of persons entitled to exercise the voting power in respect of not less than one-half of the units, is present at the time when the meeting proceeds to business.

(6) If a quorum is not formed within half an hour of the time appointed for a general meeting of the corporation—

- (a) the unit holders present must appoint another day for the meeting, being a day at least seven days but not more than 14 days away;
 - (b) the meeting then stands adjourned to that day at the same place and time;
- and
- (c) if the quorum is not formed at the adjourned meeting within half an hour of the relevant time, the persons who are present and entitled to vote constitute a quorum.

(7) Where a meeting of the corporation is adjourned under subsection (6), the secretary of the corporation must cause reasonable notice of the day, place and time of the adjourned meeting to be given, in writing, to the unit holders.

(8) In the absence of the presiding officer at a meeting of the corporation, another person who is entitled to vote at the meeting must be chosen to preside.

Voting rights at general meetings

34. (1) Subject to this section, at a general meeting of a strata corporation, one vote may be exercised in respect of each unit on any matter arising for decision.

(2) If—

- (a) all of the units comprised in the strata scheme consist of non-residential premises;
- and
- (b) the strata corporation has, by unanimous resolution, decided to adopt the voting system provided by this subsection,

then a number of votes is exercisable in respect of each unit equivalent to the unit entitlement of the unit.

(3) A vote may be exercised as follows:

- (a) it may be exercised (subject to paragraph (b)) by the unit holder or a proxy of the unit holder;
- (b) if there are two or more unit holders in respect of the same unit, the following provisions apply:
 - (i) if only one attends the meeting—the vote is exercisable by that unit holder;
 - (ii) if two or more attend the meeting—the vote is exercisable by one of them on behalf of all in accordance with an agreement between them or, if there is no such agreement, by the unit holder whose name appears first on the certificate of title for the unit.

(4) A unit holder may exercise an absentee vote on a proposed resolution by giving the secretary written notice of the proposed vote at least six hours before the time of the meeting.

(5) A written ballot may be demanded by a unit holder (or a proxy of a unit holder) attending a meeting.

(6) Such a ballot will be taken amongst the unit holders (or proxies of unit holders) attending the meeting in such manner as the person presiding at the meeting thinks fit.

(7) Except where a unanimous resolution is required, a vote is not exercisable in relation to a unit unless all amounts due and payable to the strata corporation in respect of the unit have been paid.

(8) A decision supported by the majority of votes cast at a duly convened meeting of the corporation will be taken to be a decision of the corporation (unless a special or unanimous resolution is required).

DIVISION VI—MANAGEMENT COMMITTEE

Management committee

35. (1) Subject to subsection (1a), a strata corporation may, by resolution, appoint a management committee of unit holders.

(1a) Where all of the units comprised in the strata scheme consist of non-residential premises, the management committee may consist of, or include, persons who are not unit holders.

(2) A management committee will, subject to any limitation imposed by the strata corporation, have full power to transact any business of the corporation.

(3) A management committee does not have power to do anything for which a special or unanimous resolution of the strata corporation is required by this Act or by the articles of the corporation.

(4) The prescribed number of members of a management committee constitute a quorum of the committee and no business may be transacted at a meeting of the committee unless a quorum is present.

(4a) The prescribed number for the purposes of subsection (4) is a number ascertained by dividing the total number of members of the committee by two, ignoring any fraction resulting from the division, and adding one.

(4b) A decision supported by a majority of the members at a meeting of a management committee of which at least three days notice has been given to all members will be taken to be a decision of the committee.

(5) A member of a management committee holds office on terms fixed by the strata corporation and may be removed by resolution of the strata corporation at any time.

(6) A management committee may co-opt a suitable person to fill a casual vacancy in the membership of the committee.

(7) A member of a management committee can appoint another person (who must, unless all of the units comprised in the strata scheme consist of non-residential units, be a unit holder) to act as his or her proxy at any meeting of the committee that the member is unable to attend.

(8) A management committee must—

(a) keep minutes of its proceedings;

and

(b) cause proper accounting records to be kept in respect of money received and expended by it.

(9) Subject to the articles and any direction of the strata corporation, a committee may otherwise regulate its meetings and proceedings as it thinks fit.

(10) A strata corporation may appoint or engage a person to assist its management committee in the performance of the committee's functions.

