



**STRATA TITLES ACT 2018**

**(NO. 4 OF 2018)**







## STRATA TITLES ACT 2018

(NO. 4 OF 2018)

**PASSED** by the National Parliament this sixth day of August 2018.

*(This printed impression has been carefully compared by me with the Bill passed by Parliament and found by me to be a true copy of the Bill)*

*Clezy Rore*  
**Clerk to National Parliament**

**ASSENTED** to in Her Majesty's name and on Her Majesty's behalf this twenty-second of August 2018.

*Sir Frank Utu Ofagioro Kabui*  
**Governor-General**

*Date of Commencement: see section 2.*

AN ACT TO PROVIDE FOR THE DIVISION OF LAND INTO STRATA TITLES; TO AMEND THE *LAND AND TITLES ACT* (CAP. 133), THE *LAND AND TITLES (GENERAL) REGULATIONS*, THE *LOCAL GOVERNMENT (EXEMPTION FROM BASIC RATE) (HONIARA) REGULATIONS*, THE *LOCAL GOVERNMENT (RATING OF LAND) REGULATIONS* AND THE *PLANNING AND DEVELOPMENT ACT* (CAP. 154); AND FOR RELATED PURPOSES.

ENACTED BY THE NATIONAL PARLIAMENT OF SOLOMON ISLANDS.

# STRATA TITLES ACT 2018

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# STRATA TITLES ACT 2018

## Part 1 Preliminary matters

### 1 Short title

This Act may be cited as the *Strata Titles Act 2018*.

### 2 Commencement

This Act commences on the day appointed by the Minister by *Gazette* notice.

### 3 Interpretation

(1) In this Act:

**“administrative fund of a strata scheme corporation”** means the administrative fund established by the strata scheme corporation under Schedule 1 clause 7;

**“amendment of a strata scheme involving division of a strata parcel”** means an amendment of the strata scheme that involves substituting or amending the strata scheme plan;

**“associate”**—see section 4;

**“auditor”** means a certified practising accountant member within the meaning of the *Accountants Act 2010*;

**“building”** includes a fixed structure;

**“business day”** means any day except Saturday, Sunday or a public holiday;

**“capital value of a lot”** means the capital amount that an unencumbered strata title for the lot might reasonably be expected to realise on sale;

**“ceiling”** includes a false or suspended ceiling;

**“Commissioner of Lands”** means the person holding or acting in the office of the Commissioner of Lands as referred to in section 3 of the *Land and Titles Act* (Cap. 133);

**“common property in a strata scheme”** means the part of the strata parcel shared by the owners of the strata lots and administered by them as members of a strata scheme corporation;

*Note—Section 16 sets out what comprises the common property in a strata scheme.*

**“contiguous”**—

- (a) parcels of land or lots are contiguous if they abut one another at any point or if they are separated only by:
  - (i) a street, road, thoroughfare, right of way watercourse or channel; or
  - (ii) a public reserve;
- (b) for paragraph (a), parcels of land or lots will be taken to be separated by intervening land if a line projected at right angles from any point on the boundary of one of the parcels or lots with the intervening land would intersect a boundary of the other parcel or lot with the intervening land;

**“development lot in a strata scheme”** means a part of the strata parcel delineated as a development lot in the strata scheme plan;

**“estate”** has the same meaning as in the *Land and Titles Act* (Cap. 133);

**“fence”** includes a gate;

**“first statutory general meeting”** means the first meeting of the strata scheme corporation convened by the strata scheme developer under section 69(1);

**“floor”** includes a stairway or ramp;

**“land”** has the same meaning as in the *Land and Titles Act* (Cap. 133);

**“leaseback arrangement”**—a strata scheme is subject to a leaseback arrangement if each of the lots is subject to a lease to the same person (whether the strata scheme developer or some other person) or some but not all of the lots are subject to leases to the same person and the remaining lots are owned by the lessee;

**“licensed surveyor”** has the same meaning as in the *Land Surveyors Act 2017*;

**“local government council”** means:

- (a) Honiara City Council established by section 4 of the *Honiara City Act 1999*; or
- (b) a local government council established under section 3 of the *Local Government Act (Cap. 117)*;

**“lot”** means a strata lot or a development lot;

**“management committee of a strata scheme corporation”** means the management committee established by the strata scheme corporation under section 72;

**“model by-laws”** means model strata scheme by-laws set out in the regulations under section 52;

**“non-recurrent expenditure”** means expenditure for a particular purpose that is normally made less frequently than once a year;

**“number of a strata scheme”** means the distinguishing number assigned to the strata scheme by the Registrar under section 34(1)(e);

**“objecting owner”**—see section 99(1);

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

**“officer of a strata scheme corporation”** means the presiding officer, treasurer or secretary of the strata scheme corporation appointed under section 75;



**“ordinary resolution”**—see Schedule 2, clause 3(1);

**“owner of a lot in a strata scheme”** means the person registered under the *Land and Titles Act* (Cap. 133) as the owner of a strata title in the lot (or, if a chargee is in possession of the lot, means the chargee to the exclusion of the person so registered);

**“parcel of land”** has the same meaning as in the *Land and Titles Act* (Cap. 133);

**“Planning and Development Board”** has the same meaning as in the *Planning and Development Act* (Cap. 154);

**“primary lot”** means a lot in a primary strata scheme;

**“primary strata lot”** means a strata lot in a primary strata scheme;

**“primary strata scheme”** means a strata scheme for the division of a parcel of land into strata titles;

**“primary strata scheme corporation”** means a strata scheme corporation established on registration of a primary strata scheme;

**“proponent of the termination of a strata scheme”** means a person who proposes the termination of the strata scheme, being a person who may do so under section 96;

**“prospective chargee of a lot”** means a person who will hold a registered charge over the lot on registration of an instrument that has been presented for registration under the *Land and Titles Act* (Cap. 133) but has not been registered;

**“prospective lessee of a lot”** means a person who will hold a registered lease over the lot on registration of an instrument that has been presented for registration under the *Land and Titles Act* (Cap. 133) but has not been registered;

**“prospective owner of a lot”** means a person who will be the owner of the lot on registration of a transfer that has been presented for registration under the *Land and Titles Act* (Cap. 133) but has not been registered;

**“public reserve”** means a garden, park or other open space dedicated for public purposes;

**“recurrent expenditure”** means expenditure for a particular purpose that is normally made every year or more frequently;

**“registered encumbrance”** means an encumbrance (including an easement, lease, profit or charge) registered under the *Land and Titles Act* (Cap. 133);

**“Registrar”** has the same meaning as in the *Land and Titles Act* (Cap. 133);

**“registry map”** has the same meaning as in the *Land and Titles Act* (Cap. 133);

**“related strata scheme”**—

- (a) a primary strata scheme is related to each secondary strata scheme that divides a strata lot in the primary strata scheme; and
- (b) a secondary strata scheme is related to the primary strata scheme that includes the strata lot that is divided by the secondary strata scheme and to each other secondary strata scheme that is related to that primary strata scheme;

**“relative strata lot value”**, for a strata lot in a strata scheme, means the relative strata lot value for the strata lot set out in the statement of strata scheme lot values for the scheme;

**“relative termination lot value”**, for a lot in a strata scheme, means the relative termination lot value for the lot set out in a termination statement for the scheme;

**“relative termination strata lot value”**, for a strata lot in a strata scheme, means the relative termination strata lot value for the strata lot set out in a termination statement for the scheme;

**“residential purposes”** does not include the purposes of a hotel, motel or hostel or of providing any other form of temporary residential accommodation for valuable consideration;

**“secondary development lot”** means a development lot in a secondary strata scheme;

**“secondary lot”** means a lot in a secondary strata scheme;

**“secondary strata lot”** means a strata lot in a secondary strata scheme;

**“secondary strata scheme”** means a strata scheme for the division of a strata lot into strata titles;

**“secondary strata scheme corporation”** means a strata scheme corporation established on registration of a secondary strata scheme;

**“service infrastructure”** means cables, wires, pipes, sewers, drains, ducts, plant and equipment by which lots or common property are provided with:

- (a) water reticulation or supply; or
- (b) electricity supply; or
- (c) air conditioning or ventilation; or
- (d) a telephone service; or
- (e) a radio service; or
- (f) a computer data or television service; or
- (g) sewer systems; or
- (h) drainage; or
- (i) systems for the removal or disposal of garbage or waste; or
- (j) other systems or services designed to improve the amenity, or enhance the enjoyment, of the lots or common property;

**“sinking fund of a strata scheme corporation”** means the sinking fund established by the strata scheme corporation under Schedule 1 clause 7;

**“Solomon Islands Electricity Authority”** means the Solomon Islands Electricity Authority established under the *Electricity Act* (Cap. 128);

**“Solomon Islands Water Authority”** means the Solomon Islands Water Authority established under the *Solomon Islands Water Authority Act* (Cap. 130);

**“special resolution”**—see Schedule 2 clause 3(2);

**“strata lot in a strata scheme”** means a part of the strata parcel delineated as a strata lot in the strata scheme plan;

**“strata parcel”** means:

- (a) for a primary strata scheme—the parcel of land divided by the scheme; or
- (b) for a secondary strata scheme—the primary strata lot divided by the scheme;

**“strata parcel file”** means:

- (a) for a primary strata scheme—the parcel file under the *Land and Titles Act* (Cap. 133) for the parcel of land divided by the primary strata scheme; or
- (b) for a secondary strata scheme—the parcel file under the *Land and Titles Act* (Cap. 133) for the strata lot divided by the secondary strata scheme;

**“strata scheme”** means:

- (a) a primary strata scheme; or
- (b) a secondary strata scheme;

**“strata scheme by-laws”**, for a strata scheme, means the by-laws filed in the strata parcel file for the strata scheme under the *Land and Titles Act* (Cap. 133);

**“strata scheme corporation”**, for a strata scheme, means the body corporate established under section 41 on registration of the strata scheme;

**“strata scheme description”**, for a strata scheme, means the description filed in the strata parcel file for the strata scheme under the *Land and Titles Act* (Cap. 133);

**“strata scheme developer”** means:

- (a) for a primary strata scheme—the person registered under the *Land and Titles Act* (Cap. 133) as the owner of the relevant estate in the parcel of land comprising the strata parcel (or, if a chargee is in possession of the parcel, the chargee to the exclusion of the person so registered) immediately before its division by registration of the strata scheme; or
- (b) for a secondary strata scheme—the person registered under the *Land and Titles Act* (Cap. 133) as the owner of the strata lot comprising the strata parcel (or, if a chargee is in possession of the lot, the chargee to the exclusion of the person so registered) immediately before its division by registration of the strata scheme;

**“strata scheme development contract”**, for a strata scheme, means a strata scheme development contract filed in the strata parcel file for the strata scheme under the *Land and Titles Act* (Cap. 133);

**“strata scheme documents”**—see section 20(1);

*Note—The strata scheme documents comprise the strata scheme plan, the statement of strata scheme lot values, the strata scheme description, the strata scheme development contracts, the strata scheme by-laws and the certificates of strata scheme insurance.*

**“strata scheme insurance”** means the insurance required under section 25;

**“strata scheme lot values”**, for a strata scheme, means the strata scheme lot values set out in the statement of strata scheme lot values filed in the strata parcel file for the strata scheme under the *Land and Titles Act* (Cap. 133);

**“strata scheme manager”** means a person:

- (a) who carries on a business that consists of, or includes, performing functions or exercising powers of strata scheme corporations or their management committees or officers; and
- (b) who is or is to be remunerated in respect of work performed in performing the functions or exercising the powers;

**“strata scheme plan”**, for a strata scheme, means the plan of division filed in the strata parcel file for the strata scheme under the *Land and Titles Act* (Cap. 133);

**“strata title”**—see section 12(2);

**“Surveyor-General”** has the same meaning as in the *Land Surveyors Act 2017*;

**“termination proposal”** means a proposal for the termination of a strata scheme prepared under section 96;

**“termination statement”** means a termination statement of strata scheme lot values prepared under section 97;

**“unanimous resolution”**—see Schedule 2, clause 3(3);

**“unimproved value”** has the same meaning as in section 2A of the *Land and Titles Act* (Cap. 133);

**“valuer”** has the same meaning as in the *Valuers Act 2009*;

**“Valuer General”** has the same meaning as in the *Valuers Act 2009*;

**“wall”** includes a door or window.

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

(3) An example in this Act:

(a) forms part of the Act; and

(b) is not exhaustive; and

(c) may extend, but does not limit, the meaning of the Act or the provision to which it relates.

#### **4 Associates**

(1) 2 persons are **“associates”** if:

(a) 1 is the spouse or de facto spouse of the other; or

- (b) 1 is the child or grandchild of the other; or
- (c) 1 is the brother or sister of the other; or
- (d) 1 is in a position to exercise control or significant influence over the conduct of the other because they are of the same clan or tribe or because they live in the same household or otherwise; or
- (e) they are in partnership; or
- (f) they are joint venturers; or
- (g) 1 is the employee of the other; or
- (h) they are both employees of the same employer; or
- (i) they are both directors or executive officers of the same body corporate; or
- (j) 1 is an employee of, and the other is a director or executive officer of, the same body corporate; or
- (k) 1 is a body corporate and:
  - (i) the other is a director or executive officer of the body corporate; or
  - (ii) the other is an associate of a director or executive officer of the body corporate;
- (l) 1 is a body corporate (other than a public company whose shares are quoted on a financial market) and the other is a shareholder in the body corporate; or
- (m) 1 has a right to participate (otherwise than as a shareholder in a body corporate) in income or profits derived from a business conducted by the other; or
- (n) they have some other connection or association specified in the regulations.

## **5 Object of Act**

- (1) The main object of this Act is to encourage higher density

development in appropriate locations.

- (2) That object is to be carried out:
  - (a) by allowing certain land, after development permission has been obtained under the *Planning and Development Act* (Cap. 154), to be divided by a strata scheme into strata lots (and development lots) that may be separately owned and common property that is to be shared by the owners of the strata lots; and
  - (b) by establishing a regulatory framework designed to achieve a balance between the interests of developers and the interests of owners and lawful occupiers of lots in strata scheme developments.

## **Part 2                    Division of land by strata scheme**

### **Division 1            Introduction**

#### **6                    Purpose of strata scheme**

A strata scheme is a scheme for the creation of strata titles so as to:

- (a) effect a physical subdivision of land into 2 or more strata lots and common property that is to be shared by the owners (for the time being) of the strata lots; and
- (b) allow for the strata lots to be owned and sold or otherwise dealt with separately; and
- (c) require the common property to be administered by the owners (for the time being) of the strata lots as members of a strata scheme corporation established under this Act; and
- (d) prevent the common property from being sold separately and limit how the common property may be otherwise dealt with.

#### **7                    Parcels of land that may be divided by primary strata scheme**

- (1) A parcel of land may be divided under section 140 of the *Land and Titles Act* (Cap. 133) by registration of a strata scheme if:



- (a) the land is public land (that is, the land is vested for a perpetual estate in the Commissioner of Lands for and on behalf of the Government under the *Land and Titles Act* (Cap. 133)); and
  - (b) the land is registered under the *Land and Titles Act* (Cap. 133); and
  - (c) the strata scheme developer owns a fixed-term estate in the parcel of land.
- (2) However, if the parcel is subject to a lease registered under the *Land and Titles Act* (Cap. 133), neither the parcel nor the lease may be divided by registration of a strata scheme.
  - (3) The regulations may specify other parcels of land that may be divided under section 140 of the *Land and Titles Act* (Cap. 133) by registration of a strata scheme.
  - (4) If it is proposed that contiguous parcels of land be divided by registration of a strata scheme, the parcels of land must first be combined under the *Land and Titles Act* (Cap. 133) into a single parcel of land and then divided by registration of the strata scheme.

*Note—The following terminology is used:*

- a strata scheme that divides a parcel of land is a primary strata scheme;
- the strata parcel for a primary strata scheme is the parcel of land that is divided by the scheme;
- the strata lots created by a primary strata scheme are primary strata lots.

## **8 Division of strata lots by secondary strata scheme**

- (1) A primary strata lot may be further divided under section 140 of the *Land and Titles Act* (Cap. 133) by registration of a strata scheme (unless that is prevented by the primary strata scheme).
- (2) However, if the strata lot is subject to a lease registered under the *Land and Titles Act* (Cap. 133), neither the lot nor the lease may be divided by registration of a strata scheme.

*Note—The following terminology is used:*

- a strata scheme that divides a primary strata lot is a secondary strata scheme;
- the strata parcel for a secondary strata scheme is the primary strata lot divided by the scheme;

- *the strata lots created by a secondary strata scheme are secondary strata lots.*

*Example—A secondary strata scheme might be used if the primary strata scheme would otherwise involve residential and commercial purposes in order for separate strata scheme corporations to be established to manage those separate uses.*

## **9 No further division of strata lot**

A secondary strata lot cannot be further divided by registration of a strata scheme or by any other division under section 140 of the *Land and Titles Act* (Cap. 133).

## **10 Staged development**

- (1) A strata scheme (whether primary or secondary) may also do either or both of the following:
  - (a) set aside part of the strata parcel as a development lot and provide for subsequent development and division of the lot in accordance with a strata scheme development contract executed under this Act by the owner of the lot;
  - (b) provide for subsequent development and, in the case of a primary strata scheme, division, of a strata lot in accordance with a strata scheme development contract executed under this Act by the owner of the strata lot.
- (2) A development lot may be owned and sold or otherwise dealt with separately.
- (3) A development lot cannot be divided by registration of a strata scheme but it can be divided by registration of an amendment of a strata scheme.

*Example—The development lot or part of the development lot may be converted to 1 or more strata lots or common property or both in the strata scheme.*

- (4) The strata scheme development contract for a development lot:
  - (a) must provide that, on completion of development of the lot or a stage of that development, an application is to be made for amendment of the strata scheme for specified purposes; and

- (b) may provide that, on completion of development of the lot or a stage of that development, an application is to be made for amendment of a related strata scheme for specified purposes; and
  - (c) may provide that, on creation of a strata lot by amendment of the strata scheme:
    - (i) if the strata scheme is a primary strata scheme—an application is to be made for division of the strata lot by registration of a secondary strata scheme, or an amendment of a secondary strata scheme, for specified purposes; or
    - (ii) the strata lot is to be made subject to a strata scheme development contract for specified purposes.
- (5) A strata scheme development contract for a strata lot may provide that, on completion of development of the lot or a stage of that development:
- (a) for a primary strata lot—an application is to be made for division of the strata lot by registration of a secondary strata scheme for specified purposes; or
  - (b) in any case—an application is to be made for amendment of the strata scheme or a related strata scheme for specified purposes.

## 11

### **Prohibition against division of leases**

If a strata parcel or any part of a strata parcel is subject to a registered lease under the *Land and Titles Act* (Cap. 133), the lease must not be divided under section 158 of that Act.

## 12 **Creation and term of strata titles on registration of strata scheme**

- (1) Strata titles are created when a strata scheme is registered as set out in this Act.

*Note—Before a strata scheme may be registered, development permission under the Planning and Development Act (Cap. 154) must be obtained, the development completed and the consent of the Commissioner of Lands under section 140 of the Land and Titles Act (Cap. 133) obtained.*

- (2) A “**strata title**” is a fixed-term estate in:
  - (a) a strata lot and the common property of the strata scheme; or
  - (b) a development lot.

*Note—The common property is vested in the strata lot owners as owners in common in shares proportionate to their relative strata lot values: see section 37.*

- (3) The term of a strata title created by registration of a strata scheme is 75 years after the date of registration of the scheme.

## 13 **Creation and term of strata titles on registration of amendment of strata scheme**

- (1) A strata title is also created when an amendment of a strata scheme that results in the creation of an additional lot in the strata scheme is registered as set out in this Act.
- (2) The term of a strata title created by registration of an amendment of a strata scheme is the balance of the term of the strata titles created on registration of the scheme.

## 14 **Renewal of strata title**

On the expiry of the first and any subsequent term of a strata title, the strata title will be taken to have been renewed for a further term of 75 years.

## **Division 2      Definition of lots and common property**

### **15      Definition of lots**

- (1) A strata lot:
  - (a) may be below, on or above the surface of land; and
  - (b) must be wholly or partly within a building that has been erected on the strata parcel; and
  - (c) may be wholly on 1 storey or partly on 1 storey and partly on another or others; and
  - (d) may have upper and lower boundaries as well as lateral boundaries that are defined by reference to parts of the building; and
  - (e) may include an area that is not contiguous to the rest of the lot (whether within or outside the building) to be used for a purpose that is ancillary to the purpose for which the rest of the lot is to be used.

*Example—An area comprising a space in a carpark or a shed.*

- (2) The boundaries of a strata lot, or the parts of a strata lot, that are within the building must be defined by reference to the building and, subject to any explicit statement to the contrary in the strata scheme plan:
  - (a) if a boundary is defined by reference to a wall or fence—the boundary is the inner surface of the wall or fence; and
  - (b) if a boundary is defined by reference to a floor—the boundary is the upper surface of the floor; and
  - (c) if a boundary is defined by reference to a ceiling or roof—the boundary is the under surface of the ceiling or roof.
- (3) A development lot that is wholly or partly within a building must be defined in the same manner as a strata lot, but otherwise may be defined as an area of land.

## **16 Definition of common property**

The common property created by a strata scheme comprises:

- (a) those parts of the strata parcel that do not comprise or form part of a strata lot, development lot or land delineated as a public road or public reserve; and
- (b) the service infrastructure (except for any part of the service infrastructure that is vested in the Solomon Islands Electricity Authority or the Solomon Islands Water Authority or any other operator of service infrastructure and the parts of the service infrastructure that provide a service to only 1 lot); and
- (c) those parts of the buildings on the strata parcel that are not part of a lot; and
- (d) any building that is not for the exclusive use of the owner or occupier of a lot in the strata scheme or a related strata scheme and was erected before registration of the strata scheme; and
- (e) any building erected by the strata scheme corporation as part of the common property; and
- (f) any other building on the strata parcel that has been committed to the administration of the strata scheme corporation (with the consent of the strata scheme corporation given by unanimous resolution) as part of the common property.

## **Division 3 Application for division and strata scheme documents**

### **Subdivision 1 General requirements**

#### **17 Application for division**

- (1) Subject to this Act, each of the following persons may apply for the division of a strata parcel under section 140 of the *Land and Titles Act* (Cap. 133):

- (a) the owner of a fixed-term estate in a parcel of land may apply for division of the parcel of land by registration of a primary strata scheme;
  - (b) the owner of a strata lot may apply for division of the strata lot by registration of a secondary strata scheme;
  - (c) a person may apply for division of a strata parcel by registration of an amendment of a strata scheme as set out in Part 5 Division 1.
- (2) An application for division of a strata parcel by registration of a primary strata scheme may be contingent on registration of a secondary strata scheme for the division of a strata lot in the primary strata scheme.
- (3) An application for division of a strata parcel by registration of a secondary strata scheme that is made subsequent to registration of the primary strata scheme must be accompanied by any necessary application for amendment of the primary strata scheme.

*Note—The statement of strata scheme lot values for the primary strata scheme would usually require amendment following registration of a secondary strata scheme. It would also be likely that the strata scheme description for the primary strata scheme would require amendment.*

## **18 General requirements for application**

- (1) An application for division of a strata parcel by registration of a strata scheme or an amendment of a strata scheme must:
- (a) be lodged with the Commissioner of Lands; and
  - (b) be in a form approved by the Commissioner of Lands; and
  - (c) be accompanied by any instrument, duly executed, that is to be registered on registration of the strata scheme or the amendment of the strata scheme; and

*Example—An instrument for the release of a registered encumbrance.*

- (d) comply with the other requirements of this Division; and
- (e) be accompanied by the fee fixed by the regulations.

- (2) The Commissioner of Lands may require the applicant to provide additional information reasonably required for determination of the application.
- (3) The application may be refused if the applicant does not comply with such a requirement.

## **19 Additional requirements for applications for amendment of strata scheme**

Part 5 Division 1 sets out additional requirements that apply in relation to an application for registration of an amendment of a strata scheme involving division of a strata parcel.

### **Subdivision 2 Strata scheme documents**

#### **20 Required strata scheme documents**

- (1) An application for the division of a strata parcel by registration of a strata scheme must be accompanied by each of the following documents (together referred to as the “**strata scheme documents**”):

- (a) a strata scheme plan that complies with section 21;

*Note—The strata scheme plan shows, amongst other things, the division of the land into strata lots and development lots.*

- (b) a statement of strata scheme lot values that complies with section 22;

*Note—The strata scheme lot values determine the rent payable under the Land and Titles Act (Cap. 133) incident to the strata titles and, amongst other things, the shares in which strata lot owners own the common property as owners in common and the monetary contributions to be made by members of the strata scheme corporation.*

- (c) a strata scheme description that complies with section 23;

*Note—The description comprises a brief description of the nature of the development of the strata parcel as permitted by the relevant Planning and Development Board for the benefit of persons considering purchasing or entering into any other dealing with a strata title created by the scheme.*



- (d) if the strata scheme plan identifies a development lot or a strata lot that is subject to a strata scheme development contract—a strata scheme development contract that complies with section 24 for each lot so identified;

*Note—A strata scheme development contract binds the owner of the lot to develop or develop and divide a lot in a particular way.*

- (e) strata scheme by-laws that comply with Division 5;

*Note—Strata scheme by-laws govern the administration of the scheme and the rights and responsibilities of the strata scheme corporation and its members.*

- (f) certificates evidencing the strata scheme insurance required under section 25.

- (2) In addition to the requirements set out in this Division, each strata scheme document must:

- (a) be in a form approved by the Commissioner of Lands; and
- (b) comply with any requirements issued in writing by the Commissioner of Lands.

*Note—Part 5 Division 1 provides that these requirements also apply to replacement strata scheme documents accompanying an application for division of a strata parcel by registration of an amendment of a strata scheme.*

## **21 Strata scheme plan**

- (1) The strata scheme plan must:
  - (a) identify, amongst other things:
    - (i) at least 2 strata lots (separately identifying any strata lot that is subject to a strata scheme development contract); and
    - (ii) any development lots; and
  - (b) be prepared and certified by a licensed surveyor in accordance with the *Land Surveyors Act 2017*; and
  - (c) be approved by the Surveyor-General; and

- (d) delineate the boundaries of the strata parcel and the lots into which the strata parcel is divided in a manner that allows those boundaries to be ascertained; and
  - (e) designate each lot by a distinguishing number; and
  - (f) identify each development lot (if any) and each strata lot that is subject to a strata scheme development contract (if any); and
  - (g) as far as practicable, delineate the service infrastructure (but not that part of the service infrastructure within the boundaries of a strata lot if it does not provide a service to any other lot or the common property); and
  - (h) delineate any public road or public reserve that is to be created on division of the strata parcel and specify whether the Government or a specified local government council is to have control of the road or reserve; and
  - (i) delineate any easements that are to be created on division of the strata parcel (and the plan, or the application for division, must specify which land is the dominant land (if any) and which land is the servient land in respect of the easement).
- (2) The Surveyor-General must, on payment of the fee fixed by the regulations, examine a strata scheme plan to be lodged with an application under this Act before the application is lodged.
- (3) Before approving a strata scheme plan for lodging, the Surveyor-General may require the plan to be modified and resubmitted.

