

Passed by both Houses



New South Wales

# Conveyancing Amendment (Building Management Statements) Bill 2001

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*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2001*



New South Wales

## **Conveyancing Amendment (Building Management Statements) Bill 2001**

Act No , 2001

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An Act to amend the *Conveyancing Act 1919* in relation to the management of buildings subdivided by plans registered under that Act, and for other purposes.

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*I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.*

*Chairman of Committees of the Legislative Assembly.*

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Conveyancing Amendment (Building Management Statements) Act 2001*.

**2 Commencement**

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

**3 Amendment of Conveyancing Act 1919 No 6**

The *Conveyancing Act 1919* is amended as set out in Schedule 1.

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## Schedule 1 Amendments

(Section 3)

### [1] Part 23, Division 3B

Insert after Division 3A of Part 23:

#### Division 3B Provisions relating to stratum lots

##### 196B Application of Division

This Division applies only to land under the provisions of the *Real Property Act 1900*.

##### 196C Definitions

In this Division and Schedules 8A and 8B:

***Australian Height Datum*** means a system of control points for height, approved by the Surveyor-General, based on a network of levelling measurements that covered the whole of Australia and that was fitted to mean sea level, as measured at tide gauges distributed around the Australian coast, over the period 1968–1970.

***development consent*** has the same meaning as it has in the *Environmental Planning and Assessment Act 1979*.

***owner*** of a part of a building or a site means a person in whom is vested an estate in fee simple, recorded in a folio of the Register kept under the *Real Property Act 1900*, in the part of the building or the site.

***plan of subdivision of a building*** means a plan of subdivision (within the meaning of Division 3) for a building or part of a building, being a plan of subdivision that contains a stratum lot.

***registered building management statement*** means a building management statement registered under this Division.

***stratum lot*** means a lot that is limited in height or depth (or both) by reference to Australian Height Datum or another datum approved by the Surveyor-General, but does not include a lot within the meaning of the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*.

**196D Building management statement may be registered**

The Registrar-General may register with a plan of subdivision of a building, or subsequently, a building management statement for the building and its site.

**196E Formal requirements**

- (1) A building management statement proposed to be registered under this Division and any amendment of a registered building management statement must be in the approved form.
- (2) A registered building management statement as in force from time to time must comply with Schedule 8A and that Schedule applies to any such statement.
- (3) The Registrar-General may register a building management statement and an amendment of a registered building management statement by making such recordings in the Register as the Registrar-General considers appropriate.
- (4) The Registrar-General may refuse to register a building management statement or an amendment of a registered building management statement if the application for registration fails to comply with any requirement made by this Act or the regulations or is not accompanied by the fee prescribed by the regulations.

**196F Recording of information relating to building management statement**

If a building management statement has been registered in accordance with this Division, the Registrar-General must record in the folio or folios of the Register relating to the lots concerned:

- (a) the existence of the statement and of any subsequent amendment of it that is registered from time to time, and

- (b) such information relating to the statement and any amendment of it as the Registrar-General considers appropriate.

**196G Amendment of building management statement**

- (1) A registered building management statement may be amended only if:
  - (a) each owner of a part of the building concerned or its site has consented to the amendment, or
  - (b) the amendment is ordered under this or any other Act by a court, or
  - (c) the amendment is consequential on the revocation or modification, under section 103 of the *Environmental Planning and Assessment Act 1979*, of a development consent.
- (2) An amendment of a registered building management statement does not have effect under this Division unless it is recorded in the folio or folios of the Register relating to the lot or lots concerned.