Validity of acts

36. Where a management committee acts honestly, the subsequent discovery of some defect affecting the appointment of a member, or the right of a person to act as a member, does not invalidate an act of the committee.

DIVISION VII—APPOINTMENT OF ADMINISTRATOR

Administrator of strata corporation's affairs

37. (1) The Court may, on application by—

- (a) a strata corporation;
- (b) a creditor of a strata corporation;
- (c) a person with a registered interest in a unit,

appoint an administrator of the strata corporation, or remove or replace an administrator previously appointed.

(2) An administrator has, while the appointment remains in force, full and exclusive power to administer the affairs of the strata corporation (including power to do anything for which a special or unanimous resolution of the strata corporation is required).

(3) The administrator must comply with any directions that the Court may give from time to time.

(4) The remuneration of an administrator will be fixed by the Court and payable from the strata corporation's funds.

(5) The administrator may, by written instrument, delegate any of his or her powers.

(6) A delegation under subsection (5)—

- (a) may be made on such conditions as the administrator thinks fit;
 - (b) is revocable at will;
- and
- (c) does not derogate from the power of the administrator to act in any matter personally.

(7) Where a person—

- (a) is appointed as an administrator;
- or
- (b) is removed or replaced as an administrator,

that person must, within 14 days, give the Registrar-General written notice of his or her appointment, removal or replacement.

DIVISION VIII—SUPPLEMENTARY

Duties of the original proprietor in relation to strata corporation

38. (1) The original registered proprietor must ensure that a general meeting of the strata corporation is convened within three months after the relevant date.

Penalty: Division 7 fine.

(2) The relevant date is the first date on which there are two or more members of the corporation holding different units.

(3) The original registered proprietor must, at the first general meeting of the strata corporation, place it in possession of—

- (a) the duplicate certificate of title for the common property;
- (b) a copy of all plans, drawings, specifications and reports in his or her possession relating to the design and construction of buildings and building improvements on the site;
- (c) a copy of any other notice, order or document in his or her possession relating to the strata scheme of which the strata corporation will need to know in order to carry out its statutory functions.

Penalty: Division 7 fine.

Power to require handing over of property

39. (1) A strata corporation may by notice in writing to a person who has possession of any record, key, or other property of the corporation, require that person to deliver it to an officer of the corporation named in the notice on or before a specified time.

(2) A person who fails to comply with a requirement under subsection (1) is guilty of an offence.

Penalty: Division 7 fine.

Record keeping

40. (1) A strata corporation must—

- (a) keep—
 - (i) a minute book containing minutes of its meetings;and
 - (ii) proper accounting records in respect of its receipts and expenditure;
- (b) ensure that a proper statement of accounts is prepared in respect of each accounting period;
- (c) keep a record of any notice or order served on the corporation;
- (d) retain for such period as may be prescribed—
 - (i) the minute book and accounting records kept under paragraph (a);
 - (ii) a copy of any statement of account prepared under paragraph (b);
 - (iii) any notice or order referred to in paragraph (c);
 - (iv) a copy of any correspondence received or sent by the corporation;
 - (v) notices of meetings of the corporation and its management committee;
 - (vi) such other documentary material as may be prescribed.

(2) An accounting period for a strata corporation is—

- (a) a period—
 - (i) commencing on the commencement of this Act, the date of incorporation of the corporation or the end of a previous accounting period (whichever is the later);and
 - (ii) ending on the following 30 June;

or

- (b) a period of not less than 9 months and not more than 18 months fixed by the corporation as an accounting period (but the corporation's accounting periods must be consecutive, following immediately one upon the other).

Information to be furnished

41. (1) A strata corporation must, on application by or on behalf of the owner or a mortgagee of a unit, or by or on behalf of a prospective purchaser or mortgagee of a unit—

(a) furnish—

- (i) particulars of any contribution payable in relation to the unit (including details of any arrears of contribution related to the unit);
- (ii) particulars of the assets and liabilities of the corporation;
- (iii) particulars of any expenditure that the corporation has incurred, or has resolved to incur, and to which the unit holder of the unit must contribute, or is likely to be required to contribute;
- (iv) particulars in relation to any prescribed matter;

(b) provide copies of—

- (i) the minutes of general meetings of the corporation and meetings of its management committee for such period, not exceeding two years, specified in the application;
- (ii) the statement of accounts of the corporation last prepared by the corporation;
- (iii) the articles for the time being in force;
- (iv) current policies of insurance taken out by the corporation;

(c) make available for inspection—

- (i) a copy of the accounting records of the corporation;
- (ii) the minute books of the corporation;
- (iii) any other prescribed documentary material.