## **22 Strata scheme lot values**

- (1) A statement of strata scheme lot values must comprise:
- (a) a statement of the capital value of each strata lot (other than a primary strata lot divided by a secondary strata scheme) and each development lot in the strata scheme; and

- (b) for each primary strata lot divided by a secondary strata scheme—a statement of the aggregate of the capital values of each strata lot and each development lot in the secondary strata scheme (with that aggregate being taken to be the capital value of the primary strata lot for the purpose of determining relative strata lot values); and
  - (c) for each strata lot in the strata scheme—a statement of the relative strata lot value, that is, the proportion that the capital value of the lot bears to the aggregate of the capital values of all strata lots in the scheme (taking into account the assumption under paragraph (b)).
- (2) A relative strata lot value must be expressed as a decimal number simplified to 3 decimal places by rounding (with 1 to 5 being rounded down and 6 to 9 being rounded up).

*Example—If there are 2 strata lots and the aggregate value is \$1m and 1 strata lot has a capital value of \$555,400 and the second strata lot has a capital value of \$444,600, the relative strata lot values would be 0.555 and 0.445.*

- (3) The statement of strata scheme lot values must:
  - (a) be prepared and certified by a valuer in accordance with standards and rules under the *Valuers Act 2009*; and
  - (b) be approved by the Valuer General.
- (4) The Valuer General must, on payment of the fee fixed by the regulations, examine a statement of strata scheme lot values to be lodged with an application under this Act before the application is lodged.
- (5) Before approving a statement of strata scheme lot values for lodging, the Valuer General may require the statement to be modified and resubmitted.
- (6) The Commissioner of Lands may refuse to accept a statement of strata scheme lot values if the approval of the Valuer General was given more than 6 months before the application for division of the strata parcel is lodged.

**Strata scheme description**

- (1) The strata scheme description must:
  - (a) identify the strata parcel; and
  - (b) identify the strata scheme plan for the strata scheme; and
  - (c) provide contact details for the strata scheme corporation; and
  - (d) describe the development permitted on the strata parcel and set out any conditions of development in full; and
  - (e) set out the purposes for which strata lots and common property may be used; and
  - (f) specify the standard of buildings and other improvements (if any) to be, or which may be, erected on or made to the lots or common property; and
  - (g) if the scheme is to be developed in stages:
    - (i) identify any development lot created by the scheme; and
    - (ii) identify any strata lots subject to strata scheme development contracts; and
    - (iii) briefly describe the nature and scope of the development to be undertaken in each stage; and
    - (iv) state the time expected for the completion of each stage or explain why it is not possible to do so; and
    - (v) briefly describe the nature and scope of any amendment of the strata scheme or division of the lot proposed on completion of a stage of development; and
  - (h) for a primary strata scheme—state whether or not any strata lot is able to be further divided by a secondary strata scheme; and
  - (i) for a secondary strata scheme—be consistent with the primary strata scheme documents; and

- (j) be approved by the relevant Planning and Development Board as being appropriate for the development as permitted.
- (2) The strata scheme description should be clear and concise.
- (3) The relevant Planning and Development Board must, on payment of the fee fixed by the regulations, examine a strata scheme description to be lodged with an application under this Act before the application is lodged.
- (4) Before approving a strata scheme description for lodging, the relevant Planning and Development Board may require modifications to the description that are, in the opinion of the Board, necessary or desirable:
  - (a) to give an accurate and complete picture of the scheme; or
  - (b) to clarify any part of the description; or
  - (c) to remove unnecessary detail.
- (5) The strata scheme description must identify the person who prepared the description and include a certificate of that person certifying that the description has been prepared in accordance with this section.

## **24 Strata scheme development contracts**

- (1) The purpose of a strata scheme development contract is to place the owner of a lot under a binding obligation to develop the lot, and divide the lot or amend a strata scheme, in accordance with the strata scheme description.
- (2) A strata scheme development contract must:
  - (a) identify the strata lot or development lot to which it applies; and
  - (b) describe the development of the lot that the owner is obliged to undertake and the division of the lot or strata scheme amendment that is proposed; and

- (c) if the development includes the construction or erection of a building—specify the position of the building, briefly describe the design, dimensions, methods and materials of construction and external appearance of the building and include a pictorial representation of the appearance of the building after completion; and
- (d) if the development includes landscaping—specify the area to be landscaped, briefly describe the nature of the landscaping and include a plan of the area showing the design of the proposed landscaping; and
- (e) state whether development permission under the *Planning and Development Act* (Cap. 154) has been, or will need to be, obtained before the development can proceed; and
- (f) state the days on which, and the hours during which, development work may be carried out; and
- (g) state the time or parameters for fulfilment by the owner of the obligations under the contract; and
- (h) describe any access or occupation of a lot or the common property that the owner will require for development work and the obligations of the owners or occupiers of those lots and the strata scheme corporation in that regard; and
- (i) if the owner is to be under an obligation to divide the lot—include a plan that, as far as practicable, meets the requirements for a strata scheme plan for that division or, if it is not practicable to include such a plan, include a statement describing the nature and scope of the division; and
- (j) if the owner is to be under an obligation to apply for an amendment of a strata scheme—include the details, as far as practicable, of the proposed amendment or, if it is not practicable to include the details, a statement of the nature and scope of the amendment; and
- (k) include an undertaking by the owner that the owner will interfere as little as is reasonably practicable with the use and enjoyment of other lots and the common property in the course of the development; and

- (l) include an undertaking by the owner that the owner will repair, or pay the costs of repairing, any damage caused by the owner to a lot or the common property, or to a building or other improvement on a lot or the common property, in the course of the development; and
  - (m) be consistent with other strata scheme documents; and
  - (n) for a secondary lot—be consistent with the primary strata scheme documents.
- (3) A strata scheme development contract must identify the person who prepared the contract and include a certificate of that person certifying that the contract has been prepared in accordance with this section.

## **25 Strata scheme insurance**

- (1) The following strata scheme insurance is required:
- (a) all buildings and other improvements (if any) on the strata lots and common property must be insured:
    - (i) against natural disasters (including fire, flood and earthquake), criminal damage and accidental damage, subject to reasonable limitations; and
    - (ii) for the full cost of replacing the buildings or improvements with new materials, including incidental costs such as demolition, site clearance and architect's fees;
  - (b) insurance against the risk of a person's illness, injury or death or the loss of or damage to property suffered on the common property for an amount of at least \$50 million or such other amount as is specified in the regulations.
- (2) An application for amendment of the strata scheme is not required for substitution of the certificates evidencing strata scheme insurance filed in the strata parcel file for the strata scheme under the *Land and Titles Act* (Cap. 133).
- (3) The certificates may be substituted on notification to the Registrar in a form approved by the Commissioner of Lands.

### **Subdivision 3 Planning and building requirements**

#### **26 Certificate of completion and adequacy of development**

- (1) An application for the division of land by registration of a strata scheme or amendment of a strata scheme must be accompanied by a certificate of the relevant Planning and Development Board certifying that:
  - (a) the development has been completed in accordance with the development permission; and
  - (b) any buildings used for residential purposes included in the development are of a standard that is adequate for habitation; and
  - (c) any other buildings included in the development are of a standard that is adequate for their purpose.
- (2) No liability attaches to a Planning and Development Board in relation to such a certificate if the Board acts in good faith in assessing an application for a certificate and in giving the certificate.
- (3) An application for a certificate of a Planning and Development Board under subsection (1):
  - (a) must be lodged with the Board; and
  - (b) must be in a form approved by the Board; and
  - (c) must be accompanied by the fee fixed by the regulations.
- (4) A Planning and Development Board may require an applicant to provide additional information reasonably required for determination of the application.
- (5) The application may be refused if the applicant does not comply with such a requirement.



## **Subdivision 4 Consents**

### **27 Consents to application**

- (1) An applicant for the division of a strata parcel by registration of a strata scheme or amendment of a strata scheme must provide evidence to the satisfaction of the Commissioner of Lands that:
  - (a) the holder of each registered encumbrance over the strata parcel consents to the application; and
  - (b) if registration of the strata scheme or amendment will operate to vest an estate or interest in land (whether within or outside the strata parcel) in a person—that person consents to the application; and
  - (c) if registration of the strata scheme or amendment will affect the registered estate or interest of a person in land outside the strata parcel—that person consents to the application.
- (2) The Commissioner of Lands may, if the Commissioner thinks fit, dispense with the consent of a person referred to in subsection (1), including on the grounds that consent has been unreasonably withheld.
- (3) If the registration of an amendment of a strata scheme will not affect a registered encumbrance over the strata parcel, the consent of the holder of the registered encumbrance is not required.
- (4) If the registration of a strata scheme or amendment would result in the extinguishment of an easement in respect of part of the dominant land, the consent of a person who has or claims an estate or interest in the servient land is not required (unless the Commissioner of Lands determines otherwise in a particular case) in relation to that extinguishment if rights under the easement continue in existence in respect of some other part of the dominant land.

### **28 Agreements for public roads or public reserves**

If a strata scheme plan delineates a public road or public reserve within the strata parcel, the applicant for the division of the strata parcel must provide evidence to the satisfaction of the Commissioner of Lands that:

- (a) for a public road—the Minister responsible for the *Roads Act* (Cap. 129) has agreed that the land should be declared a public road under section 3 of that Act; and
- (b) if the strata scheme plan specifies that the public road is to be under the control of a specified local government council—that local government council has agreed to take control of the road; and
- (c) for a public reserve—the Minister responsible for public reserves has agreed to that part of the land becoming a public reserve; and
- (d) if the strata scheme plan specifies that the public reserve is to be under the control of a specified local government council—that local government council has agreed to take control of the reserve.

## **Subdivision 5 Rent and other obligations**

### **29 Settlement of outstanding rentals and fulfilment of obligations**

- (1) A strata parcel must not be divided by registration of a strata scheme if any rent under the *Land and Titles Act* (Cap. 133) incident to an estate in the strata parcel is outstanding.
- (2) A strata parcel must not be divided by registration of an amendment of a strata scheme if any rent under the *Land and Titles Act* (Cap. 133) incident to a strata title affected by the amendment is outstanding.
- (3) The Commissioner of Lands may refuse to consent to the division of a strata parcel on the ground that obligations under the *Land and Titles Act* (Cap. 133) incident to an estate in the strata parcel have not been complied with.

## **Subdivision 6 Encroachments**

### **30 Encroachments**

- (1) If it appears from a strata scheme plan (or a strata scheme plan as proposed to be amended) that any part of a building encroaches over land not included in the strata parcel, the Commissioner of Lands may only consent to the division of the strata parcel if:
  - (a) no part of a lot in the strata scheme forms part of the encroachment; and
  - (b) it is established to the Commissioner's satisfaction that:
    - (i) the owner of an estate in the land over which the encroachment occurs consents to the encroachment; or
    - (ii) the encroachment is otherwise authorised by law.
- (2) If the Commissioner of Lands consents to an application for division of a strata parcel and any area to which the application applies is affected by an encroachment:
  - (a) the Registrar will, on registration of the strata scheme or the amendment of the strata scheme, enter the encroachment in the encumbrance section of any relevant land register; and
  - (b) any consent of the owner of an estate in the land over which the encroachment occurs given in relation to the encroachment is binding on present and subsequent owners of an estate in the land and present and subsequent occupiers of the land.

## **Subdivision 7 Miscellaneous**

### **31 Commissioner and Registrar may rely on certificates**

If a person has, in accordance with this or any other Act, certified as to any matter or thing, the Commissioner of Lands and the Registrar may, for the purpose of performing functions under this Act or the *Land and Titles Act* (Cap. 133), rely on the certificate as establishing the matter or thing so certified.

## **32 Priority on lodgement of application and strata scheme documents**

An application for division of a strata parcel by registration of a strata scheme or an amendment of a strata scheme and the strata scheme documents (or part documents) that accompany the application will, on being lodged with the Commissioner of Lands, be taken for the purposes of the *Land and Titles Act* (Cap. 133) to be a single instrument presented for registration and will have priority over other instruments in accordance with that Act.

## **33 Amendment or withdrawal of application**

- (1) Subject to subsection (2), an application for division of a strata parcel by registration of a strata scheme or amendment of a strata scheme cannot be withdrawn, and the strata scheme documents supporting the application cannot be amended, without the consent of all the persons who have consented to the application.
- (2) The Commissioner of Lands may permit an applicant to amend an application or a strata scheme document in order to comply with this Act or the *Land and Titles Act* (Cap. 133) or with a requirement of the Commissioner of Lands or the Registrar under this Act or the *Land and Titles Act* (Cap. 133).

## **Division 4 Registration of strata scheme or amendment of strata scheme**

### **Subdivision 1 Registration**

#### **34 Registration**

- (1) A strata scheme is registered when each of the following steps has been taken:
  - (a) the Commissioner of Lands has consented to the division of the strata parcel by registration of the strata scheme under section 140 of the *Land and Titles Act* (Cap. 133);
  - (b) the Registrar has closed the land register for the parcel of land or strata lot divided by the strata scheme;

- (c) if the strata scheme involves the creation of a public road or public reserve—the Registrar has opened a new land register for the parcel comprised of the road or reserve;
- (d) the Registrar has opened a new land register for the strata parcel;
- (e) the Registrar has entered into the property section of the land register for the strata parcel a distinguishing number identifying the strata scheme and has entered that number on the relevant portion of the registry map;
- (f) the Registrar has filed the strata scheme documents in the parcel file for the strata parcel;
- (g) the Registrar has opened a new land register for each lot created by the strata scheme;
- (h) the Registrar has altered land registers as necessary for the discharge, extinguishment or vesting of any other estates and interests required for registration of the strata scheme.

*Example—The alterations to land registers may relate to leases, encroachments, charges, encumbrances or other interests adversely affecting the estate.*

- (2) The parcel of land affected by a registered strata scheme will remain on the registry map (with the number of the strata scheme being entered on the map and any public roads or public reserves created by the scheme separately demarcated on the map), but the areas into which the parcel is divided will not be shown on the registry map.
- (3) An amendment of a strata scheme involving division of a strata parcel is registered when each of the following steps has been taken:
  - (a) the Commissioner of Lands has consented to the division of the strata parcel by registration of the amendment of the strata scheme under section 140 of the *Land and Titles Act* (Cap. 133);

- (b) if the amendment involves the creation of a public road or public reserve—the Registrar has opened a new land register for the parcel comprised of the road or reserve;
  - (c) the Registrar has filed the new strata scheme documents, or the substituted or additional sheets, in the parcel file for the strata parcel and struck through any replaced documents or sheets;
  - (d) the Registrar has closed the land registers of any lots that are to cease to exist and opened new land registers for any lots to be created by the amendment of the strata scheme;
  - (e) the Registrar has altered land registers as necessary for the discharge, extinguishment or vesting of any other estates and interests required for registration of the amendment of the strata scheme.
- (4) The date of registration of a strata scheme, or an amendment of a strata scheme involving division of a strata parcel, is to be recorded in the land register for the strata parcel.
  - (5) The date of expiry of the term of a strata title is not to be recorded in the land registers for the strata parcel or lots, but may be calculated as required in accordance with sections 12 to 14.

## **Subdivision 2 Creation of estates and interests**

### **35 Overview**

- (1) Registration of a strata scheme effects the division of the strata parcel to which the scheme relates into strata titles as referred to in section 12.
- (2) Registration of an amendment of a strata scheme involving division of a strata parcel effects the relevant amendment of the division of the strata parcel and creation of strata titles as referred to in section 13.
- (3) While a strata scheme remains registered:
  - (a) the strata lots and development lots (if any) will be as defined in the strata scheme plan; and

- (b) the only estates in the strata parcel that may be owned and sold or dealt with separately are the strata titles; and
- (c) if the strata scheme divides a fixed-term estate in a parcel of land—the fixed-term estate in the parcel of land ceases to exist; and
- (d) if the strata scheme divides a strata lot—the fixed-term estate in the strata lot (that is, the strata title for the lot and common property) ceases to exist; and
- (e) the owner of a lot must pay rent under the *Land and Titles Act* (Cap. 133) and failure to comply with that obligation may make the title subject to forfeiture under that Act.

*Note—If there is a secondary strata scheme, the obligation to pay rent falls on the owners of the secondary lots and not on the secondary strata scheme corporation.*

### **36 Vesting of lots**

- (1) Lots created on division of a strata parcel by registration of a strata scheme are vested in the strata scheme developer.
- (2) Lots created on division of a strata parcel by registration of an amendment of a strata scheme as required by a strata scheme development contract are vested in the owner of the lot who was bound by the development contract immediately before the division.
- (3) If there is more than 1 such person, those persons own the lots created as owners in common or as joint tenants in the same manner as they owned the strata parcel or lot and, if they owned it as owners in common, in the same proportions as they owned the strata parcel or lot.
- (4) Lots created on division of a strata parcel by registration of an amendment of a strata scheme on the application of the owners of lots vest in those owners as specified in the application for division.
- (5) Lots created on division of a strata parcel by registration of an amendment of a strata scheme on the application of the strata scheme corporation vest in the strata scheme corporation or owners of lots as specified in the application for division.

### **37 Vesting of common property**

- (1) The common property of a strata scheme is vested, on registration of the scheme or an amendment of the scheme, in the owners for the time being of the strata lots as owners in common in shares proportionate to the relative strata lot values of their respective lots.
- (2) An owner's interest in a strata lot is inseparable from the owner's interest in the common property and accordingly:
  - (a) a dealing affecting the strata lot affects, without express reference, the interest in the common property in the same manner and to the same extent; and
  - (b) the owner of a strata lot cannot separately deal with or dispose of the interest in the common property.
- (3) If the strata scheme corporation is authorised under this Act to enter into a transaction affecting the common property, it may enter into the transaction and execute documents related to the transaction, in its own name, as if it were the owner of a fixed-term estate (of the same term as the strata titles) in the common property.
- (4) A strata scheme corporation may sue and be sued for rights and liabilities related to the common property as if it were the owner and occupier of the common property.

### **38 Vesting and control of public roads and public reserves**

- (1) If, on registration of a strata scheme or an amendment of a strata scheme, the strata scheme plan delineates a public road:
  - (a) the estate in that part of the strata parcel shown as a public road reverts to the Commissioner of Lands as a perpetual estate and the land is taken to have been declared to be a public road under section 3 of the *Roads Act* (Cap. 129); and
  - (b) if the strata scheme plan specifies that a specified local government council is to control that road—the control of the road will be taken to have been vested in that local government council under the *Roads Act* (Cap. 129).



- (2) If, on registration of a strata scheme or an amendment of a strata scheme, the strata scheme plan delineates a public reserve:
  - (a) if the strata scheme plan designates that a specified local government council is to have control of the public reserve—a fixed-term estate (of the same term as the strata titles including the term of any renewal) in that part of the strata parcel delineated as a public reserve is to be granted to the local government council for the purposes only of the land being used as a public reserve; and
  - (b) in any other case—the estate in the land delineated as a public reserve reverts to the Commissioner of Lands as a perpetual estate.
- (3) The public road or public reserve is subject to any easements (excluding rights-of-way for a public road) indicated on the strata scheme plan but is otherwise free of all other estates and interests.
- (4) Compensation is not payable in respect of the reversion or vesting of land under this section.
- (5) An easement that is appurtenant to the land comprising a public road or public reserve ceases to be appurtenant to that land on registration of the strata scheme or amendment of the strata scheme unless the strata scheme plan shows that the easement will remain appurtenant to that land.

## **39**

### **Discharge, extinguishment or vesting of other interests**

- (1) If a strata scheme plan, or an application for division of a strata parcel by registration of a strata scheme or an amendment of a strata scheme, states that an estate or interest in the strata parcel (not being a strata title) is vested in a person, registration of the strata scheme or amendment operates to vest the estate or interest in that person to the extent to which it is not already vested in that person.

- (2) If a strata scheme plan, or an application for division of a strata parcel by registration of a strata scheme or an amendment of a strata scheme, states that an estate or interest in the strata parcel is discharged or otherwise extinguished (whether wholly or in respect of part only of the strata parcel), registration of the strata scheme operates to discharge or otherwise extinguish that estate or interest (wholly or in respect of that part of the strata parcel).
- (3) If registration of a strata scheme or an amendment of a strata scheme will operate to vest an encumbrance in a person that is to be registered, the terms on which the encumbrance will be held must be specified by including them in, or attaching them to, the application for division of the strata parcel or by reference in the application to another registrable instrument.
- (4) Subject to this Division, if a strata parcel divided by a strata scheme is subject to a registered encumbrance that is to continue after registration of the strata scheme or amendment of the strata scheme, the encumbrance:
  - (a) will be entered in the encumbrance section of the land register for each lot; but
  - (b) will be taken to be discharged to the extent that it related to the common property.
- (5) The provisions of the *Land and Titles Act* (Cap. 133) that apply to, or in relation to, instruments of a particular class will, subject to this Division, apply (with any necessary adaptations or modifications) to, or in relation to, instruments of that class relevant to an application for the division of a strata parcel by registration of a strata scheme or an amendment of a strata scheme.

#### **40 Combining of estates on amendment of strata scheme**

Subject to any provision to the contrary in an application for registration of an amendment of a strata scheme, the following provisions apply if 1 or more pieces of land are combined on the amendment of a strata scheme:

- (a) subject to paragraph (b), if 1 of the pieces of land is subject to a registered encumbrance (other than a lease or an easement)—the whole of the land formed by the combination is subject to the encumbrance;
- (b) if an encumbrance (other than an easement) is registered over a lot, or part of a lot, that is combined with land that remains common property after, or becomes common property on, the registration of the amendment of the strata scheme plan—the encumbrance is discharged in respect of that lot or part lot;
- (c) if 1, but not all, of the pieces of land is subject to a lease—the lease is discharged by the combination in so far as it affects that piece of land.

### **Subdivision 3 Strata scheme corporation**

#### **41 Establishment of strata scheme corporation**

- (1) Registration of a strata scheme effects the establishment of a strata scheme corporation for the scheme.
- (2) The name of the strata scheme corporation is "Strata scheme corporation No. X", where X is the number of the strata scheme.
- (3) A strata scheme corporation:
  - (a) is a body corporate; and
  - (b) has perpetual succession and a common seal; and
  - (c) is capable of suing and being sued in its corporate name; and
  - (d) subject to this Act, has all the powers of a natural person that are capable of being exercised by a body corporate.
- (4) The members of the strata scheme corporation are:
  - (a) the owners, from time to time, of the strata lots in the strata scheme; and
  - (b) if the strata scheme is a primary strata scheme and there is a related secondary strata scheme—the secondary strata scheme corporation.

- (5) The contact details of the strata scheme corporation are the contact details for the time being shown on the strata scheme description.
- (6) The contact details may be changed by notification to the Registrar by the strata scheme corporation in a form approved by the Commissioner (without requiring an application for amendment of the strata scheme).
- (7) The *Companies Act 2009* does not apply to a strata scheme corporation.

*Note—The owner of a development lot in a strata scheme is not a member of the strata scheme corporation.*

*The owners of secondary strata lots are not members of the primary strata scheme corporation and the owners of primary strata lots are not members of the secondary strata scheme corporation.*

*For further provisions relating to the strata scheme corporation see especially Part 4 Divisions 1 to 3 and Schedules 1 and 2.*

*A strata scheme corporation must establish a management committee: see Part 4 Division 2.*

## **Subdivision 4 Strata scheme development contracts**

### **42 Binding nature of strata scheme development contracts**

- (1) While a strata scheme remains registered, the owners for the time being of any development lot, or any strata lot identified in the strata scheme plan as being subject to a strata scheme development contract, are bound by the strata scheme development contract for the lot (subject to the amendment or termination of the contract under this Act).
- (2) However, a person who is the owner of a lot by virtue of being a chargee in possession of the lot is not bound by a strata scheme development contract relating to the lot unless the person:
  - (a) becomes the owner of the lot on foreclosure; or
  - (b) remains in possession of the lot for a period of 12 months and, in that event, the person will be bound by the contract from the end of that period.

**Enforcement of strata scheme development contract**

- (1) A strata scheme development contract will be taken to be a contract made by the owner of the strata lot or development lot bound by the contract (the developer) with each of the following persons (the parties):
  - (a) the strata scheme corporation;
  - (b) the owner and occupier of each strata lot in the strata scheme;
  - (c) the owner of any other development lot;
  - (d) if there is a related strata scheme:
    - (i) the strata scheme corporation of the related strata scheme; and
    - (ii) the owners and occupiers of the lots in the related strata scheme.
- (2) A party to a strata scheme development contract with a developer is entitled to take proceedings against the developer for its enforcement (including damages for breach of the contract) in the High Court, even if no obligations attach to the party under the contract.

*Note—The Land Board may also determine under the Land and Titles Act (Cap. 133) that a strata title is forfeited for contravention of a strata scheme development contract.*
- (3) The High Court may, on its own initiative or on the application of a party to the proceedings:
  - (a) state a question of law for the opinion of the Court of Appeal and, if necessary, adjourn the High Court proceedings until the answer is received; or
  - (b) transfer the proceedings to the Court of Appeal on the ground that it is appropriate to do so because of the complexity or significance of the matter or because the proceedings raise a matter of general importance.

## **Subdivision 5 Lot owners and occupiers**

### **44 Interpretation and application of Subdivision**

- (1) If there are related strata schemes:
  - (a) a reference in this Subdivision to a lot or common property is a reference to a lot or common property in any of the related strata schemes; and
  - (b) a secondary strata scheme corporation will be taken to be the owner of the primary strata lot divided by the secondary strata scheme.
- (2) Nothing in this Part derogates from the rights and obligations of a developer (within the meaning of section 43(1)) under a strata scheme development contract.

