

FIRST PRINT

STRATA TITLES (COVENANTS) AMENDMENT BILL 1986

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

This Bill is cognate with the Conveyancing (Covenants) Amendment Bill 1986.

The object of this Bill is to amend the Strata Titles Act 1973 so as to provide for the enforcement of positive covenants imposed under proposed section 88D or 88E of the Conveyancing Act 1919 on land subject to a strata scheme created by the Principal Act.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with minor exceptions, commence when certain amendments to the Conveyancing Act 1919 commence.

Clause 3 is a formal provision which gives effect to the Schedules of amendments to the Principal Act.

Schedule 1 defines the term "positive covenant" for the purposes of the Principal Act.

Schedule 2 (1) requires a positive covenant charge affecting a lot to have been discharged before the lot may be converted into common property.

Schedule 2 (2) provides that a strata plan, a strata plan of subdivision, a strata plan of consolidation or a building alteration plan shall not be registered if the land comprised in the plan is subject to a positive covenant charge and the person having the benefit of that charge (the "positive covenant chargee") has not signed the plan.

Schedule 2 (3) has the effect of freeing common property created by the registration of a strata plan or a strata plan of subdivision from any positive covenant charge which affected the land before registration of the plan.

Schedule 2 (4) requires the Registrar-General to record a positive covenant, but not any positive covenant charge, affecting land subject to a strata scheme on the folio for the common property.

Schedule 2 (5) empowers a body corporate to create a positive covenant which burdens common property or the whole parcel subject to a strata scheme.

Schedule 2 (6) and (7) require the consent of any positive covenant chargee to certain amendments of registered development statements.

Schedule 2 (8) provides for a positive covenant chargee to be given notice where an application is made to the Land and Environment Court for the rectification of a defective development statement.

Schedule 3 (1) empowers a positive covenant chargee to apply to the Supreme Court for the variation or substitution of a strata scheme where the building to which the scheme relates is damaged or destroyed.

Schedule 3 (2) enables an authority applying to the Supreme Court to have land transferred to it because of the contravention of a positive covenant to apply also to that Court for an order terminating any strata scheme affecting the land.

Schedule 4 (1) enables a positive covenant chargee to nominate a person who may be appointed by the Strata Titles Commissioner to convene a meeting of a body corporate.

Schedule 4 (2) makes the by-laws in force in respect of a strata scheme binding upon a positive covenant chargee in possession of a lot to which the strata scheme relates.

Schedule 4 (3) empowers the body corporate to carry out certain work which is required to be carried out by a positive covenant chargee in possession and to recover the cost of carrying out that work.

Schedule 4 (4) ensures that the interests of a positive covenant chargee are taken into account in the same way as the interests of an enrolled mortgagee of a lot when a body corporate distributes surplus money in an administrative fund or a sinking fund.

Schedule 4 (5) requires that notice of an application to the Supreme Court to authorise the body corporate to take certain action during the initial period for a strata scheme which would otherwise be prohibited by the Principal Act shall be given to a positive covenant chargee.

Schedule 4 (6) obliges a body corporate to keep a record on its strata roll of information relating to positive covenant charges.

Schedule 4 (7) provides that a positive covenant chargee in possession of a lot shall be subject to the same obligations relating to the use and enjoyment of other lots and common property as a proprietor or mortgagee in possession of the lot.

Schedule 4 (8) empowers a positive covenant chargee to authorise an individual to exercise or perform on its behalf any of its functions under the Principal Act, as amended by the proposed Act.

Schedule 4 (9) provides for the giving of notice to a body corporate when a positive covenant charge is registered or discharged and when a positive covenant chargee enters into possession of a lot.

Schedule 4 (10) enables an authority having the benefit of a positive covenant requiring insurance to make representations to the Strata Titles Commissioner before the Commissioner makes an order exempting a body corporate required to observe the covenant from its obligation under the Principal Act to insure.

Schedule 4 (11) provides that a proprietor of a lot may secure the amount owing under a covenant charge by a contract of insurance.

Schedule 5 (1) provides that the Commissioner may order a body corporate or proprietor of a lot to comply with an obligation imposed by a positive covenant.

Schedule 5 (2) and (3) enable the authority having the benefit of a positive covenant to apply to the Commissioner for an order—

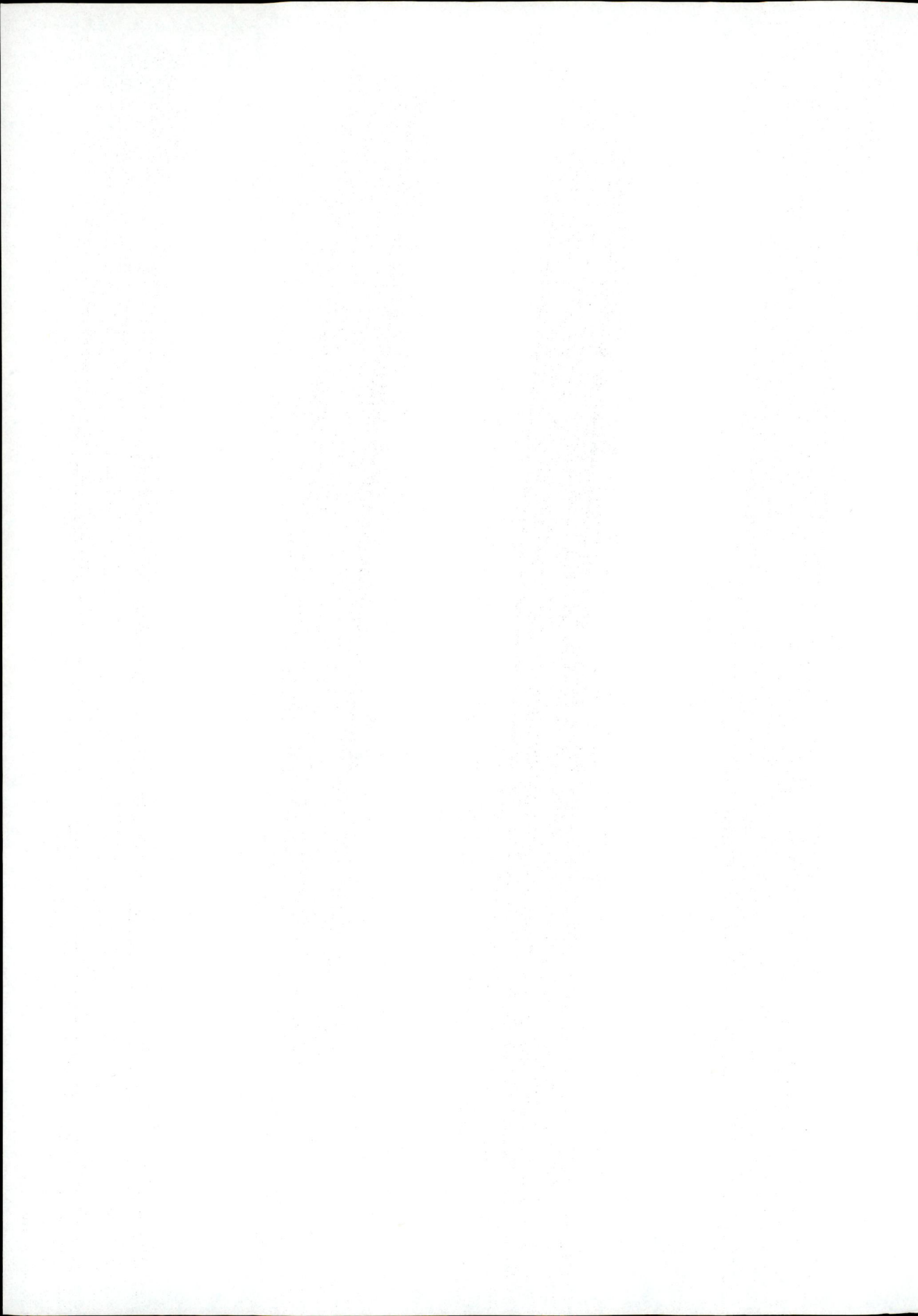
- (a) to vary the insurance effected under the Principal Act by a body corporate; or
- (b) to appoint a managing agent to perform obligations under the covenant.