Penalty: Division 9 fine.

(2) An application under this section must be accompanied by the prescribed fee.

(2a) A strata corporation must not charge more than the prescribed fee in respect of a service provided in pursuance of an application under this section.

Penalty: Division 9 fine.

(3) The application is duly made if given or sent to—

- (a) the secretary of the strata corporation;
- (b) if the strata corporation has a management committee—any member of the management committee.

(4) A statement of a strata corporation provided for the purposes of subsection (1)(a) is, in favour of the person to whom it is provided and as against the corporation, conclusive evidence (as at the date of the statement) of the matters contained in the statement.

PART IIIA
RESOLUTION OF DISPUTES

Resolution of disputes, etc.

41a. (1) An application may be made under this section—

- (a) if a strata corporation or a member of a strata corporation claims that a breach of this Act or of the articles of the corporation has occurred;
- (b) if a member of a strata corporation claims to have been prejudiced, as occupier of a strata unit, by the wrongful act or default of the strata corporation, of the management committee of the strata corporation, or of some other member of the strata corporation;
- (c) if a member of a strata corporation claims that a decision of the strata corporation or of the management committee of the strata corporation is unreasonable, oppressive or unjust;

or

(d) if a dispute arises—

(i) between a strata corporation and a member of the corporation;

or

(ii) between two or more members of a strata corporation,

in relation to any aspect of the occupation or use of a strata unit.

(2) Subject to this section, an application should be made to a local court and dealt with by that court within its small claims jurisdiction and the provisions of the *Local and District Criminal Courts Act 1926* will apply, with such modifications as may be necessary for the purpose or as may be prescribed, in relation to the application as if the proceedings were based on a small claim.

(3) A person may, with leave of the District Court, bring an application under this section in the District Court.

(4) The District Court may, on the application of a party to proceedings under this section that have been commenced in a local court, order that the proceedings be transferred to the District Court (and such an order will have effect according to its terms).

(5) Proceedings should not be commenced in, or transferred to, the District Court under subsections (3) or (4) unless the District Court considers that it is appropriate for the court to deal with the matter by reason of the complexity or significance of the matter.

(6) A court may, on its own initiative or on an application by a party to the proceedings—

(a) transfer an application under this section to the Supreme Court on the ground that the application raises a matter of general importance;

or

(b) state a question of law for the opinion of the Supreme Court.

(7) A court, in hearing and determining an application under this section, should act according to equity, good conscience and the substantial merits of the case, without regard to technicalities and legal forms, and is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit.

(8) A member of a strata corporation duly appointed by the corporation for the purpose may represent the corporation in any proceedings under this section.

(9) A court may, in respect of an application under this section—

- (a) attempt to achieve settlement of the proceedings by agreement between the parties;
- (b) require a party to provide reports or other information for the purposes of the proceedings;
- (c) order that a party take such action as in the opinion of the court necessary to remedy any default, or to resolve any dispute, and is specified in the order;
- (d) order that a party refrain from any further action of a kind specified in the order;
- (e) by order—
 - (i) alter the articles of the corporation;
 - (ii) vary or reverse any decision of the corporation, or of the management committee of the corporation;
- (f) give judgment on any monetary claim;
- (g) make orders as to costs;
- (h) make any incidental or ancillary orders.

(10) A court should not make an order to alter the articles of a corporation unless—

- (a) the corporation is a party to the proceedings or the court is satisfied that the corporation has been given a reasonable opportunity to become a party to the proceedings;
- (b) if it appears to the court that the alteration could adversely affect a member of the corporation who is not a party to the proceedings, the court is satisfied that the member has been notified of the possibility that such an order could be made and given a reasonable opportunity to make submissions to the court in relation to the matter;

and

- (c) in any event, the court is satisfied that the order is essential to achieving a fair and equitable resolution of the matters in dispute.

(11) Where an application is made under this section and the court is satisfied that an interim order is justified by the urgency of the case, the court may make an interim order to safeguard the position of any person pending its final resolution.