### **45 Statutory easements for support, shelter, services and projections**

- (1) The following easements exist between lots and between lots and the common property, to the extent required by the nature of the strata scheme or by the nature of the buildings or other improvements erected on, or made to, the strata parcel (whether before or after registration of the scheme):
  - (a) easements of support (including the right to use a party wall for the support of floors, ceilings and rooves) and shelter;
  - (b) easements for the establishment, maintenance and repair of the service infrastructure;
  - (c) easements for the provision of services by means of the service infrastructure;
  - (d) easements for the projection of window sills, windows, window awnings, eaves, guttering and other minor parts of a building.
- (2) An easement for the support or shelter of a building or other improvement does not arise under subsection (1) if the building or other improvement is erected or made after creation of the lot on which it is located unless:

- (a) the building or other improvement is erected or made under a strata scheme development contract; or
  - (b) the building or other improvement provides support or shelter for the building or improvement from which it is to receive support or shelter.
- (3) An easement for projections only arises under subsection (1)(d) in respect of:
- (a) a building erected before the creation of the lot on which it is located; or
  - (b) a building erected under a strata scheme development contract.

**46 Location of service infrastructure**

- (1) The cables, wires, pipes, sewers, drains, ducts, plant and equipment comprising the service infrastructure will be located:
- (a) in the positions specified in the strata scheme plan; or
  - (b) if no position has been specified—in the position agreed by the owners of the lots affected or, if they cannot reach agreement, the position determined by a court on an application made under Part 7.
- (2) If a cable, wire, pipe, sewer, drain, duct, plant or equipment comprising the service infrastructure was laid or installed on a lot before the creation of the lot by registration of a strata scheme or an amendment of a strata scheme, the owner of the lot will be taken to have agreed to the position in which the cable, wire, pipe, sewer, drain, duct, plant or equipment was laid or installed.

**47 Entry onto lot or common property**

- (1) If the owner of a lot needs to enter another lot, or a strata scheme corporation needs to enter a lot, in order to exercise rights under an easement for the establishment, maintenance and repair of part of the service infrastructure, the owner or corporation must give written notice to the owner of the lot to be entered.

- (2) If the owner of a lot needs to enter the common property in order to exercise rights under an easement for the establishment, maintenance and repair of part of the service infrastructure, the owner must give written notice to the strata scheme corporation.
- (3) Notice is unnecessary:
  - (a) in an emergency if there is insufficient time to give notice; or
  - (b) if the owner of the lot to be entered dispenses with the requirement for notice; or
  - (c) if, in the case of entry to the common property:
    - (i) the owner has the right to enter; or
    - (ii) the strata scheme corporation has dispensed with the requirement for notice.
- (4) The length of the notice must be reasonable in the circumstances of the particular case.
- (5) If notice is not given because of an emergency or the period of the notice has expired and it is not possible for the owner or the strata scheme corporation, or a person acting on behalf of the owner or strata scheme corporation, to gain entry without using force, the person wishing to enter may use such force as is reasonable in the circumstances.
- (6) Any damage caused by the use of force must be made good (that is, the property must be restored to the state that it was in before the damage was caused) as soon as practicable by the owner or strata scheme corporation entering the lot or common property unless the need for force was the result of an unreasonable act or omission on the part of the owner of the lot that was entered or, in the case of entry to the common property, on the part of the strata scheme corporation.
- (7) In an emergency, the owner or occupier of a lot may enter another lot or the common property to assist a person on the lot or common property or to prevent or reduce damage to the lot or another lot or to the common property.



- (8) A person who uses force when entering a lot or the common property or a building on a lot or the common property under subsection (7) is not liable for the damage caused if the person acted reasonably in the circumstances.
- (9) A person who is entitled under an Act or any other law to enter a lot is entitled if reasonably necessary to enter the common property in order to gain access to the lot.

**48 Interference with easements and services**

- (1) An owner or occupier of a lot must not interfere, or permit interference, with support or shelter provided for another lot or for the common property.
- (2) An owner or occupier of a lot must not, either within or outside the lot, interfere or permit interference with the service infrastructure, or a service provided by means of the service infrastructure, in a way that may prejudice the use or enjoyment of another lot or the common property.

**49 Nuisance**

An owner or occupier of a lot must not use, or permit the use of, the lot or the common property in a way that:

- (a) causes a nuisance; or
- (b) interferes unreasonably with the use or enjoyment of another lot or the common property by another person who is lawfully on the lot or common property.

**50 Maintenance of lots**

- (1) Subject to this section, the owner of a lot must keep it, and any building or other improvement on the lot, in good order and condition.
- (2) The strata scheme by-laws may require the strata scheme corporation and not the owner to undertake the obligations referred to in subsection (1).

- (3) If a strata scheme is subject to a leaseback arrangement, the lessee and not the owner of a lot that is subject to a lease comprising the leaseback arrangement must comply with subsection (1).
- (4) An occupier of a lot must keep the external part of the lot and of any building or other improvement on the lot in a clean and tidy condition.

## **51 Alterations and additions**

A person must not carry out the erection, alteration, demolition or removal of a building, or the alteration of the external appearance of a building, on a strata lot unless the person is authorised to do so:

- (a) if each of the lots comprised in the strata scheme is used, or is intended to be used, solely or predominantly for non-residential purposes—by the strata scheme by-laws; or
- (b) in any case—by special resolution of the strata scheme corporation.

## **Division 5 Strata scheme by-laws**

### **52 Model strata scheme by-laws**

The Minister may, by regulation, provide for model strata scheme by-laws that may be adopted by a strata scheme corporation in whole or in part.

### **53 Strata scheme by-laws**

- (1) Strata scheme by-laws may be made for the following purposes:
  - (a) to govern the administration of the strata scheme, including by:
    - (i) regulating procedures of general meetings of the strata scheme corporation and the management committee of the strata scheme corporation; and
    - (ii) regulating procedures for appointment of members of the management committee and officers of the strata scheme corporation; and

- (iii) imposing limits on the functions or powers of the management committee and officers of the strata scheme corporation;
  - (b) to govern the rights and responsibilities of the strata scheme corporation and its members, including rights and responsibilities relating to:
    - (i) the administration, management and control of the common property; and
    - (ii) the use and enjoyment of the common property; and
    - (iii) the purpose or purposes for which strata lots may be used; and
    - (iv) the use and enjoyment of the strata lots to the extent necessary to give effect to the strata scheme description.
- (2) Without limiting subsection (1)(b), strata scheme by-laws may:
  - (a) for a primary strata scheme—prevent a strata lot being divided by a secondary strata scheme; and
  - (b) regulate:
    - (i) the position, design, dimensions, methods and materials of construction and external appearance of buildings and other improvements on strata lots; and
    - (ii) the maintenance and repair of buildings and other improvements on strata lots; and
    - (iii) landscaping, including the establishment, care and maintenance of lawns, gardens and other areas on strata lots; and
  - (c) impose requirements or restrictions relating to the appearance of strata lots and buildings and other improvements situated on strata lots; and

- (d) regulate the use and enjoyment of strata lots in order to prevent interference with the use and enjoyment of other lots; and
  - (e) authorise or require the strata scheme corporation to act as agent for the owners of strata lots in arranging policies of insurance.
- (3) Strata scheme by-laws may regulate such other matters as are permitted by this Act to be regulated by by-laws.
- (4) A strata scheme by-law may:
- (a) impose a penalty for contravention of a by-law not exceeding \$5,000; and
  - (b) confer discretionary powers on the strata scheme corporation or any other person; and
  - (c) apply to a particular lot or lots, to a class or classes of lots, or to lots generally.
- (5) Strata scheme by-laws must identify the person who prepared the by-laws and the extent to which model by-laws have been adopted and include a certificate of that person certifying that the by-laws have been prepared in accordance with this section.

#### **54 Penalties imposed by by-laws**

- (1) The following provisions apply in relation to a penalty imposed on a person for contravention of a by-law:
- (a) the penalty is payable to the strata scheme corporation in accordance with this subsection;
  - (b) subject to the making of an application under paragraph (e), the penalty is payable by the person on the date specified for payment in a notice served by the strata scheme corporation on the person;
  - (c) the notice must:
    - (i) be in writing in the form set out in the regulations; and

- (ii) specify the amount of the penalty payable and a date for payment (being not less than 60 days after the notice is served);
  - (d) the penalty payable under the notice is recoverable by the strata scheme corporation as a debt and, in the case of a notice served on the owner of a strata lot, may be recovered by the strata scheme corporation as if it were a contribution payable to the strata scheme corporation under Schedule 1 clause 5 (and interest will be payable on the penalty amount in the same way as if it were such a contribution);
  - (e) the person may, within 60 days after service of the notice, apply to the Magistrate's Court for revocation of the notice and the Court must grant the application if either:
    - (i) the Court is not satisfied that the person committed the contravention alleged in the notice; or
    - (ii) the Court is satisfied that the contravention alleged in the notice is trifling;
  - (f) the strata scheme corporation is a party to an application under paragraph (e) and bears the onus of proving, on the balance of probabilities, that the person committed the contravention alleged in the notice;
  - (g) if an application is made in accordance with paragraph (e)—the penalty specified in the notice is not payable unless the application for revocation is withdrawn or otherwise discontinued by the applicant or is dismissed or refused by the Court (and, in such a case, the penalty will be payable on the date on which the application is so withdrawn, discontinued, dismissed or refused or on the date for payment specified in the notice, whichever occurs later).
- (2) A person's contravention of by-laws will be regarded as trifling if, and only if, the person establishes that the circumstances surrounding the commission of the contravention were such that the person ought to be excused from the imposition of a penalty on the ground that:

- (a) there were compelling humanitarian or safety reasons for the conduct that allegedly constituted the contravention; or
- (b) the person could not, in all the circumstances, reasonably have averted committing the contravention; or
- (c) the conduct allegedly constituting the contravention was merely a technical, trivial or petty instance of a contravention of the relevant by-laws.

**55 Exemptions that may be included in by-laws**

- (1) The by-laws of a strata scheme that does not include more than 2 strata lots may exempt the strata scheme corporation from 1 or more of the following requirements of this Act:
  - (a) the requirement to hold annual general meetings (except the first statutory general meeting);
  - (b) the requirement to prepare accounting records of the strata scheme corporation's receipts and expenditure and to prepare an annual statement of accounts;
  - (c) the requirement to have the annual statement of accounts audited;
  - (d) the requirement to establish administrative and sinking funds;
  - (e) the requirement to maintain a register of the names of the members of the strata scheme corporation.
- (2) The by-laws of a strata scheme that does not include more than 3 strata lots may exempt the strata scheme corporation from the requirement to maintain a register of the names of the members of the strata scheme corporation.

**56 By-law as to public use of common property**

- (1) If a strata scheme plan or strata scheme description indicates that members of the public have access to the common property, or a part of it, then members of the public are entitled to use the common property, or the relevant part of it, in accordance with the strata scheme by-laws.

- (2) Despite any Act or law to the contrary, uninterrupted use by the public of common property under subsection (1) does not vest in the public or any local or government authority any rights in respect of the common property.

**57 By-law as to exclusive use of part of common property**

- (1) A strata scheme by-law may confer on the occupier for the time being of a strata lot (or the occupiers of a group of strata lots) the exclusive right to use a specified part of the common property for the purpose or purposes stated in the by-law.
- (2) If the strata lot is divided by a secondary strata scheme, the by-law will, subject to any restriction or limitation expressed in the by-law, operate for the benefit of the occupiers of the secondary strata lots.
- (3) Such a by-law:
  - (a) may impose conditions in relation to the use of that part of the common property; and
  - (b) may impose requirements on the owner or occupier of the lot; and
  - (c) without limiting paragraph (b), may require the owner of the lot to pay a fee (whether periodically or not) to the strata scheme corporation or to the owner or owners of another lot or lots.
- (4) The occupier cannot erect a building or install a fixture on the part of the common property of which the occupier has exclusive use, or alter that part of the common property in any other way, without the approval of a special resolution of the strata scheme corporation.

*Note—Planning and developments laws would also apply.*

- (5) A strata scheme corporation cannot make a by-law under this section without the written consent of the owner of the strata lot (or the owners of the group of strata lots) to which it relates.
- (6) The benefits of a by-law under this section apply for the benefit of subsequent occupiers of the strata lot or lots concerned and the obligations imposed by a by-law under this section attach to subsequent owners and occupiers of the strata lot or lots concerned.

- (7) The fee referred to in subsection (3)(c) may be recovered as a debt and the owner of the lot when the fee became payable and the succeeding owners of the lot are jointly and severally liable for payment of the fee.
- (8) In this section, a reference to an owner of a lot includes a reference, in relation to a strata lot divided by a secondary strata scheme, to the secondary strata scheme corporation.

**58 Restrictions on making of by-laws**

- (1) Subject to subsection (2), a strata scheme by-law cannot:
  - (a) prohibit or restrict the transfer, transmission, leasing (including the granting of a right of occupation) or charging of, or other dealing with, a lot; or
  - (b) impose a monetary obligation on the owner or occupier of a lot except if the by-law provides for the exclusive use of part of the common property; or
  - (c) prevent access by the owner or occupier or other person to a lot; or
  - (d) prevent an occupier of a lot who has a disability from keeping an animal, or restrict the use of an animal by the occupier, if the animal is trained to assist the occupier in respect of the disability; or
  - (e) prevent a visitor to the strata parcel who has a disability from using an animal trained to assist the visitor in respect of the disability.
- (2) A strata scheme by-law may:
  - (a) prohibit or restrict the owner of a strata lot from leasing or granting rights of occupation in respect of the lot for valuable consideration for a period of less than 2 months; or
  - (b) impose a monetary obligation on the owner of a lot in relation to the payment of an insurance premium, if the by-laws authorise or require the strata scheme corporation to act as agent for the owner in arranging the policy of insurance.



- (3) In this section, a reference to an owner of a lot includes a reference, in relation to a strata lot divided by a secondary strata scheme, to the secondary strata scheme corporation.

## **59 Persons bound by by-laws**

The following persons are bound by strata scheme by-laws:

- (a) the strata scheme corporation;
- (b) the owners and occupiers of the lots in the strata scheme;
- (c) if there is a related strata scheme:
  - (i) the strata scheme corporation of the related strata scheme; and
  - (ii) the owners and occupiers of the lots in the related strata scheme;
- (d) persons visiting the strata parcel.

## **60 Invalidity of by-laws**

- (1) Subject to this section, strata scheme by-laws are invalid to the extent to which they are inconsistent with:
- (a) this Act or any other Act or subsidiary legislation made under this or any other Act; or
  - (b) the strata scheme description; or
  - (c) any strata scheme development contract; or
  - (d) the strata scheme description, or any strata scheme development contract, of a related strata scheme; or
  - (e) in the case of the by-laws of a secondary strata scheme—the by-laws of the related primary strata scheme.

- (2) A strata scheme by-law will be taken to be inconsistent with a strata scheme description, strata scheme development contract or the by-laws of another scheme if, and only if, there are no circumstances in which the by-law can operate consistently with the statement, contract or by-laws.

*Example—If the scheme description provides that the strata lots will be used for residential purposes without specifying the kinds of residential use, the by-laws may prohibit some kinds of residential use such as flats or boarding house accommodation but cannot prohibit all kinds of residential use.*

## **61 Certain by-laws may be struck out by court**

- (1) A strata scheme by-law may be struck out by order of a court on an application made under Part 7 if the by-law:
- (a) is likely to have the effect of reducing the value of a strata lot in the strata scheme or a related strata scheme; or
  - (b) unfairly discriminates against a member of the strata scheme corporation or a related strata scheme corporation.
- (2) An application referred to in subsection (1):
- (a) can only be made by a person who was a member of the strata scheme corporation or related strata scheme corporation when the by-law came into force or who had contracted to purchase a strata lot; and
  - (b) must be made within 3 months after the person (or, if the member is an owner of a lot owned by 2 or more persons, either or any of those owners) first knew, or could reasonably be expected to have known, that the by-law had been made.

## **62 Application of Interpretation and General Provisions Act to by-laws**

- (1) Sections 31, 35, 48 to 51, 60, 61(1), 62 and 66(1) of the *Interpretation and General Provisions Act* (Cap. 85) do not apply to strata scheme by-laws.
- (2) Strata scheme by-laws are not written laws for the purposes of the *Interpretation and General Provisions Act* (Cap. 85).

## **Division 6            Regulation of sales of lots**

### **63            Holding of deposit and other contract moneys when lot is pre-sold**

- (1) A person must not sell a lot in a proposed strata scheme before the lot is created by registration of the strata scheme or an amendment of the strata scheme unless:
  - (a) the contract of sale provides for any consideration payable by the purchaser prior to registration of the strata scheme or amendment to be held on trust by a specified legal practitioner until registration; and
  - (b) that provision is specifically drawn to the attention of the purchaser.
- (2) All consideration payable by the purchaser prior to registration of a strata scheme or amendment of a strata scheme under a contract referred to in subsection (1) must be paid by the purchaser to the legal practitioner specified in the contract of sale.
- (3) In the event of a contravention of subsection (1), the purchaser may, by written notice given at any time before the strata scheme or amendment of the strata scheme is registered, avoid the contract of sale.
- (4) A person who purchases a lot in a proposed strata scheme before the lot is created by registration of the strata scheme or an amendment of the strata scheme may, by written notice to the vendor, avoid the contract of sale at any time before the strata scheme or the amendment of the strata scheme is registered:
  - (a) if the strata scheme or amendment of the strata scheme is not registered within such period after the date of the contract as is specified in the contract and specifically drawn to the attention of the purchaser; or
  - (b) if the contract does not specify a period in accordance with paragraph (a) and the strata scheme or amendment of the strata scheme is not registered within 6 months after the date of the contract.

- (5) However, a purchaser cannot avoid a contract of sale under this section if the purchaser has entered into a subsequent contract to sell the lot to another purchaser (unless that contract has been avoided by that purchaser).
- (6) If a purchaser avoids a contract of sale, all consideration paid by the purchaser under the contract is recoverable by the purchaser from the legal practitioner to whom it was paid (but the purchaser may be liable to pay rent for occupation for any period during which the purchaser was in occupation of the lot or entitled to receive the rents and profits of the lot, if the payment of such rent has been agreed by the purchaser).
- (7) In this section:

***“date of the contract”*** means the day on which the contract of sale referred to in subsection (1) was signed or, if the parties signed it on different days, the last of those days.

#### **64 Provision of information**

A person commits an offence if:

- (a) the person provides information to a person considering purchasing, or entering into a dealing with, a lot in a strata scheme; and
- (b) the person:
  - (i) provides information about subsequent development and division of that lot or other lots in the strata scheme other than information that accurately reflects the strata scheme description and strata scheme development contracts; or
  - (ii) fails to inform the person of a proposal to amend or terminate the strata scheme.

Maximum penalty: 500,000 penalty units.

#### **65 Sale of lot if no strata scheme insurance**

- (1) The owner of a lot commits an offence if:

- (a) the owner enters into a contract to sell the lot; and
- (b) the strata scheme insurance is not in place; and
- (c) the owner, or a person acting on behalf of the owner, has not, before the purchaser signs the contract, served personally on the purchaser a written statement that the strata scheme insurance is not in place.

Maximum penalty: 500,000 penalty units.

- (2) The owner of a secondary lot commits an offence if:
  - (a) the person enters into a contract to sell the lot; and
  - (b) the strata scheme insurance for the primary strata scheme is not in place; and
  - (c) the owner, or a person acting on behalf of the owner, has not, before the purchaser signs the contract, served personally on the purchaser a written statement that the strata scheme insurance for the primary strata scheme is not in place.

Maximum penalty: 500,000 penalty units.

### **Part 3                      Obligations of strata scheme developer**

#### **66                      Fiduciary relationship**

- (1) The strata scheme developer stands in a fiduciary relationship with the strata scheme corporation and, before the strata scheme corporation is established, with the proposed strata scheme corporation.
- (2) The duties owed by the strata scheme developer under this Act are in addition to, and do not derogate from, the duties arising out of that fiduciary relationship.

**Role and restrictions**

- (1) The functions of the management committee and the officers of a strata scheme corporation are to be exercised by the strata scheme developer, or a strata scheme manager contracted by the strata scheme corporation, until the committee is established and those officers are appointed.
- (2) However, during the control period, the strata scheme corporation must not, unless authorised to do so by the High Court:
  - (a) alter any common property or erect any structure on the common property otherwise than in accordance with a strata scheme development contract; or
  - (b) incur a debt for an amount that exceeds the amount then available for repayment of the debt from its administrative fund or its sinking fund; or
  - (c) appoint a strata scheme manager, or engage or employ any person, for a period extending beyond the end of the control period; or
  - (d) borrow money or give securities; or
  - (e) acquire an estate or interest in land.
- (3) A strata scheme corporation may recover from the strata scheme developer:
  - (a) as a debt, any amount for which the strata scheme corporation is liable because of a contravention of subsection (2)(b), together with the expenses of the strata scheme corporation incurred in recovering that amount; and
  - (b) as damages for breach of statutory duty, any loss suffered by the strata scheme corporation as a result of any other contravention of this section.
- (4) An owner of a lot or a strata scheme corporation for a related strata scheme may recover, as damages for breach of statutory duty, any loss that has been suffered by the owner or corporation as a result of a contravention of this section (other than subsection (2)(b)).

- (5) It is a defence to an action under this section in debt or for damages that the strata scheme developer:
- (a) did not know of the contravention on which the action is based; or
  - (b) was not in a position to influence the conduct of the strata scheme corporation in relation to the contravention; or
  - (c) used due diligence to prevent the contravention.
- (6) A remedy available under this section does not affect any other remedy.
- (7) In this section:

***“control period”*** means a period during which:

- (a) the strata scheme developer is the only member of the strata scheme corporation; or
- (b) the strata scheme developer owns the majority of strata lots in the strata scheme or in any other way controls the voting of the strata scheme corporation.

## **68 Requirement to take out insurance**

- (1) The strata scheme developer must take out the strata scheme insurance before registration of the strata scheme (with the insurance to come into effect on registration) and must maintain that insurance in force for at least 6 months after registration of the strata scheme.
- (2) The strata scheme developer commits an offence if the developer contravenes subsection (1).

Maximum penalty: 500,000 penalty units.

**First statutory general meeting**

- (1) A strata scheme developer must convene a general meeting of the strata scheme corporation within 1 month after the day on which there are at least 2 different members of the strata scheme corporation (not including the strata scheme developer or any person who the strata scheme developer knows, or ought reasonably to know, is an associate of the strata scheme developer).
- (2) A member of the strata scheme corporation may convene the meeting required under subsection (1) if the strata scheme developer fails to do so.
- (3) The strata scheme developer, or a nominee of the strata scheme developer, is to preside at the meeting if it is convened by the strata scheme developer.
- (4) If the meeting is convened by a member of the strata scheme corporation, the member or a nominee of the member is to preside at the meeting.
- (5) The strata scheme developer must deliver to the strata scheme corporation at the meeting:
  - (a) a copy, as filed by the Registrar, of each of the strata scheme documents; and
  - (b) a copy of specifications, diagrams and drawings relating to the buildings and other improvements (if any) on the land divided by the strata scheme; and
  - (c) the policies of the strata scheme insurance taken out by the strata scheme developer; and
  - (d) a statement of the strata scheme corporation's assets and liabilities; and
  - (e) an expenditure and contribution statement complying with Schedule 1 clause 4; and
  - (f) books of account and other records relating to the strata scheme corporation; and



- (g) the strata scheme corporation's common seal; and
  - (h) a copy of all other documents in the strata scheme developer's possession that are likely to be of use to the strata scheme corporation.
- (6) The following matters must be addressed at the meeting:
- (a) the appointment of the management committee and of the officers of the strata scheme corporation;
  - (b) the custody of the strata scheme corporation's common seal and the manner of its use;
  - (c) the strata scheme corporation's recurrent and non-recurrent expenditure in its first financial year and the amount to be raised by contributions from members of the strata scheme corporation to cover that expenditure;
  - (d) the appointment of an auditor of the strata scheme corporation's accounts in its first financial year or a special resolution that the accounts for that year need not be audited;
  - (e) whether the policies of insurance taken out by the strata scheme developer are adequate;
  - (f) whether any limitations should be placed on the performance of functions and the exercise of powers by the management committee;
  - (g) whether the strata scheme by-laws require amendment;
  - (h) such other matters as are required by the regulations.
- (7) If a document of a kind referred to in subsection (5) comes into the possession of the strata scheme developer within 12 months after the meeting, the strata scheme developer must deliver it, or a copy of it, to the strata scheme corporation.
- (8) A strata scheme developer commits an offence if the developer contravenes subsection (1), (5) or (7).

Maximum penalty: 500,000 penalty units.

## **Part 4                    Management of strata schemes**

### **Division 1                Strata scheme corporation**

#### **70                    Functions and powers**

- (1) The functions of a strata scheme corporation are:
  - (a) to administer, manage and control the common property for the benefit of the members of the corporation; and
  - (b) to fix and receive contributions from the members of the corporation for that purpose; and
  - (c) to invest money held by it that is not immediately required, subject to any requirements of the regulations or strata scheme by-laws; and
  - (d) to monitor compliance with and enforce the strata scheme by-laws and the strata scheme development contracts (if any); and
  - (e) to carry out other functions assigned to it by this Act or the strata scheme by-laws.
- (2) A strata scheme corporation's powers to carry on business and to otherwise exercise the powers of a natural person are limited to activities necessary or desirable to carry out its functions.
- (3) Schedule 1 sets out how a strata scheme corporation may perform its functions and exercise its powers, confers further functions and powers on strata scheme corporations and imposes various obligations on strata scheme corporations.

#### **71                    Monetary liabilities guaranteed by members**

- (1) Subject to subsection (3), if a strata scheme corporation defaults in payment of a monetary liability, the liability is enforceable against the members of the strata scheme corporation jointly and severally.
- (2) The members have a right of contribution amongst themselves in proportion to the relative strata lot values of their lots.

- (3) If the liability was incurred when the strata scheme was subject to a leaseback arrangement and was not authorised by an ordinary resolution of the strata scheme corporation (or by a special or unanimous resolution if required by this Act), the liability is enforceable against the lessee but not against the members of the corporation.

## **Division 2            Management committee**

### **72            Establishment and members**

- (1) A strata scheme corporation must establish a management committee.
- (2) The appointment of members of the management committee must be addressed at the first statutory general meeting and then at each annual general meeting of the strata scheme corporation.
- (3) The management committee must consist of at least 2 persons and must not consist of more than 9 persons.
- (4) The management committee of a strata scheme that has more than 100 lots (or some other number specified in the regulations) must consist of at least 3 members.
- (5) Each member of the management committee must be a natural person who is:
  - (a) a member of the strata scheme corporation; or
  - (b) a nominee of a body corporate that is a member of the strata scheme corporation appointed by the body corporate to attend and vote at meetings of the strata scheme corporation on behalf of the body corporate; or
  - (c) if the strata scheme is subject to a leaseback arrangement—a nominee of the lessee.
- (6) If more than 1 person owns a strata lot, only 1 of those owners or the nominee of 1 of those owners may be a member of the management committee at the same time.

