



New South Wales

# Strata Schemes Management Amendment Bill 2003

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend the *Strata Schemes Management Act 1996* to implement a number of proposals in relation to the management of strata schemes arising from an overall review of that Act and a review of that Act in connection with competition policy reform. The Bill includes amendments to the *Strata Schemes Management Act 1996* ("the Principal Act") in relation to the following matters:

- (a) The Bill clarifies certain provisions relating to the exercise and delegation of functions by owners corporations and the powers of owners corporations to add to or alter, or grant licences for the use of, common property.
- (b) The Bill enables officers who are authorised to carry out certain fire safety inspections of buildings and premises subject to a strata scheme to deal with the owners corporation for the building or premises instead of individual lot owners.

- (c) The Bill requires new owners corporations to establish 10-year sinking fund plans and enables the regulations to extend those requirements to some or all existing owners corporations.
- (d) The Bill defines a strata scheme comprising at least 100 lots (or such other amount prescribed by the regulations) as a *large strata scheme* and imposes a number of additional requirements in relation to such schemes as well as enabling regulations to be made in respect of a range of matters relating to the administration of such schemes.
- (e) The Bill requires approval by a general meeting of an owners corporation to the seeking of legal advice or services or the taking of legal action by the owners corporation where expenditure will be involved.
- (f) The Bill provides for disclosure of certain matters to owners in strata schemes.
- (g) The Bill requires all insurance taken out by an owners corporation to be taken out with an approved insurer.
- (h) The Bill gives a greater discretion to the Registrar of the Consumer, Trader and Tenancy Tribunal to refer matters to Adjudicators or the Tribunal without the need for mediation and lists specific matters that will not require mediation.
- (i) The Bill expands the powers of Adjudicators and the Tribunal to appoint a strata managing agent for a strata scheme that has been the subject of an application for an order under the Act.
- (j) The Bill makes a number of refinements in relation to the procedure for meetings of owners corporations of strata schemes and executive committees of owners corporations.
- (k) The Bill makes other miscellaneous amendments and amendments by way of statute law revision.

The Bill also amends the *Retirement Villages Act 1999*, the *Retirement Villages Regulation 2000* and the *Conveyancing (Sale of Land) Regulation 2000* in relation to disclosure of certain matters to prospective purchasers of lots in strata schemes and prospective residents of retirement villages that are subject to a strata scheme.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision giving effect to the amendments to the *Strata Schemes Management Act 1996* set out in Schedule 1.

**Clause 4** is a formal provision that gives effect to the amendments to the *Retirement Villages Act 1999*, the *Retirement Villages Regulation 2000* and the *Conveyancing (Sale of Land) Regulation 2000* set out in Schedule 2.

## **Schedule 1 Amendment of Strata Schemes Management Act 1996**

### **Functions of owners corporations and executive committees**

**Schedule 1 [1] and [2]** make it clear that in the event of a disagreement between an owners corporation and the executive committee of the owners corporation the decision of the owners corporation prevails.

**Schedule 1 [3]** enables the owners corporation to authorise a chartered accountant to exercise certain functions relating to the finances and accounts of the owners corporation.

**Schedule 1 [4]** prevents the functions of a strata managing agent appointed for a strata scheme being transferred to another person by the strata managing agent without the approval of the owners corporation.

**Schedule 1 [5]** inserts proposed section 29A into the Principal Act which provides that certain functions of the owners corporation, executive committee, the chairperson, secretary or treasurer cannot be delegated to or conferred on anyone else except a member of the executive committee or the strata managing agent for the scheme. This limitation is subject to section 24 of the Principal Act that specifically allows certain functions relating to the finances and accounts of an owners corporation to be exercised by specified persons such as accountants.

**Schedule 1 [6] and [7]** make it clear that by-laws for a strata scheme are of no force or effect to the extent that they are inconsistent with the Principal Act or any other Act or law.

**Schedule 1 [8]** prevents an owners corporation or executive committee of an owners corporation issuing a notice on a person that the person has contravened the by-laws unless a resolution of the owners corporation or executive committee has been passed that allows the issuing of the notice or notices of that kind. That limitation does not apply to the issuing of such a notice by a strata managing agent authorised to do so.

**Schedule 1 [9]** makes it clear that the owners corporation may make a by-law granting a licence to an owner of a lot to use common property in a particular manner or for a particular purpose.

**Schedule 1 [11]** inserts proposed section 65A into the Principal Act that enables the owners corporation by special resolution, to alter, add to or erect a new structure on common property, or allow an owner of a lot to do so, for the purpose of enhancing or improving the common property. The proposed section also enables the owners corporation to address the issue of who bears responsibility for the maintenance of the common property after the relevant work has been carried out and provides that where the owners corporation does not make any provision for maintenance, the owners corporation itself has that responsibility.

**Schedule 1 [11]** also inserts proposed section 65B into the Principal Act that enables an owners corporation, by special resolution, to grant a licence to an owner of a lot to use common property in a particular manner or for a particular purpose without the need for making a by-law (as referred to in Schedule 1 [9]).

**Schedule 1 [10]** makes a consequential amendment.

### **Fire safety inspections**

**Schedule 1 [11]** inserts proposed section 65C into the Principal Act to enable a person authorised to carry out a fire safety inspection of a building or premises under the *Environmental Planning and Assessment Act 1979* to give a notice to the owners corporation for a strata scheme requiring it to organise access to the common property and also, if specified, one or more individual lots. The owners corporation commits an offence if it does not comply with the notice but has a defence in relation to access to an individual lot if the owner or occupier denied the access or could not be contacted.

**Schedule 1 [26]** enables the owners corporation to apply for an order of an Adjudicator requiring the occupier of a lot in the strata scheme concerned to provide access for the purposes of a fire safety inspection. A fine may be imposed under the current provisions of the Principal Act for refusal to comply with an order of an Adjudicator.

### **Sinking fund plans**

**Schedule 1 [14]** inserts proposed section 75A into the Principal Act which requires the owners corporation for a strata scheme established after the commencement of the proposed section to prepare 10-year sinking fund plans and to complete and review the plans at specified intervals. The regulations may extend those requirements (with necessary modifications) to some or all existing owners corporations.