(12) An interim order—

- (a) has effect for such period as the court may determine and specifies in the order, and may be renewed by the court from time to time;
- (b) may be made or renewed whether or not notice of the application has been given to a respondent;

and

- (c) unless sooner revoked, ceases to have effect on the determination or resolution of an application under this section.

(13) A person who fails to comply with an order under this section is guilty of an offence.

Penalty: Division 7 fine.

(14) The power to make an order under this section includes the power to vary or revoke an order.

(15) A court may decline to proceed with an application under this section if it considers that it would be more appropriate for proceedings to be taken in another court or tribunal constituted by law.

(16) This section does not limit or derogate from any civil remedy at law or in equity.

(17) Rules of Court may be made dealing with any matter necessary or expedient for the effective and efficient operation of this section.

(18) The rules for a particular court will be made in the same manner as ordinary rules are made for that court.

(19) In this section—

“member” in relation to a strata corporation includes any person who is bound to comply with the articles of the corporation:

“small claim” means a small claim within the meaning of the *Local and District Criminal Courts Act 1926*.

PART IV

MISCELLANEOUS

Unit holder's power of entry

42. (1) If—

(a) (i) the proper supply of hot or cold water, gas, electricity, heating oil or air-conditioned air to a unit (unit A) fails;

or

(ii) the sewerage, garbage or drainage system as it affects a unit (unit A) fails to operate properly;

and

(b) some other unit (unit B) must be entered in order to investigate the cause of the failure, or to carry out necessary repairs,

the unit holder of unit A, or a person authorized by that unit holder, may, after giving such notice to the unit holder of unit B as may be practicable in the circumstances, enter unit B for that purpose.

(2) Reasonable force may be exerted in the exercise of powers conferred by this section but any damage to unit B must be immediately made good at the expense of the unit holder of unit A.

Insurance by unit holder

43. (1) Nothing in this Act limits the right of a unit holder to effect insurance in respect of the unit.

(2) A contract of insurance may be entered into by the unit holder in respect of damage to the unit for an amount equal to the amount secured at the date of the contract by mortgages over the unit.

(3) Where a contract of insurance of the kind referred to in subsection (2) is in force—

(a) payment must be made by the insurer under the contract to the mortgagees whose interests are noted in the contract in order of their respective priorities, subject to the terms and conditions of the contract;

(b) subject to the terms and conditions of the contract, the insurer is liable to pay under the contract—

(i) the amount stated in the contract;

(ii) the amount of the damage;

or

(iii) the amount sufficient, at the date of the payment, to discharge the mortgages noted in the contract,

whichever is the least amount.

(4) Where the amount so paid by the insurer equals the amount necessary to discharge a mortgage over the unit, the insurer is entitled to an assignment of that mortgage and where the amount is less than the amount necessary to discharge a mortgage over the unit, the insurer is entitled to obtain from the mortgagee a transfer of a

proportion of the mortgagee's interest in the mortgage equal to the proportion that the amount of the payment bears to the amount owing under the mortgage immediately before the payment.

(5) Money received under any such contract of insurance is not liable to be brought into contribution with any other money received under another contract of insurance, except where the other contract of insurance—

- (a) is in respect of damage to the same unit;
- and
- (b) relates to the same mortgage debt.

Dealing with part of unit

44. (1) Subject to this section, a unit holder may not enter into any dealing with a part of the unit unless—

- (a) the dealing is to be effected by amendment to the strata plan;
- or
- (b) the dealing consists of the granting, surrendering or extinction of an easement.

(2) Subject to any other law, a unit holder may grant a lease or licence over a part of a unit—

- (a) if all of the units comprised in the strata scheme consist of non-residential premises;
- or
- (b) where paragraph (a) does not apply—
 - (i) if the lease or licence is granted to another unit holder;
 - or
 - (ii) if the lease or licence is authorized by unanimous resolution of the strata corporation (but no authorization is required in relation to a lease or licence over the whole of a unit).

(3) Where a unit holder acts in contravention of this section—

- (a) the dealing is void and no instrument purporting to give effect to the dealing may be lodged for registration;
- and
- (b) the unit holder is guilty of an offence.

Penalty: Division 8 fine.

Body corporate may act as officer, etc.