- (7) The strata scheme developer, or a nominee of the strata scheme developer, may not be appointed as a member of the management committee unless the fact that the person is the strata scheme developer or the strata scheme developer's nominee has been disclosed at the meeting at which the developer or nominee is appointed.
- (8) An associate of the strata scheme developer, or a nominee of the associate, may not be appointed as a member of the management committee unless details of the nature of the association with the strata scheme developer have been disclosed at the meeting at which the associate or nominee is appointed.
- (9) A member of the strata scheme corporation who has an outstanding debt to the strata scheme corporation and who has not entered into an arrangement for payment or who has defaulted on such an arrangement may not be appointed or nominate a person for appointment as a member of the management committee.
- (10) The strata scheme by-laws may regulate the nomination or election process for membership of the management committee.

### **73 Functions and powers**

- (1) Subject to this Act, the strata scheme by-laws and any limitations imposed by ordinary resolution of the strata scheme corporation, it is the function of a management committee to perform the functions and exercise the powers of the strata scheme corporation as if they had been delegated to the management committee.
- (2) A management committee does not have power to do anything for which an ordinary, special or unanimous resolution of the strata scheme corporation is required under this Act or the strata scheme by-laws.
- (3) Subsection (1) does not derogate from the power of the strata scheme corporation to act in a matter by ordinary resolution at a general meeting of the corporation.

### **74 Terms of appointment and vacancies**

- (1) Subject to this section, a member of the management committee holds office until the next annual general meeting of the strata scheme corporation following the member's appointment.

- (2) The office of a member of a management committee becomes vacant if:
  - (a) the person dies; or
  - (b) the person completes a term of office and is not reappointed; or
  - (c) in the case of a person who was a member of the strata scheme corporation when the person was appointed to the office—the person ceases to be a member of the strata scheme corporation; or
  - (d) in the case of a person appointed by a body corporate that is a member of the strata scheme corporation to attend and vote at meetings—the person ceases to hold that appointment or the body corporate ceases to be a member of the strata scheme corporation; or
  - (e) in the case of a person nominated by the lessee for a strata scheme that is subject to a leaseback arrangement—the person ceases to hold that nomination or the lessee ceases to be the lessee in the leaseback arrangement; or
  - (f) the person resigns by written notice to the strata scheme corporation; or
  - (g) the person is removed from office by special resolution of the strata scheme corporation.
- (3) A management committee may appoint a person who is eligible to be appointed as a member of the committee to fill a casual vacancy in the office of a member.
- (4) A member appointed to fill a casual vacancy holds office, subject to this section, for the balance of the term of the member's predecessor.

## **Division 3      Officers**

### **75      Appointment**

- (1) The appointment of a presiding officer, treasurer and secretary from amongst the members of the management committee is a matter to be addressed at the first statutory general meeting and at each annual general meeting of the strata scheme corporation.
- (2) If the presiding officer, treasurer or secretary of the strata scheme corporation is not appointed at the first statutory general meeting or an annual general meeting of the strata scheme corporation, the management committee must, at its first meeting after the general meeting, appoint a presiding officer, treasurer or secretary (as the case requires) from amongst its members.
- (3) In the case of a strata scheme comprising 10 strata lots or less or subject to a leaseback arrangement, 2 or all of the offices of presiding officer, treasurer and secretary may be held by 1 person.
- (4) In the case of a strata scheme comprising 11 or more strata lots, 2 of the offices of presiding officer, treasurer and secretary may be held by 1 person.
- (5) The office of the presiding member, treasurer or secretary becomes vacant if the person:
  - (a) ceases to be a member of the management committee; or
  - (b) resigns from office by written notice to the strata scheme corporation; or
  - (c) is removed from office by special resolution of the strata scheme corporation.
- (6) The management committee must appoint another person to fill the office for the balance of the term of the predecessor as soon as reasonably practicable.
- (7) The strata scheme by-laws may regulate the nomination or election process for officers of the strata scheme corporation.

**76 Role of presiding officer**

The presiding officer has the following functions:

- (a) to preside at meetings of the management committee and of the strata scheme corporation;
- (b) to make determinations as to quorum or other procedural matters at meetings of the management committee and of the strata scheme corporation.

**77 Role of treasurer**

(1) The treasurer has the following functions:

- (a) to notify members of the strata scheme corporation of any contributions to be raised from them in accordance with this Act;
- (b) to receive, acknowledge, bank and account for any money paid to the strata scheme corporation;
- (c) to keep accounting records and prepare financial statements.

(2) The management committee may, by written notice to the treasurer, require the treasurer not to perform a function specified in the notice except jointly with another person specified in the notice.

**78 Role of secretary**

The secretary has the following functions:

- (a) to convene meetings of the management committee and of the strata scheme corporation;
- (b) to prepare and distribute minutes of meetings of the management committee and of the strata scheme corporation and submit a motion for confirmation of the minutes of any meeting at the next such meeting;
- (c) to give, on behalf of the members of the management committee or strata scheme corporation, the notices required to be given under this Act or the regulations;

- (d) to answer communications addressed to the management committee or strata scheme corporation;
- (e) to keep records and enable the inspection of documents on behalf of the strata scheme corporation as required by this Act or the regulations;
- (f) to attend to matters of an administrative or secretarial nature in connection with the performance of functions by the strata scheme corporation or the management committee.

## **Division 4      Strata scheme managers**

### **79      Appointment**

- (1) A strata scheme corporation may, by ordinary resolution, appoint a strata scheme manager and authorise the manager:
  - (a) to perform all of the functions and exercise all of the powers of its management committee or officers; or
  - (b) to perform specified functions and exercise specified powers of its management committee or officers.

*Note—This excludes any function or power that can only be performed or exercised under this Act by the strata scheme corporation by passing an ordinary, special or unanimous resolution.*

- (2) An authorisation given to a strata scheme manager:
  - (a) may be absolute or conditional; and
  - (b) does not derogate from the power of the management committee or the officers of the strata scheme corporation to act in a matter; and
  - (c) is revoked on termination or expiry of the contract with the strata scheme manager.
- (3) If the management committee or an officer of the strata scheme corporation proposes to act in a matter for which the strata scheme manager is authorised, the committee or officer must give the manager written notice of the proposal to act.



- (4) A strata scheme manager may perform functions or exercise powers even if there is no management committee of the strata scheme corporation or there is a vacancy in the office of the president, treasurer or secretary of the strata scheme corporation.
- (5) The strata scheme developer or an associate of the strata scheme developer may not be appointed as a strata scheme manager until at least 10 years after registration of the strata scheme.
- (6) A person who is seeking appointment as a strata scheme manager is not entitled to vote or to have a vote cast on the person's behalf on the resolution for the appointment of a strata scheme manager.
- (7) The regulations may specify requirements to be met for appointment of a person as a strata scheme manager.

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**Requirement for contract and professional indemnity insurance**

- (1) A strata scheme manager is only entitled to receive remuneration in respect of work performed in exercising functions or powers as authorised by a strata scheme corporation if:
  - (a) the manager and the strata scheme corporation have entered into a contract in compliance with this section; and
  - (b) the strata scheme manager, whilst performing such work, maintained professional indemnity insurance complying with the requirements specified in the regulations.
- (2) If a strata scheme manager has received, from a strata scheme corporation, remuneration to which the manager is not entitled under this section, the strata scheme corporation may recover the amount of the remuneration as a debt.
- (3) A contract between a strata scheme manager and a strata scheme corporation must:
  - (a) be in writing; and
  - (b) specify the term of the contract; and

- (c) set out the functions to be performed and the powers to be exercised by the manager and any limitations that are to apply; and
  - (d) specify the rights of the strata scheme corporation to terminate the contract in certain circumstances under section 81; and
  - (e) set out the remuneration payable to the manager in respect of the work performed in exercising the authorised functions or powers, or set out the basis on which such remuneration is to be calculated; and
  - (f) include a statement verifying that the manager is insured under a policy of professional indemnity insurance as required by this section and an undertaking by the manager that the manager will maintain that insurance throughout the life of the contract; and
  - (g) include an undertaking by the manager that the manager will allow any member of the strata scheme corporation to inspect, at any time during ordinary business hours, the records of the strata scheme corporation in the possession or control of the manager and specify how an inspection can be arranged; and
  - (h) contain any other particulars required by the regulations.
- (4) The strata scheme manager must ensure that a copy of the contract, and any other information or document of a kind specified in the regulations, is available for inspection by members of the strata scheme corporation at least 5 clear days before the date of the meeting at which the strata scheme corporation is to consider whether or not to enter into the contract.
- (5) The strata scheme manager commits an offence if the manager does not, at the request of a member of the strata scheme corporation, make a copy of the strata scheme manager's policy of professional indemnity insurance available for inspection and copying by the member within 3 business days after the request.

Maximum penalty: 500,000 penalty units.

**81 Right of strata scheme corporation to terminate contract**

- (1) A strata scheme corporation may terminate its contract with a strata scheme manager by written notice given to the strata scheme manager at least 28 days (or a lesser period specified in the contract) before the termination is to come into effect under the notice if:
  - (a) the contract is for a period of more than 12 months; and
  - (b) the contract has been in force for a continuous period of at least 12 months.
- (2) For subsection (1)(a), the period of a contract is the term of the contract disregarding any renewal period that may occur at the end of that term unless the renewal occurs at the option of the strata scheme manager (in which case, the period of the contract will be taken to include the period of the renewal).
- (3) The right of a strata scheme corporation to terminate a contract under this section is in addition to, and does not derogate from, any other right of the strata scheme corporation to terminate the contract.
- (4) A decision to terminate a contract in accordance with this section is to be made by ordinary resolution of the strata scheme corporation.

**82 General duties**

- (1) A strata scheme manager stands in a fiduciary relationship with the strata scheme corporation and the duties owed by the manager under this Act are in addition to, and do not derogate from, the duties arising out of that fiduciary relationship.
- (2) A strata scheme manager commits an offence if the strata scheme manager:
  - (a) does not act honestly in the performance of the manager's functions; or
  - (b) makes improper use of the manager's position to gain, directly or indirectly, an advantage personally or for any other person; or

(c) discloses personal information, trade secrets or other information that might reasonably be expected to be kept confidential obtained in the performance of the manager's functions except as authorised:

(i) by law; or

(ii) by the person to whom the information relates.

Maximum penalty: 500,000 penalty units or imprisonment for 5 years, or both.

(3) A strata scheme manager:

(a) must exercise due care and diligence in the performance of the manager's functions; and

(b) must comply with a code of conduct or other requirements specified in the regulations.

### **83 Conflict of interest**

(1) A strata scheme manager who has a direct or indirect pecuniary interest in a matter in relation to which the manager proposes to perform functions or exercise powers under the manager's authorisation commits an offence if the manager does not disclose the nature of the interest, in writing, to the strata scheme corporation before performing the functions or exercising the powers.

Maximum penalty: 500,000 penalty units.

*Example—If the strata scheme manager will receive a commission from a person for placing business of the strata scheme corporation with that person, it would be an offence to fail to disclose that fact before placing business with the person. Similarly, if the strata scheme manager were to profit by placing business of the strata scheme corporation with a related body corporate, it would be an offence to fail to disclose that fact before placing business with the related body corporate.*

(2) If an employee or agent of a strata scheme manager has a direct or indirect pecuniary interest in a matter, the strata scheme manager is taken to have a direct or indirect pecuniary interest in the matter.

- (3) A strata scheme manager who is the owner of a lot in the strata scheme is not obliged by subsection (1) to disclose an interest that the manager has in common with all of the owners of the lots or lots of that kind in the strata scheme.
- (4) It is a defence to a prosecution for an offence against subsection (1) that the defendant did not know and could not reasonably have been expected to know of the defendant's interest in the matter.

#### **84 Records and reports**

- (1) A strata scheme manager must present to the annual general meeting of the strata scheme corporation a detailed report on the operations of the manager in the previous financial year.
- (2) A strata scheme manager must:
  - (a) on application by a member of the strata scheme corporation, provide the applicant, on a quarterly basis, with a statement setting out details of dealings by the strata scheme manager with the strata scheme corporation's money; and
  - (b) continue to so provide the statements until the applicant ceases to be a member of the strata scheme corporation or revokes the application.
- (3) A strata scheme manager must, within 10 business days after expiry or termination of a strata scheme manager's contract, return to, or make available for collection by, the strata scheme corporation:
  - (a) all records of the corporation held by the manager; and
  - (b) all trust money held for the corporation.
- (4) A strata scheme manager who holds records of the strata scheme corporation must, at the request of a member of the strata scheme corporation:
  - (a) make those records available for the member to inspect within 10 business days after the request; or

- (b) provide the member with a copy of any of the records on payment of a fee (not exceeding a fee calculated in accordance with the regulations).
- (5) The strata scheme manager commits an offence if the manager contravenes this section.

Maximum penalty: 200,000 penalty units.

## **Part 5 Amendment and termination of strata schemes**

### **Division 1 Amendment of strata scheme**

#### **85 Amendment of strata scheme**

- (1) If an application for the amendment of a strata scheme involves a division of the strata parcel, it must be made as an application under section 140 of the *Land and Titles Act* (Cap. 133) and this Act.

*Example—An amendment of the strata scheme plan may involve a division of the strata parcel by:*

- *the conversion of a development lot or part of a development lot into a strata lot;*
- *the conversion of part of the common property into a lot;*
- *the combining of lots into a single lot (but not so that there is less than 2 strata lots in the scheme);*
- *a change to the boundaries of 1 or more lots or the common property;*
- *the delineation of a public road or public reserve.*

*Note—Section 34(3) sets out how registration of such an amendment is effected.*

- (2) If an application for an amendment of a strata scheme does not involve a division of the strata parcel, it must be made under this Division.

*Note—Section 95 sets out how registration of such an amendment is effected.*

- (3) An application made under this Division must:
- (a) be lodged with the Commissioner of Lands; and
  - (b) be in the form approved by the Commissioner of Lands; and
  - (c) be accompanied by the fee fixed by the regulations.

- (4) The Commissioner of Lands may require the applicant to provide any additional information reasonably required for determination of the application.
- (5) The application may be refused if the applicant does not comply with such a requirement.

**86 Who may make application**

- (1) An application for registration of an amendment of a strata scheme may be made:
  - (a) by the owner of a lot if the amendment is as contemplated by a strata scheme development contract by which the owner is bound; or
  - (b) by the owners of all lots affected by the amendment if the amendment:
    - (i) does not affect any common property; and
    - (ii) does not alter the total number of lots in a strata parcel; and
    - (iii) does not alter the boundaries of a strata parcel; and
    - (iv) does not require an amendment of the strata scheme description, strata scheme by-laws or any strata scheme development contract of the strata scheme or a related strata scheme; or
  - (c) by the strata scheme corporation if the application is supported by:
    - (i) a unanimous resolution for any amendment of the strata scheme plan, statement of strata scheme lot values or strata scheme description; or
    - (ii) a special resolution for any amendment, or the termination, of a strata scheme development contract; or
    - (iii) a special resolution for any amendment of the strata scheme by-laws; or

- (d) in other circumstances as set out in the regulations.
- (2) If the owner of a lot does not apply for division of the lot by registration of an amendment of a strata scheme as required by a strata scheme development contract, a party who has the benefit of the contract may make the application and recover any costs reasonably incurred in doing so from the owner.

## **87 Notification to strata scheme corporation of applications**

If an application for registration of an amendment of a strata scheme is made other than by the strata scheme corporation, the amendment of the strata scheme must not be registered unless the strata scheme corporation has been given written notice of the proposed amendment.

## **88 Replacement of strata scheme documents**

- (1) An application for registration of an amendment of a strata scheme must be accompanied by replacement documents for such of the strata scheme documents as will require replacement as a result of the amendment of the strata scheme.
- (2) A strata scheme document as amended must be consistent with each other strata scheme document of the strata scheme and each related strata scheme.

*Note—Consequently, it may be necessary to replace several strata scheme documents to maintain consistency.*

- (3) The Commissioner of Lands may allow the applicant to provide a sheet or sheets to replace a sheet or sheets of a strata scheme document or to be added to a strata scheme document rather than a replacement document.
- (4) The requirements that must be met by strata scheme documents set out in Part 2 Division 3 Subdivision 2 and Part 2 Division 5 apply in the same manner to replacement documents or sheets or additional sheets, including any requirements for certification and approval.



- (5) The Commissioner of Lands may exempt an applicant from the requirement for a specified certification or approval if the Commissioner is satisfied that the amendment is required to fix a minor error or the changes effected by the amendment are of a trivial nature and do not warrant the requirement.

**89            Amendment of strata scheme plan**

- (1) If an applicant for amendment of a strata scheme plan asserts that the amendment does not affect the statement of strata scheme lot values, the application must be accompanied by a certificate from the Valuer General, obtained on payment of the fee fixed by the regulations, confirming that assertion.
- (2) If an application for amendment of a strata scheme plan is an application for registration of an amendment of a strata scheme made by the owners of lots, the application must specify the manner in which those owners are to own the lots created.
- (3) If an application for amendment of a strata scheme plan is an application for registration of an amendment of a strata scheme made by a strata scheme corporation, the application must specify the first owners of any lots to be created on registration of the amendment of the strata scheme and the manner in which they are to own the lots.

**90            Amendment of strata scheme lot values**

- (1) An applicant for registration of an amendment of the statement of strata scheme lot values must provide evidence to the satisfaction of the Commissioner of Lands that the following persons have given their consent to the proposed amendment:
  - (a) if a strata scheme corporation is an applicant—a person who is, at the relevant time, a member of the corporation but who did not have the opportunity of voting against the resolution of the corporation authorising the proposed amendment because the person was not a member when the vote was taken;
  - (b) a prospective owner, at the relevant time, of a strata lot;
  - (c) an owner or prospective owner, at the relevant time, of a development lot;

- (d) a registered chargee or prospective chargee or a registered lessee or prospective lessee, at the relevant time, of a lot;
  - (e) if the strata scheme includes a strata lot that is divided by a secondary strata scheme:
    - (i) a prospective owner at the relevant time of a secondary lot; and
    - (ii) a registered chargee or prospective chargee or a registered lessee or prospective lessee, at the relevant time, of a secondary lot.
- (2) The consent of an owner, chargee or lessee of a lot is not required under this section if, before the relevant time, an instrument had been presented for registration under the *Land and Titles Act* (Cap. 133) on the registration of which that person would cease to be the owner, registered chargee or registered lessee of the lot.
- (3) The consent of an owner, chargee or lessee, or prospective owner, chargee or lessee of a development lot is not required under this section if the capital value of the development lot is not affected by the proposed amendment.
- (4) The consent of a chargee or lessee, or prospective chargee or lessee, of a strata lot is not required under this section if the new relative strata lot value of the lot is within a range of plus or minus 10% of the relative strata lot value of the lot when it was first created.
- (5) The Commissioner of Lands may, if the Commissioner thinks fit, dispense with the consent of a person referred to in subsection (1), including on the grounds that consent has been unreasonably refused.
- (6) In this section:

**“relevant time”** means the time at which the application for amendment of the statement of strata scheme lot values is lodged with the Commissioner of Lands.

**Amendment of strata scheme description**

- (1) An applicant for registration of an amendment of a strata scheme description must provide evidence to the satisfaction of the Commissioner of Lands that the following persons have given their consent to the proposed amendment:
  - (a) if a strata scheme corporation is an applicant—a person who is, at the relevant time, a member of the strata scheme corporation but who did not have the opportunity of voting against the resolution of the corporation authorising the proposed amendment because the person was not a member of the strata scheme corporation when the vote was taken;
  - (b) a prospective owner, at the relevant time, of a strata lot;
  - (c) an owner or prospective owner, at the relevant time, of a development lot;
  - (d) a registered chargee or prospective chargee and a registered lessee or prospective lessee, at the relevant time, of a lot;
  - (e) if the strata scheme includes a strata lot that is divided by a secondary strata scheme:
    - (i) a prospective owner, at the relevant time, of a secondary strata lot; and
    - (ii) an owner or prospective owner, at the relevant time, of a secondary development lot; and
    - (iii) a registered chargee or prospective chargee and a registered lessee or prospective lessee, at the relevant time, of a secondary lot.
- (2) The consent of the owner, chargee or lessee of a lot is not required under this section if before the relevant time an instrument had been presented for registration under the *Land and Titles Act* (Cap. 133) on the registration of which that person would cease to be the owner, registered chargee or registered lessee of the lot.

- (3) The consent of the owner, chargee or lessee, or prospective owner, chargee or lessee, of a development lot is not required under this section if the amendment to the strata scheme description does not affect the development lot.
- (4) The Commissioner of Lands may, if the Commissioner thinks fit, dispense with the consent of a person referred to in subsection (1), including on the grounds that consent has been unreasonably refused.
- (5) In this section:

**“relevant time”** means the time at which the application for amendment of the strata scheme description is lodged with the Commissioner of Lands.

## **92 Amendment or termination of strata scheme development contract**

- (1) An application for amendment or termination of a strata scheme development contract:
  - (a) may only be made if there is an agreement between the owner of the lot bound by the strata scheme development contract and the strata scheme corporation to so amend or terminate the contract; and
  - (b) must be accompanied by a copy of that agreement and, for an application for amendment, a copy of the contract as proposed to be amended.
- (2) The applicant for registration of an amendment or termination of a strata scheme development contract must provide evidence to the satisfaction of the Commissioner of Lands that:
  - (a) a decision to enter the agreement to amend or terminate the contract was passed by a special resolution of the strata scheme corporation; and
  - (b) for an amendment—the contract as amended is consistent with the strata scheme description and strata scheme by-laws of the strata scheme and any related strata scheme (or the description and by-laws as applied to be amended); and

- (c) for termination—the termination is consistent with the strata scheme description of the strata scheme and any related strata scheme (or the description as applied to be amended).

**93 Priority on lodgement of application and strata scheme documents**

An application for registration of an amendment of a strata scheme not involving division of the strata parcel and the strata scheme documents that accompany the application will, on being lodged with the Commissioner of Lands, be taken for the purposes of the *Land and Titles Act* (Cap. 133) to be a single application presented for registration and will have priority over other applications in accordance with that Act.

**94 Amendment or withdrawal of application**

- (1) Subject to subsection (2), an application for registration of an amendment of a strata scheme not involving division of the strata parcel, but requiring consents to be obtained, cannot be withdrawn, and the strata scheme documents supporting the application cannot be amended, without the consent of all the persons who have consented to the application.
- (2) The Commissioner of Lands may permit an applicant to amend the application or the strata scheme document in order to comply with this Act or the *Land and Titles Act* (Cap. 133) or with a requirement of the Commissioner of Lands or the Registrar under this Act or the *Land and Titles Act* (Cap. 133).

**95 Registration of amendment of strata scheme**

- (1) If an application is made under this Division (that is, for registration of an amendment of a strata scheme not involving division of a strata parcel) and the requirements of this Division are satisfied, the Registrar must:
  - (a) file the new strata scheme document, or substitute or add the sheets to the strata scheme document, in the strata parcel file in the relevant land register; and

- (b) for the amendment or termination of a strata scheme development contract—file the agreement for amendment or termination in the strata parcel file in the relevant land register; and
  - (c) rule a line diagonally across each page of the previous strata scheme document, or replaced pages of the strata scheme document, in that file.
- (2) Subject to subsection (3), the strata scheme is amended and the new strata scheme documents take effect when each of those steps has been completed.
- (3) An amendment of strata scheme by-laws may provide that the amendment takes effect at a later date and such a provision has effect according to its terms.

## **Division 2      Termination of strata scheme**

### **96      Termination proposal**

- (1) Termination of a strata scheme may be proposed by:
- (a) a member of the strata scheme corporation; or
  - (b) the owner of a development lot in the strata scheme; or
  - (c) if the scheme is a secondary strata scheme—a member of the primary strata scheme corporation; or
  - (d) a body corporate formed by 2 or more such persons.
- (2) A primary strata scheme cannot be terminated unless all related secondary strata schemes will be terminated before the primary strata scheme is terminated.
- (3) The proponent of the termination of a strata scheme must prepare a written proposal containing the following:
- (a) the name and contact details of the proponent of the termination of the strata scheme;
  - (b) an explanation of the process for termination of a strata scheme under this Act and the *Land and Titles Act* (Cap. 133);

- (c) a description of the standard of the buildings on the strata parcel and their state of repair and whether the difficulty of raising sufficient contributions for repair is a reason for the proposal;
- (d) a statement of the right of an objecting owner of a lot in the strata scheme to sell the lot to the strata scheme corporation in accordance with section 99 if the required resolution is passed by the strata scheme corporation to terminate the scheme;
- (e) a statement of any proposed disposition of property owned by the strata scheme corporation immediately before the termination;
- (f) a statement of whether it is proposed to sell or divide the land, combine the land with other land, or redevelop the land, following termination and of the details of the proposal;
- (g) if the land is to be redeveloped and the owners of the lots are proposed to own lots in the land as redeveloped—a description of the proposed redevelopment, including the following:
  - (i) architectural plans for the proposed redevelopment;
  - (ii) a statement of the approximate date on which it is proposed that the redevelopment would start and be completed;
  - (iii) the estimated cost of the proposed redevelopment;
  - (iv) a proposal for the way in which owners of lots, and any tenants, would be dealt with during the carrying out of the works for the proposed redevelopment and, if applicable, after its completion, including in relation to relocation or a payment to the owners instead of relocation;
  - (v) if applicable, a proposed strata scheme description for the strata parcel after the redevelopment is completed;
  - (vi) a statement disclosing any arrangements or proposed arrangements with a person for the redevelopment;

- (h) an explanation about, and a plan for, any financing required for the proposal;
- (i) a statement identifying the person who prepared the proposal and a certificate of that person certifying that the proposal has been prepared in accordance with this section;
- (j) any other information required by the regulations.

**97 Termination statement**

- (1) The proponent of the termination of a strata scheme must also cause a termination statement of strata scheme lot values to be prepared.
- (2) A termination statement of strata scheme lot values must comprise:
  - (a) a statement of the capital value of each lot in the strata scheme; and

*Note—This is required for determining the purchase price of a lot in the event that the owner is an objecting owner.*

- (b) if termination of a primary strata scheme is contingent on the termination of a secondary strata scheme—for each primary strata lot divided by a secondary strata scheme, a statement of the capital value of each secondary lot and a statement of the aggregate of the capital values of those lots (with that aggregate being taken to be the capital value of the primary strata lot); and
  - (c) for each lot in the strata scheme—a relative termination lot value, that is, the proportion that the capital value of the lot bears to the aggregate of the capital values of all lots in the scheme; and

*Note—This is required for determining the interest of each lot owner as a tenant in common in the combined estate following termination.*



- (d) for each strata lot in the strata scheme—a relative termination strata lot value, that is, the proportion that the capital value of the strata lot bears to the aggregate of the capital values of all strata lots in the scheme; and

*Note—This is required for determining the distribution of assets and liabilities of the strata scheme corporation.*

- (e) a statement of:
  - (i) the unimproved value of the fixed-term estate in the parcel of land or strata lot that will result from termination of the strata scheme; and
  - (ii) the unimproved value of the estates proposed to be created after any redevelopment, division or combination (if proposed) is completed.