**Schedule 1 [13]** requires an owners corporation to take account of any such sinking fund plan when preparing the annual estimate of amounts of contributions required to be levied for the sinking fund.

### Provisions relating to large strata schemes

**Schedule 1 [53] and [54]** define *large strata scheme* as a strata scheme comprising 100 or more lots (or more than such other number of lots as may be prescribed by the regulations). Utility lots and parking lots are not to be included in the calculation.

**Schedule 1 [13]** requires an owners corporation for a large strata scheme when preparing estimates of the amounts of contributions to be levied for the administrative and sinking funds to specify amounts for proposed expenditure on individual items or matters likely to arise before the next annual general meeting. **Schedule 1 [15]** inserts proposed section 80A into the Principal Act which prevents the executive committee of a large strata scheme from spending more than that specified amount plus 10 per cent on the relevant item or matter in the period until the following annual general meeting unless approved by the owners corporation. Proposed section 80C provides an exception in emergency situations.

**Schedule 1 [15]** inserts proposed section 80B into the Principal Act which requires the owners corporation for a large strata scheme to obtain 2 quotations before spending an amount over that prescribed by the regulations. Proposed section 80C provides an exception in emergency situations.

**Schedule 1 [19]** substitutes section 107 of the Principal Act so as to require the owners corporation for a large strata scheme to have its accounts and financial statements audited in accordance with the Australian Auditing Standards before presentation at the annual general meeting.

**Schedule 1 [35]** enables regulations to be made in respect of certain matters regarding the administration of large strata schemes.

**Schedule 1 [42]** requires a proxy for meetings of an owners corporation for a large strata scheme to be given to the secretary of the owners corporation at least 24 hours before the first meeting to which it relates. The current requirements that enable proxies to be presented at the relevant meeting still apply to other strata schemes.

**Schedule 1 [48]** provides that, for large strata schemes, notice of an executive committee meeting must be given to each owner and executive committee member and, in addition, be displayed on a notice board if a notice board is required to be maintained. For other strata schemes, notice must be displayed on the notice board or, in the alternative, given to each owner and executive committee member if a notice board is not required to be maintained.

**Schedule 1 [49]** provides that, for large strata schemes, the minutes and resolutions arising from an executive committee meeting must be given to each owner and executive committee member and, in addition, be displayed on a

notice board if a notice board is required to be maintained. For other strata schemes, minutes and resolutions must be displayed on the notice board or, in the alternative, given to each owner and executive committee member if a notice board is not required to be maintained.

**Schedule 1 [46] and [50]** provide that Schedules 2 and 3 relating to procedures for meetings of owners corporations and executive committees of owners corporations and to the constitution of executive committees are subject, in the case of large strata schemes, to the regulations.

### **Legal action by owners corporations**

**Schedule 1 [15]** inserts proposed section 80D into the Principal Act which prevents an owners corporation from seeking legal advice or services, or taking legal action, that will require payment unless a resolution has been passed at a general meeting approving the owners corporation doing so. Regulations may be made exempting types of legal services or legal action from the operation of the proposed section.

**Schedule 1 [34]** provides that if a disclosure is made to an owners corporation in respect of the costs of legal services to be provided to the owners corporation, the owners corporation must give a copy of the disclosure to each owner and executive committee member within 7 days of the disclosure being made.

**Schedule 1 [35]** provides for regulations to be made in respect of the provision of legal services to an owners corporation.

### **Insurance**

**Schedule 1 [17]** inserts proposed section 88A into the Principal Act which requires that all insurance that must or may be taken out by an owners corporation must be taken out with an insurer approved by the Minister. Currently that requirement applies only to some forms of mandatory insurance.

**Schedule 1 [16]** makes a consequential amendment.

### **Provisions relating to disclosure and procedure for meetings**

**Schedule 1 [22]** requires an owners corporation to give a written statement of the current contributions relating to a lot in a strata scheme if requested to do so by the operator of a retirement village that is subject to that strata scheme. That requirement will enable the operator to meet the disclosure obligations imposed under the amendment included in Schedule 2.3.

**Schedule 1 [36] and [37]** require the agenda for the first annual general meeting of an owners corporation to include items to discuss the preparation of the 10-year sinking fund plan and the appointment and functions of a caretaker.

**Schedule 1 [38]–[40]** require certain documents and plans relating to a strata scheme to be produced at the first annual general meeting of the owners corporation for the strata scheme and enables the regulations to prescribe other documents that must also be produced.

**Schedule 1 [41]** increases the penalty for an original owner or lessor failing to produce such documents.

**Schedule 1 [43]** contains an amendment ensuring that notice of a meeting of an owners corporation must be given to first mortgagees and covenant chargees if the meeting will deal with certain matters that they are entitled to vote on.

**Schedule 1 [44]** provides that the notice of an annual general meeting of an owners corporation must include a form of motion to decide if any matter is to be determined only by the owners corporation in general meeting. **Schedule 1 [45]** provides that a corresponding agenda item must be included in the agenda of an annual general meeting as well as an agenda item relating to the preparation or review of the 10-year sinking fund plans, if relevant.

**Schedule 1 [47]** clarifies that the owners corporation has power to remove more than one or all of the members of the executive committee from office by special resolution.

### **Dispute resolution and powers of Adjudicators and Tribunal**

**Schedule 1 [23]** enables the regulations to exclude classes of strata schemes from the dispute resolution provisions.

**Schedule 1 [24]** gives a greater discretion to the Registrar of the Consumer, Trader and Tenancy Tribunal to accept an application for an order of an Adjudicator or the Tribunal even though mediation has not been attempted. The Registrar may accept such an application if the Registrar considers that mediation is unnecessary or inappropriate. In addition, mediation is not required in cases where the application relates to specified orders.

**Schedule 1 [25]** clarifies that the current powers of an Adjudicator to make orders to give effect to agreements or arrangements arising out of a mediation session include giving effect to the terms of a written agreement entered into by parties to the mediation. Such an order can only be made with the agreement of the parties to the mediation.

**Schedule 1 [27]** expands the circumstances in which an Adjudicator may make an order, on application, appointing a strata managing agent for a strata scheme. **Schedule 1 [31]** gives a specific power to the Tribunal, on its own motion, to make an order appointing a strata managing agent in cases where the management structure of a strata scheme that is the subject of an application for an order under the Principal Act or an appeal to the Tribunal is not functioning. This is similar to a power that Adjudicators already have.