**196H Signing of building management statement**

- (1) The Registrar-General may register a building management statement or any amendment of a registered building management statement only if the statement or amendment is:
  - (a) signed by each owner of a part of the building concerned or its site, and
  - (b) signed by every mortgagee, chargee or covenant chargee under a mortgage, charge or covenant charge recorded in a folio of the Register kept under the *Real Property Act 1900* relating to a part of the building or its site.
- (2) The Registrar-General may refuse to register a building management statement or an amendment of a registered building management statement unless there have been lodged in the office of the Registrar-General written consents to the registration of the statement or amendment signed by (or by an agent authorised by) such one or more of the following as the Registrar-General determines:

- (a) the lessee under any lease, or the judgment creditor under any writ, recorded in any folio of the Register affected by the statement or amendment,
  - (b) the caveator under a caveat affecting any estate or interest recorded in any folio of the Register affected by the statement or amendment.
- (3) The Registrar-General may, in a particular case, dispense with any signature required by or under this section without giving notice to any person.

**196I Effect of building management statement**

- (1) A registered building management statement, as in force for the time being, has effect as an agreement under seal containing the covenants referred to in subsection (2) entered into by:
  - (a) each owner for the time being of any part of the building or its site affected by the statement, and
  - (b) any mortgagee in possession or lessee of any part of the building or its site affected by the statement.
- (2) The covenants referred to in this section are:
  - (a) a covenant by which those persons jointly and severally agree to carry out their obligations under the building management statement as from time to time in force, and
  - (b) a covenant by which those persons jointly and severally agree to permit the carrying out of those obligations.
- (3) The agreement ceases to have effect under this Division in relation to a person who is described in subsection (1) on that person ceasing to be a person so described.
- (4) Subsection (3) does not prejudice or affect any obligation that was incurred by a person, or any right that accrued to a person, under the agreement while the agreement was in force.
- (5) A registered building management statement has no effect to any extent to which it is inconsistent with:
  - (a) any condition imposed, before the registration of the statement, on a development consent relating to the building to which the statement relates or its site, or

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(b) this or any other Act or any other law.

- (6) Except as may be provided otherwise by this Act or the regulations, a provision in any instrument under which the agreement is excluded, modified or restricted is void.
- (7) A covenant entered into under the agreement does not merge in a transfer of a lot.
- (8) Nothing in this section affects any right or remedy that a person may have under a building management statement apart from a right or remedy under this Division.

**196J Effect of registration of strata management statement on building management statement**

- (1) A registered building management statement for a building ceases to have effect on the registration of a strata management statement for the building in accordance with Division 2B of Part 2 of the *Strata Schemes (Freehold Development) Act 1973* or Division 5A of Part 2 of the *Strata Schemes (Leasehold Development) Act 1986*.
- (2) Subsection (1) does not prejudice or affect any obligation that was incurred by a person, or any right that accrued to a person, under the registered building management statement while it was in force.

**196K Certain easements implied on registration of building management statement**

- (1) On registration under this Division of a building management statement for a building and its site there is implied (despite section 88):
  - (a) as appurtenant to each of the lots that includes a part of the building, an easement for the subjacent and lateral support of that part by such other parts of the building as are capable of affording support, and
  - (b) as affecting each of the lots that includes a part of the building, an easement for the subjacent and lateral support of such other parts of the building as are capable of enjoying support from that part, and



- (c) as appurtenant to each of the lots that includes a part of the building, an easement for the shelter of that part by all such other parts of the building as are capable of affording shelter, and
  - (d) as affecting each of the lots that includes a part of the building, an easement for the shelter of such other parts of the building as are capable of being sheltered by that part.
- (2) All ancillary rights and obligations reasonably necessary to make easements effective apply in respect of an easement created by this section.
- (3) An easement for support or shelter created by this section entitles the owner of any lot benefited by the easement to enter the lot burdened by the easement to replace, renew or restore any support or shelter.
- (4) The Registrar-General must make in the Register such recordings in respect of the easements as the Registrar-General considers appropriate.