*Note—This is required for estimating the rent incident to the estates following termination and, if proposed, redevelopment and division or combination under the Land and Titles Act (Cap. 133).*

- (3) A relative termination lot value or relative termination strata lot value must be expressed as a decimal number simplified to 3 decimal places by rounding (with 1 to 5 being rounded down and 6 to 9 being rounded up).
- (4) The termination statement of strata scheme lot values must:
  - (a) be prepared and certified by a valuer in accordance with standards and rules under the *Land Valuers Act 2009*; and
  - (b) be approved by the Valuer General.
- (5) The Valuer General must, on payment of the fee fixed by the regulations, examine a statement of termination strata scheme lot values.
- (6) Before approving a statement of termination strata scheme lot values for lodging, the Valuer General may require the statement to be modified and resubmitted.

**Termination resolution**

- (1) An application may only be made for termination of a strata scheme if:
  - (a) a resolution to terminate the strata scheme has been passed at a properly convened meeting of the strata scheme corporation and development lot owners (if any); and
  - (b) the owners of development lots in the strata scheme were entitled to vote on the resolution in the same manner as if they had been owners of strata lots in the strata scheme; and
  - (c) the resolution was passed following service of the termination proposal and termination statement, and, if there are related strata schemes that are also proposed to be terminated, the termination proposal and termination statement for each such related strata scheme, in accordance with subsection (2); and
  - (d) if there are less than 10 lots in the strata scheme—the resolution was a unanimous resolution; and
  - (e) if there are 10 or more lots in the strata scheme—the number of votes (if any) cast against the resolution is 10% or less of the total number of votes that could be cast at a meeting at which all strata scheme corporation members and development lot owners are present and entitled to vote.
- (2) For subsection (1)(c), the termination proposal or proposals and termination statement or statements must be served at least 3 months before, and not more than 12 months (or such longer period as the strata scheme corporation approves by ordinary resolution) before, the date of the meeting at which the resolution for termination of the strata scheme was passed on:
  - (a) all the members of the strata scheme corporation; and
  - (b) all owners of development lots in the strata scheme; and
  - (c) all prospective owners of lots in the strata scheme; and

- (d) all the registered chargees and prospective chargees, and registered lessees and prospective lessees of lots in the strata scheme.

*Note—If a termination proposal or termination statement is subsequently altered, a fresh notice must be served relating to the updated proposal or statement.*

- (3) If a prospective owner, registered chargee or prospective registered chargee, or registered lessee or prospective registered lessee, of a lot objects to the termination of the strata scheme by written notice to the strata scheme corporation at or before the meeting at which the resolution for termination is proposed, the owner of the lot will be taken to have voted against the resolution (and the owner is not entitled to cast a separate vote at the meeting).
- (4) If there are related strata schemes:
  - (a) a resolution for the termination of the primary strata scheme is contingent on the termination of each secondary strata scheme; and
  - (b) a resolution for the termination of a secondary strata scheme may be expressed to be contingent on the termination of any other related secondary strata scheme or the related primary strata scheme.
- (5) The vote of a secondary strata scheme corporation on a resolution for termination of the primary strata scheme must be counted as a vote against termination unless the following resolutions have been passed at a properly convened meeting of the secondary strata scheme corporation and secondary development lot owners (if any):
  - (a) a resolution for termination of the secondary strata scheme, passed in the required manner; and
  - (b) a resolution supporting termination of the primary strata scheme, passed in the same manner as required for termination of the secondary strata scheme.
- (6) If a resolution is passed for the termination of a strata scheme as required under this section, the strata scheme corporation must, within 14 days after the resolution is passed, serve a copy of the resolution on:

- (a) all the members of the strata scheme corporation; and
- (b) all owners of development lots in the strata scheme; and
- (c) all prospective owners of lots in the strata scheme; and
- (d) all the registered chargees and prospective chargees, and registered lessees and prospective lessees of lots in the strata scheme; and
- (e) if it is a secondary strata scheme—the related primary strata scheme corporation.

**99 Right of objecting owner to sell lot**

- (1) If the required resolution for termination of a strata scheme has been passed by the strata scheme corporation, the following are to be regarded as “**objecting owners**”:
  - (a) the owner of a lot in the strata scheme who did not vote in favour of the resolution for termination of the strata scheme;
  - (b) if termination of the strata scheme is contingent on the termination of a secondary strata scheme and the secondary strata scheme corporation has not passed a resolution for termination of the primary strata scheme as required—the secondary strata scheme corporation.
- (2) If subsection (1)(b) applies, the secondary strata scheme corporation is to be regarded as an objecting owner as if it were the owner of a strata lot in the primary strata scheme (since, on termination of the secondary strata scheme, the owners of the secondary lots will become the owners of the strata lot formerly divided by the secondary strata scheme).
- (3) An objecting owner may, within 60 days after the copy of the resolution for termination of the strata scheme is served on the owner under section 98(6):
  - (a) give written notice to the strata scheme corporation stating that the objecting owner is no longer to be considered to be an objecting owner; or

- (b) give written notice to the strata scheme corporation stating that the objecting owner proposes to sell its lot otherwise than to the strata scheme corporation under this section; or
  - (c) give written notice to the strata scheme corporation stating that the objecting owner intends to sell its lot in the strata scheme to the strata scheme corporation under this section.
- (4) If there is a prospective owner, registered chargee, prospective chargee, registered lessee, or prospective lessee of a lot in the strata scheme owned by an objecting owner, the objecting owner may only give a notice under subsection (3) with the written consent of the prospective owner, registered chargee, prospective chargee, registered lessee or prospective lessee (and evidence of that consent must accompany the notice).
  - (5) A secondary strata scheme corporation may only give a notice under subsection (3)(a) if a resolution supporting termination of the primary strata scheme has been passed at a properly convened meeting of the secondary strata scheme corporation and secondary development lot owners (if any) in the same manner as required for the resolution for termination of the secondary strata scheme.
  - (6) If an objecting owner does not give a notice under subsection (3) within the required time (or such longer period as is allowed by the strata scheme corporation), the objecting owner will be taken to intend to sell the lot to the strata scheme corporation under this section.
  - (7) If a notice is given under subsection (3)(c) for a lot or, under subsection (6), an objecting owner is to be taken to intend to sell a lot, the strata scheme corporation must purchase the lot at its capital value as set out in the termination statement of strata lot values before the strata scheme may be terminated.

**100      Application to High Court objecting to termination**

- (1) An objecting owner or a prospective owner, registered chargee, prospective chargee, registered lessee or prospective registered lessee of a lot of an objecting owner may apply to the High Court for a determination that a strata scheme must not be terminated despite a resolution for its termination.

- (2) The application must be made within 28 days after a copy of the resolution for termination of the strata scheme is served on the owner, chargee or lessee under section 98(6).
- (3) The application may only be made on the grounds that termination of the strata scheme would result in undue hardship to the applicant or some other person.
- (4) On an application under this section, if the High Court is satisfied that termination of the strata scheme would result in undue hardship to the applicant or some other person, the High Court may make an order prohibiting termination of the strata scheme pursuant to the resolution.

## **101 Application for termination**

- (1) If a resolution to terminate a strata scheme has been passed as required by section 98, an application may be made by the strata scheme corporation or a proponent of the termination of the strata scheme to the Commissioner of Lands under section 140 of the *Land and Titles Act* (Cap. 133) for the consent of the Commissioner to the termination of the strata scheme (and consequent combination of the lots).
- (2) The application must:
  - (a) be in a form approved by the Commissioner of Lands; and
  - (b) be lodged with the Commissioner of Lands; and
  - (c) be accompanied by:
    - (i) the termination proposal; and
    - (ii) the termination statement; and
    - (iii) evidence of the required resolution approving termination; and
    - (iv) a copy of the certificate of the relevant Planning and Development Board required under section 102; and
    - (v) such other documentary material as the Commissioner of Lands may require; and

- (d) be accompanied by the fee fixed by the regulations.
- (3) The application must also be accompanied by registrable instruments for any transfers of the lots of objecting owners to the strata scheme corporation that are required before the strata scheme may be terminated.
- (4) The Commissioner of Lands may refuse to accept the termination statement if the approval of the Valuer General of the statement was given more than 6 months before the application for termination of the strata scheme is lodged.

**102 Planning and development certificate**

- (1) An application for termination of a strata scheme must be accompanied by a certificate of the relevant Planning and Development Board certifying that any relevant development permissions associated with the proposal for termination have been obtained.
- (2) An application for a certificate of a Planning and Development Board under this section:
  - (a) must be lodged with the Board; and
  - (b) must be in a form approved by the Board; and
  - (c) must be accompanied by the fee fixed by the regulations.
- (3) The Planning and Development Board may require the applicant to provide additional information reasonably required for determination of the application.
- (4) The application may be refused if the applicant does not comply with such a requirement.

**103 Limitations on termination**

The Commissioner of Lands must not consent to the termination of a strata scheme unless:

- (a) there is no rent under the *Land and Titles Act* (Cap. 133) incident to an estate in the strata parcel outstanding; and

- (b) the strata scheme corporation has no other accrued or accruing debts; and
- (c) if it is a primary strata scheme—all related secondary strata schemes have been or will be terminated prior to the termination of the primary strata scheme; and
- (d) the relevant Planning and Development Board has certified that any relevant development permissions associated with the proposal for termination have been obtained; and
- (e) the period for an application to the High Court objecting to the termination has expired and no application has been made or an application has been made and the proceedings have been withdrawn, discontinued or dismissed or have been finally determined without an order prohibiting the termination having been made; and
- (f) the lot in the strata scheme of each objecting owner has been, or will be on termination of the strata scheme, transferred to the strata scheme corporation as required before the scheme may be terminated.

#### **104 Termination**

- (1) If the Commissioner of Lands consents to the termination of a strata scheme under section 140 of the *Land and Titles Act* (Cap. 133), the Registrar must:
  - (a) strike through the entry on the registry map of the number of the strata scheme; and
  - (b) make a note of the termination in the relevant strata parcel file; and
  - (c) close the land register for the strata parcel and each lot affected by the termination; and
  - (d) in the case of a primary strata scheme—open a new land register for the fixed-term estate in the parcel of land formerly divided by the scheme; and



- (e) in the case of a secondary strata scheme—open a new land register for the strata lot formerly divided by the scheme (unless the primary strata scheme is also to be terminated); and
  - (f) alter land registers as necessary for the discharge, extinguishment or vesting of any other estates and interests required for termination of the strata scheme.
- (2) The strata scheme is terminated when the Registrar has completed each of those steps.
- (3) On termination of a primary strata scheme:
  - (a) the strata parcel becomes a parcel of land subject to a fixed-term estate for the balance of the terms of the strata titles formerly comprised in the strata parcel; and
  - (b) the strata titles formerly comprised in the strata parcel vest as a fixed-term estate in the owners of the former lots as tenants in common in proportions fixed by reference to their relative termination lot values.
- (4) On termination of a secondary strata scheme:
  - (a) the strata parcel becomes a strata lot subject to a strata title; and
  - (b) the strata titles formerly comprised in the strata parcel vest as a strata title over the primary strata lot in the owners of the former secondary lots as tenants in common in proportions fixed by reference to their relative termination lot values.
- (5) If there was more than 1 owner of a former lot, the proportion of the new fixed-term estate or strata title owned by each such owner is to be divided equally between the owners if they were joint tenants or, if they were owners in common, in the same proportions as they owned the former lot.
- (6) On termination of a strata scheme:
  - (a) a lease over a lot or the common property is extinguished; and
  - (b) all internal easements are extinguished; and

- (c) an easement over a lot or the common property if the dominant land is outside the strata parcel (or if there is no dominant land) is unaffected; and
  - (d) an easement that was appurtenant to part, but not the whole, of the strata parcel will be appurtenant to the whole of the land formerly comprised in the strata parcel if the owner of the servient land and all persons who hold a registered encumbrance over the servient land (other than an easement that will not be affected) consent to the termination of the strata scheme; and
  - (e) the strata scheme corporation is dissolved; and
  - (f) the liabilities of the former strata scheme corporation attach directly to the owners of the former strata lots jointly and severally (but they will be entitled to contribution amongst each other in proportion to their relative termination strata lot values); and
  - (g) the assets of the former strata scheme corporation will be divided between the owners of the former strata lots in proportion to their relative termination strata lot values.
- (7) The estate vested in the owner of a former lot under this section will be subject to:
- (a) an easement (other than an internal easement) over any of the former lots or common property; and
  - (b) any encumbrance (other than a lease) that was, immediately prior to the termination of the strata scheme, entered on the strata lot file of that lot.
- (8) If, when the strata scheme was registered, an easement was partially extinguished so as not to pass through a strata lot created by the scheme, the easement will be reinstated on termination of the scheme if a request for reinstatement is made to the Registrar by the owners of the servient land and the dominant land (if any).
- (9) The termination of a strata scheme revokes the strata scheme by-laws and discharges any strata scheme development contracts.

(10) For this section, the owner of a former lot is the person who was the owner of the lot immediately before the termination of the strata scheme.

(11) In this section:

**"internal easement"** means an easement where both the dominant and servient land comprised the whole or part of a lot or the common property within the strata parcel.

## **Part 6                      Other divisions and combinations affecting primary strata parcel**

### **105                      Alteration of boundaries of primary strata parcel**

(1) This section applies if a primary strata scheme is to be amended by the inclusion of land from outside the strata parcel or by the removal of land from the strata parcel.

*Examples—*

- *A primary lot or part of a primary lot may be excised and combined with a contiguous parcel or made into a separate parcel.*
- *Part of the common property may be excised and combined with a contiguous parcel or made into a separate parcel.*
- *A contiguous parcel or part of a contiguous parcel may be combined with a primary strata parcel.*

(2) If a parcel of land or part of a parcel of land is to be included in a strata parcel or land is to be removed from a strata parcel, an application for division or combination of the parcels must be made under section 140 of the *Land and Titles Act* (Cap. 133) as well as an application for amendment of the strata scheme under this Act and:

- (a) in so far as the application relates to the strata parcel—the application must be made by the strata scheme corporation (as if it owned a fixed-term estate in the strata parcel) pursuant to a unanimous resolution; and
- (b) if a parcel of land or part of a parcel of land is to be included in the strata parcel—the application must be made jointly by the strata scheme corporation and the owner of the fixed-term estate in the parcel of land; and

- (c) the Commissioner of Lands may direct the manner in which the application is to be made and the documents to accompany it.
- (3) If the only transfer of land to or from the strata parcel of a primary strata scheme is from or to the strata parcel of another primary strata scheme:
- (a) subsection (2) does not apply; and
  - (b) applications are to be made by both strata scheme corporations for the amendment of their respective strata schemes as required by this Act.

## **Part 7                      Resolution of disputes**

### **106                      Persons who may apply for relief**

The following persons may apply for relief under this Part:

- (a) a strata scheme corporation;
- (b) the owner or occupier of a lot;
- (c) a person who has contracted to purchase a lot;
- (d) any other person bound by the strata scheme by-laws except for persons visiting the strata parcel.

### **107                      Application for resolution of dispute**

An application may be made under this Part:

- (a) if the applicant claims that a contravention of this Act, the regulations or the strata scheme by-laws has occurred in relation to the strata scheme or a related strata scheme; or
- (b) if the applicant claims to have been prejudiced, as occupier of a lot, by the wrongful act or default of the strata scheme corporation, the management committee of the strata scheme corporation, the strata scheme manager, the strata scheme developer or the owner or occupier of another lot; or

- (c) if the applicant claims that a strata scheme by-law reduces the value of a strata lot or unfairly discriminates against a member of the strata scheme corporation; or
- (d) if a member of a strata scheme corporation claims that a decision of the strata scheme corporation, the management committee of the strata scheme corporation or the strata scheme manager is unreasonable, oppressive or unjust; or
- (e) if a member of a strata scheme corporation claims that the strata scheme corporation has not made an application under this Act or taken other action as required by a resolution that the strata scheme corporation has passed; or
- (f) if a dispute arises between a strata scheme corporation and a member of the strata scheme corporation, or between 2 or more members of a strata scheme corporation, over:
  - (i) any aspect of the occupation or use of a lot; or
  - (ii) the position in which a cable, wire, pipe, sewer, drain, duct, plant or equipment comprising service infrastructure should be laid or installed; or
- (g) for an order authorising a person to use force to enter a lot or a building on a lot; or
- (h) if a strata scheme corporation is required under section 99 to purchase a lot of an objecting owner and a dispute arises relating to that purchase; or
- (i) if an objecting owner of a lot has given notice of an intention to sell the lot under section 99(3)(b) but has not entered into a contract to do so within 60 days after giving that notice; or
- (j) in other circumstances specified in the regulations.

**108 Court to hear application**

- (1) Subject to this section, an application under this Part must be made in the Magistrate's Court.

- (2) If the application involves a monetary claim for an amount exceeding \$100,000, the application must be made in the High Court.
- (3) If the application involves a monetary claim for an amount exceeding \$50,000, the application may be made in the Magistrate's Court only if all parties agree to that, but must otherwise be made in the High Court.
- (4) A person may, with the permission of the High Court, bring any application under this section in the High Court.
- (5) The High Court may, on the application of a party to proceedings under this Part that have been commenced in the Magistrate's Court, order that the proceedings be transferred to the High Court (and such an order will have effect according to its terms).
- (6) Proceedings should not be commenced in, or transferred to, the High Court under subsection (4) or (5) unless the High Court considers that it is appropriate for the Court to deal with the matter because of the complexity or significance of the matter or because the proceedings raise a matter of general importance.
- (7) The Magistrate's Court may, on its own initiative or on an application by a party to the proceedings:
  - (a) state a question of law for the opinion of the High Court and, if necessary, adjourn the Magistrate's Court proceedings until the answer is received; or
  - (b) transfer an application under this Part to the High Court on the ground that the application raises a matter of general importance.

## **109 Determination of application**

- (1) A court may refuse to consider an application under this Part unless the parties have made a genuine attempt to achieve settlement of the proceedings by agreement between the parties.
- (2) A court, in hearing and determining an application under this Part:

- (a) should act according to equity, good conscience and the substantial merits of the case, without regard to technicalities and legal forms; and
  - (b) is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit.
- (3) A court may, in proceedings under this Part:
- (a) attempt to achieve settlement of the proceedings by agreement between the parties; or
  - (b) require a party to provide reports or other information for the purposes of the proceedings; or
  - (c) order a party to have specified accounts audited or to reimburse a person for the costs of having specified accounts audited; or
  - (d) order a strata scheme corporation to hold a general meeting of the corporation for consideration of a resolution on a specified matter; or
  - (e) order that a party take such action as is, in the opinion of the court, necessary to remedy a default, or to resolve a dispute, and is specified in the order; or
  - (f) order that a party refrain from taking specified action; or
  - (g) make a declaration as to the validity of:
    - (i) a strata scheme by-law or purported strata scheme by-law; or
    - (ii) a decision or purported decision of the strata scheme corporation, management committee or strata scheme manager; or
  - (h) by order:
    - (i) alter the strata scheme by-laws (and make any necessary consequential changes to the strata scheme description and strata scheme development contracts); or

- (ii) vary or reverse a decision of the strata scheme corporation, management committee or a strata scheme manager; or
  - (i) vary, avoid or terminate a contract entered into (whether before or after the commencement of this paragraph) between a strata scheme corporation and any of the following:
    - (i) the strata scheme developer;
    - (ii) an associate of the strata scheme developer;
    - (iii) a strata scheme manager;
    - (iv) an associate of the strata scheme manager; or
  - (j) by order, determine the position in which a cable, wire, pipe, sewer, drain, duct, plant or equipment is to be laid or installed; or
  - (k) by order, require an objecting owner of a lot to sell the lot to the strata scheme corporation to enable termination of the strata scheme; or
  - (l) give judgment on a monetary claim; or
  - (m) make orders as to costs; or
  - (n) make any incidental or ancillary orders.
- (4) A court should not make an order to alter the strata scheme by-laws unless:
- (a) the strata scheme corporation is a party to the proceedings or the court is satisfied that the strata scheme corporation has been given a reasonable opportunity to become a party to the proceedings; and
  - (b) if it appears to the court that the alteration could adversely affect a member of the strata scheme 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 has been 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.
- (5) A court should not make an order to vary, avoid or terminate a contract entered into between a strata scheme corporation and another party unless the court is satisfied that the contract involves a breach of fiduciary duties or other duties under this Act.
- (6) If 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 a person pending its final resolution.
- (7) An interim order:
  - (a) has effect for the period specified in the order, and may be renewed by the court from time to time on application of a party; and
  - (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 proceedings under this Part.
- (8) The power to make an order under this section includes the power to vary or revoke an order.
- (9) A person commits an offence if the person contravenes an order under this section.

Maximum penalty: 500,000 penalty units.

- (10) Subsection (9) does not limit the court's power to punish a person who fails to comply with an order for contempt.
- (11) 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.

- (12) If a land registry under the *Land and Titles Act* (Cap. 133) requires rectification as a consequence of an order of the court, the Registrar must rectify the land registry accordingly.
- (13) Rules of court may be made dealing with any matter necessary or expedient for the effective and efficient operation of proceedings under this Part.
- (14) The rules for a particular court will be made in the same manner as ordinary rules are made for that court.

**110 Non-derogation**

This Part does not limit or derogate from:

- (a) the powers of the parties to refer the matter to arbitration under the *Arbitration Act* (Cap. 2); or
- (b) any civil remedy at law or in equity.

**Part 8 Miscellaneous**

**111 Delegation by Commissioner of Lands or Registrar**

- (1) The Commissioner of Lands may delegate to a public officer responsible to the Commissioner (including a person for the time being performing particular duties or holding or acting in a particular position) a function or power under this Act (except a function or power specified in the regulations).
- (2) The Registrar may delegate to a public officer responsible to the Registrar (including a person for the time being performing particular duties or holding or acting in a particular position) a function or power under this Act (except a function or power specified in the regulations).
- (3) A delegation:
  - (a) must be by instrument in writing; and
  - (b) may be absolute or conditional; and

- (c) does not derogate from the power of the Commissioner of Lands or Registrar (as the case requires) to act in a matter; and
  - (d) is revocable at will.
- (4) A delegated function or power may not be further delegated.

## **112 Stamp duty**

- (1) Duty is not payable under the *Stamp Duties Act* (Cap. 126):
- (a) in respect of the vesting of a lot created by registration of a strata scheme or amendment of a strata scheme; or
  - (b) in respect of the vesting of common property created by registration of a strata scheme or amendment of a strata scheme; or
  - (c) in respect of the vesting of property on termination of a strata scheme.

*Note—Stamp duty will apply in accordance with that Act to the transfer of a strata title or to the creation of an interest in, or the transfer of an interest in, a strata title.*

- (2) If duty is payable under the *Stamp Duties Act* (Cap. 126) in relation to 2 or more transactions that will be effected by registration of a strata scheme or an amendment of a strata scheme, each of the transactions will be taken to be effected by a separate instrument for the purposes of assessing duty.

## **113 False or misleading information**

- (1) A person commits an offence if:
- (a) the person gives false or misleading information to the Commissioner of Lands or the Registrar under this Act; and
  - (b) the person knows, or is reckless as to whether, the information is false or misleading.

Maximum penalty: 200,000 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) for giving false or misleading information in a document that the person, when giving the document:
- (a) drew the misleading aspect of the document to the attention of the Commissioner of Lands or the Registrar; and
  - (b) to the extent to which the person could reasonably do so, gave the Commissioner of Lands or the Registrar the information necessary to correct the document.
- (3) In this section:

***“misleading information”*** means information that is misleading in a material particular or because of the omission of a material particular.

#### **114 Owner of lot under legal disability**

- (1) The rights and powers under this Act of the owner of a lot who is under a legal disability may be exercised on behalf of the owner by a guardian.
- (2) If the owner of a lot is under a legal disability and there is no guardian to act on behalf of the owner, or the owner of a lot cannot be found, the Magistrate’s Court may, on application by the strata scheme corporation or any other person with a proper interest, dispense with any consent, approval or vote that would otherwise be required from that owner under this Act.

#### **115 Procedure if whereabouts of certain persons unknown**

- (1) The Commissioner of Lands may determine that a requirement under this Act for the consent of a person to an application or a matter related to an application does not apply if:
  - (a) the Commissioner is satisfied by such evidence as the Commissioner may require:
    - (i) that the applicant has been unable, after making reasonable inquiries, to ascertain the whereabouts of the person; and

- (ii) that the applicant has complied with the notice requirements under subsection (2); and
  - (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
- (b) the Commissioner is satisfied that it is reasonable to proceed without the consent.
- (2) The notice requirements referred to in subsection (1)(a)(ii) are that the applicant has:
- (a) if the Registrar has a postal address for the person—posted to the person whose consent is required, at the last address of the person known to the Registrar, a notice in the form set out in the regulations; and
  - (b) published a copy of the notice in a newspaper circulating generally throughout Solomon Islands; 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.

## **116 Regulations**

- (1) The Minister may make regulations under this Act.
- (2) Without limiting subsection (1), the regulations may:
- (a) make further provision in relation to the enforcement of strata scheme by-laws; and
  - (b) make further provision in relation to the amendment or termination of a strata scheme.

## Part 9 Consequential amendments

### Division 1 Amendment of Land and Titles Act (Cap. 133)

#### 117 Land and Titles Act amended

This Division amends the *Land and Titles Act* (Cap. 133).