**Schedule 1 [28]** removes a current limitation that requires a strata managing agent appointed by an Adjudicator on his or her own motion to be chosen from a panel of nominees chosen by prescribed persons or bodies.

**Schedule 1 [12], [29], [30], [32] and [33]** contain statute law revision amendments clarifying the provisions for the making of applications for certain orders.

### **Miscellaneous amendments**

**Schedule 1 [18]** provides that all records required to be kept by the owners corporation under the Act are to be kept for at least 5 years or such other period as may be prescribed. Currently various periods are prescribed by the regulations.

**Schedule 1 [19]** substitutes section 107 of the Principal Act so as to provide that if an owners corporation has its accounts and financial statements audited the auditing must be done in accordance with the Australian Auditing Standards, unless the strata scheme concerned comprises not more than 2 lots.

**Schedule 1 [20] and [21]** remove a requirement that a person obtain the written authorisation of the owner of a lot to carry out certain inspections of the records of an owners corporation or to obtain a certificate as to certain financial and other matters relating to the lot. That authorisation will be able to be given in any manner.

**Schedule 1 [28] and [54]** put it beyond doubt that a strata managing agent appointed under the Principal Act can be a corporation.

**Schedule 1 [51] and [52]** insert into the Principal Act a savings and transitional regulation-making power and transitional provisions consequent on the enactment of the proposed Act.

## **Schedule 2 Amendment of Act and Regulations**

**Schedule 2.1** amends the *Conveyancing (Sale of Land) Regulation 2000* to require a vendor of a lot in a strata scheme to attach a copy of any by-law for the strata scheme that grants exclusive use of, or special privileges over, common property in the strata scheme.



**Schedule 2.2** amends the *Retirement Villages Act 1999* to require information about living in a strata scheme to be given to a prospective resident of a retirement village that is subject to a strata scheme.

**Schedule 2.3** amends the *Retirement Villages Regulation 2000* to require the current strata contributions for a lot in a retirement village that is subject to a strata scheme to be included in the disclosure statement required to be given to a prospective purchaser of the lot.





New South Wales

# Strata Schemes Management Amendment Bill 2003

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New South Wales

# Strata Schemes Management Amendment Bill 2003

No. , 2003

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## A Bill for

An Act to amend the *Strata Schemes Management Act 1996* to make miscellaneous amendments with respect to the functions of owners corporations, special requirements for the management of large strata schemes and other matters relating to the management of strata schemes; and for other purposes.

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

**1 Name of Act**

This Act is the *Strata Schemes Management Amendment Act 2003*.

**2 Commencement**

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

**3 Amendment of Strata Schemes Management Act 1996 No 138**

The *Strata Schemes Management Act 1996* is amended as set out in Schedule 1.

**4 Amendment of other Act and Regulations**

Each Act and Regulation specified in Schedule 2 is amended as set out in that Schedule.

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## **Schedule 1   Amendment of Strata Schemes Management Act 1996**

(Section 3)

### **[1]   Section 21 Executive committee's decisions to be decisions of owners corporation**

Insert “, subject to subsection (4)” after “owners corporation” in section 21 (1).

### **[2]   Section 21 (4)**

Insert after section 21 (3):

- (4)   Despite any other provision of this Act, in the event of a disagreement between the owners corporation and the executive committee, the decision of the owners corporation prevails.

### **[3]   Section 24 Who can exercise functions relating to the finances and accounts of the owners corporation?**

Omit section 24 (d). Insert instead:

- (d)   a member of CPA Australia, or a member of the Institute of Chartered Accountants in Australia, authorised by the owners corporation to exercise the function, or

### **[4]   Section 27 How is a strata managing agent appointed?**

Insert after section 27 (2):

- (3)   The functions of a strata managing agent of a strata scheme may be transferred to another person by the strata managing agent, but only with the approval of the owners corporation for the strata scheme. A person to whom those functions are transferred is taken to be appointed as a strata managing agent of the strata scheme concerned in accordance with this section.

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**[5]    Section 29A**

Insert after section 29:

**29A    Functions that may only be delegated to member of executive committee or strata managing agent**

(1)    The following functions of an owners corporation, executive committee, chairperson, secretary or treasurer may not be delegated to or conferred on any other person unless the person is a member of the executive committee or a strata managing agent:

- (a)    the preparation of estimates for the purposes of section 75,
- (b)    the levying of contributions,
- (c)    the receiving of, acknowledging of, banking of or accounting for money paid to the owners corporation,
- (d)    having custody of any money paid to the owners corporation or making payments from any such money,
- (e)    the taking out of insurance required or permitted by this Act,
- (f)    the conduct of meetings of the owners corporation and handling of correspondence,
- (g)    the maintenance of records required to be kept under this Act,
- (h)    such other functions as may be prescribed by the regulations.

(2)    This section is subject to sections 24 and 32.

**Note.** Section 24 enables some of these functions to be exercised by certain other specified persons.

**[6]    Section 43 What can by-laws provide for?**

Omit “This section” from section 43 (2).

Insert instead “Subsection (1)”.



<b>[7] Section 43 (4)</b>	1
Insert after section 43 (3):	2
(4) A by-law has no force or effect to the extent that it is inconsistent with this or any other Act or law.	3 4
<b>[8] Section 45 How can an owners corporation enforce the by-laws?</b>	5
Insert at the end of the section (but before the note):	6
(2) A notice cannot be issued under this section unless a resolution approving the issue of the notice, or the issue of notices for the type of contravention concerned, has first been passed by the owners corporation or the executive committee of the owners corporation.	7 8 9 10 11
(3) Subsection (2) does not apply to the issue of a notice under this section by a strata managing agent if that function has been delegated to the strata managing agent in accordance with this Act.	12 13 14 15
<b>[9] Section 51 Application of Division</b>	16
Insert “(including, for example, a licence to use the whole or any specified part of the common property in a particular manner or for particular purposes)” after “common property” in section 51 (1) (b).	17 18 19
<b>[10] Chapter 3, Part 2, heading and introductory note</b>	20
Omit the heading and introductory note. Insert instead:	21
<b>Part 2 Maintenance, repairs, alteration and use of common property and fire safety inspections</b>	22 23 24
<b>Introductory note.</b> This Part sets out the duties of an owners corporation to maintain and repair the property of a strata scheme and to arrange access for fire safety inspections. Certain powers are given to an owners corporation to recover money for work required to be carried out and to enter property to carry out certain necessary work. The Part also deals with certain powers of an owners corporation in relation to alterations or additions to common property and the granting of licences over common property.	25 26 27 28 29 30 31 32