**196L Effect of certain easements for access or services in buildings**

- (1) In this section:
  - drainage* includes the product of rain, a storm, soakage, a spring or seepage.
  - service* means a water, sewerage, drainage, gas, electricity, oil, garbage, air conditioning or telephone, television or radio impulses, signals or data transmission service or any other service prescribed by the regulations.
- (2) This section applies to an easement:
  - (a) that gives a right of vehicular access or a right of personal access, or is an easement for a specified service, over or through or as appurtenant to a stratum lot that includes part of a building, and
  - (b) that is created by an instrument on or after the registration of a building management statement for the building under this Division, and
  - (c) the site of which is identified on a plan lodged in the office of the Registrar-General.

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- (3) The rights and obligations conferred or imposed by an easement to which this section applies are as specified in Schedule 8B, except in so far as those rights or obligations may have been varied or negated under this section or in the instrument creating the easement.
- (4) Nothing in section 88 or in subsection (2) (c) requires the site of an easement for a service referred to in subsection (2) (a) to be identified on a plan lodged in the office of the Registrar-General.
- (5) The terms of an easement to which this section applies in so far as they relate to:
- (a) responsibility for maintaining in good order or repairing the access or other things required for enjoyment of the easement, or
  - (b) the proportions in which the persons having the benefit or burden of the easement are liable to contribute towards the cost of maintaining in good order or repairing that access or those things,
- may be varied by memorandum of variation in the approved form and registered under the *Real Property Act 1900* as if it were a dealing.
- (6) A variation of the terms of an easement referred to in subsection (5) must be executed by every person having an estate or interest registered under the *Real Property Act 1900* in the land benefited or burdened by the easement.
- (7) On the application of any person who has an estate or interest in any land that has the benefit or burden of an easement to which this section applies, the Supreme Court may, by order, vary the terms of the easement in so far as they relate to:
- (a) responsibility for maintaining in good order or repairing the access or other things required for enjoyment of the easement, or
  - (b) the proportions in which the persons having the benefit or burden of the easement are liable to contribute towards the cost of maintaining in good order or repairing that access or those things.
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- (8) An order under subsection (7), when registered as provided by subsection (9), is binding on all persons, whether of full age or capacity or not, then entitled or later becoming entitled to the easement, and whether those persons are parties to the proceedings or have been served with notice or not.
- (9) The Registrar-General must, on application made in the approved form, make all necessary recordings in the Register for giving effect to the order.
- (10) If an expression used in an instrument that creates an easement to which this section applies is an expression in relation to which the provisions of section 181A and Schedule 8 operate, the provisions of this section and Schedule 8B prevail over those other provisions to the extent of any inconsistency.

**[2] Schedules 8A and 8B**

Insert after Schedule 8:

**Schedule 8A Building management statements**

(Section 196E)

**1 Form of building management statement**

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

- (a) any conditions, imposed before the registration of the statement, on a development consent relating to the building to which the statement relates or its site, or
- (b) this or any other Act or any other law.

**2 Matters that must be included**

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

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- (c) the settlement of disputes, or the rectification of complaints, concerning the management of the building or its site, whether by requiring reference of disputes or complaints to any person (with the consent of the person) for a recommendation or decision or otherwise, and
  - (d) the obtaining of a damage policy for the building in accordance with clause 3, and
  - (e) the obtaining of other insurance in accordance with clause 4, and
  - (f) the manner in which notices and other documents may be served on the committee.
- (2) Each owner of a part of the building or its site must be a member of the building management committee.
  - (3) Despite subclause (2), any such owner may be excluded from membership, but only with the written consent of the owner.
  - (4) A corporation that is a member of a building management committee may be represented for the purposes of the committee by a person appointed by, or selected in accordance with, a resolution made by the corporation.
  - (5) A person who has been so appointed or selected and whose term of office as such a representative has not expired or been terminated by the corporation is, while representing the corporation for those purposes, taken to be the corporation.