44a. (1) Where a unit holder is a body corporate, the body corporate is eligible to hold the office of presiding officer, secretary or treasurer of the strata corporation, or to be a member of the management committee.

(2) If a body corporate is appointed as the presiding officer, secretary or treasurer of a strata corporation, or as a member of a management committee, the body corporate may, by instrument in writing, appoint a person to perform on its behalf any function that is conferred on the body corporate by virtue of the appointment.

(2a) Subject to subsection (2b), the person appointed under subsection (2) must be a director, manager, secretary or other officer of the body corporate.

(2b) Subsection (2a) does not apply—

(a) if all of the units comprised in the relevant strata scheme consist of non-residential premises;

(b) if the body corporate is the South Australian Housing Trust;

or

(c) in any other case prescribed by regulation.

(3) A function performed on behalf of a body corporate by a person appointed under subsection (2) will be taken to have been performed by the body corporate.

(4) A body corporate may revoke at will an appointment under subsection (2).

Persons under disability, etc.

45. (1) Where a unit holder is under a disability, the rights and powers of that unit holder under this Act may be exercised on his or her behalf by a guardian.

(2) If a unit holder is under a disability or cannot be found, the Court may on application by the strata corporation or any other person with a proper interest in the matter, dispense with any consent, approval or vote that would otherwise be required from that person under this Act.

Relief where unanimous resolution required

46. (1) Where a unanimous resolution is necessary under this Act before an act may be done and that resolution is not obtained but the resolution is supported to the extent necessary for a special resolution, a person included in the majority in favour of the resolution may apply to the Court to have the resolution declared sufficient to authorize the particular act proposed and, if the Court so orders, the resolution will be taken to have been passed as a unanimous resolution.

(2) Notice of an application under subsection (1) must be served on—

(a) every person who was entitled to exercise the power of voting conferred under this Act and did not, either in person or by proxy, vote in favour of the resolution;

and

(b) any other person whom the Court declares to have a sufficient interest in the proceedings to require that the person should be served with notice of the application,

and the Court may direct that any person served with, or to be served with, notice of proceedings under this subsection be joined as a party to the proceedings.

(3) The Court should not order a party who opposes an application under this section to pay the costs of a successful applicant unless the Court considers the actions of that party in relation to the application were unreasonable.

Vicarious liability of management committee members

47. (1) If a strata corporation for which a management committee has been constituted is guilty of an offence against this Act, each person who was a member of the management committee at the time of the offence is also guilty of an offence and liable to a penalty not exceeding one-half the maximum prescribed for the principal offence.

- (2) It is a defence to a charge under subsection (1) to prove—
- (a) that the defendant exercised reasonable care in the exercise of his or her responsibilities as a member of the management committee;
- and
- (b) that the offence is not attributable to any intentional or negligent act or omission on the defendant's part.

Applications, etc.

48. (1) An application or plan submitted to the Registrar-General under this Act must be in a form approved by the Registrar-General and certified in any manner required by the Registrar-General.

(2) Any such application must be accompanied by the prescribed fee.

(3) Any other document that is to be lodged with the Registrar-General under this Act must be accompanied by the prescribed fee.

(4) The Registrar-General may, in appropriate cases, remit or reduce a fee.

Service

49. (1) A document to be served under this Act or the articles of a strata corporation may be served personally or by post.

(2) A strata corporation must keep—

(a) a letter box, with the name of the corporation clearly shown on it, for postal delivery to the site;

or

(b) where there is no postal delivery to the site, a post office box.

(3) A document may be served on the strata corporation, its secretary or treasurer, or a member of its management committee—

(a) by placing it in the strata corporation's letter box;

or

(b) by post addressed to the strata corporation, the secretary or treasurer at the postal address of the corporation.

Proceedings for offences

50. (1) An offence against this Act is a summary offence.

(2) A prosecution for an offence against this Act may only be commenced with the written consent of the Attorney-General.

(3) In proceedings for an offence against this Act, a document apparently signed by the Attorney-General that appears to be a consent to a prosecution for an offence against this Act will be accepted, in the absence of proof to the contrary, as proof of the consent.

(4) Where a person fails to comply with an obligation imposed by this Act and is, in consequence of that non-compliance, convicted of an offence against this Act, the court may order the convicted person to comply with the obligation within a time fixed by the court.

(5) If the convicted person fails to comply with an order under subsection (4), that person is guilty of a further offence.