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**[11]    Sections 65A–65C**

Insert after section 65:

**65A    Owners corporation may make or authorise changes to  
common property**

- (1) For the purpose of improving or enhancing the common property, an owners corporation or an owner of a lot may take any of the following action, but only if a special resolution has first been passed at a general meeting of the owners corporation that specifically authorises the taking of the particular action proposed:
  - (a) add to the common property,
  - (b) alter the common property,
  - (c) erect a new structure on the common property.
- (2) A special resolution that authorises action to be taken under subsection (1) in relation to the common property by an owner of a lot may specify whether the ongoing maintenance of the common property once the action has been taken is the responsibility of the owners corporation or the owner.
- (3) If a special resolution under this section does not specify who has the ongoing maintenance of the common property concerned, the owners corporation has the responsibility for the ongoing maintenance.
- (4) A special resolution under this section that allows an owner of a lot to take action in relation to certain common property and provides that the ongoing maintenance of that common property after the action is taken is the responsibility of the owner has no effect unless:
  - (a) the owners corporation obtains the written consent of the owner to the making of a by-law to provide for the maintenance of the common property by the owner, and
  - (b) the owners corporation makes such a by-law.
- (5) A by-law made for the purposes of this section:
  - (a) may require, for the maintenance of the common property, the payment of money by the owner concerned at specified times or as determined by the owners corporation, and

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| (b)        | must not be amended or repealed unless a special resolution has first been passed at a general meeting of the owners corporation and the owners corporation has obtained the written consent of the owner concerned.   | 1<br>2<br>3<br>4                                   |
| (6)        | The provisions of sections 52 (3), 54 (2) and (3) and 55 apply to a by-law made for the purposes of this section in the same way as those provisions apply to a by-law to which Division 4 of Part 5 of Chapter 2 applies.   | 5<br>6<br>7<br>8                                   |
| <b>65B</b> | <b>Owners corporation may grant licence to use common property</b>   | 9<br>10  |
| (1)        | An owners corporation may grant a licence to an owner of a lot to use common property in a particular manner or for particular purposes if the owners corporation has approved the granting of the licence by special resolution passed at a general meeting of the owners corporation.  | 11<br>12<br>13<br>14<br>15                         |
| (2)        | A licence may be granted subject to terms and conditions.<br><b>Note.</b> Division 4 of Part 5 of Chapter 2 enables owners corporations to make by-laws granting exclusive use rights and special privileges (including licences) in relation to common property.  | 16<br>17<br>18<br>19                               |
| <b>65C</b> | <b>What are the duties of an owners corporation in relation to fire safety inspections</b>   | 20<br>21   |
| (1)        | A person authorised to carry out an inspection under the <i>Environmental Planning and Assessment Act 1979</i> of a building or premises for purposes relating to fire safety may give a notice in writing to an owners corporation for a strata scheme requiring the owners corporation to ensure that access is provided, within a period or at a time specified in the notice, to the common property of the strata scheme and, if so specified, some or all of the individual lots in the strata scheme. | 22<br>23<br>24<br>25<br>26<br>27<br>28<br>29<br>30 |
| (2)        | An owners corporation must comply with a requirement of a notice given to the owners corporation under this section.<br><br>Maximum penalty: 20 penalty units.   | 31<br>32<br>33                                     |
| (3)        | It is a defence to a prosecution for an offence against subsection (2) consisting of a failure to ensure that access is provided to a lot in a strata scheme if the owners corporation   | 34<br>35<br>36                                     |
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	establishes that the owner or occupier of the lot refused to allow the access or could not be contacted by the owners corporation.	1 2 3
	(4) For the purposes of the <i>Environmental Planning and Assessment Act 1979</i> , access to a building or premises or part of a building or premises given to a person in accordance with this section, or in accordance with an order of an Adjudicator made under section 145 for the purposes of this section, is taken to be a permission given to that person by the occupier of the building, premises or part to enter the premises and carry out the inspection concerned.	4 5 6 7 8 9 10 11
<b>[12]</b>	<b>Section 72 Distribution of surplus money in administrative fund or sinking fund</b>	12 13
	Omit "An order" from section 72 (4).	14
	Insert instead "An application for an order".	15
<b>[13]</b>	<b>Section 75 Estimates to be prepared of contributions to administrative and sinking funds</b>	16 17
	Insert after section 75 (3):	18
	(4) In estimating amounts to be credited to the sinking fund, an owners corporation that is required to prepare a plan under section 75A is to take into account anticipated major expenditure identified in the plan for the 10-year period to which the plan relates.	19 20 21 22 23
	(5) An owners corporation of a large strata scheme must include in the estimates prepared under this section at an annual general meeting specific amounts in relation to each item or matter on which the owners corporation intends to expend money, or on which the owners corporation is aware money will be likely to be expended, in the period until the next annual general meeting.	24 25 26 27 28 29 30
<b>[14]</b>	<b>Section 75A</b>	31
	Insert after section 75:	32
<b>75A</b>	<b>Owners corporation to prepare 10-year sinking fund plans</b>	33
	(1) This section applies to owners corporations established on or after the commencement of this section.	34 35