Schedule 6 (1) declares that a positive covenant chargee is entitled to any rights or remedies it may have apart from the Principal Act but that it may be liable for costs if it enforces its rights or remedies otherwise than by any method available under Part V of that Act.

Schedule 6 (2) confirms that the amount owing under a covenant charge shall be apportioned among the lots subject to a strata scheme in the same proportions as the unit entitlements attributable to those lots.

Schedule 6 (3) allows for the service of certain notices by positive covenant chargees.

Schedule 7 provides for the conferring on company nominees of positive covenant chargees of the voting rights of lot proprietors at general meetings of the body corporate and empowers lot proprietors to require the inclusion of proposed motions in the agenda for certain general meetings, notwithstanding that the voting powers of the proprietors may be exercised by positive covenant chargees.



STRATA TITLES (COVENANTS) AMENDMENT BILL 1986

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Act No. 68, 1973

SCHEDULE 1—AMENDMENTS TO PART I OF THE STRATA TITLES ACT 1973

SCHEDULE 2—AMENDMENTS TO PART II OF THE STRATA TITLES ACT 1973

SCHEDULE 3—AMENDMENTS TO PART III OF THE STRATA TITLES ACT 1973

SCHEDULE 4—AMENDMENTS TO PART IV OF THE STRATA TITLES ACT 1973

SCHEDULE 5—AMENDMENTS TO PART V OF THE STRATA TITLES ACT 1973

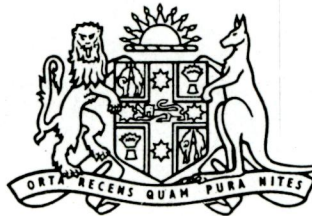
SCHEDULE 6—AMENDMENTS TO PART VI OF THE STRATA TITLES ACT 1973

SCHEDULE 7—AMENDMENTS TO SCHEDULE 2 TO THE STRATA TITLES ACT
1973



STRATA TITLES (COVENANTS) AMENDMENT BILL 1986

NEW SOUTH WALES



No. , 1986

A BILL FOR

An Act to amend the Strata Titles Act 1973 so as to provide for the enforcement of certain covenants affecting the use of land subject to strata schemes.

Strata Titles (Covenants) Amendment 1986

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

5 Short title

1. This Act may be cited as the "Strata Titles (Covenants) Amendment Act 1986".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this
10 Act.

(2) Except as provided by subsection (1), this Act shall commence on the day appointed and notified under section 2 (2) of the Conveyancing (Covenants) Amendment Act 1986.

Amendment of Act No. 68, 1973

15 3. The Strata Titles Act 1973 is amended in the manner set forth in Schedules 1-7.

SCHEDULE 1

(Sec. 3)

AMENDMENTS TO PART I OF THE STRATA TITLES ACT 1973

20 Section 5 (Interpretation)—

(1) Section 5 (1), definition of "mortgage"—

After "interest", insert "or a covenant charge".

(2) Section 5 (1), definition of "positive covenant"—

After the definition of "parcel", insert:

25 "positive covenant" means a positive covenant imposed on land under section 88D or 88E of the Conveyancing Act 1919;

Strata Titles (Covenants) Amendment 1986

SCHEDULE 2

(Sec. 3)

AMENDMENTS TO PART II OF THE STRATA TITLES ACT 1973

- (1) Section 13 (**Conversion of lots into common property**)—
- 5 Section 13 (2) (c)—
 After “charge,” insert “covenant charge.”
- (2) Section 16 (**Plans to be signed**)—
- (a) Section 16 (2) (a)—
 Omit the paragraph, insert instead:
- 10 (a) the mortgagee, chargee or covenant chargee under a
 mortgage, charge or covenant charge recorded in the
 Register;
- (b) Section 16 (2), (3)—
 After “, charge” wherever occurring, insert “, covenant charge”.
- 15 (c) Section 16 (2)—
 After “gross”, insert “or a positive covenant”.
- (d) Section 16 (3)—
 After “chargee” wherever occurring, insert “, covenant chargee”.
- (3) Section 18 (**Vesting of common property upon registration of strata
 20 plan**)—
 Section 18 (1), (3)—
 After “charge,” wherever occurring, insert “covenant charge.”
- (4) Section 23 (**Folio where common property**)—
- (a) Section 23 (2) (d), (3)—
- 25 Omit “as to user” wherever occurring, insert instead “on the use
 of land or positive covenant”.
- (b) Section 23 (3)—
 Omit “or restriction” wherever occurring, insert instead “,
 restriction or positive covenant”.