### **3 Damage policy**

- (1) In this clause, a ***damage policy*** for a building means a contract of insurance providing for the matters referred to in this clause in the event of the building being destroyed or damaged by fire, lightning or explosion, or any other occurrence specified in the policy.
- (2) A damage policy is to provide for the rebuilding of the building, or the replacement of the building by a similar building, in the event of its destruction so that the rebuilt or replacement building is no less extensive than the original building and is in a condition no worse than the original building was in when new.

- (3) A damage policy is to provide for the repair of damage to, or the restoration of the damaged part of, the building in the event of its being damaged but not destroyed, so that the repaired or restored part is no less extensive than the original part and is in a condition no worse than the original part was in when new.
- (4) A damage policy is to provide for the payment of expenses incurred in the removal of debris.
- (5) A damage policy is to provide for the remuneration of architects and other persons whose services are necessary as an incident to the rebuilding, replacement, repair or restoration.
- (6) A damage policy may provide that, instead of the work and the payments being carried out or made on the occurrence of any of the events specified in subclause (1), the liability of the insurer is, on the occurrence of any such event, limited to an amount specified in the policy that is not less than an amount calculated by adding together the following amounts:
  - (a) the estimated cost, as at the date of commencement of the damage policy, of the rebuilding or replacement of the building in accordance with subclause (2),
  - (b) the estimated cost, as at the date of commencement of the damage policy, of removing debris from the site of the building in the event of the building's being destroyed by an occurrence specified in the policy,
  - (c) the fees (estimated as at the date of commencement of the damage policy) payable to architects and other professional persons employed in the course of the rebuilding or replacement referred to in paragraph (a),
  - (d) the estimated amount by which expenditure referred to in the preceding paragraphs may increase during the period of 18 months following the date of commencement of the damage policy.

#### **4 Other insurance**

Other insurance to be taken out is insurance:

- (a) in respect of any occurrence against which the building management committee is required by law to insure, including any insurance required by the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998* to be taken out, and
- (b) in respect of damage to property, death or bodily injury for which the building management committee could become liable in damages, and
- (c) against the possibility of the owners becoming jointly liable by reason of a claim arising in respect of any other occurrence against which the building management committee decides to insure, and
- (d) against any damages for which the building management committee could become liable by reason that, without fee or reward or any expectation of fee or reward, a person acting on behalf of the committee does work in the building or on its site.

#### **5 Other matters**

- (1) A building management statement may include provisions regulating (or providing for the regulation of) any one or more of the following:
  - (a) the location, control, management, use and maintenance of any part of the building or its site that is a means of access,
  - (b) the storage and collection of garbage on and from the various parts of the building,
  - (c) meetings of the building management committee,
  - (d) the keeping of records of proceedings of the committee.
- (2) A building management statement may include particulars relating to any one or more of the following:
  - (a) safety and security measures,
  - (b) the appointment of a managing agent,
  - (c) the control of unacceptable noise levels,

- (d) prohibiting or regulating trading activities,
  - (e) service contracts,
  - (f) an architectural code to preserve the appearance of the building.
- (3) This clause does not limit the matters that may be included in a building management statement.
- (4) A building management statement may incorporate plans and other instruments as part of the statement.

#### **6 Implied provisions**

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

- (a) The building management committee must meet at least once each year.
- (b) At least 7 days' notice of a meeting must be served on each person who is a member of the committee.
- (c) The quorum for a meeting of the committee is a majority of the members.
- (d) The decision of a majority of the members present and voting at a meeting of the committee is the decision of the committee.

### **Schedule 8B Rights and obligations implied in certain easements**

(Section 196L)

#### **7 Definitions**

- (1) In this Schedule:

*apparatus* includes plant.

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

*service* has the same meaning as in section 196L.

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- (2) For the purposes of this Schedule, a reference to a person who is entitled to the benefit of an easement that gives a right of vehicular or personal access or of an easement for a specified service includes a reference to any person authorised by such a person.