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(2)	An owners corporation to which this section applies is to prepare a plan of anticipated major expenditure to be met from the sinking fund over the 10-year period commencing on the first annual general meeting of the owners corporation.	1 2 3 4
(3)	The initial plan is to be finalised by the end of the second annual general meeting of the owners corporation.	5 6
(4)	The plan is to be reviewed and (if necessary) adjusted no later than at the fifth annual general meeting of the owners corporation.	7 8 9
(5)	An owners corporation to which this section applies is to prepare a plan as referred to in subsection (2) for each 10-year period following the period referred to in that subsection and is to finalise and review the plan in accordance with the requirements of subsections (3) and (4) at the corresponding annual general meetings in the relevant 10-year period.	10 11 12 13 14 15
(6)	An owners corporation may engage expert assistance in the preparation of a plan under this section.	16 17
(7)	The regulations may extend the operation of this section to all owners corporations or to such classes of owners corporations established before the commencement of this section as are specified in the regulations.	18 19 20 21
(8)	A regulation referred to in subsection (7) may make necessary modifications to the application of any provision of this section to an owners corporation established before the commencement of this section.	22 23 24 25
<b>[15] Chapter 3, Part 3, Division 3</b>		26
Insert after section 80:		27
<b>Division 3</b>	<b>Restrictions on spending</b>	28
<b>80A</b>	<b>Limit on spending by executive committees of large strata schemes</b>	29 30
(1)	If a specific amount has been determined as referred to in section 75 (5) for expenditure on any item or matter, the executive committee of the owners corporation concerned must not, in the period until the annual general meeting next	31 32 33 34

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	occurring after the determination was made, spend on the item or matter an amount greater than that determined amount for expenditure on the item or matter plus 10 per cent.	1 2 3
(2)	The owners corporation of a large strata scheme may by resolution at a general meeting remove the limitation imposed by subsection (1) generally or in relation to any particular item or matter.	4 5 6 7
<b>80B</b>	<b>Quotations to be obtained for certain items of expenditure by large strata schemes</b>	8 9
	An owners corporation of a large strata scheme must obtain at least 2 quotations in relation to proposed expenditure in respect of any one item or matter if the proposed expenditure will exceed an amount prescribed by the regulations for the purposes of this section.	10 11 12 13 14
<b>80C</b>	<b>Exceptions in relation to emergencies</b>	15
	Sections 80A (1) and 80B do not apply to expenditure undertaken for emergency purposes, including, for example, expenditure to remedy any of the following:	16 17 18
	(a) burst or blocked water or sewerage pipes,	19
	(b) serious damage caused by fire or by storm or any other natural disaster,	20 21
	(c) unexpected electrical or security system failure,	22
	(d) glass breakages that affect the security of any building in the strata scheme or could result in damage to the inside of any such building.	23 24 25
<b>80D</b>	<b>Legal action to be approved by general meeting</b>	26
(1)	An owners corporation or executive committee of an owners corporation must not seek legal advice or the provision of any other legal services, or initiate legal action, for which any payment may be required unless a resolution is passed at a general meeting of the owners corporation approving the seeking of the advice or services or the taking of that action.	27 28 29 30 31 32
(2)	The regulations may make provision for or with respect to exempting any type of legal service or legal action from the operation of this section.	33 34 35

<b>[16] Section 87 What other insurance must an owners corporation take out?</b>	1
	2
Omit “must be taken out with an approved insurer and” from section 87 (2).	3
	4
<b>[17] Section 88A</b>	5
Insert after section 88:	6
<b>88A Insurance must be taken out with approved insurer</b>	7
Any insurance that is taken out in accordance with this Division must be taken out with an approved insurer.	8
	9
<b>[18] Section 104 Certain records to be retained for prescribed period</b>	10
Omit “the period”.	11
Insert instead “5 years or such other period as may be”.	12
<b>[19] Section 107</b>	13
Omit the section. Insert instead:	14
<b>107 Auditing of accounts and financial statements</b>	15
(1) An owners corporation may determine that the accounts and financial statements of the owners corporation are to be audited.	16
	17
	18
(2) However, the owners corporation of a large strata scheme must ensure that the accounts and financial statements of the owners corporation are audited before presentation to the annual general meeting.	19
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	21
	22
(3) Any auditing of the accounts and financial statements of an owners corporation under this section must be carried out in accordance with the Australian Auditing Standards, unless the strata scheme concerned comprises not more than 2 lots.	23
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	25
	26
<b>[20] Section 108 Inspection of records of owners corporation</b>	27
Omit “in writing” from section 108 (1).	28

<b>[21] Section 109 Certificate by owners corporation as to financial and other matters relating to lot</b>	1 2
Omit “in writing” from section 109 (1).	3
<b>[22] Section 115A</b>	4
Insert after section 115:	5
<b>115A Owners corporation to give information on contributions payable</b>	6 7
An owners corporation of a strata scheme for a retirement village (within the meaning of the <i>Retirement Villages Act 1999</i> ) must, if requested by the operator of the retirement village, give a statement in writing specifying the amount of current contributions levied on a particular lot in the strata scheme.	8 9 10 11 12 13
<b>[23] Section 123 What action can be taken if there is a dispute, complaint or problem concerning a strata scheme?</b>	14 15
Insert at the end of the section:	16
(2) The regulations may make provision for or with respect to excluding a particular class or classes of strata schemes from any or all of the provisions of this Chapter.	17 18 19
<b>[24] Section 125 Registrar to be satisfied that mediation has been attempted before accepting application</b>	20 21
Omit section 125 (1) and (2). Insert instead:	22
(1) The Registrar must not accept an application for an order under this Chapter unless:	23 24
(a) mediation under Part 2 or otherwise has been attempted but was unsuccessful, or	25 26
(b) the Registrar considers that mediation is unnecessary or inappropriate in the circumstances, or	27 28
(c) the application is for any of the following:	29
(i) an order under section 162 for the appointment of a strata managing agent,	30 31
(ii) an interim order under section 170 or stay of the operation of an order under section 180,	32 33