#### 118 Amendment of section 2 (Interpretation)

- (1) Section 2(1) is amended by inserting the following note after the definition of “**parcel**”:

*“Note—Consequently, for this Act, a strata parcel divided by a primary strata scheme is a parcel, but a strata parcel divided by a secondary strata scheme is not a parcel.”*

- (2) Section 2(1) is amended by deleting the definition of “**Surveyor-General**” and substituting the following definition:

*“**Surveyor-General**” has the same meaning as in the *Land Surveyors Act 2017*;*

- (3) Section 2 (1) is amended by inserting (in alphabetical order) the following definitions:

*“**common property**” has the same meaning as in the *Strata Titles Act 2017*;*

*“**development lot**” has the same meaning as in the *Strata Titles Act 2017*;*

*“**fixed-term estate**” includes a strata title;*

*“**lot**” has the same meaning as in the *Strata Titles Act 2017*;*

*“**number of a strata scheme**” means the distinguishing number assigned to the scheme by the Registrar under section 34(1)(e) of the *Strata Titles Act 2017*;*

*“**primary strata lot**”, “**primary strata parcel**” and “**primary strata scheme**” have the same meanings as in the *Strata Titles Act 2017*;*

**“secondary lot”, “secondary strata scheme” and “secondary strata scheme corporation”** have the same meanings as in the *Strata Titles Act 2017*;

**“strata lot”, “strata parcel”, “strata scheme”, “strata scheme corporation”, “strata scheme development contract”, “strata scheme document” and “strata title”** have the same meanings as in the *Strata Titles Act 2017*;

**“unimproved value of an estate”**—see section 2A;

**“Valuer General”** has the same meaning as in the *Valuers Act 2009*;

## 119 **New section 2A**

The following section is inserted after section 2:

### **“2A Unimproved value of estate**

- (1) The unimproved value of an estate other than a strata title is the capital amount that an unencumbered estate might reasonably be expected to realise on sale assuming, subject to subsection (2), that improvements on the parcel had not been made, including the following improvements:
  - (a) houses and buildings;
  - (b) fixtures and other building improvements;
  - (c) fences, bridges, roads, tanks, wells and dams;
  - (d) fruit trees, bushes, shrubs and other plants planted or sown, whether for commercial or other purposes.
- (2) The following improvements on a parcel are to be taken into account in assessing the unimproved value unless they were undertaken for commercial agricultural or horticultural purposes:
  - (a) reclamation of land by draining or filling, and retaining walls or other structures or works ancillary to that reclamation;
  - (b) the excavation, grading or levelling of land;

- (c) the removal of rocks, stone, sand or soil;
  - (d) the clearing of timber, scrub or other vegetation.
- (3) The unimproved value of a strata title is to be determined as follows:
- (a) the capital value of each strata lot (other than a primary strata lot divided by a secondary strata scheme) and each development lot in the strata scheme must be assessed;
  - (b) for each primary strata lot divided by a secondary strata scheme—the capital value of each strata lot and each development lot in the secondary strata scheme must be assessed and aggregated, with the aggregate being taken to be the capital value of the primary strata lot;
  - (c) the unimproved value of the primary strata parcel must be assessed;
  - (d) the unimproved value of the strata title is the value that bears to the unimproved value of the primary strata parcel the same proportion as the capital value of the lot bears to the aggregate capital value of all the lots in the strata scheme (on the assumption that applies under paragraph (b)).
- (4) For subsection (3):
- (a) capital value of a lot means the capital amount that an unencumbered strata title for the lot might reasonably be expected to realise on sale; and
  - (b) unimproved value of a primary strata parcel means the capital amount that an unencumbered fixed-term estate of 75 years in the parcel might reasonably be expected to realise on sale on the assumptions that apply under subsections (1) and (2)."

120

**Amendment of section 8C (Powers and function of Board in land allocation)**

Section 8C(1) is amended by deleting paragraph (d) and substituting the following paragraphs:

“(d) by Gazette notice:



- (i) fix the percentage that is to be applied to the unimproved value of a fixed-term or perpetual estate to determine the premium payable for the grant or transfer of the estate under section 132; and
- (ii) fix the percentage that is to be applied to the unimproved value of a fixed-term estate to determine the rent incident to the estate as set out in section 135;

(da) on the grant or transfer of an estate under section 132—  
impose restrictive covenants;”

**121 Amendment of section 87 (District land registries)**

Section 87(1)(e) is amended by inserting “, or, in the case of a strata title, the number of the strata scheme and the lot,” after “parcels”.

**122 Amendment of section 88 (Land register)**

(1) Section 88 is amended by deleting subsection (1) and substituting the following subsection:

“(1) The land register is to be comprised of separate land registers as follows:

- (a) a land register for the perpetual estate in each parcel of land shown in the registry map; and
- (b) a land register for a fixed-term estate in each parcel of land shown in the registry map (and not subject to a strata scheme); and
- (c) a land register for each strata parcel (including its common property); and
- (d) a land register for each strata title; and
- (e) a land register for each lease required by this Act to be registered.”

(2) Section 88(2)(A) is amended by inserting “and, if the land register is for a strata parcel or strata title, the number of the strata scheme” after “(if any)”.

- (3) Section 88(2)(B) is amended by inserting “and, in the case of a land register for a strata parcel, the name and contact details of the strata scheme corporation and, if the strata parcel is divided by a secondary strata scheme, the name and contact details of the secondary strata scheme corporation” after “disposition”.

**123 Amendment of section 97 (Boundaries)**

Section 97(3) is amended by inserting “(except for a boundary of a lot or common property that is not also the boundary of a parcel)” after “map”.

**124 Substitution of section 99**

Section 99 is repealed and the following section is substituted:

**“99 Registering divisions and combinations of estates**

If the Commissioner consents to the division of an estate, or the combination of estates, under section 140, the Registrar must give effect to the division or combination:

- (a) if it relates to a strata parcel or lot—in accordance with the *Strata Titles Act 2017*; and
- (b) in any other case—by closing the register for the former estate or registers for the former estates and opening a new register or registers in respect of the estate or estates resulting from the division or combination and recording in the new register or registers all subsisting entries appearing in the closed register or registers that remain relevant.”

**125 Amendment of section 100 (Conversion of estates held by persons other than Solomon Islanders)**

- (1) Section 100(1) is amended by deleting “unimproved capital value of such estate at a rate not exceeding 8 per centum” and substituting “unimproved value of the fixed-term estate”.
- (2) Section 100 is amended by deleting subsection (3).

- 126 Amendment of section 109 (Interest conferred by registration)**
- (1) Section 109(b) is amended by inserting “(other than a strata title)” after “fixed-term estate”.
  - (2) Section 109 is amended by inserting the following subsection after its present contents (now to be designated as subsection (1)):  
“(2) The registration of a person as the owner of a strata title vests in the person the strata title as set out in the *Strata Titles Act 2017*.”
- 127 Amendment of section 110 (Rights of owner)**
- Section 110 is amended by inserting “or under the *Strata Titles Act 2017*” after “trustee”.
- 128 Amendment of section 112 (Perpetual estates)**
- (1) Section 112(1) is amended by deleting “the payment of any rent and”.
  - (2) Section 112 is amended by inserting the following subsection after subsection (4):  
“(5) The Commissioner of Lands may not, as owner of the perpetual estate in a strata parcel, deal with the land in a manner that is inconsistent with the strata scheme.”
- 129 Amendment of section 113 (Fixed-term estates)**
- (1) Section 113(1) is amended by inserting “(including a strata title)” after “fixed-term estate”.
  - (2) Section 113(1) is amended by deleting “for a period of time fixed and certain at the time of the grant thereof, the land and” and substituting “, for the term of the estate, the land and, if relevant,”.
  - (3) Section 113(2) is amended by inserting “(including a strata title)” after “fixed-term estate”.
- 130 Amendment of section 115 (Right of way)**
- Section 115(1) is amended by inserting “but excluding a lot” after “customary land”.

**131 Amendment of section 117 (Instruments ineffectual until registered)**

Section 117(1) is amended by inserting “or the *Strata Titles Act 2017*” after “this Act” wherever occurring.

**132 Amendment of section 129 (Inspections)**

Section 129 is amended by inserting “and any filed instrument, plan or document (including a strata scheme document)” after “map”.

**133 Amendment of section 130 (Certified copies)**

Section 130 is amended by inserting “(including a strata scheme document)” after “document”.

**134 Amendment of section 132 (Transfers and grants by Commissioner)**

- (1) Section 132(2) is amended by deleting paragraph (b).
- (2) Section 132(2) is amended by deleting “, and the amount of any rent shall be entered on the register”.
- (3) Section 132 is amended by deleting subsection (4) and substituting the following subsection:  
“(4) Subject to this Act, the Board may vary, negative or add to obligations contained or implied in a transfer or grant of an estate.”

**135 New section 132A**

The following section is inserted after section 132:

**“132A Strata title subject to rent**

- (1) While land is subject to a registered strata scheme:
  - (a) rent and other obligations incident to any former fixed term estate in the land have no effect; and
  - (b) rent is payable for each strata title.

- (2) The owner for the time being of a lot is liable for the rent incident to the strata title for the lot.

*Note—If a primary strata lot is divided by a secondary strata scheme, the strata title in the lot ceases to exist and, consequently, the secondary strata scheme corporation is not liable for rent but the owners of the strata titles in the secondary lots are liable for rent.”*

**136 Amendment of section 133 (Implied obligations incident to estates)**

- (1) Section 133 is amended by inserting “or in writing and noted on the land register for the estate” after “the transfer or grant”.
- (2) Section 133 is amended by deleting “in the grant” and substituting “by the Commissioner in the grant or in writing and noted on the land register for the estate”.

**137 Amendment of section 135 (Rents)**

- (1) Section 135 is amended by inserting the following subsections before subsection (1):
  - “(A1) Every fixed-term estate (including a strata title) is subject to the payment of rent to the Commissioner.
  - (A2) The owner for the time being of a fixed-term estate is liable for the rent incident to the estate.
  - (A3) The amount of rent incident to a fixed-term estate is the percentage of the unimproved value of the estate fixed, from time to time, by the Board by Gazette notice for estates of that class.
  - (A4) The percentage fixed by the Board may vary according to the location of the land, the class of estate or any other factor.”
- (2) Section 135(1) is amended by deleting “transferred or granted by the Commissioner”.
- (3) Section 135(2) is amended by deleting “transferred or granted by the Commissioner”.
- (4) Section 135(2) is amended by deleting “of the transfer or grant of the estate” and substituting “that the estate begins to subsist”.

- (5) Section 135 is amended by deleting subsections (3), (3A), (4), (5) and (6).

**138 Amendment of section 136 (Board's right of forfeiture)**

- (1) Section 136(1) is amended by inserting the following paragraph after paragraph (c):

“(ca) breaches a strata scheme development contract by which the owner is bound;”

- (2) Section 136(1) is amended by deleting paragraph (e) and substituting the following paragraph:

“(e) has undertaken, or permitted another person to undertake, development on the land within the meaning of the *Planning and Development Act* (Cap. 154) within the last 4 years without the necessary permission under that Act.”

- (3) Section 136(3) is amended by deleting “the Commissioner has commenced” and substituting “the Board has commenced, or less than 90 days before the Board commences,”.

**139 Amendment of section 140 (Divisions and combinations of estates)**

- (1) Section 140 is amended by deleting subsection (1) and substituting the following subsections:

“(1) An owner of an estate may not create or dispose of an interest in the land comprised in the estate so as to effect a physical division of the land unless the Commissioner has consented to the division on application under this section.

(1A) The owners of perpetual estates in contiguous land may apply to the Commissioner for the separate estates to be combined into a single estate in accordance with this section.

(1B) The owners of fixed-term estates in contiguous land may apply to the Commissioner for the separate estates to be combined into a single estate in accordance with this section.

(1C) On application under this section, the Commissioner may, by written notice, give conditional or unconditional consent to:

- (a) the division of an estate into separate estates; or
  - (b) the combination of separate estates into a single estate.”
- (2) Section 140(2) is amended by deleting “any subdivision” and substituting “a division effected other than by registration of a strata scheme or amendment of a strata scheme”.
  - (3) Section 140(2)(b) is amended by deleting “which has not been declared to be a town under the *Town and Country Planning Act* (Cap. 154)” and substituting “is not wholly within an area to which Part IV of the *Planning and Development Act* (Cap. 154) applies”.
  - (4) Section 140 is amended by inserting the following subsections after subsection (2A):
    - “(2B) The Commissioner must not consent to a division or combination effected by registration, amendment or termination of a strata scheme or affecting strata parcels or strata lots except in accordance with the *Strata Titles Act 2017*.
    - (2C) The Commissioner must not consent to a division of land subject to a lease unless the lease is also divided.
    - (2D) The Commissioner must not consent to a combination of perpetual estates, or a combination of fixed-term estates, not affecting strata parcels or strata lots unless the estates are or will, following registration of relevant instruments, be owned by the same owner and be subject, in all respects, to the same rights and obligations.
    - (2E) The fact that fixed-term estates are of different terms does not prevent the estates from being combined, but the combined fixed-term estate will be for the shorter of the terms of the former fixed-term estates.”
  - (5) Section 140(3) is amended by deleting “subsection (1)” and substituting “subsection (1C)”.
  - (6) Section 140 is amended by deleting subsections (4) and (4A) and substituting the following subsection:

“(4) If an estate is divided or estates are combined:

- (a) for each fixed-term estate resulting from the division or combination for which rent must be calculated—there must be a valuation included in the valuation roll; and
- (b) the Commissioner may impose new obligations on an estate (other than a strata title) resulting from the division or combination.”

(7) Section 140(5) is amended by deleting “subdivided” and substituting “divided”.

(8) Section 140(5) is amended by deleting “subdivision” wherever occurring and substituting, in each case, “division”.

(9) Section 140(5) is amended by deleting paragraph (a) and substituting the following paragraph:

“(a) pay moneys payable (if any) under the charge:

- (i) for fixed-term estates—in the same proportions as rent incident to the estates; and
- (ii) for perpetual estates—in proportions based on the area of land comprised in the estates; and”

**140 Amendment of section 141 (Termination and surrender of estates)**

(1) Section 141(1) is amended by inserting “(other than a strata title)” after “estate”.

(2) Section 141 is amended by deleting subsections (2), (3) and (4) and substituting the following subsections:

“(2) A strata title relating to a lot vests in the Commissioner when the Commissioner has under section 136(2)(a) lawfully re-entered and recovered possession of the lot or for any other reason has become entitled to be registered as the owner of the lot.

(3) The owner of a fixed-term estate may, with the approval of the Commissioner, surrender the fixed-term estate.



- (4) An applicant for the approval of the Commissioner to the surrender of a fixed-term estate must provide evidence to the satisfaction of the Commissioner that:
- (a) the holder of any registered interest in the land consents to the application; and
  - (b) if surrender of the fixed-term estate will affect the registered interest of a person in other land—that person consents to the application.
- (4A) The Commissioner of Lands may, if the Commissioner thinks fit, dispense with the consent of a person referred to in subsection (4), including on the grounds that consent has been unreasonably refused.
- (4B) If the Commissioner approves the surrender of a fixed-term estate:
- (a) in the case of a strata title—the strata title vests in the Commissioner; and
  - (b) in any other case—the fixed-term estate ceases to subsist.
- (4C) The surrender of a fixed-term estate other than a strata title may be conditional on the granting of a new fixed-term estate in the same land to the owner or another person and, in that case:
- (a) any easement or other interest registered in or over, or caveat lodged over, the fixed-term estate:
    - (i) continues in force and extends to all land included in the new fixed-term estate; and
    - (ii) will be endorsed on the land register for the new fixed-term estate,unless the holder of the easement, interest or caveat consents to its discharge; and
  - (b) any easements appurtenant to the land included in the fixed-term estate continue in force as easements appurtenant to the land included in the new fixed-term estate.”

- (3) Section 141(5) is amended by inserting "or strata title" after "perpetual estate".
- (4) Section 141(6) is amended by inserting "or strata title" after "perpetual estate".
- (5) Section 141 is amended by inserting the following subsection after subsection (6):  
“(7) If a strata title vests in the Commissioner, the Board must, as soon as reasonably practicable, sell the lot to which the strata title relates by public auction.”

**141 Amendment of section 158 (Division of leases)**

Section 158(2) is amended by deleting "restriction and effect of subdivision" and substituting "division".

**142 Amendment of section 168 (Obligations implied in charges)**

Section 168(1)(d) is amended by deleting "subdivide" and substituting "divide".

**143 Amendment of section 169 (Chargee's consent to transfer)**

- (1) Section 169 is amended by deleting "subdivide" and substituting "divide".
- (2) Section 169 is amended by deleting "subdivision" and substituting "division".

**144 Amendment of section 173 (Matters implied in transfer)**

- (1) Section 173(1)(a) is amended by inserting "(for an estate that is a fixed-term estate)" after "rent".
- (2) Section 173(1)(b) is amended by inserting "(for an estate that is a fixed-term estate)" after "rent" first occurring.

**145 Amendment of section 174 (No transfer of part without division)**

- (1) Section 174(b) is amended by deleting "subdivided" and substituting "divided".

- (2) Section 174(b) is amended by deleting “in each subdivision”.

**146 Amendment of section 181 (Profits)**

Section 181 is amended by inserting the following subsection after subsection (5):

- “(6) For this section, a strata scheme corporation will be taken to be the owner of a fixed-term estate in the common property of the strata scheme.”

**147 Amendment of section 195 (Co-ownership)**

Section 195 is amended by inserting the following subsection after subsection (3):

- “(4) This section does not apply to the vesting of interests under the *Strata Titles Act 2017* on termination of a strata scheme.”

**148 Amendment of section 197 (Partition)**

Section 197 is amended by inserting the following subsection after its present contents (now to be designated as subsection (1)):

- “(2) This section does not apply to land comprised in a strata title.”

**149 Amendment of section 235 (Power to require clearance of survey lines)**

Section 235 is amended by inserting the following subsection after subsection (2):

- “(3) For this section, if the parcel is divided by a primary strata scheme, the strata scheme corporation will be taken to be the owner of an interest in the parcel.”

**150 Amendment of section 236 (Repair or replacement of boundary marks)**

Section 236 is amended by inserting the following subsection after subsection (2):

- “(3) For this section, a strata scheme corporation will be taken to be an owner of an estate in the common property.”

**151      Amendment of section 238 (Compensation)**

Section 238 is amended by inserting the following subsection after subsection (1):

- “(1A) If compensation is payable under subsection (1) for damage relating to common property in a strata scheme, the compensation is payable to the strata scheme corporation.”

**152      New Part XXVA**

The following Part is inserted after Part XXV:

**“PART XXVA    VALUATION OF ESTATES IN LAND**

**238A      Valuation roll**

- (1) The Valuer General must make or cause to be made a roll (the valuation roll) setting out the unimproved value of an estate in land so far as that value is required for calculating rent under this Act or a rate imposed by Honiara City Council.
- (2) If a valuation of an estate in land is required for calculating a tax or some other impost under a law of Solomon Islands, the valuation roll may be extended to include that valuation.
- (3) Initially, the valuation roll may be based on the unimproved value of estates in land as recorded immediately before the commencement of this section in the records of the Commissioner or the rolls kept for calculating rates imposed by Honiara City Council, regardless of the accuracy of those valuations or when they were made.
- (4) The Valuer General must instigate a systematic program of updating the valuation roll taking into account available resources and, for that purpose, may divide Solomon Islands into various areas with a view to undertaking a general valuation of estates in land in each area as at a specified date for that area.
- (5) Every effort must be made to conduct a general valuation of estates in land in an area at least once every 5 years, unless the Valuer General is of the opinion that the value of land within the area has not materially increased or diminished since a previous general valuation of estates in land within the area.

### **238B Form of valuation roll**

An entry in the valuation roll must contain the following particulars:

- (a) the name of the owner of the estate in the land and the type of estate;
- (b) a description of or reference to the land sufficient to identify it;
- (c) the unimproved value of the estate in the land;
- (d) the date from which the valuation applies;
- (e) such additional particulars as the Valuer General may determine.

### **238C Amendment of valuation roll**

- (1) The Valuer General may amend the valuation roll so as to add a valuation of an estate in land that has not previously been valued or separately valued under this Part or if, in the opinion of the Valuer General, the value of the estate in the land has been materially enhanced or diminished, or such a valuation is, for any reason whatsoever, necessary or expedient.
- (2) The Valuer General must amend the valuation roll as necessary to include relevant lot values when a statement, or amendment of a statement, of strata scheme lot values is filed.
- (3) The Valuer General must correct or amend a valuation or entry in the valuation roll if the Valuer General discovers or receives notice of an error in the valuation or entry.
- (4) The Valuer General must amend an entry in the valuation roll if the Valuer General receives notice of a change in the ownership of the estate in the land to which it relates.
- (5) The Valuer General may amend a valuation and the valuation roll if the Valuer General discovers or receives notice that the valuation is not consistent with other valuations in force under this Part (provided that this subsection only applies if the amended valuation will be less than the original valuation).

**238D Inspection of and provision of copy of or extract from valuation roll**

- (1) The Valuer General must make a copy of or extract from the valuation roll (including any amendments made from time to time) available to the Commissioner, Honiara City Council, and to any public authority or local council, as necessary for the performance of official functions.
- (2) The Valuer General must:
  - (a) at the request of the owner of an estate in land or an occupier of land, permit the owner or occupier to inspect, free of charge, entries in the valuation roll relating to that land; and
  - (b) at the request of any person, and on payment of the fee fixed by the regulations, provide that person with a copy of, or extract from, an entry in the valuation roll as to the value of an estate in the land.
- (3) In proceedings, a copy of, or extract from, an entry in a valuation roll certified by the Valuer General will be proof, in the absence of proof to the contrary, of the matters contained in the entry.

**238E Notice of valuation**

- (1) The Valuer General must serve notice of a valuation under this Part on the owner or occupier of the land, or both, as the Valuer General considers appropriate.
- (2) If particulars of the valuation are included in an account, assessment or notice for rent under this Act or for rates, tax or some other impost under another Act, that document will, subject to the regulations, be taken to constitute the notice of valuation required under subsection (1) and service of that document under the Act imposing the rent, rates, tax or other impost will be taken to constitute service of the notice under subsection (1).
- (3) A valuation is not invalid, nor is its operation affected, by reason only of a failure to serve notice of the valuation under this section.
- (4) This section does not apply to the initial inclusion of valuations in the valuation roll under 238A(3).

**238F      Objection to valuation**

- (1) Subject to this section, a person who is dissatisfied with a valuation of an estate in land in force under this Part may, by notice in writing served personally or by post on the Valuer General, object to the valuation.
- (2) After notice of a valuation (whenever made) is first served on the owner or occupier of the land, an objection to the valuation may be made by the owner or occupier within 60 days after the date of service of the notice.
- (3) A person may not make an objection to a valuation if the Valuer General has previously considered an objection by that person to the valuation.
- (4) The Valuer General may, for reasonable cause shown by a person entitled to make an objection to a valuation, extend the period within which the objection may be made (whether or not the period for objection to the valuation that would otherwise apply under this section has already expired).
- (5) A notice of objection under subsection (1) must contain a full and detailed statement of the grounds on which the objection is based.
- (6) This section does not apply to the initial inclusion of valuations in the valuation roll under 238A(3).

**238G      Valuer General to consider and decide on objection**

- (1) The Valuer General must, as soon as practicable, consider any objection made under this Part and may either allow or disallow the objection.
- (2) On the determination of an objection, the Valuer General must:
  - (a) serve on the person by whom the objection was made written notice of the Valuer General's decision on the objection, the reasons for that decision and the right of the person to appeal against the decision; and
  - (b) if the Valuer General decides to allow an objection, either wholly or in part—the Valuer General must alter the valuation and valuation roll to conform with the decision.

**238H Appeal against decision of Valuer General on objection**

- (1) A person who has made an objection to a valuation under this Part may appeal against the decision of the Valuer General on the objection to the High Court.
- (2) An appeal must be made to the High Court within 1 month after the person receives written notice of the making of the decision to which the appeal relates or such longer period as the High Court, on application, allows.
- (3) On an appeal, the High Court may:
  - (a) affirm the decision of the Valuer General; or
  - (b) substitute the decision of the Valuer General with a decision that the Court considers appropriate.

**238I Access to land and documents and provision of information**

- (1) For this Part, the Valuer General or a person authorised in writing by the Valuer General may:
  - (a) enter land and inspect, measure or survey the land as necessary or expedient to determine the value of an estate in the land; and
  - (b) put to the owner or occupier of the land or any person on the land any questions relating to the value of an estate in the land.
- (2) The Valuer General and any person authorised in writing by the Valuer General must be given full and free access to all maps, plans, documents and books that are relevant to the determination of the value of an estate in land in the possession of any Ministry or department of Government, Honiara City Council, a public authority or a local council.



- (3) A person commits an offence if:
- (a) the person:
    - (i) hinders or obstructs the Valuer General or a person authorised in writing by the Valuer General in the performance of functions under this Part; or
    - (ii) refuses or fails truthfully to answer a question lawfully put to the person under this section; and
  - (b) the person knows that the Valuer General or person is exercising official powers.

Maximum penalty: 10,000 penalty units.

**238J Returns to be completed by owners**

- (1) The Valuer General may, for this Part, serve on the owner of an estate in land forms to be completed and returned to the Valuer General within the period specified on the forms.
- (2) The forms may contain such questions as the Valuer General may determine with reference to:
  - (a) the use of the land; and
  - (b) the nature and value of improvements on the land; and
  - (c) the tenancies (if any) to which the land is subject; and
  - (d) any other matters relevant to the valuation of an estate in the land.
- (3) The Valuer General may require a person by whom a form is completed and returned under this section to verify the contents of the form by statutory declaration.
- (4) A person commits an offence if:
  - (a) the person fails to complete and return a form served on the person under subsection (1); or

- (b) returns such a form containing false or misleading information and the person knows, or is reckless as to whether, the information is false or misleading.

Maximum penalty: 10,000 penalty units.

- (5) In this section:

**“misleading information”** means information that is misleading in a material particular or because of the omission of a material particular.”

**153 Amendment of section 260 (Regulations)**

Section 260(2) is amended by deleting paragraph (e).

**Division 2 Amendment of Land and Titles (General) Regulations**

**154 Land and Titles (General) Regulations amended**

This Division amends the *Land and Titles (General) Regulations*.

**155 Amendment of regulation 6 (Fees)**

Regulation 6(1) is amended by inserting the following entry at the end of the table:

“For a copy of, or extract from, an entry in the valuation roll \$5 per page”

**Division 3 Amendment of Local Government (Exemption from Basic Rate) (Honiara) Regulations**

**156 Local Government (Exemption from Basic Rate) (Honiara) Regulations amended**

This Division amends the *Local Government (Exemption from Basic Rate) (Honiara) Regulations*.

**157 Amendment of regulation 3 (Exemption of persons paying property rate)**

Regulation 3 is amended by deleting “an appeal to the Valuation Court established under the said Regulations or to the High Court, as the case may be” and substituting “the determination of an objection or appeal relating to a valuation of the estate under the *Land and Titles Act (Cap. 133)*”.

**Division 4 Amendment of Local Government (Rating of Land) Regulations**

**158 Local Government (Rating of Land) Regulations amended**

This Division amends the *Local Government (Rating of Land) Regulations*.