### **8 Right of vehicular access**

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

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

### **9 Right of personal access**

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

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

### **10 Obligations relating to rights of access**

- (1) If an easement that gives a right of vehicular or personal access is created over or appurtenant to a stratum lot, the roadways, ramps, land, stairs, escalators, lifts, passages, corridors, shafts and other areas to which the right relates are to be maintained in good order and repaired:
  - (a) by the person or, if more than one, jointly by the persons indicated as having responsibility for those matters in the instrument by which the right is created or in any instrument in an approved form by which the instrument is varied, or



- (b) if any such instrument does not indicate who is responsible for those matters, by the person or, if more than one, jointly by the persons entitled to an estate or interest in possession in the dominant tenement.
- (2) If a person has failed to carry out a responsibility imposed by subclause (1) on the person and at least 7 days have passed since that failure first arose, any other person entitled to an estate or interest in possession in the dominant or servient tenement may take all lawful steps necessary to ensure that the responsibility is carried out.

#### **11 Easements for services**

- (1) Each person entitled to the benefit of an easement for a specified service has at all times an unrestricted right:
  - (a) (except when it is necessary to halt the service for any essential maintenance or repairs relating to the service) to the passage of the service, to any extent consistent with the rights of other persons having the same or similar rights, along or through any existing line of pipes or any existing apparatus that is for the time being within the burdened land, and
  - (b) to carry out an inspection of the pipes or apparatus to which the easement relates, and
  - (c) in order to maintain the efficiency of any such pipes or apparatus:
    - (i) to enter the part of the burdened land in respect of which the easement is created by such route as is reasonable in the circumstances, and
    - (ii) to remain there for such reasonable time as may be necessary for the purpose of replacing, inspecting, cleaning, repairing, maintaining or renewing the pipes or apparatus or any part of the pipes or apparatus and of making such excavations as may be reasonably necessary.
- (2) Any action taken under subsection (1) must be taken in a manner that ensures that:
  - (a) the burdened land is disturbed as little as possible, and
  - (b) any excavated surface is restored as nearly as possible to its original state, and

- (c) any other damage attributable to that action is repaired.

**12 Obligations relating to an easement for the provision of services**

- (1) If an easement for services is created over or appurtenant to a stratum lot, the pipes or apparatus to which the easement relates are to be maintained in good order and repaired:
  - (a) by the person or, if more than one, jointly by the persons, indicated as having responsibility for those matters in the instrument by which the easement is created or in any instrument in the approved form by which that easement is varied, or
  - (b) if any such instrument does not indicate who is responsible for those matters, by the person or, if more than one, jointly by the persons entitled to an estate or interest in possession in the dominant tenement.
- (2) If a person has failed to carry out a responsibility imposed by subclause (1) on the person and at least 7 days have passed since that failure first arose, any other person entitled to an estate or interest in possession in the dominant or servient tenement may take all lawful steps necessary to ensure that the responsibility is carried out.

**13 Sharing of costs of maintenance and repair**

- (1) The costs of maintenance and repair in respect of an easement that gives a right of vehicular or personal access or an easement for services to which this Schedule applies are to be borne by the persons concerned:
  - (a) in the proportions specified in the instrument by which the right or easement was created or, if the proportions so specified have been varied, those proportions as varied, or
  - (b) where no such proportions are so specified in equal proportions.
- (2) If a person incurs costs referred to in subclause (1), the person may demand in writing from another person the amount that the other person is liable to contribute under that subclause to those costs.

- (3) A demand made under subclause (2) must be accompanied by receipts or invoices or copies of receipts or invoices that evidence the expenditure to which the demand relates.
- (4) If a person fails to comply with any such demand within 7 days after it has been made, the amount demanded may be recovered in a court of competent jurisdiction as a debt due to the person making the demand.

**14 Ancillary rights and powers**

All easements to which this Schedule applies carry with them such ancillary rights and powers as may be necessary to render them effective.

**[3] Schedule 9 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Conveyancing Amendment (Building Management Statements)  
Act 2001*