	(iii) a variation or revocation of an order under section 171 (2), 190 or 191,	1 2
	(iv) an order under section 182 (authorising certain acts during initial period),	3 4
	(v) an order for allocation of unit entitlements under section 183,	5 6
	(vi) an order under Part 6.	7
<b>[25]</b>	<b>Section 131 Agreements and arrangements arising from mediation sessions</b>	8 9
	Insert after section 131 (2):	10
	(2A) Without limiting subsection (1), an Adjudicator may make an order under that subsection that gives effect to the terms of a written agreement signed during a mediation session by persons who were parties to the mediation.	11 12 13 14
	(2B) A mediator may request the Registrar to refer a matter to an Adjudicator for the making of an order under this section, but only with the consent of the parties to the mediation.	15 16 17
<b>[26]</b>	<b>Section 145 Order for entry to lot</b>	18
	Omit section 145 (1). Insert instead:	19
	(1) An Adjudicator may make an order requiring the occupier of a lot or part of a lot to allow access to the lot for any of the following purposes:	20 21 22
	(a) to enable the owners corporation to carry out any work referred to in section 65 (1) or to determine whether such work needs to be carried out,	23 24 25
	(b) to enable an inspection referred to in section 65C to be carried out.	26 27
<b>[27]</b>	<b>Section 162 Order appointing strata managing agent to exercise certain functions</b>	28 29
	Omit section 162 (3). Insert instead:	30
	(3) <b>Order may be made without application in certain circumstances</b>	31 32
	An Adjudicator may make an order under this section, without an application having been made for the order, but only if satisfied that the management structure of a strata scheme the subject of an application under this Chapter is not functioning or is not functioning satisfactorily.	33 34 35 36 37

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(3A) **Order may be made on application in certain circumstances**

An Adjudicator may make an order under this section, on application, but only if satisfied that:

- (a) the management structure of a strata scheme the subject of an application under this Chapter is not functioning or is not functioning satisfactorily, or
- (b) an owners corporation has failed to comply with a requirement imposed on the owners corporation by an order made under this Act, or
- (c) an owners corporation has failed to perform one or more of its duties, or
- (d) an owners corporation owes a judgment debt.

**[28] Section 162 (4) (b)**

Omit section 162 (4) (b) and (c). Insert instead:

- (b) have given consent in writing to the appointment, which consent, in the case of a strata managing agent that is a corporation, may be given by the chief executive officer of the corporation.

**[29] Section 171 Variation or revocation of order by Adjudicator**

Insert “, whether or not on application,” after “varying an order” in section 171 (2).

**[30] Section 171 (3)**

Insert after section 171 (2):

- (3) An application under this section may be made by any of the following persons:
  - (a) the owners corporation,
  - (b) the lessor of a leasehold strata scheme,
  - (c) the applicant for the original order,
  - (d) any person who made a written submission on the application for the original order,
  - (e) any other person who is required by the original order to do or refrain from doing a specified act.

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**[31] Section 183B**

Insert after section 183A:

**183B Orders for appointment of strata managing agent**

**(1) Order appointing strata managing agent to exercise functions of owners corporation**

The Tribunal may, on its own motion, make an order appointing a person as a strata managing agent:

- (a) to exercise all the functions of an owners corporation, or
- (b) to exercise specified functions of an owners corporation, or
- (c) to exercise all the functions other than specified functions of an owners corporation.

**(2) Order may confer other functions on strata managing agent**

The Tribunal may also order, when appointing a strata managing agent under this section, that the strata managing agent is to have and may exercise:

- (a) all the functions of the chairperson, secretary, treasurer or executive committee of the owners corporation, or
- (b) specified functions of the chairperson, secretary, treasurer or executive committee of the owners corporation, or
- (c) all the functions of the chairperson, secretary, treasurer or executive committee of the owners corporation other than specified functions.

**(3) Circumstances in which order may be made**

The Tribunal may make an order under this section only if satisfied that the management structure of a strata scheme the subject of an application under this Chapter or an appeal to the Tribunal is not functioning or is not functioning satisfactorily.

**(4) Qualifications of person appointed**

A person appointed as a strata managing agent under this section must:

- (a) hold a strata managing agent's licence issued under the *Property, Stock and Business Agents Act 2002*, and

	(b) have consented in writing to the appointment, which consent, in the case of a strata managing agent that is a corporation, may be given by the chief executive officer of the corporation.	1 2 3 4
	<b>(5) Terms and conditions of appointment</b>	5
	A strata managing agent may be appointed under this section on such terms and conditions (including terms and conditions relating to remuneration by the owners corporation and the duration of appointment) as may be specified in the order making the appointment.	6 7 8 9 10
	<b>(6) Revocation of certain appointments</b>	11
	An order under this section may be revoked or varied on the application of any of the following persons and, unless sooner revoked, ceases to have effect at the expiration of such period after its making (not exceeding 12 months) as is specified in the order:	12 13 14 15 16
	(a) a person who obtained an order under this Act that imposed a duty on the owners corporation or on its executive committee, chairperson, secretary or treasurer and that has not been complied with,	17 18 19 20
	(b) a person having an estate or interest in a lot in the strata scheme concerned or, in the case of a leasehold strata scheme, in a lease of a lot in the scheme,	21 22 23
	(c) the authority having the benefit of a positive covenant that imposes a duty on the owners corporation,	24 25
	(d) a judgment creditor to whom the owners corporation owes a judgment debt.	26 27
<b>[32]</b>	<b>Section 190 Tribunal may vary order to correct error, for clarification or to extend time limit</b>	28 29
	Insert “, whether or not on application,” after “vary an order”.	30
<b>[33]</b>	<b>Section 190 (2)</b>	31
	Insert at the end of section 190:	32
	(2) An application under this section may be made by any of the following persons:	33 34
	(a) the owners corporation,	35
	(b) the lessor of a leasehold strata scheme,	36

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- (c) the applicant for the original order, 1
  - (d) any person who made a written submission on the 2  
application for the original order, 3
  - (e) any other person who is required by the original order 4  
to do or refrain from doing a specified act. 5

**[34] Chapter 7, Part 1A** 6

Insert after section 230: 7

**Part 1A Legal costs** 8

**230A Disclosure of matters relating to legal costs** 9

If a disclosure under Division 2 of Part 11 of the *Legal* 10  
*Profession Act 1987* is made to an owners corporation in 11  
respect of the costs of legal services to be provided to the 12  
owners corporation, the owners corporation must give a copy 13  
of the disclosure to each owner and executive committee 14  
member within 7 days of the disclosure being made. 15