Strata Titles (Covenants) Amendment 1986

SCHEDULE 2—*continued*

AMENDMENTS TO PART II OF THE STRATA TITLES ACT 1973—
continued

- (c) Section 23 (4)—
After “charge” wherever occurring, insert “, covenant charge”.
- (5) Section 26 (**Creation of easements, restrictions and positive covenants**)—
Section 26 (1) (a)—
5 Omit “as to user”, insert instead “on the use of land or a positive covenant”.
- (6) Section 28D (**Registration of amendment that does not exclude or convert a development lot**)—
(a) Section 28D (1) (c)—
10 After “developer”, insert “or subject to a covenant charge”.
(b) Section 28D (1) (c)—
After “mortgagee”, insert “or covenant chargee”.
- (7) Section 28E (**Registration of amendment whereby development lot excluded or converted**)—
15 (a) Section 28E (1) (c)—
After “developer”, insert “or to a covenant charge”.
(b) Section 28E (1) (c)—
After “mortgagee”, insert “or covenant chargee”.
(c) Section 28E (3)—
20 After “charge,”, insert “covenant charge,”.
- (8) Section 28K (**Misleading development statement**)—
Section 28K (2) (c)—
Omit the paragraph, insert instead:
25 (c) where any lot is subject to a mortgage or covenant charge,
the first mortgagee or covenant chargee;
-

SCHEDULE 3

(Sec. 3)

AMENDMENTS TO PART III OF THE STRATA TITLES ACT 1973

5 (1) Section 50 (**Variation of strata scheme consequent upon damage to or destruction of building**)—

(a) Section 50 (1) (a), (a1)—

Omit section 50 (1) (a), insert instead:

(a) any proprietor of a lot the subject of the strata scheme concerned;

10 (a1) where any such lot is subject to a mortgage or covenant charge—the mortgagee or covenant chargee; or

(b) Section 50 (6) (c)—

After “charges”, insert “, covenant charges”.

(2) Section 51 (**Termination of strata scheme**)—

15 (a) Section 51 (1) (a), (a1)—

Omit section 51 (1) (a), insert instead:

(a) any proprietor of a lot the subject of the strata scheme concerned;

20 (a1) where any such lot is subject to a mortgage or covenant charge—the mortgagee or covenant chargee; or

(b) Section 51 (1A)—

After section 51 (1), insert:

25 (1A) An application for an order under subsection (4) may be made by an authority having the benefit of a positive covenant only when the authority applies under section 881 of the Conveyancing Act 1919 for an order that the land the subject of the strata scheme concerned be transferred to the authority.

SCHEDULE 4

(Sec. 3)

AMENDMENTS TO PART IV OF THE STRATA TITLES ACT 1973

(1) Section 57 (**Meetings of body corporate**)—

5 (a) Section 57 (6A)—

Omit “or mortgagee of a lot”, insert instead “of a lot or, where the lot is subject to a mortgage or covenant charge, the mortgagee or covenant charge”.

(b) Section 57 (6A)—

10 Omit “or mortgagee” where secondly occurring, insert instead “, mortgagee or covenant charge”.

(2) Section 58 (**By-laws**)—

(a) Section 58 (5)—

After “any mortgagee”, insert “or covenant charge”.

15 (b) Section 58 (5)—

After “mortgagee,” insert “covenant charge,”.

(3) Section 60 (**Power of body corporate to carry out work**)—

Section 60 (2), (3) (a)—

20 After “mortgagee” wherever occurring, insert “or covenant charge”.

(4) Section 62 (**Distribution of surplus moneys in administrative fund or sinking fund**)—

(a) Section 62 (2)—

After “mortgage”, insert “or covenant charge”.

Strata Titles (Covenants) Amendment 1986

SCHEDULE 4—*continued*

AMENDMENTS TO PART IV OF THE STRATA TITLES ACT 1973—
continued

(b) Section 62 (2) (a)—

Omit the paragraph, insert instead:

- 5 (a) where the mortgagee or covenant chargee furnishes to the
body corporate a consent for the payment to be made to
the mortgagee or covenant chargee in writing executed by
the proprietor and each other mortgagee and covenant
chargee, if any, entered in the strata roll as having the
benefit of a mortgage on or a covenant charge affecting that
lot—to the firstmentioned mortgagee or covenant chargee;
10 or

(c) Section 62 (2) (b)—

Omit “enrolled mortgagee of”, insert instead “mortgagee and
covenant chargee, if any, entered in the strata roll as having the
benefit of a mortgage on or a covenant charge affecting”.

15 (d) Section 62 (3)—

Omit the subsection, insert instead:

- 20 (3) Where a body corporate has passed a unanimous
resolution referred to in subsection (1) and no consent has been
executed as referred to in subsection (2) (a) or (b), the proprietor
or any enrolled mortgagee or any covenant chargee entered in
the strata roll may make an application to the appropriate court
for an order under subsection (4).

(e) Section 62 (4) (b)—

- 25 After “mortgagee”, insert “or covenant chargee entered in the
strata roll”.

(f) Section 62 (4) (c)—

Omit “and any enrolled mortgagee”, insert instead “, any
enrolled mortgagee and any covenant chargee entered in the
strata roll”.

*Strata Titles (Covenants) Amendment 1986*SCHEDULE 4—*continued*AMENDMENTS TO PART IV OF THE STRATA TITLES ACT 1973—
continued(5) Section 67 (**Supreme Court's power to authorise certain acts during initial period**)—

Section 67 (2) (b)—

Omit the paragraph, insert instead:

- 5 (b) each registered mortgagee and enrolled mortgagee, if any, of every such lot and any covenant chargee having the benefit of a covenant charge affecting any such lot; and

(6) Section 69 (**Strata roll**)—

(a) Section 69 (3) (c), (c1)—

- 10 After “mortgagee of” wherever occurring, insert “, or covenant chargee having the benefit of a covenant charge affecting,”.

(b) Section 69 (3) (c), (d)—

After “mortgage” wherever occurring, insert “or covenant charge”.

15 (c) Section 69 (3) (c)—

After “81 (3)”, insert “or (4A)”.

(d) Section 69 (3) (c)—

After “mortgages”, insert “or covenant charges”.

(e) Section 69 (3) (d)—

- 20 After “81 (4)”, insert “, (4A)”.

(f) Section 69 (3) (e)—

After “mortgagee”, insert “or covenant chargee”.

(7) Section 80 (**Duties of proprietors and occupiers of lots**)—

After “mortgagee”, insert “or covenant chargee”.