Penalty: Division 7 fine.

Regulations

51. (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

(2) Any such regulation—

- (a) may be of general or restricted application;
- (b) may confer discretionary powers;
- (c) may impose a fine (not exceeding a division 9 fine) for breach of, or non-compliance with, the regulation or any other regulation.

* * * * *

SCHEDULE 2
TRANSITIONAL PROVISIONS

Interpretation

1. In this schedule—

“the repealed strata title provisions” means Part XIXB of the *Real Property Act, 1886*, repealed by the first schedule.

Existing plans

2. (1) Subject to subclause (2), a plan deposited in the Lands Titles Registration Office by the Registrar-General in pursuance of the repealed strata title provisions will be taken to be a deposited plan under this Act.

(2) Subject to any amendment under this Act, the boundaries of a unit within a plan to which subclause (1) applies are not affected by the enactment of this Act.

Strata corporations

3. (1) A corporation existing under the repealed strata title provisions immediately before the commencement of this Act continues as a strata corporation under this Act.

(2) A committee of a corporation appointed under the repealed strata title provisions and in existence immediately before the commencement of this Act will, subject to this Act, continue as the management committee of the corporation under this Act.

(3) Where a strata corporation to which this clause applies had adopted articles in substitution for those prescribed by the repealed strata title provisions, those articles continue, subject to amendment or substitution under this Act, as the articles of the corporation.

(4) In any other case, the articles prescribed by schedule 3 will take the place of those prescribed by the repealed strata title provisions on the expiration of six months from the commencement of this Act (but if those earlier articles had been amended, there will be a corresponding amendment to the schedule 3 articles as they apply to the strata corporation).

Continuation and completion of proceedings under the repealed provisions

4. (1) Proceedings commenced under the repealed strata title provisions may be continued and completed as if this Act had not been enacted.

(2) For the purposes of subclause (1), proceedings for the deposit of a strata plan will be taken to have commenced when a formal application was first made to the Registrar-General, the Commission or the council in relation to the division of the land by strata plan.

Prescribed building unit schemes

5. (1) Where—

(a) land was, before 22 February, 1968, laid out in a building unit scheme consisting of two or more units designed for separate occupation;

(b) as at that date, buildings to which the scheme relates had been erected,

the scheme is one to which this clause applies.

(2) An application may be made under this Act for the deposit of a strata plan in relation to land subject to a scheme to which this clause applies.

(3) An application cannot be made under subclause (2) without the consent of—

(a) all those on whom rights to occupation of the units have been conferred under the scheme;

(b) any other person who has a registered interest in the land;

and

(c) any company formed to administer the scheme.

(4) Where a strata plan is deposited in pursuance of an application under this clause—

(a) the scheme is terminated;

(b) all registered interests that had been entered on the original certificate for the land are extinguished and any related instrument is discharged (although the Registrar-General will, on due application being made, register any instrument in substitution for any instrument that is cancelled by the operation of this paragraph and may note a caveat on the title without the leave of the Court);

(c) the certificate for the units will be issued in the names of those who were entitled to occupation of them under the scheme;

(d) the assets and liabilities of any company formed to administer the scheme are transferred to the strata corporation.

Application of Acts

6. The *Acts Interpretation Act, 1915*, applies, except to the extent of any inconsistency with the provisions of this schedule, to any repeal made by this Act.

SCHEDULE 3

ARTICLES OF STRATA CORPORATION

1. (1) A unit holder must—
 - (a) maintain the unit in good repair;
 - (b) carry out any work ordered by a council or other public authority in respect of the unit.
- (2) The occupier of a unit must keep it in a clean and tidy condition.
2. A person bound by these articles—
 - (a) must not obstruct the lawful use of the common property by any person;
 - (b) must not use the common property in a manner that unreasonably interferes with the use and enjoyment of the common property by the other members of the strata community, their customers, clients or visitors;
 - (c) must not make, or allow his or her customers, clients or visitors to make, undue noise in or about any unit or the common property;

and

 - (d) must not interfere, or allow his or her customers, clients or visitors to interfere, with others in the enjoyment of their rights in relation to units or common property.
3. A person bound by these articles must not use the unit, or permit the unit to be used, for any unlawful purpose.
4. Subject to the *Strata Titles Act, 1988*, a person bound by these articles must not, without the strata corporation's consent, keep any animal in, or in the vicinity of, a unit.
5. A person bound by these articles—
 - (a) must not park a motor vehicle in a parking space allocated for others or on a part of the common property on which parking is not authorized by the strata corporation;