**[35] Section 246 Regulations** 16

Insert after section 246 (2) (f): 17

- (g) the procedure for meetings of the owners corporation of 18  
a large strata scheme, 19
- (h) the delegation of functions of the owners corporation of 20  
a large strata scheme, 21
- (i) the decisions or classes of decisions that may or may 22  
not be made by the executive committee of a large strata 23  
scheme, 24
- (j) the functions of office holders of an owners corporation 25  
of a large strata scheme, 26
- (k) the management of the administrative fund or sinking 27  
fund of the owners corporation of a large strata scheme, 28
- (l) requiring information and other matters to be brought to 29  
the attention of owners and executive committee 30  
members in respect of the provision of legal services to 31  
an owners corporation. 32

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<b>[36]    Schedule 2 Meetings and procedure of owners corporation</b>	1
Insert after clause 3 (b):	2
(b1)    in the case of an owners corporation to which section	3
75A applies, to discuss the preparation of the plan	4
required by that section,	5
<b>[37]    Schedule 2, clause 3 (f1)</b>	6
Insert after clause 3 (f):	7
(f1)    to decide whether a caretaker should be appointed	8
under section 40A and, if a caretaker is to be appointed,	9
what functions the caretaker should exercise,	10
<b>[38]    Schedule 2, clause 4 (1) (a)</b>	11
Insert “or lessor” after “owner”.	12
<b>[39]    Schedule 2, clause 4 (1) (a1)</b>	13
Insert after clause 4 (1) (a):	14
(a1)    without limiting paragraph (a), all development	15
consents, complying development certificates and	16
related endorsed plans, “as built” drawings, compliance	17
certificates (within the meaning of the <i>Environmental</i>	18
<i>Planning and Assessment Act 1979</i> ), fire safety	19
certificates and warranties obtained or received by the	20
owner or lessor and relating to the parcel or any	21
building, plant or equipment on the parcel,	22
<b>[40]    Schedule 2, clause 4 (1) (d)</b>	23
Insert after clause 4 (1) (c):	24
(d)    any other document or item relating to the parcel or any	25
building, plant or equipment on the parcel that is	26
prescribed by the regulations for the purposes of this	27
subclause.	28
<b>[41]    Schedule 2, clause 4 (1)</b>	29
Omit “10 penalty units”. Insert instead “100 penalty units”.	30

<b>[42] Schedule 2, clause 11 (3)</b>	1
Omit the subclause. Insert instead:	2
<b>(3) Proxy to be given to secretary of owners corporation</b>	3
The instrument is ineffective unless it contains the date on	4
which it was made and it is given to the secretary of the	5
owners corporation:	6
(a) in the case of a large strata scheme—at least 24 hours	7
before the first meeting in relation to which the	8
instrument is to operate, or	9
(b) in any other case—at or before the first meeting in	10
relation to which the instrument is to operate.	11
<b>[43] Schedule 2, clause 32 (2)</b>	12
Insert “or relates to insurance, budgeting or the fixing of a levy that will	13
require expenditure above the prescribed amount referred to in the	14
definition of <i>priority vote</i> in clause 7 (1)” after “the owners corporation”.	15
<b>[44] Schedule 2, clause 34</b>	16
Insert at the end of clause 34 (f):	17
, and	18
(g) include a form of motion to decide if any matter or type	19
of matter is to be determined only by the owners	20
corporation in general meeting.	21
<b>[45] Schedule 2, clause 34A</b>	22
Insert after clause 34:	23
<b>34A Required items of agenda for annual general meeting</b>	24
The agenda for each annual general meeting must include:	25
(a) an item to decide if any matter or type of matter is to be	26
determined only by the owners corporation in general	27
meeting, and	28
(b) in the case of an owners corporation to which	29
section 75A applies, an item to prepare or review a plan	30
relating to the sinking fund if required to be done at that	31
meeting.	32

<b>[46]    Schedule 2, Part 3</b>	1
Insert after Part 2:	2
 <b>Part 3            General provisions</b>	3
 <b>38    Regulations relating to large strata schemes</b>	4
The provisions of this Schedule are subject to the regulations, but only to the extent that the regulations relate to large strata schemes.	5 6 7
 <b>[47]    Schedule 3 Constitution of executive committee of the owners         corporation and meetings of executive committee</b>	8 9
Insert after clause 4 (2):	10
(3)    For the avoidance of doubt, a special resolution referred to in subclause (1) (e) may relate to more than one member of an executive committee or to all members of an executive committee.	11 12 13 14
 <b>[48]    Schedule 3, clause 6</b>	15
Omit the clause. Insert instead:	16
 <b>6    Notice of executive committee meetings</b>	17
(1)    An executive committee of a large strata scheme must give notice of its intention to hold a meeting at least 72 hours before the time fixed for the meeting:	18 19 20
(a)    by giving written notice (which may be done by electronic means) to each owner and executive committee member, and	21 22 23
(b)    if the owners corporation is required by the by-laws to maintain a notice board, by displaying the notice on the notice board.	24 25 26
(2)    An executive committee of a strata scheme that is not a large strata scheme must give notice of its intention to hold a meeting at least 72 hours before the time fixed for the meeting:	27 28 29 30
(a)    by displaying the notice on the notice board, or	31



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|---|--|
| <p>(b) if the owners corporation is not required by the by-laws to maintain a notice board, by giving written notice (which may be done by electronic means) to each owner and executive committee member.</p> <p>(3) The notice must specify when and where the meeting is to be held and contain a detailed agenda for the meeting.</p> <p>(4) A notice may be given to a person by electronic means only if the person has given the owners corporation an e-mail address for the service of notices under this Act and the notice is sent to that address.</p> <p><b>[49] Schedule 3, clause 16</b></p> <p>Omit the clause. Insert instead:</p> <p><b>16 Display of minutes</b></p> <p>(1) Within 7 days after a meeting of the executive committee of a large strata scheme, the executive committee must:</p> <p style="padding-left: 20px;">(a) give each owner and executive committee member a copy of the minutes of the meeting, and</p> <p style="padding-left: 20px;">(b) if the owners corporation is required by the by-laws to maintain a notice board, cause a copy of the minutes of the meeting to be displayed on the notice board.</p> <p>(2) Within 7 days after the executive committee of a large strata scheme passes a resolution in accordance with this Schedule, the executive committee must:</p> <p style="padding-left: 20px;">(a) give each owner and executive committee member a copy of the minute of the resolution, and</p> <p style="padding-left: 20px;">(b) if the owners corporation is required by the by-laws to maintain a notice board, cause a copy of the minute of the resolution to be displayed on the notice board.</p> | <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> |
|---|--|