*Strata Titles (Covenants) Amendment 1986*SCHEDULE 4—*continued*AMENDMENTS TO PART IV OF THE STRATA TITLES ACT 1973—
continued(8) Section 80A (**Power for individuals to act for corporate proprietors, mortgagees, etc.**)—

(a) Section 80A (1)—

5 After “lot”, insert “or as a covenant chargee having the benefit of a covenant charge affecting a lot”.

(b) Section 80A (2)—

Omit the subsection, insert instead:

10 (2) Where an individual exercises or performs a power, authority, duty or function with respect to a lot which the individual is authorised under subsection (1) to exercise or perform by a proprietor, mortgagee or covenant chargee, the power, authority, duty or function shall be deemed to have been exercised or performed with respect to the lot by the proprietor, mortgagee or covenant chargee.

15 (c) Section 80A (3)—

After “a lot”, insert “or a covenant chargee”.

(9) Section 81 (**Notices to be given by proprietors, mortgagees, etc.**)—

(a) Section 81 (3) (b)—

After “lot”, insert “or covenant charges affecting the lot”.

20 (b) Section 81 (4A)—

After section 81 (4), insert:

(4A) After the registration of—

25 (a) a covenant charge affecting a lot, the covenant chargee may give to the body corporate written notice which shall identify the lot and—

(i) specify the name of the covenant chargee in full, the address for service of notices on the covenant chargee and the date of registration of the covenant charge; and

*Strata Titles (Covenants) Amendment 1986*SCHEDULE 4—*continued*AMENDMENTS TO PART IV OF THE STRATA TITLES ACT 1973—
continued

- (ii) specify any mortgages of the lot or other covenant charges affecting the lot which have priority over the covenant charge referred to in the notice; or
- 5 (b) a discharge of a covenant charge affecting a lot, the proprietor of the lot may give to the body corporate written notice of the discharge which shall identify the lot and—
- (i) specify the date of registration of the discharge; and
- 10 (ii) bear written confirmation by the covenant chargee of the discharge.
- (c) Section 81 (6)—
- After “mortgagee” wherever occurring, insert “or covenant chargee”.
- (10) Section 83 (**Insurance of buildings**)—
- 15 Section 83 (4)—
- After section 83 (3), insert:
- (4) Where a body corporate is required by a positive covenant to insure the building, an order shall not be made under this section until—
- 20 (a) at least 21 days after the Commissioner has served notice on the authority having the benefit of the covenant of the intention to make the order; and
- (b) the Commissioner has considered any representations made during those 21 days to the Commissioner by the
- 25 authority with respect to the intended order.
- (11) Section 86 (**Insurance of mortgaged lot**)—
- (a) Section 86 (1)—
- After “mortgages of” wherever occurring, insert “and any covenant charges affecting”.

*Strata Titles (Covenants) Amendment 1986*SCHEDULE 4—*continued*AMENDMENTS TO PART IV OF THE STRATA TITLES ACT 1973—
continued

(b) Section 86 (1) (a) (i)—

After “mortgagees”, insert “and any covenant charges”.

(c) Section 86 (3) (b)—

Omit “mortgage”.

5

SCHEDULE 5

(Sec. 3)

AMENDMENTS TO PART V OF THE STRATA TITLES ACT 1973

(1) Section 114A—

After section 114, insert:

10

Order enforcing positive covenant

15

114A. (1) Where, pursuant to an application by an authority having the benefit of a positive covenant for an order under this section, the Commissioner considers that the body corporate for the strata scheme to which the application relates or any proprietor has failed to comply with an obligation imposed by the covenant and relating to the maintenance, repair or insurance of the building, the Commissioner may order the body corporate or proprietor to comply with that obligation.

20

(2) Where an authority has been refused an injunction under section 88H of the Conveyancing Act 1919, the Commissioner may not make an order under this section to the same effect as the injunction refused.

(2) Section 125 (**Order varying amount of insurance to be provided**)—

25

Omit “or an enrolled mortgagee of a lot”, insert instead “, an enrolled mortgagee of a lot or an authority having the benefit of a positive covenant”.

*Strata Titles (Covenants) Amendment 1986*SCHEDULE 5—*continued*AMENDMENTS TO PART V OF THE STRATA TITLES ACT 1973—
continued(3) Section 127 (**Order appointing managing agent to exercise or perform certain powers, etc.**)—

(a) Section 127 (1) (b1)—

After section 127 (1) (b), insert:

5 (b1) a duty is imposed on a body corporate by a positive covenant;

(b) Section 127 (1) (f)—

Omit “or” where lastly occurring.

(c) Section 127 (1) (f1)—

10 After section 127 (1) (f), insert:

(f1) in the case referred to in paragraph (b1)—on the application of the authority having the benefit of the positive covenant; or

SCHEDULE 6

15

(Sec. 3)

AMENDMENTS TO PART VI OF THE STRATA TITLES ACT 1973

(1) Section 146 (**Other rights and remedies not affected by this Act**)—

Section 146 (1)—

After “corporate”, insert “or covenant chargee”.

20 (2) Section 151 (**Apportionment of statutory charges**)—

Section 151 (1)—

After “Act” where secondly occurring, insert “(including the registration of a covenant charge)”.

*Strata Titles (Covenants) Amendment 1986*SCHEDULE 6—*continued*AMENDMENTS TO PART VI OF THE STRATA TITLES ACT 1973—
continued(3) Section 153 (**Service of documents on body corporate, etc.**)—

Section 153 (3)—

After “a lot”, insert “or on a covenant chargee having the benefit of a covenant charge affecting a lot”.

5

SCHEDULE 7

(Sec. 3)

AMENDMENTS TO SCHEDULE 2 TO THE STRATA TITLES ACT
1973(1) Part 1 (**Meetings other than first annual general meeting**)—10 (a) Clause 1 (**General meetings of body corporate**)—

(i) Clause 1 (4) (a)—

15 Omit “first mortgagee of a lot”, insert instead “, where the strata roll shows that the lot is subject to a mortgage or covenant charge, each first mortgagee and covenant chargee”.

(ii) Clause 1 (4) (b)—

Omit “of a lot”, insert instead “or covenant chargee”.

(iii) Clause 1 (6) (c) (i)—

Omit the subparagraph, insert instead:

20

(i) in the case of a proprietor of a lot subject to a first mortgage or a covenant charge shown on the strata roll, only if the mortgagee or, if a covenant charge is shown on the strata roll as having priority to the mortgage or there is no mortgage, only if the covenant chargee refuses or neglects to exercise the voting power conferred by this Part;

25

*Strata Titles (Covenants) Amendment 1986*SCHEDULE 7—*continued*AMENDMENTS TO SCHEDULE 2 TO THE STRATA TITLES ACT
1973—*continued*

(iv) Clause 1 (6) (c) (ii)—

After “or first mortgagee”, insert “or in respect of which the person is a covenant chargee”.