and

 - (b) must take reasonable steps to ensure that his or her customers, clients or visitors do not park in parking spaces allocated for others or on parts of the common property on which parking is not authorized by the strata corporation.
6. A person bound by these articles must not, without the consent of the strata corporation—
 - (a) damage or interfere with any lawn, garden, tree, shrub, plant or flower on the common property;

or

 - (b) use any portion of the common property for his or her own purposes as a garden.
7. A person bound by these articles must not—
 - (a) bring objects or materials onto the site of a kind that are likely to cause justified offence to the other members of the strata community;

or

 - (b) allow refuse to accumulate so as to cause justified offence to others.
8. A person bound by these articles must not, without the consent of the strata corporation, display any sign, advertisement, placard, banner or any other conspicuous material of a similar nature—
 - (a) on part of his or her unit so as to be visible from outside the building;

or

 - (b) on any part of the common property.
9. The occupier of a unit may, without the consent of the strata corporation, paint, cover or in any other way decorate the inside of any building forming part of the unit and may, provided that unreasonable damage is not caused to any common property, fix locks, catches, screens, hooks and other similar items to that building.
10. The occupier of a unit used for residential purposes must not, without the consent of the strata corporation, use or store on the unit or on the common property any explosive or other dangerous substance.
11. A person bound by these articles—
 - (a) must maintain within the unit, or on a part of the common property set apart for the purpose by the strata corporation, a receptacle for garbage adequately covered;

and

 - (b) must comply with all council by-laws relating to the disposal of garbage.
12. A unit holder must immediately notify the strata corporation of—
 - (a) any change in the ownership of the unit, or any change in the address of an owner;
 - (b) any change in the occupancy of the unit.

APPENDIX 1

Legislative History

(entries in bold type indicate amendments incorporated since the last reprint)