**159 Amendment of regulation 2—Interpretation**

- (1) Regulation 2 (1) is amended by deleting the definition of “**improvements**”.
- (2) Regulation (2)(1) is amended by deleting “, lease of” from paragraph (b) of the definition of “**owner**” and substituting “(including a strata title within the meaning of the *Strata Titles Act 2017*), or a lease or”.
- (3) Regulation 2(1) is amended by deleting the definitions of “**unimproved value**”, “**valuation roll**” and “**valuer**” and substituting the following definition:

“**unimproved value of rateable land**” means the value that is the unimproved value of the estate in the land held by the owner of the rateable land for calculating rent incident to that estate under the *Land and Titles Act (Cap. 133)*.”

**160 Amendment of heading to Part II**

The heading to Part II is amended by striking out “VALUATION” and substituting “RATE-BOOK”.

**161 Repeal of regulations 3 to 8**

Regulations 3 to 8 are repealed.

**162 Amendment of regulation 9 (Valuation and assessment to be entered in rate-book)**

- (1) Regulation 9(1) is amended by deleting "Commissioner of Lands" and substituting "Valuer General".
- (2) Regulation 9(1) is amended by deleting "regulation 11" and substituting "the *Land and Titles Act* (Cap. 133)".
- (3) Regulation 9(2) is repealed.

**163 Repeal of regulations 10 and 11**

Regulations 10 and 11 are repealed.

**164 Amendment of regulation 12 (Alteration of rate-book)**

- (1) Regulation 12 is amended by deleting paragraph (b) and substituting the following paragraph:  
  
" (b) correcting any error that has been corrected in the valuation roll;"
- (2) Regulation 12(d) is amended by deleting "subdivided" and substituting "divided".

**165 Substitution of regulations 13 to 20**

Regulations 13 to 20 are repealed and the following regulation is substituted:

**"13 Rate may be levied despite objection or appeal to valuation**

- (1) An objection or appeal against a valuation of an estate under the *Land and Titles Act* (Cap. 133) does not preclude the recovery of a rate pending determination of the objection or appeal.

- (2) However, if, on the determination of the objection or appeal, the valuation and consequently the rate-book are altered, any excess paid must be repaid and any deficiency must be paid and may be recovered as if it were in arrears.”

**166 Amendment of regulation 21 (General property rate)**

Regulation 21 is amended by deleting “assessed in accordance with these Regulations”.

**167 Amendment of regulation 24 (Rates to be assessed on unimproved value of rateable land)**

Regulation 24(2) is amended by deleting “, subject to regulations 11, 12, 17 and 18” and by deleting “shown in the rate-book”.

**168 Amendment of regulation 25 (Demand note to be served on ratepayer)**

Regulation 25(b) is amended by inserting “(and, if that value has changed since the last rate notice, an explanation of the owner’s right to object to the valuation under the *Land and Titles Act* (Cap. 133))” at the end of the paragraph.

**Division 5 Amendment of Planning and Development Act (Cap. 154)**

**169 Planning and Development Act amended**

This Division amends the *Planning and Development Act* (Cap. 154).

**170 Amendment of section 14 (Provision for development)**

Section 14(2) is amended by deleting “the subdivision of land” and substituting “the division of land (including by registration of a strata scheme or amendment of a strata scheme under the *Strata Titles Act 2017*)”.

**171 New section 16A**

The following section is inserted after section 16:

**“16A Referral of application for division or combination to  
Commissioner of Lands**

- (1) If a development will involve the division or combination of land under section 140 of the *Land and Titles Act* (Cap. 133) (including on termination of a strata scheme under the *Strata Titles Act 2017*), an application for permission for the development must be referred by the Planning and Development Board to the Commissioner of Lands.
- (2) On receipt of an application under subsection (1), the Commissioner of Lands must form an opinion as to whether the Commissioner will consent under section 140 of the *Land and Titles Act* (Cap. 133) to the division or combination, assuming that an application is made for that consent and all the requirements of the *Land and Titles Act* (Cap. 133) and, if relevant, the *Strata Titles Act 2017* are met in relation to the application.
- (3) Without limiting the matters that the Commissioner of Lands may take into account under subsection (2), the Commissioner must consider whether land tenure arrangements other than those proposed are preferable or necessary in the circumstances in order to secure the desired planning and development outcomes or in the public interest.
- (4) If the Commissioner of Lands gives written notice to the Planning and Development Board that the Commissioner will not consent to the division or combination of land, the Board must reject the application for development permission.
- (5) If the Commissioner of Lands gives written notice to the Planning and Development Board that the Commissioner will consent to the division or combination of land, the Commissioner is bound to grant the consent if an application is made for that consent and all the requirements of the *Land and Titles Act* (Cap. 133) and, if relevant, the *Strata Titles Act 2017* are met in relation to the application.
- (6) The decision of the Board to reject an application on the basis of the decision of the Commissioner of Lands is not subject to appeal, but the decision of the Commissioner is to be regarded as a decision made under section 140 of the *Land and Titles Act* (Cap. 133) for the purposes of an appeal against the decision under that section.

- (7) A copy of a notice under subsection (4) or (5) must be given to the applicant for the development permission.
- (8) If the Commissioner of Lands has not given written notice to the Planning and Development Board as to whether the Commissioner will or will not consent to the division or combination of land within 1 month after the referral of the application for development permission, the Planning and Development Board may proceed assuming that the Commissioner will grant consent (although the Commissioner is not bound to do so)."

## **Schedule 1      Strata scheme corporation functions and powers**

### **Part 1              Performance of functions and exercise of powers**

#### **1                    Common seal**

- (1) A strata scheme corporation must have a common seal bearing its name.
- (2) The seal may only be used:
  - (a) in a manner directed by the strata scheme corporation by ordinary resolution; or
  - (b) if the strata scheme corporation has not given such a direction—in the presence of any 2 of the officers of the strata scheme corporation, both of whom must sign the document to which the seal is affixed as witnesses.
- (3) If the same person holds all the offices of presiding officer, treasurer and secretary, the presence and signature of that person is sufficient for compliance with subclause (2)(b).

#### **2                    No delegations**

A strata scheme corporation, management committee or officer of a strata scheme corporation may not delegate functions or powers under this Act.

*Note—The performance of functions and the exercise of powers by the management committee is governed by section 73.*

*The roles of the officers are set out in sections 76, 77 and 78.*

*As set out in section 79, a strata scheme corporation may, by ordinary resolution, authorise a strata scheme manager to perform all or specified functions or exercise all or specified powers of its management committee or officers.*



### **3 Employee or contractor to assist**

A strata scheme corporation may appoint or engage a person to assist its management committee or officers in the performance of their functions or the exercise of their powers.

## **Part 2 Financial management**

### **4 Statement of expenditure and contributions**

- (1) A statement setting out the following information must be presented by a strata scheme corporation to each annual general meeting of the corporation:
  - (a) the estimated expenditure of a recurrent nature, and the estimated expenditure of a non-recurrent nature, to be made by the strata scheme corporation in the current financial year; and
  - (b) the estimated expenditure in future years for which funds should be raised now and held in reserve; and
  - (c) the amount proposed to be raised by way of contributions from the members of the strata scheme corporation to cover the expenditure referred to in paragraphs (a) and (b).
- (2) A statement presented to a meeting in accordance with this clause forms part of the minutes of the meeting.

### **5 Contributions by members**

- (1) A strata scheme corporation must, by ordinary resolution, fix the amount it requires by way of contributions from the members of the strata scheme corporation.
- (2) Subject to this Act, the share of an amount fixed under subclause (1) to be contributed by a member is determined by the relative strata lot value applicable to the member, unless otherwise provided by a unanimous resolution of the strata scheme corporation.
- (3) A strata scheme corporation may, by ordinary resolution:

- (a) permit contributions to be paid in instalments specified in the resolution; or
  - (b) fix interest payable in respect of a contribution, or an instalment of a contribution, that is in arrears.
- (4) The interest payable by a member in respect of a contribution, or an instalment of a contribution, that is in arrears must not exceed a rate of 20% per annum (or, if some other rate is specified in the regulations, that rate) and the strata scheme corporation must not demand payment of interest on unpaid interest.
- (5) A contribution, or an instalment of a contribution, is payable on the day specified for payment in a notice served by the strata scheme corporation on the member.
- (6) The notice must:
- (a) identify the lot in relation to which the contribution or instalment is payable; and
  - (b) specify the amount of the contribution or instalment; and
  - (c) in the case of a contribution that is payable in instalments—specify the amount of each instalment and the day on which each instalment is payable; and
  - (d) specify the day on or before which the contribution or instalment must be paid (being a day not less than 14 days after the notice is served); and
  - (e) specify the total amount that the strata scheme corporation has decided to raise by way of contributions from members; and
  - (f) specify the purpose or purposes for which the money raised will be used; and
  - (g) specify the rate of interest payable in respect of a contribution or instalment that is in arrears; and
  - (h) specify how payment may be made; and
  - (i) include any other information required by the regulations; and

- (j) be served on the member at least 14 days before the date for payment.
- (7) Payment of a contribution, instalment or interest is enforceable jointly and severally against the owner or owners of a strata lot and the subsequent owner or owners of the strata lot.
- (8) A contribution, instalment or interest may be recovered as a debt.
- (9) If a leaseback arrangement is in force, the lessee and not the owners of the strata lots that are subject to the leases comprising the leaseback arrangement must pay the amount of the contribution.
- (10) An amount paid by a person under this clause is not recoverable by the person from the strata scheme corporation when the person ceases to be a member of the strata scheme corporation.

## **6 Cases where owner not liable to contribute**

- (1) A member of the strata scheme corporation to whom the strata scheme corporation is under a financial or other obligation cannot be required to contribute to the satisfaction of that obligation by the corporation.
- (2) If a primary strata scheme corporation is under a financial or other obligation to the owner of a secondary strata lot, the owner of the secondary strata lot cannot be required to contribute to the contribution to be made by the secondary strata scheme corporation to the satisfaction of that obligation.
- (3) If a member of a strata scheme corporation and the strata scheme corporation were parties to proceedings before a court or other tribunal and the corporation has been ordered to pay the member's costs or the corporation and the member are to bear their own costs, the member cannot be required to contribute to the payment by the corporation of the corporation's costs in those proceedings.

- (4) If a primary strata scheme corporation and the owner of a secondary lot were parties to proceedings before a court or other tribunal and the corporation has been ordered to pay the owner's costs or the corporation and the owner are to bear their own costs, the owner of the lot cannot be required to contribute to any contribution to be made by the secondary strata scheme corporation to the payment of the corporation's costs in those proceedings.

## **7 Administrative and sinking funds**

- (1) A strata scheme corporation must establish an administrative fund and a sinking fund.

*Note—Strata scheme by-laws may exempt a strata scheme corporation from this provision if there are only 2 strata lots in the scheme: see section 55.*

- (2) Subject to subclauses (3) and (4), non-recurrent expenditure must be made from the sinking fund and all other expenditure of the strata scheme corporation must be made from the administrative fund.
- (3) Expenditure must not be made from a fund to satisfy a financial or other obligation to a member of the strata scheme corporation who cannot be required to contribute to that expenditure or to pay legal costs that the member cannot be required to contribute to, if the expenditure, or part of the expenditure can be traced to a contribution made by the member directly or, if the owner is the owner of a secondary strata lot, by way of a contribution made by the secondary strata scheme corporation.
- (4) Expenditure must not be made from a fund to satisfy a financial or other obligation to the owner of a lot in a related secondary strata scheme who cannot be required to contribute to that expenditure or to pay legal costs that the owner cannot be required to contribute to, if the expenditure, or part of the expenditure can be traced to a contribution made by the secondary strata scheme corporation directly.
- (5) Subject to this clause, contributions of members and other money received by a strata scheme corporation must be credited to the administrative or sinking fund according to the purpose for which the money will be used.

- (6) Money received on sale of assets of a strata scheme corporation must be credited to the sinking fund.
- (7) All money to be credited to a fund must:
  - (a) be paid into an account in the strata scheme corporation's name at a bank or at some other financial institution of a kind specified in the regulations; or
  - (b) if the strata scheme corporation has assigned its power to receive and hold money to a strata scheme manager—be paid into a trust account held by the manager at a bank or at some other financial institution of a kind specified in the regulations.

## **8 Disposal of excess money in funds**

If, in the opinion of a strata scheme corporation, more money than is required by the corporation is held in the administrative fund or the sinking fund, the excess may, by special resolution of the corporation:

- (a) be transferred to the other fund; or
- (b) be distributed between the members of the strata scheme corporation according to their relative strata lot values.

## **9 Power to borrow**

A strata scheme corporation may borrow money or obtain other forms of financial accommodation and may, subject to this Act and the regulations, give such security for that purpose as it thinks fit.

## **10 Limitation on expenditure**

Expenditure of an amount exceeding the amount specified in the regulations must not be made by a strata scheme corporation unless the expenditure has been specifically authorised by an ordinary, special or unanimous resolution of the corporation, depending on the amount involved as set out in the regulations.

## **11 Accounting records and statement of accounts**

- (1) A strata scheme corporation must make proper accounting records of its receipts and expenditure.

- (2) A strata scheme corporation must, within 3 months after the end of a financial year, prepare a statement of accounts in respect of each financial year showing:
  - (a) the assets and liabilities of the corporation at the end of the financial year; and
  - (b) the income and expenditure of the corporation for the financial year.
- (3) Records and statements made and prepared under this clause must be kept by the strata scheme corporation for at least 7 years.

## **12 Audit**

- (1) Subject to subclause (3), a strata scheme corporation must have the annual statement of accounts audited by an auditor.
- (2) A member of the strata scheme corporation and any person who has a personal or pecuniary interest in the results of an audit must not be appointed as auditor.
- (3) An annual statement of accounts in respect of a financial year need not be audited in any of the following circumstances:
  - (a) if:
    - (i) the aggregate of the contributions made or to be made by members of the strata scheme corporation in respect of that year does not exceed \$20,000 (or, if some other amount is specified in the regulations, that amount); and
    - (ii) the balance standing to the credit of the administrative fund and the sinking fund at the commencement of that year does not exceed \$80,000 (or, if some other amount is specified in the regulations, that amount);
  - (b) if all strata lots are owned by the same person;
  - (c) if:
    - (i) the strata scheme consists only of strata lots used for residential purposes; and

- (ii) there are not more than 6 strata lots; and
  - (iii) the strata scheme corporation, by unanimous resolution, resolves not to have the statement of accounts for that financial year audited;
- (d) if the regulations exempt the strata scheme corporation from the requirement;
- (e) if there are only 2 strata lots in the strata scheme and the strata scheme by-laws exempt the strata scheme corporation from the requirement.

### **Part 3                    Acquisition, maintenance and use of property**

#### **Division 1                Strata lots**

#### **13                    Power to enforce duties of maintenance and repair etc**

- (1) A strata scheme corporation may, by written notice to the owner of a strata lot, require the owner:
- (a) to carry out specified work in pursuance of a duty of maintenance or repair imposed on the owner by this Act or the strata scheme by-laws; or
  - (b) to carry out specified work to remedy:
    - (i) a contravention of this Act or the strata scheme by-laws by the owner or a former owner or an occupier or former occupier of the lot; or
    - (ii) a situation that is likely to result in a contravention of this Act or the strata scheme by-laws; or
  - (c) to carry out specified work required to be carried out on the lot by a local government council or a public authority.
- (2) Without limitation, an owner may be required under subclause (1)(b)(i) to remedy a structural deficiency caused by the contravention or to restore the lot to its state prior to the contravention.

- (3) Subject to subclause (4), if the owner of a lot does not comply with a requirement imposed under this clause within the time allowed in the notice, a person or persons authorised by the strata scheme corporation may (using such force as may be reasonably necessary in the circumstances) enter the lot and carry out the specified work.
- (4) A power of entry must not be exercised under subclause (3) unless the owner and the occupier of the lot have been given at least 2 days' written notice of the proposed entry.
- (5) A person must not use force to enter a strata lot or a building on any other lot under subclause (3) except pursuant to an order of the Magistrate's Court authorising the entry.
- (6) Despite any other provision of this clause, an officer of a strata scheme corporation or a person or persons authorised by a strata scheme corporation may, if satisfied that urgent action is necessary to avert a risk of death or injury or significant damage to property, enter a lot (using such force as may be reasonably necessary in the circumstances) and carry out such work as is reasonably necessary to deal with the risk.
- (7) A person proposing to enter a lot in accordance with subclause (6) must give such notice (if any) to the owner and occupier of the lot as the person considers reasonable in the circumstances.
- (8) Costs reasonably incurred by the strata scheme corporation in having work carried out under this clause may be recovered as a debt from the owner of the lot.
- (9) If the circumstances giving rise to a requirement for work to be carried out under this clause are attributable to the act or default of a person other than the owner of the lot concerned, the owner of the lot concerned may recover from that other person, as a debt, costs incurred in complying with a notice under subclause (1) or recovered from the owner under subclause (8).
- (10) If a strata scheme is subject to a leaseback arrangement, this clause applies to, and in relation to, the lessee instead of the owners of the lots.



- (11) In this clause, a secondary strata scheme corporation is to be regarded as the owner of the primary strata lot divided by the secondary strata scheme.

## **Division 2      Common property**

### **14      Maintenance of common property**

A strata scheme corporation must:

- (a) maintain the common property in good order and condition; and
- (b) if practicable, establish and maintain lawns or gardens on those parts of the common property not required or used for any other purpose.

### **15      Use of common property**

- (1) The common property may be used for any lawful purpose including a commercial purpose.
- (2) A strata scheme corporation may not cause or permit the common property or the property of the corporation to be used to produce income unless that use is authorised by a unanimous resolution of the corporation.
- (3) Any income arising from the use of the common property must be paid into the administrative fund or the sinking fund of the strata scheme corporation.

### **16      Improvements on common property**

A strata scheme corporation may not cause or permit a building to be erected on the common property or any other improvements of the common property to be made unless that activity is authorised by special resolution of the corporation.

**17 Easement or profit over or for the benefit of common property**

- (1) A strata scheme corporation may, if authorised to do so by a unanimous resolution of the corporation, grant an easement or profit over the common property or consent to the extinguishment of an easement or profit that was granted for the benefit of the common property.
- (2) A strata scheme corporation may, by ordinary resolution, accept the grant of an easement or profit for the benefit of the common property or consent to the extinguishment of an easement or profit over the common property.

**Division 3 Leasing of common property and lots**

**18 Limitations on leasing of common property and lots**

- (1) A right to occupy the whole or a part of the common property to the exclusion of all or some of the owners or occupiers of the strata lots or any secondary strata lots:
  - (a) may be granted by the strata scheme corporation pursuant to a unanimous resolution of the corporation; and
  - (b) must not be granted contrary to the strata scheme description.
- (2) A right to occupy the whole or a part of the common property or a strata lot:
  - (a) must not be granted contrary to the strata scheme by-laws; and
  - (b) in the case of the common property, or a lot, in a secondary strata scheme—must not be granted contrary to the by-laws of the primary strata scheme.

*Note—The only restriction that the by-laws can impose in relation to the leasing or occupancy of a lot relates to short term occupancy—see section 58(2).*

## **Division 4      Other property**

### **19      Acquisition of property**

- (1) A strata scheme corporation may acquire for the use and enjoyment of all or some of the owners and occupiers of the strata lots and, in the case of a primary strata scheme corporation, the strata lots of any related secondary strata scheme:
  - (a) a strata title; or
  - (b) a fixed-term estate in a parcel of land (that is, a parcel not divided by a strata scheme); or
  - (c) a licence or concession related to land; or
  - (d) an interest in personal property.
- (2) If a strata scheme corporation has acquired a fixed-term estate in a parcel of land outside the strata parcel or a strata title in a lot outside the strata parcel, it may (but is not obliged to) apply to the Commissioner of Lands for the amendment of the strata scheme to include the estate in the strata parcel.
- (3) An acquisition under subclause (1) must:
  - (a) in the case of the acquisition of a strata title—be authorised by a unanimous resolution of the strata scheme corporation; and
  - (b) in any other case—be authorised by:
    - (i) if the cost of acquisition is above \$5,000 (or, if some other amount is specified in the regulations, that amount)—by unanimous resolution; and
    - (ii) in any other case—by special resolution.

### **20      Maintenance of property**

A strata scheme corporation must maintain its property in good order and condition.

## **21 Power to require handing over of property**

- (1) A strata scheme corporation may by written notice to a person who has possession of a record, key, or other property of the corporation, require that person to deliver it to an officer of the corporation, or some other person, named in the notice on or before a specified time.
- (2) A person commits an offence if the person fails to comply with a requirement under subclause (1).

Maximum penalty: 100,000 penalty units.

## **Part 4 Insurance**

### **22 Strata scheme insurance**

- (1) A strata scheme corporation commits an offence if it does not ensure that strata scheme insurance is in place.

Maximum penalty: 500,000 penalty units.

- (2) In the event of a claim, any excess or shortfall resulting from under insurance must be met by the strata scheme corporation.

### **23 Application of insurance money**

A strata scheme corporation must, subject to a unanimous resolution of the corporation to the contrary, apply money received by it under a policy of insurance, and any excess or shortfall that it is required to meet, in making good the loss in respect of which the money was paid.

### **24 Right to inspect policies of strata scheme insurance**

- (1) The owner, and a prospective owner, of a lot and a registered chargee, prospective chargee, registered lessee, or prospective lessee, of a lot are entitled to inspect policies of strata scheme insurance that are in place.

- (2) The owner, and a prospective owner, of a secondary lot and a registered chargee, prospective chargee, registered lessee, or prospective lessee, of a secondary lot are entitled to inspect policies of strata scheme insurance that are in place for the primary strata scheme.
- (3) A strata scheme corporation commits an offence if a request made under this clause for the inspection of policies of strata scheme insurance is not complied with within 5 business days after the making of the request.

Maximum penalty: 50,000 penalty units.

## **Part 5 Provision of services and work**

### **25 Strata scheme corporation may provide services**

- (1) A strata scheme corporation may provide services that relate to the ownership or occupation of lots in the strata scheme or a related strata scheme for the benefit of owners and occupiers of the lots.
- (2) The strata scheme corporation may charge for the provision of those services.
- (3) However:
  - (a) a service must not be provided to a person who has not agreed with the strata scheme corporation to accept the service; and
  - (b) the cost of the service must be paid for by the persons who have agreed to accept it and must not be subsidised by the strata scheme corporation.

### **26 Recovery of costs of work**

- (1) If the strata scheme corporation carries out work at the request, or with the consent, of the owner of a strata lot in the strata scheme or a related strata scheme and the work wholly or substantially benefits that lot to the exclusion of the other strata lots, the strata scheme corporation may, subject to any agreement to the contrary, recover the cost of that work as a debt from the owner of the strata lot.

- (2) If a debt referred to in subclause (1) is recoverable from the owners of 2 or more strata lots, they are liable jointly and severally for the debt and are entitled to contribution amongst each other according to the relative strata lot values of the lots.

## **Part 6                      Strata scheme documents and records**

### **27                      Obligation to keep up-to-date strata scheme documents available**

- (1) A strata scheme corporation must make up-to-date copies of the strata scheme documents available for inspection or purchase by:
  - (a) owners and occupiers of strata lots in the strata scheme and (if applicable) of secondary strata lots in a related strata scheme; and
  - (b) persons considering purchasing a lot referred to in paragraph (a) or entering into any other transaction in relation to such a lot.
- (2) The inspection of strata scheme documents must be free of charge and a fee charged for the purchase of strata scheme documents must not exceed the fee fixed by the regulations.

### **28                      Register of members**

- (1) A strata scheme corporation must maintain a register of the names of the members of the strata scheme corporation which shows:
  - (a) the last contact address, telephone number and email address known to the corporation of each member; and
  - (b) the member's relative strata lot value.
- (2) A strata scheme corporation must keep a record of the information used to compile the register for at least 7 years.

*Note—Strata scheme by-laws may exempt a strata scheme corporation from this provision if there are only 2 or 3 strata lots in the scheme: see section 55.*

**Records**

- (1) A strata scheme corporation must:
  - (a) make a record of any notice or order served on the corporation; and
  - (b) make such other records as are required to be made by the regulations.
  
- (2) A strata scheme corporation must keep the following for at least 7 years:
  - (a) copies of all notices of meetings of the corporation and of its management committee;
  - (b) a record of all decisions of the corporation and of its management committee;
  - (c) a copy of all correspondence received or sent by the corporation or its management committee or officers;
  - (d) receipts for the expenditure of money;
  - (e) documents providing evidence of the deposit or investment of money;
  - (f) bank or other financial institution statements and all other documents providing evidence of dealing with money invested or on deposit;
  - (g) other documentary material required to be kept by the regulations.
  
- (3) A strata scheme corporation must keep the minutes of meetings of the corporation and of its management committee for at least 30 years.

**Information to be provided**

- (1) A strata scheme corporation must, on application by or on behalf of a member of the corporation or a prospective owner or the registered chargee, prospective chargee, registered lessee, or prospective lessee of a lot, within 5 business days after the making of the application:
  - (a) provide a statement setting out:
    - (i) particulars of any contribution payable by the member or in relation to the lot (including details of any arrears of contributions); and
    - (ii) particulars of the assets and liabilities of the strata scheme corporation; and
    - (iii) particulars of any expenditure that the strata scheme corporation has incurred, or has resolved to incur, and to which the members of the corporation must contribute, or is likely to be required to contribute; and
    - (iv) particulars in relation to any other matter specified in the regulations; and
  - (b) provide copies of:
    - (i) the minutes of general meetings of the strata scheme corporation and meetings of its management committee for such period, not exceeding 2 years, specified in the application; and
    - (ii) the statement of accounts of the strata scheme corporation last prepared by the corporation; and
    - (iii) current strata scheme insurance policies; and
  - (c) make available for inspection such information as is required to establish the current financial position of the strata scheme corporation including:
    - (i) a copy of the accounting records of the corporation; and



- (ii) other documentary material specified in the regulations; and
  - (d) if the strata scheme corporation is a party to a contract with a strata scheme manager—make available for inspection a copy of the contract; and
  - (e) make available for inspection the register of the names of the members of the corporation.
- (2) A person to whom a statement of a strata scheme corporation is provided under subclause (1)(a) may, as against the strata scheme corporation, rely on the statement as conclusive evidence (as at the date of the statement) of the matters contained in the statement.
- (3) A strata scheme corporation must, on application by an owner of a lot, provide the applicant, on a quarterly basis, with bank or other financial institution statements for all accounts maintained by the corporation (and continue to so provide the statements until the applicant ceases to be an owner or revokes the application).
- (4) Subclause (3) does not apply to a strata scheme corporation if a strata scheme manager maintains the accounts on behalf of the corporation.
- (5) An application under this clause:
- (a) may be given to the secretary of the strata scheme corporation or any member of the management committee; and
  - (b) must, unless the regulations prohibit a fee being charged, be accompanied by the fee charged by the strata scheme corporation in accordance with the regulations.
- (6) A strata scheme corporation commits an offence if:
- (a) the corporation contravenes subclause (1) or (3); or
  - (b) the corporation charges more than the fee fixed by the regulations for a service provided under an application under this clause.