(b) Clause 2 (**Persons entitled to vote at general meetings**)—

5 Clause 2 (2)—

Omit “a first mortgagee of a lot, as shown on the strata roll, or, where the first mortgagee is a corporation, the company nominee, as shown on that roll, of that corporation”, insert instead:

10 where a lot is subject to a mortgage or a covenant charge, or to both, shown on the strata roll—

(a) the mortgagee or, if the mortgagee is a corporation, the company nominee, as shown on that roll, of that corporation; or

15 (b) the company nominee, as shown on that roll, of the covenant chargee,

under the mortgage or covenant charge shown on that roll as being first in priority.

20 (c) Clause 14 (**Requisition for motion to be included on agenda for general meeting**)—

Clause 14 (2)—

Omit “who but for the existence of a mortgage over his lot”, insert instead “of a lot who, but for the fact that the lot is subject to a mortgage or covenant charge,”.

*Strata Titles (Covenants) Amendment 1986*SCHEDULE 7—*continued*AMENDMENTS TO SCHEDULE 2 TO THE STRATA TITLES ACT
1973—*continued*(2) Part 2 (**First annual general meeting**)—(a) Clause 3 (**Notice of meeting and contents thereof**)—

(i) Clause 3 (1)—

5 Omit “first mortgagee of a lot”, insert instead “, where the strata roll shows that the lot is subject to a mortgage or covenant charge, each first mortgagee and covenant charge”.

(ii) Clause 3 (1) (b) (i)—

Omit the subparagraph, insert instead:

10 (i) in the case of a proprietor of a lot subject to a first mortgage or a covenant charge shown on the strata roll, only if the mortgagee or, if the covenant charge is shown on the strata roll as having priority to the mortgage or there is no mortgage, only if the
15 covenant chargee refuses or neglects to exercise the voting power conferred by this Part;

(iii) Clause 3 (1) (b) (ii)—

After “or first mortgagee”, insert “or in respect of which the person is a covenant charge”.

20 (iv) Clause 3 (2)—

Omit “or first mortgagee of a lot”, insert instead “, first mortgagee or covenant charge”.

(v) Clause 3 (3)—

25 Omit “Where it is served on a first mortgagee of a lot”, insert instead “Where the lot to which the notice relates is subject to a mortgage or covenant charge and the notice is served on the mortgagee or covenant charge”.

*Strata Titles (Covenants) Amendment 1986*SCHEDULE 7—*continued*AMENDMENTS TO SCHEDULE 2 TO THE STRATA TITLES ACT
.1973—*continued*(b) Clause 4 (**Restrictions on submitting motions**)—

Clause 4 (3)—

Omit “who but for the existence of a mortgage over his lot”, insert instead “of a lot who, but for the fact the lot is subject to a mortgage or covenant charge,”.

(c) Clause 5 (**Persons entitled to vote at meeting**)—

Clause 5 (2)—

Omit “a first mortgagee of a lot, as shown on the strata roll, or, where the first mortgagee is a corporation, the company nominee, as shown on that roll, of that corporation”, insert instead:

where a lot is subject to a mortgage or a covenant charge, or both, shown on the strata roll—

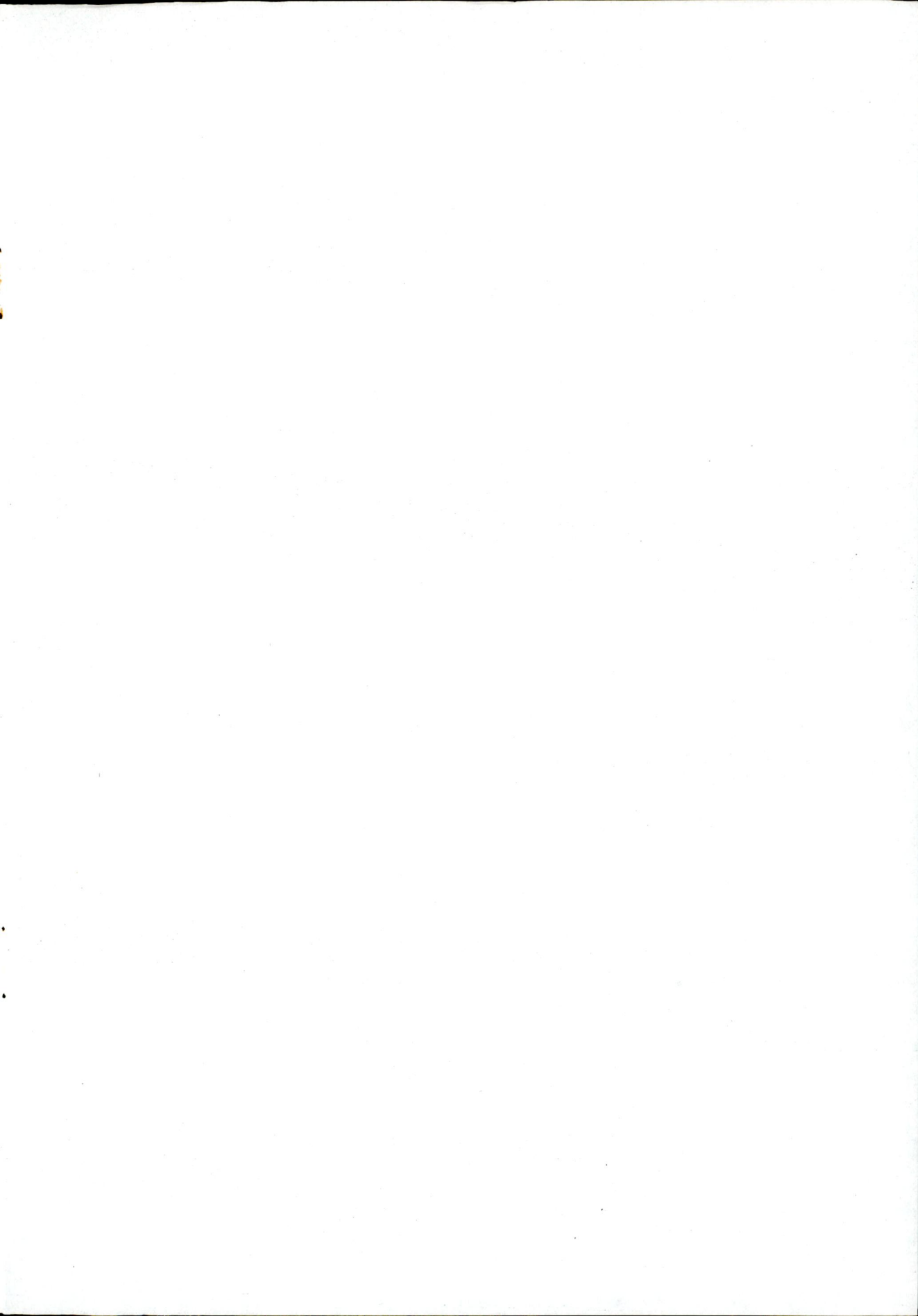
(a) the mortgagee or, if the mortgagee is a corporation, the company nominee, as shown on that roll, of that corporation; or

(b) the company nominee, as shown on that roll, of the covenant charge,

under the mortgage or covenant charge shown on that roll as being first in priority.

 BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1986



STRATA TITLES (COVENANTS) AMENDMENT ACT 1986
No. 72

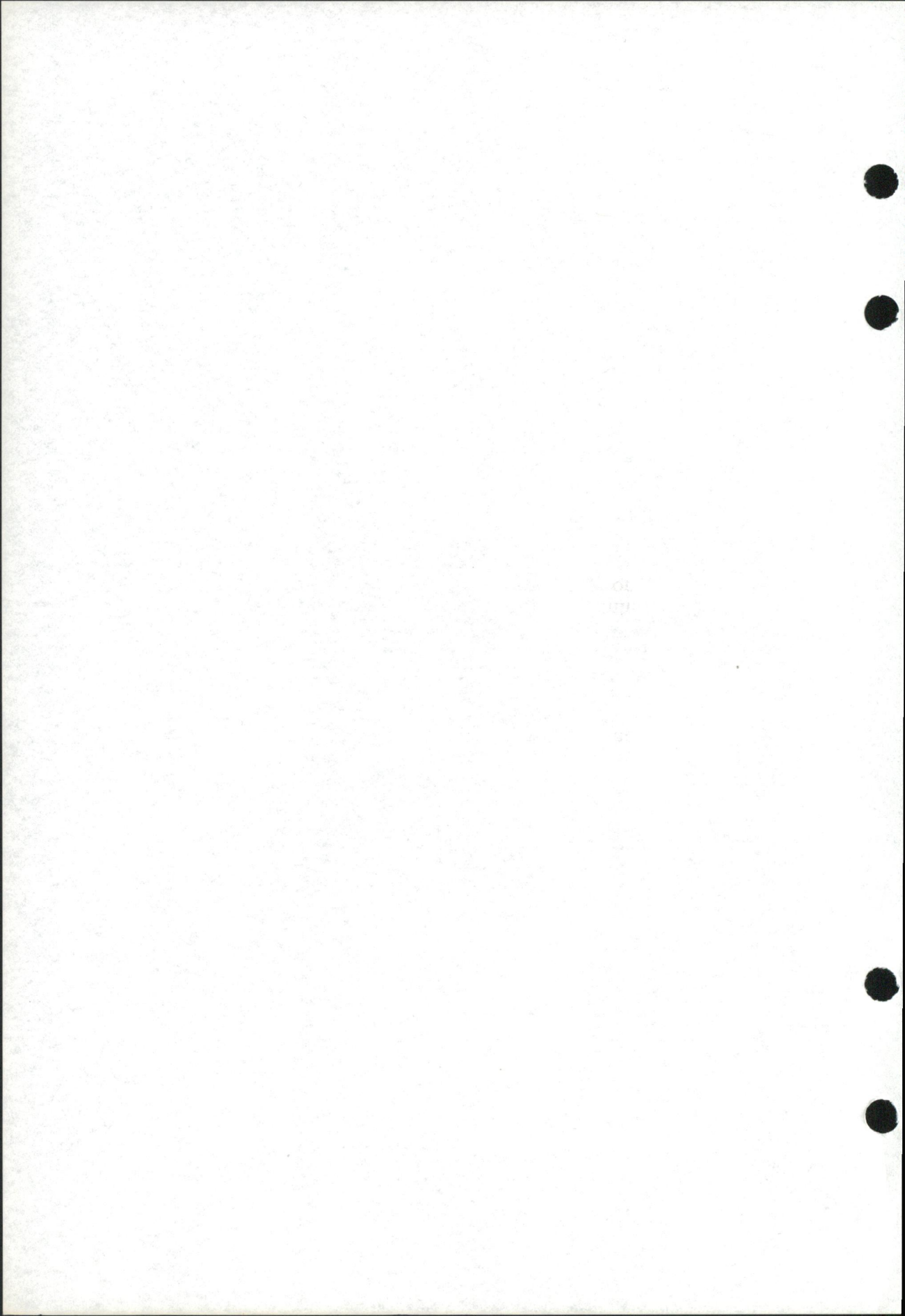
NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Act No. 68, 1973

SCHEDULE 1—AMENDMENTS TO PART I OF THE STRATA TITLES ACT 1973
SCHEDULE 2—AMENDMENTS TO PART II OF THE STRATA TITLES ACT 1973
SCHEDULE 3—AMENDMENTS TO PART III OF THE STRATA TITLES ACT 1973
SCHEDULE 4—AMENDMENTS TO PART IV OF THE STRATA TITLES ACT 1973
SCHEDULE 5—AMENDMENTS TO PART V OF THE STRATA TITLES ACT 1973
SCHEDULE 6—AMENDMENTS TO PART VI OF THE STRATA TITLES ACT 1973
SCHEDULE 7—AMENDMENTS TO SCHEDULE 2 TO THE STRATA TITLES ACT
1973



STRATA TITLES (COVENANTS) AMENDMENT ACT 1986 No. 72

NEW SOUTH WALES



Act No. 72, 1986

An Act to amend the Strata Titles Act 1973 so as to provide for the enforcement of certain covenants affecting the use of land subject to strata schemes. [Assented to, 21 May 1986]

Strata Titles (Covenants) Amendment 1986

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

Short title

1. This Act may be cited as the "Strata Titles (Covenants) Amendment Act 1986".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on the day appointed and notified under section 2 (2) of the Conveyancing (Covenants) Amendment Act 1986.

Amendment of Act No. 68, 1973

3. The Strata Titles Act 1973 is amended in the manner set forth in Schedules 1-7.

SCHEDULE 1

(Sec. 3)

AMENDMENTS TO PART I OF THE STRATA TITLES ACT 1973

Section 5 (**Interpretation**)—

(1) Section 5 (1), definition of "mortgage"—

After "interest", insert "or a covenant charge".