Long title:	amended by 54, 1990, s. 3(1) (4th Sched.)
Section 2:	repealed by 54, 1990, s. 3(1) (4th Sched.)
Section 3(1):	definition of "fence" inserted by 13, 1990, s. 3(a) definition of "statutory encumbrance" inserted by 13, 1990, s. 3(b)
Section 5(6):	amended by 13, 1990, s. 4
Section 5(7):	amended by 78, 1991, s. 3
Section 7(6):	amended by 13, 1990, s. 5(a)
Section 7(7):	amended by 13, 1990, s. 5(b), (c)
Section 8(5):	substituted by 13, 1990, s. 6(a)
Section 8(6):	substituted by 13, 1990, s. 6(b)
Section 8(7):	inserted by 13, 1990, s. 6(b)
Section 12(2):	amended by 13, 1990, s. 7(a)
Section 12(3a):	inserted by 13, 1990, s. 7(b)
Section 12(4a):	inserted by 13, 1990, s. 7(c)
Section 12(5):	substituted by 13, 1990, s. 7(d)
Section 12(5a):	inserted by 13, 1990, s. 7(d)
Section 12(6):	amended by 13, 1990, s. 7(e)
Section 12(6a):	inserted by 13, 1990, s. 7(f)
Section 14(7):	amended by 13, 1990, s. 8
Section 15(4):	amended by 54, 1990, s. 3(1) (4th Sched.)
Section 16(2):	amended by 13, 1990, s. 9
Section 17(7):	amended by 13, 1990, s. 10(a)
Section 17(7a):	inserted by 13, 1990, s. 10(b)
	Division VIII of Part II comprising ss. 17a, 17b and heading inserted by 13, 1990, s. 11
Section 20(3):	repealed by 78, 1991, s. 4
Section 22(1):	amended by 54, 1990, s. 3(1) (4th Sched.); 78, 1991, s. 5
Section 23(1):	amended by 13, 1990, s. 12(a)
Section 23(1a):	inserted by 13, 1990, s. 12(b)
Section 23(5):	amended by 54, 1990, s. 3(1) (4th Sched.); substituted by 78, 1991, s. 6
Section 25:	amended by 13, 1990, s. 13
Section 26(2):	amended by 13, 1990, s. 14(a)
Section 26(3):	amended by 13, 1990, s. 14(b)
Section 26(6):	amended by 54, 1990, s. 3(1) (4th Sched.)
Section 27(8):	inserted by 13, 1990, s. 15
Section 29(1):	substituted by 13, 1990, s. 16
Section 29(3):	amended by 54, 1990, s. 3(1) (4th Sched.); repealed by 78, 1991, s. 7
Section 29(4):	repealed by 78, 1991, s. 7
Section 29(5):	amended by 54, 1990, s. 3(1) (4th Sched.); repealed by 78, 1991, s. 7
Section 30(3):	amended by 13, 1990, s. 17
Section 31(2):	amended by 13, 1990, s. 18
Section 32(1):	amended by 54, 1990, s. 3(1) (4th Sched.); 78, 1991, s. 8
Section 33(2):	amended by 13, 1990, s. 19(a)
Section 33(3):	amended by 13, 1990, s. 19(b)
Section 33(3a):	inserted by 13, 1990, s. 19(c)
Section 33(4):	amended by 54, 1990, s. 3(1) (4th Sched.); 78, 1991, s. 9
Section 33(6):	substituted by 13, 1990, s. 19(d)
Section 33(7):	amended by 13, 1990, s. 19(e)
Section 33(8):	inserted by 13, 1990, s. 19(f)
Section 34(2):	amended by 13, 1990, s. 20(a)
Section 34(5):	amended by 13, 1990, s. 20(b)
Section 34(6):	substituted by 13, 1990, s. 20(c)
Section 34(8):	substituted by 13, 1990, s. 20(d)
Section 35(1):	amended by 13, 1990, s. 21(a)
Section 35(1a):	inserted by 13, 1990, s. 21(b)
Section 35(4):	substituted by 13, 1990, s. 21(c)
Section 35(4a) and (4b):	inserted by 13, 1990, s. 21(c)
Section 35(6):	amended by 13, 1990, s. 21(d)
Section 35(7):	amended by 13, 1990, s. 21(e)
Section 38(1):	amended by 54, 1990, s. 3(1) (4th Sched.)
Section 38(2):	substituted by 13, 1990, s. 22
Section 38(3):	amended by 54, 1990, s. 3(1) (4th Sched.)
Section 39(2):	amended by 54, 1990, s. 3(1) (4th Sched.)
Section 40(2):	amended by 54, 1990, s. 3(1) (4th Sched.)
Section 41(1):	amended by 13, 1990, s. 23(a), (b); 54, 1990, s. 3(1) (4th Sched.)
Section 41(2a):	inserted by 13, 1990, s. 23(c); amended by 54, 1990, s. 3(1) (4th Sched.)
	Part IIIA comprising s. 41a and heading inserted by 78, 1991, s. 10
Section 44(2):	substituted by 13, 1990, s. 24
Section 44(3):	amended by 54, 1990, s. 3(1) (4th Sched.)
Section 44a:	inserted by 16, 1989, s. 3
Section 44a(2a) and (2b):	inserted by 13, 1990, s. 25
Section 49(2):	amended by 54, 1990, s. 3(1) (4th Sched.); substituted by 78, 1991, s. 11(a)
Section 49(3):	amended by 78, 1991, s. 11(b)
Section 50(4):	amended by 13, 1990, s. 26
Section 50(5):	amended by 54, 1990, s. 3(1) (4th Sched.)

Section 51(2):	amended by 54, 1990, s. 3(1) (4th Sched.)
Schedule 1:	repealed by 54, 1990, s. 3(1) (4th Sched.)
Schedule 2	
Clause 2:	substituted by 13, 1990, s. 27
Schedule 3	
Article 6:	amended by 13, 1990, s. 28

APPENDIX 2

Divisional Penalties

At the date of publication of this reprint divisional penalties are, as provided by section 28a of the *Acts Interpretation Act, 1915*, as follows:

Division	Maximum imprisonment	Maximum fine
1	15 years	\$60 000
2	10 years	\$40 000
3	7 years	\$30 000
4	4 years	\$15 000
5	2 years	\$8 000
6	1 year	\$4 000
7	6 months	\$2 000
8	3 months	\$1 000
9	—	\$500
10	—	\$200
11	—	\$100
12	—	\$50

Note: This appendix is provided for convenience of reference only.