(3)	Within 7 days after a meeting of the executive committee of a strata scheme that is not a large strata scheme, the executive committee must:	1
		2
		3
(a)	cause a copy of the minutes of the meeting to be displayed on the notice board, or	4
		5
(b)	if the owners corporation is not required by the by-laws to maintain a notice board, give each owner and executive committee member a copy of the minutes of the meeting.	6
		7
		8
		9
(4)	Within 7 days after the executive committee of a strata scheme that is not a large strata scheme passes a resolution in accordance with this Schedule, the executive committee must:	10
		11
		12
		13
(a)	cause a copy of the minute of the resolution to be displayed on the notice board, or	14
		15
(b)	if the owners corporation is not required by the by-laws to maintain a notice board, give each owner and executive committee member a copy of the minute of the resolution.	16
		17
		18
		19
(5)	A copy of a minute or minutes required to be displayed on a notice board under this clause must be kept displayed on the notice board for a period of not less than 14 days.	20
		21
		22
<b>[50]</b>	<b>Schedule 3, Part 3</b>	23
	Insert after Part 2:	24
	<b>Part 3      General provisions</b>	25
	<b>18      Regulations relating to large strata schemes</b>	26
	The provisions of this Schedule are subject to the regulations, but only to the extent that the regulations relate to large strata schemes.	27
		28
		29
<b>[51]</b>	<b>Schedule 4 Savings, transitional and other provisions</b>	30
	Insert at the end of clause 1 (1):	31
	<i>Strata Schemes Management Amendment Act 2003</i>	32

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<b>[52] Schedule 4, Part 5</b>	1
Insert after clause 13:	2
 <b>Part 5 Provisions consequent on enactment of Strata Schemes Management Amendment Act 2003</b>	3 4 5
 <b>14 Definitions</b>	6
In this Part:	7
<i>amending Act</i> means the <i>Strata Schemes Management Amendment Act 2003</i> .	8 9
 <b>15 Exercise of functions</b>	10
Section 29A does not affect the exercise of a function under this Act before the commencement of that section.	11 12
 <b>16 Legal action</b>	13
Section 80D applies only to legal advice or legal services sought, or legal action entered into, after the commencement of that section.	14 15 16
 <b>17 Insurance</b>	17
Section 88A does not affect any insurance that was taken out in accordance with the provisions of this Act as in force before the commencement of that section.	18 19 20
 <b>18 Disclosures under Legal Profession Act 1987</b>	21
Section 230A does not apply to a disclosure under Division 2 of Part 11 of the <i>Legal Profession Act 1987</i> made before the commencement of that section.	22 23 24
 <b>19 Notice of annual general meeting</b>	25
Clause 34 (g) of Schedule 2 does not apply to a notice served before the commencement of that paragraph.	26 27

<b>20</b>	<b>Agenda for annual general meeting</b>	1
	Clause 34A of Schedule 2 does not apply to the agenda of a meeting notice of which was served before the commencement of that clause.	2 3 4
<b>21</b>	<b>Notice of executive committee meetings</b>	5
	Clause 6 of Schedule 3, as in force immediately before its substitution by the amending Act, continues to apply to a meeting notice of which was given before the substitution of that clause.	6 7 8 9
<b>22</b>	<b>Minutes of executive committee meetings</b>	10
	Clause 16 of Schedule 3, as in force immediately before its substitution by the amending Act, continues to apply to a meeting held before the substitution of that clause.	11 12 13
<b>[53]</b>	<b>Dictionary</b>	14
	Insert in alphabetical order in Part 1:	15
	<i>large strata scheme</i> has the meaning given by clause 5 of Part 2.	16 17
	<i>utility lot</i> means a lot designed to be used primarily for storage or accommodation of boats, motor vehicles or goods and not for human occupation as a residence, office, shop or the like.	18 19 20 21
<b>[54]</b>	<b>Dictionary, Part 2</b>	22
	Insert after clause 4:	23
<b>5</b>	<b>Meaning of “large strata scheme”</b>	24
(1)	In this Act, <i>large strata scheme</i> means a strata scheme comprising more than 100 lots or more than such other number of lots as may be prescribed by the regulations for the purposes of this subclause.	25 26 27 28
(2)	When calculating the number of lots in a strata scheme for the purposes of this clause, utility lots and lots used for the purposes of parking are not to be included in the calculation.	29 30 31

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- (3) The regulations may contain provisions of a savings or transitional nature consequent on a change in the number of lots comprising a large strata scheme.

**6 References to strata managing agent's licence**

A reference in this Act (however expressed) to a strata managing agent's licence under the *Property, Stock and Business Agent's Act 2002* includes a reference to a corporation licence under that Act that authorises the holder to act as, or carry on the business of, a strata managing agent.

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## **Schedule 2   Amendment of Act and Regulations**

(Section 4)

### **2.1   Conveyancing (Sale of Land) Regulation 2000**

#### **[1]   Schedule 1 Prescribed documents**

Insert at the end of clause 5 (b):

, and

- (c) a copy of any by-law for the strata scheme to which Division 4 of Part 5 of Chapter 2 of the *Strata Schemes Management Act 1996* applies.

#### **[2]   Schedule 1, clause 6**

Insert at the end of clause 6 (d):

, and

- (e) a copy of any by-law for the strata scheme to which Division 4 of Part 5 of Chapter 2 of the *Strata Schemes Management Act 1996* applies.

### **2.2   Retirement Villages Act 1999 No 81**

#### **Section 19 General information about retirement villages**

Insert “and, in the case of a retirement village that is subject to a strata scheme, living in a strata scheme” after “industry” in section 19 (1).

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**2.3 Retirement Villages Regulation 2000**

1

**Schedule 1 Disclosure statement**

2

Insert after item 14:

3

**14A STRATA CONTRIBUTIONS PAYABLE (Where applicable)**

4

The amount of contributions levied under the *Strata Schemes Management Act 1996* for the current year in respect of the lot (within the meaning of the *Strata Schemes Management Act 1996*) are:

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6

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**Note.** The amount of contributions to be levied is reviewed at least once each year.

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10