(2) Section 5 (1), definition of "positive covenant"—

After the definition of "parcel", insert:

"positive covenant" means a positive covenant imposed on land under section 88D or 88E of the Conveyancing Act 1919;

Strata Titles (Covenants) Amendment 1986

SCHEDULE 2

(Sec. 3)

AMENDMENTS TO PART II OF THE STRATA TITLES ACT 1973

(1) Section 13 (**Conversion of lots into common property**)—

Section 13 (2) (c)—

After “charge,” insert “covenant charge,”.

(2) Section 16 (**Plans to be signed**)—

(a) Section 16 (2) (a)—

Omit the paragraph, insert instead:

(a) the mortgagee, chargee or covenant chargee under a mortgage, charge or covenant charge recorded in the Register;

(b) Section 16 (2), (3)—

After “, charge” wherever occurring, insert “, covenant charge”.

(c) Section 16 (2)—

After “gross”, insert “or a positive covenant”.

(d) Section 16 (3)—

After “chargee” wherever occurring, insert “, covenant chargee”.

(3) Section 18 (**Vesting of common property upon registration of strata plan**)—

Section 18 (1), (3)—

After “charge,” wherever occurring, insert “covenant charge,”.

(4) Section 23 (**Folio where common property**)—

(a) Section 23 (2) (d), (3)—

Omit “as to user” wherever occurring, insert instead “on the use of land or positive covenant”.

(b) Section 23 (3)—

Omit “or restriction” wherever occurring, insert instead “, restriction or positive covenant”.

Strata Titles (Covenants) Amendment 1986

SCHEDULE 2—*continued*

AMENDMENTS TO PART II OF THE STRATA TITLES ACT 1973—
continued

- (c) Section 23 (4)—
After “charge” wherever occurring, insert “, covenant charge”.
- (5) Section 26 (**Creation of easements, restrictions and positive covenants**)—
Section 26 (1) (a)—
Omit “as to user”, insert instead “on the use of land or a positive covenant”.
- (6) Section 28D (**Registration of amendment that does not exclude or convert a development lot**)—
(a) Section 28D (1) (c)—
After “developer”, insert “or subject to a covenant charge”.
(b) Section 28D (1) (c)—
After “mortgagee”, insert “or covenant chargee”.
- (7) Section 28E (**Registration of amendment whereby development lot excluded or converted**)—
(a) Section 28E (1) (c)—
After “developer”, insert “or to a covenant charge”.
(b) Section 28E (1) (c)—
After “mortgagee”, insert “or covenant chargee”.
(c) Section 28E (3)—
After “charge,”, insert “covenant charge.”.
- (8) Section 28K (**Misleading development statement**)—
Section 28K (2) (c)—
Omit the paragraph, insert instead:
(c) where any lot is subject to a mortgage or covenant charge,
the first mortgagee or covenant chargee;
-

SCHEDULE 3

(Sec. 3)

AMENDMENTS TO PART III OF THE STRATA TITLES ACT 1973

(1) Section 50 (**Variation of strata scheme consequent upon damage to or destruction of building**)—

(a) Section 50 (1) (a), (a1)—

Omit section 50 (1) (a), insert instead:

(a) any proprietor of a lot the subject of the strata scheme concerned;

(a1) where any such lot is subject to a mortgage or covenant charge—the mortgagee or covenant chargee; or

(b) Section 50 (6) (c)—

After “charges”, insert “, covenant charges”.

(2) Section 51 (**Termination of strata scheme**)—

(a) Section 51 (1) (a), (a1)—

Omit section 51 (1) (a), insert instead:

(a) any proprietor of a lot the subject of the strata scheme concerned;

(a1) where any such lot is subject to a mortgage or covenant charge—the mortgagee or covenant chargee; or

(b) Section 51 (1A)—

After section 51 (1), insert:

(1A) An application for an order under subsection (4) may be made by an authority having the benefit of a positive covenant only when the authority applies under section 88I of the Conveyancing Act 1919 for an order that the land the subject of the strata scheme concerned be transferred to the authority.

Strata Titles (Covenants) Amendment 1986

SCHEDULE 4

(Sec. 3)

AMENDMENTS TO PART IV OF THE STRATA TITLES ACT 1973

(1) Section 57 (**Meetings of body corporate**)—

(a) Section 57 (6A)—

Omit “or mortgagee of a lot”, insert instead “of a lot or, where the lot is subject to a mortgage or covenant charge, the mortgagee or covenant charge”.

(b) Section 57 (6A)—

Omit “or mortgagee” where secondly occurring, insert instead “, mortgagee or covenant charge”.

(2) Section 58 (**By-laws**)—

(a) Section 58 (5)—

After “any mortgagee”, insert “or covenant charge”.

(b) Section 58 (5)—

After “mortgagee,” insert “covenant charge,”.

(3) Section 60 (**Power of body corporate to carry out work**)—

Section 60 (2), (3) (a)—

After “mortgagee” wherever occurring, insert “or covenant charge”.

(4) Section 62 (**Distribution of surplus moneys in administrative fund or sinking fund**)—

(a) Section 62 (2)—

After “mortgage”, insert “or covenant charge”.

Strata Titles (Covenants) Amendment 1986

SCHEDULE 4—*continued*

AMENDMENTS TO PART IV OF THE STRATA TITLES ACT 1973—
continued

(b) Section 62 (2) (a)—

Omit the paragraph, insert instead:

- (a) where the mortgagee or covenant chargee furnishes to the body corporate a consent for the payment to be made to the mortgagee or covenant chargee in writing executed by the proprietor and each other mortgagee and covenant chargee, if any, entered in the strata roll as having the benefit of a mortgage on or a covenant charge affecting that lot—to the firstmentioned mortgagee or covenant chargee;
or

(c) Section 62 (2) (b)—

Omit “enrolled mortgagee of”, insert instead “mortgagee and covenant chargee, if any, entered in the strata roll as having the benefit of a mortgage on or a covenant charge affecting”.

(d) Section 62 (3)—

Omit the subsection, insert instead:

- (3) Where a body corporate has passed a unanimous resolution referred to in subsection (1) and no consent has been executed as referred to in subsection (2) (a) or (b), the proprietor or any enrolled mortgagee or any covenant chargee entered in the strata roll may make an application to the appropriate court for an order under subsection (4).

(e) Section 62 (4) (b)—

After “mortgagee”, insert “or covenant chargee entered in the strata roll”.

(f) Section 62 (4) (c)—

Omit “and any enrolled mortgagee”, insert instead “, any enrolled mortgagee and any covenant chargee entered in the strata roll”.