Maximum penalty: 50,000 penalty units.

- (7) The owner or prospective owner or the registered chargee, prospective chargee, registered lessee or prospective lessee of a secondary lot may apply to the primary strata scheme corporation for information under this clause and, in that case, the clause applies to the application as though the lot concerned were a primary lot instead of a secondary lot.

## **Schedule 2     Strata scheme corporation procedures**

### **1            Annual general meeting**

- (1) The annual general meeting of a primary strata scheme corporation must be held within 3 months after the commencement of each financial year.
- (2) The annual general meeting of a secondary strata scheme corporation must be held within 6 months after the commencement of each financial year.

### **2            Convening of general meetings**

- (1) A general meeting (other than the first statutory general meeting) of a strata scheme corporation may be convened:
  - (a) by an officer of the strata scheme corporation; or
  - (b) any 2 members of the management committee of the strata scheme corporation; or
  - (c) by a member or members of the strata scheme corporation:
    - (i) whose relative strata lot value or combined relative strata lot values is 0.2 or more; or
    - (ii) who holds, or who together hold, 20% or more of the total number of strata lots in the scheme; or
  - (d) on the order of a court on an application made under Part 7.
- (2) A meeting (including the first statutory general meeting) is convened by giving written notice of the day, time and place of the meeting to all members of the strata scheme corporation at least 14 days before the date of the meeting.
- (3) A member may not nominate another person to be given notices referred to in subclause (2) on the member's behalf (although nothing prevents the strata scheme corporation from agreeing to provide notices to such a person in addition to the member).

- (4) The day, time and place of the meeting must be reasonably convenient to a majority of the members of the strata scheme corporation.
- (5) The notice convening a general meeting must set out the agenda for the meeting.
- (6) The agenda must include:
  - (a) the text of, and a statement of the reasons for, any unanimous or special resolutions to be moved at the meeting; and
  - (b) a motion confirming the minutes of the previous general meeting; and

*Note—It is not necessary for the minutes to be confirmed before the decisions made at the previous general meeting may be acted on.*

- (c) in the case of the first statutory general meeting—the matters required to be dealt with by section 69(6); and
- (d) in the case of an annual general meeting:
  - (i) if there is a strata scheme manager—presentation of a report on the operations of the manager in the previous financial year; and
  - (ii) presentation of the statement of accounts for the previous financial year; and
  - (iii) in the case of a strata scheme corporation that is required to have its annual statement of accounts audited—the appointment of an auditor of the accounts for the current financial year; and
  - (iv) presentation of a statement of expenditure and contributions as required by Schedule 1 clause 4; and
  - (v) the determination of the contributions to be paid by members for the current financial year; and
  - (vi) presentation of copies of the strata scheme insurance policies; and

- (vii) the appointment of management committee members and officers until the next annual general meeting; and
- (viii) if it is proposed to enter into a contract, or renew or extend a contract, with a strata scheme manager:
  - (A) the text of the resolution to enter into, or renew or extend, the contract; and
  - (B) how and when a copy of the proposed contract can be viewed or obtained by members of the corporation; and
- (ix) such other matters as are required by the regulations.

### 3 Requirements for ordinary, special and unanimous resolutions

- (1) An “**ordinary resolution**” of a strata scheme corporation is a resolution passed at a properly convened meeting of the strata scheme corporation by a simple majority of the votes of members present and voting on the resolution.
- (2) A “**special resolution**” of a strata scheme corporation is a resolution:
  - (a) of which at least 14 days’ notice setting out the text of and the reasons for the proposed resolution has been served on all the members of the corporation; and
  - (b) that is passed at a properly convened meeting of the corporation at which:
    - (i) the number of votes (if any) cast against the resolution is 25% or less of the total number of votes that could be cast at a meeting at which all members are present and entitled to vote; or
    - (ii) if there are 3 lots in the strata scheme and there is 1 vote for each lot—either no vote, or only 1 vote, is cast against the resolution.
- (3) A “**unanimous resolution**” of a strata scheme corporation is a resolution:

- (a) of which at least 14 days' notice setting out the text of and the reasons for the proposed resolution has been served on all the members of the corporation; and
- (b) that is passed at a properly convened meeting of the corporation without any vote being cast against it.

#### **4 Procedure at meetings**

- (1) The presiding officer will preside at general meetings of the strata scheme corporation.
- (2) In the absence of the presiding officer, a person present may be appointed to preside at the meeting by the persons present and entitled to vote at the meeting.
- (3) The quorum for the transaction of business at a general meeting is determined by dividing the number of persons entitled to attend and vote at the meeting by 2, disregarding any fraction and adding 1.
- (4) If a quorum is not present within half an hour of the time appointed for a general meeting:
  - (a) the members present must appoint:
    - (i) another day for the meeting being at least 7 days and not more than 14 days later; and
    - (ii) the time and place for the meeting; and
  - (b) the meeting stands adjourned to that day at that time and place; and
  - (c) if a quorum is not formed at the adjourned meeting within half an hour—the persons present who are entitled to vote constitute a quorum.
- (5) If a meeting of a strata scheme corporation is adjourned under subclause (4), the secretary must cause reasonable notice of the day, time and place of the adjourned meeting to be given in writing to the members of the strata scheme corporation.

- (a) if only 1 of the owners attends a meeting—the vote is exercisable by that person;
  - (b) if 2 or more of the owners attend a meeting—the vote is exercisable by 1 of them in accordance with an agreement between all the owners attending the meeting but, if there is no such agreement, none of them is entitled to vote.
- (7) The strata scheme developer or an associate of the strata scheme developer cannot be nominated under this clause if 1 or more of the lots is used, or is intended to be used, solely or predominantly for residential purposes (unless the strata parcel is subject to a leaseback arrangement).
- (8) A person who is not an owner of a strata lot but has been nominated by a member of the strata scheme corporation to attend and vote at a general meeting of the corporation must be regarded as a member of the corporation for the purposes of proceedings at the meeting.
- (9) A copy of each written notice of nomination applying in relation to the meeting must be made available for inspection by persons attending the meeting before any matter is voted on at the meeting by:
  - (a) in the case of a nomination relating to the first statutory general meeting—the person presiding at the meeting; or
  - (b) in any other case—the secretary of the strata scheme corporation.
- (10) A person presiding at the first statutory general meeting or the secretary of the strata scheme corporation for any other meeting commits an offence if the notice required by subclause (9) is not available as required by that subclause.

Maximum penalty: 50,000 penalty units.

- (11) A member of a strata scheme corporation may exercise an absentee vote on a proposed resolution by giving the secretary of the corporation written notice of the proposed vote at least 6 hours before the time of the meeting.

- (12) A member attending a meeting of a strata scheme corporation may demand a written ballot on any question.
- (13) The ballot will be taken in such manner as the person presiding at the meeting thinks fit.
- (14) A vote cannot be exercised in relation to a lot (except in relation to a proposal for termination of a strata scheme) unless all amounts payable to the strata scheme corporation in respect of the lot have been paid.
- (15) If the number of votes supporting a resolution is equal to the number of votes against the resolution, the resolution is lost.

## **6 Duty to disclose interest**

- (1) If a person has been nominated to attend and vote at a meeting of a strata scheme corporation on behalf of another person, the following provisions apply:
  - (a) if the nominated person has a direct or indirect pecuniary interest in a matter to be voted on at a meeting, the nominated person commits an offence if the nominated person does not:
    - (i) disclose the nature of the interest:
      - (A) if it is practicable to do so—to the nominated person's principal before the vote is taken; or
      - (B) in any other case—to the nominated person's principal as soon as practicable after the vote is taken; or
    - (ii) disclose the nature of the interest to the members present at the meeting before the vote is taken;
  - (b) if the written notice of nomination declared a pecuniary interest of the member or an owner of the lot in relation to the matter, the nominated person commits an offence if the nominated person does not disclose the nature of the pecuniary interest to the members present at the meeting before the vote on the matter is taken.

Maximum penalty: 500,000 penalty units.



- (2) If the nominated person is a co-owner of the lot for which a vote may be cast, the nominated person is not obliged by subclause (1) to disclose an interest that is held in common with the other co-owners.
- (3) A person commits an offence if:
  - (a) the person attends and is entitled to vote (other than as a nominee) at a meeting of a strata scheme corporation or presides at such a meeting; and
  - (b) the person has a direct or indirect pecuniary interest in a matter to be voted on at the meeting; and
  - (c) the person does not disclose the nature of the interest to the members present at the meeting before the vote is taken.

Maximum penalty: 500,000 penalty units.

- (4) A member of a strata scheme corporation is not obliged to disclose an interest that the member has in common with all of the members of the corporation.
- (5) It is a defence to a prosecution for an offence against this clause that the defendant was not, at the time of the alleged offence, aware of the defendant's interest in the matter.

## **7 Voting by secondary strata scheme corporation as member of a primary strata scheme corporation**

- (1) A secondary strata scheme corporation that is a member of a primary strata scheme corporation may vote at a meeting of the primary strata scheme corporation if it has been authorised to do so by resolution of its members.
- (2) When determining whether a resolution of a primary strata scheme corporation is a unanimous resolution, the vote of a secondary strata scheme corporation that is a member of the primary strata scheme corporation will only be counted if it was authorised by a unanimous resolution of the secondary strata scheme corporation.

- (3) When determining whether a resolution of a primary strata scheme corporation is a special resolution, the vote of a secondary strata scheme corporation that is a member of the primary strata scheme corporation will only be counted if it was authorised by a special resolution of the secondary strata scheme corporation.

## **8 Value of votes cast at general meeting**

- (1) Subject to the strata scheme by-laws, the number of votes that may be cast in respect of each strata lot on a matter arising for decision at a general meeting of a strata scheme corporation is 1.
- (2) A unanimous resolution is required to vary the number of votes required by the strata scheme by-laws that may be cast in respect of each strata lot.
- (3) If the strata scheme developer owns 1 or more of the strata lots and a person, other than the strata scheme developer or an associate of the strata scheme developer, owns 1 or more of the strata lots, the following provisions apply:
  - (a) if none of the other strata lots is owned by an associate of the strata scheme developer, the strata scheme developer is entitled to the lesser of:
    - (i) the aggregate of the votes, determined in accordance with subclause (1), in respect of the lots owned; or
    - (ii) a number of votes equivalent to the aggregate of the votes, determined in accordance with that subclause, that may be exercised by all the other members of the strata scheme corporation;
  - (b) if 1 or more of the other strata lots is owned by an associate of the strata scheme developer, the strata scheme developer and the associate are each entitled to the lesser of:
    - (i) the aggregate of the votes, determined in accordance with subclause (1), in respect of the lots owned; or

- (ii) the aggregate of the votes, determined in accordance with subclause (1), in respect of the lots owned, proportionately adjusted so that the aggregate of the votes that may be exercised by the strata scheme developer and the votes that may be exercised by all associates of the strata scheme developer is equivalent to the aggregate of the votes that may be exercised by all other members of the strata scheme corporation.

*Note—The effect of subclause (3) is that neither the voting power of the strata scheme developer, nor the combined voting power of the strata scheme developer and associates, can ever be greater than the combined voting power of the other members of the strata scheme corporation.*

## **9 Variation or revocation of decisions by strata scheme corporation**

- (1) A decision that is required by this Act to be made by unanimous resolution of a strata scheme corporation may be varied or revoked by a unanimous resolution of the corporation.
- (2) A decision that is required by this Act to be made by a special resolution of a strata scheme corporation may be varied or revoked by a special resolution of the corporation.
- (3) All other decisions of a strata scheme corporation may be varied or revoked by an ordinary resolution of the corporation.

## **Schedule 3 Management committee procedures**

### **1 Convening of committee meetings**

- (1) A meeting of a management committee may be convened by an officer of the strata scheme corporation or by any 2 members of the management committee.
- (2) A meeting is convened by giving written notice of the day, time and place of the meeting to all members of the management committee at least 3 days before the date of the meeting.
- (3) The day, time and place of the meeting must be reasonably convenient to a majority of the members of the management committee.
- (4) The notice convening a meeting must set out the agenda for the meeting.

### **2 Procedure at committee meetings and decisions**

- (1) The presiding officer is to preside at management committee meetings but, in the absence of the presiding officer, the members present may appoint a member to preside at that meeting.
- (2) The quorum for the transaction of business at a management committee meeting is determined by dividing the number of members of the committee by 2, disregarding any fraction and adding 1.
- (3) A decision supported by a majority of the members present at a management committee meeting is a decision of the management committee.
- (4) A member of a management committee may appoint another person to act as the member's proxy at a committee meeting that the member is unable to attend.
- (5) The person appointed must, if each of the strata lots is used, or is intended to be used, solely or predominantly for residential purposes, be another member of the management committee or a member of the strata scheme corporation.

- (6) A decision is made by a management committee without meeting if:
  - (a) written notice setting out the proposed decision is served on every member of the committee; and
  - (b) within 7 days after the notice is served on all members of the committee, a majority of the members give written notice to the secretary setting out the proposed decision and expressing their agreement with it.
- (7) A management committee must cause accurate minutes to be kept of proceedings at its meetings and accurate records to be kept of its decisions.
- (8) Subject to this Act, the regulations, the strata scheme by-laws and any direction of the strata scheme corporation, a management committee may determine procedures at its meetings as it thinks fit.

### **3 Disclosure of interest**

- (1) A member of a management committee who has a direct or indirect pecuniary interest in a matter under consideration by the committee commits an offence if the member:
  - (a) does not disclose the nature of the interest to the committee; or
  - (b) takes part in any deliberations or decisions of the committee in relation to that matter.

Maximum penalty: 500,000 penalty units.

- (2) It is a defence to a prosecution for an offence against subclause (1) that the defendant was not, at the time of the alleged offence, aware of the defendant's interest in the matter.
- (3) A disclosure under this clause must be recorded in the minutes of the management committee.
- (4) In this clause:

***“pecuniary interest of a member of a management committee”*** does not include an interest arising solely from the fact that the member is also a member of the strata scheme corporation.

#### **4 Other duties of members**

- (1) A member of a management committee commits an offence if the member does not:
- (a) act honestly in the performance of the member's functions; or
  - (b) makes improper use of the member's position to gain, directly or indirectly, an advantage personally or for any other person; or
  - (c) discloses personal information, trade secrets or other information that might reasonably be expected to be kept confidential obtained in the performance of the member's functions except as authorised by law or by the person to whom the information relates.

Maximum penalty: 500,000 penalty units or imprisonment for 5 years, or both.

- (2) A member of a management committee:
- (a) must exercise due care and diligence in the performance of the member's functions; and
  - (b) must comply with a code of conduct or other requirements specified in the regulations.
- (3) A reference in this clause to the functions of a member extends, if the member is an officer of the strata scheme corporation, to the functions of the member as such an officer.

#### **5 Validity of acts of committee**

If a management committee acts in good faith, a vacancy in its membership, or the subsequent discovery of a defect affecting the appointment of a member or the right of a person to act as a member, does not invalidate the act of the committee.

#### **6 Protection from liability for members**

- (1) No civil liability attaches to a management committee member for an act or omission in the performance or exercise, or purported performance or exercise, of the member's functions or powers.

- (2) A liability that would, but for subsection (1), lie against a person lies instead against the strata scheme corporation or, if the land divided by the strata scheme is subject to a leaseback arrangement, to the lessee.
- (3) This clause does not prejudice rights of action of the strata scheme corporation in respect of an act or omission not in good faith.
- (4) A reference in this clause to the functions and powers of a member extends, if the member is an officer of the strata scheme corporation, to the functions and powers of the member as such an officer.

## **Schedule 4     Strata scheme manager's trust account**

### **1            Application of Schedule**

This Schedule applies if a strata scheme manager has power to receive and hold money on behalf of a strata scheme corporation.

### **2            Interpretation**

In this Schedule:

***“authorised account”*** means an account at a bank, or other financial institution of a kind specified in the regulations, that provides for the payment of interest on money held in the account;

***“trust account”*** means an account in which trust money is required to be deposited by a strata scheme manager;

***“trust money”*** means money received by a strata scheme manager on behalf of a strata scheme corporation.

### **3            Trust account and deposits**

- (1) A strata scheme manager commits an offence if the manager does not, as soon as practicable after receiving trust money and, in any event, within 5 days, deposit the money in an authorised account in the name of the manager.

Maximum penalty:     200,000 penalty units.

- (2) A strata scheme manager commits an offence if the manager pays money other than trust money into the manager's trust account.

Maximum penalty:     200,000 penalty units.

- (3) A strata scheme manager commits an offence if the manager does not, when applying to open a trust account, inform the bank or other financial institution that the account is to be a trust account for the purposes of this Schedule.

Maximum penalty:     200,000 penalty units.



- (4) If a strata scheme manager receives money on behalf of 2 or more strata scheme corporations and holds the money in 1 trust account, interest credited to the trust account must be credited by the manager proportionately to the strata scheme corporations on whose behalf the money is held.

#### **4 Withdrawal of money from trust account**

- (1) A strata scheme manager commits an offence if the manager withdraws, or permits another person to withdraw, money from a trust account except in accordance with this clause.

Maximum penalty: 200,000 penalty units.

- (2) A strata scheme manager may withdraw money from a trust account:

- (a) in exercise of powers assigned to the manager by the strata scheme corporation; or

- (b) in satisfaction of a claim that the manager has against the strata scheme corporation for fees, costs or disbursements if the strata scheme corporation has agreed in writing to pay to the manager those fees, costs or disbursements; or

- (c) to satisfy an order of a court against the strata scheme corporation; or

- (d) for making any other payment authorised by law.

- (3) A strata scheme manager who becomes entitled to money held in the manager's trust account in or towards satisfaction of the manager's fees, costs or disbursements commits an offence if the manager does not, as soon as practicable (and, in any event, within 3 months), transfer the money to an account maintained by the manager for receipts other than trust money.

Maximum penalty: 50,000 penalty units.

#### **5 Keeping of records and accounts**

- (1) A strata scheme manager commits an offence if the manager does not:

- (a) keep detailed records of all trust money received by the manager and of any disbursement of, or other dealing with, that money; and
- (b) compile detailed accounts of those receipts and disbursements that:
  - (i) accurately disclose the state of the trust account maintained by the manager; and
  - (ii) enable the receipt and disposition of trust money to be conveniently and properly audited; and
  - (iii) comply with all other requirements of the regulations.

Maximum penalty: 200,000 penalty units.

- (2) A strata scheme manager commits an offence if the manager does not keep the accounts and records referred to in this clause in a legible hard copy form, or so as to be readily convertible into such a form, for at least 7 years.

Maximum penalty: 200,000 penalty units.

## **6 Receipts for payment of trust money**

- (1) A strata scheme manager commits an offence if the manager does not, in respect of the receipt of trust money:
  - (a) make available, to the person making payment, a receipt that sets out the information specified by the regulations in the form specified by the regulations; and
  - (b) make and retain a copy of the receipt as part of the strata scheme manager's records.

Maximum penalty: 200,000 penalty units.

- (2) A strata scheme manager commits an offence if the manager does not keep copies of the receipts in a legible written form, or so as to be readily convertible into such a form, for at least 7 years.

Maximum penalty: 200,000 penalty units.

## **7 Payments out of trust money**

A strata scheme manager commits an offence if the manager:

- (a) makes a payment of trust money in cash; or
- (b) makes a payment of trust money in a manner that does not comply with the requirements of the regulations or does not keep records relating to the payment as required by the regulations.

Maximum penalty: 50,000 penalty units.

## **8 Provision of information to strata scheme corporation**

A strata scheme manager commits an offence if the manager does not, at the request of a strata scheme corporation, provide the corporation, within 5 business days after the making of the request, with a statement setting out details of dealings by the manager with the corporation's money.

Maximum penalty: 50,000 penalty units.

## **9 Electronic records and back up**

A strata scheme manager commits an offence if the manager does not ensure that:

- (a) an electronic copy of all the records required to be kept under this Schedule is made contemporaneously or within 24 hours of any alteration of the records; and
- (b) at least once in each week, an electronic copy of all the records is made and kept in a safe place at a location other than the premises where the computer program used to make the electronic copy is operating; and
- (c) before any information is deleted from the computer records, a hard copy of the information is made and kept by the manager as part of the manager's records; and

- (d) an up-to-date electronic copy of the computer program used by the manager to keep the records is made and kept in a safe place at a location other than the premises where the computer program is operating.

Maximum penalty: 200,000 penalty units.

## **10 Audit of trust accounts**

- (1) A strata scheme manager who maintains a trust account commits an offence if the manager:
  - (a) fails to have accounts and records kept under this Schedule audited by an auditor in respect of each financial year; or
  - (b) fails, before the completion of the audit, to certify and deliver to the auditor a notice setting out in detail, as of the last day of the audit period, particulars of:
    - (i) the names of all strata scheme corporations on whose behalf the manager is holding trust money and the amount of the credit of each such corporation; and
    - (ii) all negotiable or bearer securities or deposit receipts in the name of the manager which represent money drawn from the manager's trust account and which were held by the manager on that day; and
    - (iii) the names of the trust accounts in which the balance of the manager's trust money is lodged and the balances on that date of those accounts; and
    - (iv) if the trust account balances are not in agreement with the balances of the manager's trust ledger accounts—a statement reconciling those balances; or
  - (c) fails to forward the auditor's report to the secretary of the strata scheme corporation within 2 months after the end of an audit period.

Maximum penalty: 500,000 penalty units.

- (2) An auditor must not audit the accounts of a strata scheme manager if the auditor:

- (a) is, or has been within the previous 2 years, an employee or partner of the strata scheme manager; or
  - (b) is an employee of another strata scheme manager; or
  - (c) is a strata scheme manager.
- (3) In carrying out an audit, the auditor must:
- (a) make checks that will enable the auditor to give an opinion as to whether the strata scheme manager has, during the period covered by the audit, complied with this Act and the regulations relating to the manager's accounts and records; and
  - (b) ascertain what trust accounts were kept by the strata scheme manager during that period; and
  - (c) make a general test examination of any trust account kept by the strata scheme manager and of the statements relating to any such account during that period; and
  - (d) make a comparison as to no fewer than 2 dates (1 to be the last day of the audit period and 1 other to be a date within that period selected by the auditor) between:
    - (i) the liabilities of the manager to the manager's clients as shown by the manager's trust ledger accounts and the records kept under this Act and the regulations; and
    - (ii) the aggregate of the balances standing to the credit of the manager's trust account; and
  - (e) ask for such information and explanations as the auditor may require for the purposes of the audit.
- (4) The auditor's report must include all matters relating to the strata scheme manager's accounts and records that should, in the auditor's opinion, be communicated to the strata scheme corporation and, in particular, deal with each of the following matters:
- (a) whether the accounts and records appear to have been kept regularly and properly written up at all times;

- (b) whether the accounts and records have been ready for examination at the periods appointed by the auditor;
  - (c) whether the manager has complied with the auditor's requirements;
  - (d) whether, at any time during the period of the audit, the manager's trust account was overdrawn and, if so, the full explanation for that given by the manager;
  - (e) whether the manager has, or has had, any debit balances in the manager's trust account and the explanation or reason for such a debit given by the agent;
  - (f) whether the auditor has received and examined the notice given to the auditor under subclause (1)(b) and the result of that examination;
  - (g) if the manager uses a computer program to keep the manager's accounts and records, whether the program allows for the accounts and records to be conveniently and properly audited.
- (5) The auditor must attach to the auditor's statement a copy of the strata scheme manager's notice delivered to the auditor under subclause (1)(b).
- (6) The auditor must verify the report by statutory declaration and give a signed copy of the report to the strata scheme manager.
- (7) The auditor must, as soon as possible, report to the Minister and the strata scheme manager concerned if, in the course of auditing the strata scheme manager's accounts and records, the auditor discovers:
- (a) that the accounts and records are not kept in a manner that enables them to be properly audited; or
  - (b) a matter that appears to the auditor to involve dishonesty or a breach of the law by the manager; or
  - (c) a loss or deficiency of trust money or a failure to pay or account for trust money; or

(d) a failure to comply with this Act or the regulations.

Maximum penalty: 500,000 penalty units.

- (8) However, the auditor is not required to give a report to the Minister in respect of the discovery of a loss, deficiency or failure if the auditor is satisfied that:
- (a) bringing the discovery to the attention of the strata scheme manager or strata scheme corporation will adequately deal with the matter; and
  - (b) the loss, deficiency or failure does not involve dishonesty or a breach of the law.

## **11 Obtaining information for purposes of audit**

- (1) An auditor engaged by a strata scheme manager to make an audit of the trust accounts of the manager may require the manager or any other person in a position to do so:
- (a) to produce all the accounts (including accounts that are not trust accounts) relating to the business of the manager; and
  - (b) to produce all documents and records relating to those accounts, including written records that reproduce in a readily understandable form information kept by computer or other process; and
  - (c) to provide any relevant information relating to the operation of the accounts.
- (2) The manager or other principal officer of a bank or other financial institution with which a strata scheme manager has deposited money (whether in the strata scheme manager's own account or in a general or separate trust account) commits an offence if the manager or officer does not, on being required to do so by an auditor employed or appointed to make an audit under this Schedule, disclose every such account (including all deposit slips, terminated cheques and other documents relating to the operation of the account) to the auditor.

Maximum penalty: 200,000 penalty units.

- (3) A person who is required by this clause to produce documents to an auditor commits an offence if the person does not permit the auditor to make a copy of the whole, or any part, of those documents.

Maximum penalty: 200,000 penalty units.

- (4) In this clause:

**“account”** includes a record required to be kept under this Schedule in relation to the receipt and disposition of trust money;

**“strata scheme manager”** includes a former strata scheme manager.

## **12 Bank etc to report deficiencies in trust accounts**

A bank or other financial institution with which a trust account has been established commits an offence if it does not, as soon as practicable, and in any event within 14 days, after becoming aware of a deficiency in that account, report the deficiency to the Minister.

Maximum penalty: 500,000 penalty units.

## **13 Confidentiality**

An auditor commits an offence if the auditor divulges information that has come to the auditor's knowledge in the course of performing functions under this Act except:

- (a) to the strata scheme manager; or
- (b) to the Minister; or
- (c) as otherwise required by law.

Maximum penalty: 200,000 penalty units.

## **14 Banks etc not affected by notice of trust**

- (1) Subject to subclause (2), a bank or other financial institution is not affected by notice of a specific trust to which money deposited in a trust account is subject, and is not bound to satisfy itself of the due application of that money.



- (2) This clause does not relieve a bank or other financial institution of liability for negligence.