*Strata Titles (Covenants) Amendment 1986*SCHEDULE 4—*continued*AMENDMENTS TO PART IV OF THE STRATA TITLES ACT 1973—
continued(5) Section 67 (**Supreme Court's power to authorise certain acts during initial period**)—

Section 67 (2) (b)—

Omit the paragraph, insert instead:

- (b) each registered mortgagee and enrolled mortgagee, if any, of every such lot and any covenant chargee having the benefit of a covenant charge affecting any such lot; and

(6) Section 69 (**Strata roll**)—

(a) Section 69 (3) (c), (c1)—

After “mortgagee of” wherever occurring, insert “, or covenant chargee having the benefit of a covenant charge affecting,”.

(b) Section 69 (3) (c), (d)—

After “mortgage” wherever occurring, insert “or covenant charge”.

(c) Section 69 (3) (c)—

After “81 (3)”, insert “or (4A)”.

(d) Section 69 (3) (c)—

After “mortgages”, insert “or covenant charges”.

(e) Section 69 (3) (d)—

After “81 (4)”, insert “, (4A)”.

(f) Section 69 (3) (e)—

After “mortgagee”, insert “or covenant chargee”.

(7) Section 80 (**Duties of proprietors and occupiers of lots**)—

After “mortgagee”, insert “or covenant chargee”.

*Strata Titles (Covenants) Amendment 1986*SCHEDULE 4—*continued*AMENDMENTS TO PART IV OF THE STRATA TITLES ACT 1973—
continued(8) Section 80A (**Power for individuals to act for corporate proprietors, mortgagees, etc.**)—

(a) Section 80A (1)—

After “lot”, insert “or as a covenant chargee having the benefit of a covenant charge affecting a lot”.

(b) Section 80A (2)—

Omit the subsection, insert instead:

(2) Where an individual exercises or performs a power, authority, duty or function with respect to a lot which the individual is authorised under subsection (1) to exercise or perform by a proprietor, mortgagee or covenant chargee, the power, authority, duty or function shall be deemed to have been exercised or performed with respect to the lot by the proprietor, mortgagee or covenant chargee.

(c) Section 80A (3)—

After “a lot”, insert “or a covenant chargee”.

(9) Section 81 (**Notices to be given by proprietors, mortgagees, etc.**)—

(a) Section 81 (3) (b)—

After “lot”, insert “or covenant charges affecting the lot”.

(b) Section 81 (4A)—

After section 81 (4), insert:

(4A) After the registration of—

(a) a covenant charge affecting a lot, the covenant chargee may give to the body corporate written notice which shall identify the lot and—

(i) specify the name of the covenant chargee in full, the address for service of notices on the covenant chargee and the date of registration of the covenant charge; and

*Strata Titles (Covenants) Amendment 1986*SCHEDULE 4—*continued*AMENDMENTS TO PART IV OF THE STRATA TITLES ACT 1973—
continued

- (ii) specify any mortgages of the lot or other covenant charges affecting the lot which have priority over the covenant charge referred to in the notice; or
 - (b) a discharge of a covenant charge affecting a lot, the proprietor of the lot may give to the body corporate written notice of the discharge which shall identify the lot and—
 - (i) specify the date of registration of the discharge; and
 - (ii) bear written confirmation by the covenant chargee of the discharge.
- (c) Section 81 (6)—

After “mortgagee” wherever occurring, insert “or covenant chargee”.
- (10) Section 83 (**Insurance of buildings**)—

Section 83 (4)—

After section 83 (3), insert:

 - (4) Where a body corporate is required by a positive covenant to insure the building, an order shall not be made under this section until—
 - (a) at least 21 days after the Commissioner has served notice on the authority having the benefit of the covenant of the intention to make the order; and
 - (b) the Commissioner has considered any representations made during those 21 days to the Commissioner by the authority with respect to the intended order.
- (11) Section 86 (**Insurance of mortgaged lot**)—
 - (a) Section 86 (1)—

After “mortgages of” wherever occurring, insert “and any covenant charges affecting”.

*Strata Titles (Covenants) Amendment 1986*SCHEDULE 4—*continued*AMENDMENTS TO PART IV OF THE STRATA TITLES ACT 1973—
continued

(b) Section 86 (1) (a) (i)—

After “mortgagees”, insert “and any covenant chargees”.

(c) Section 86 (3) (b)—

Omit “mortgage”.

SCHEDULE 5

(Sec. 3)

AMENDMENTS TO PART V OF THE STRATA TITLES ACT 1973

(1) Section 114A—

After section 114, insert:

Order enforcing positive covenant

114A. (1) Where, pursuant to an application by an authority having the benefit of a positive covenant for an order under this section, the Commissioner considers that the body corporate for the strata scheme to which the application relates or any proprietor has failed to comply with an obligation imposed by the covenant and relating to the maintenance, repair or insurance of the building, the Commissioner may order the body corporate or proprietor to comply with that obligation.

(2) Where an authority has been refused an injunction under section 88H of the Conveyancing Act 1919, the Commissioner may not make an order under this section to the same effect as the injunction refused.

(2) Section 125 (**Order varying amount of insurance to be provided**)—

Omit “or an enrolled mortgagee of a lot”, insert instead “, an enrolled mortgagee of a lot or an authority having the benefit of a positive covenant”.

Strata Titles (Covenants) Amendment 1986

SCHEDULE 5—*continued*

AMENDMENTS TO PART V OF THE STRATA TITLES ACT 1973—
continued

(3) Section 127 (**Order appointing managing agent to exercise or perform certain powers, etc.**)—

(a) Section 127 (1) (b1)—

After section 127 (1) (b), insert:

(b1) a duty is imposed on a body corporate by a positive covenant;

(b) Section 127 (1) (f)—

Omit “or” where lastly occurring.

(c) Section 127 (1) (f1)—

After section 127 (1) (f), insert:

(f1) in the case referred to in paragraph (b1)—on the application of the authority having the benefit of the positive covenant; or

SCHEDULE 6

(Sec. 3)

AMENDMENTS TO PART VI OF THE STRATA TITLES ACT 1973

(1) Section 146 (**Other rights and remedies not affected by this Act**)—

Section 146 (1)—

After “corporate”, insert “or covenant chargee”.

(2) Section 151 (**Apportionment of statutory charges**)—

Section 151 (1)—

After “Act” where secondly occurring, insert “(including the registration of a covenant charge)”.

Strata Titles (Covenants) Amendment 1986

SCHEDULE 6—*continued*

AMENDMENTS TO PART VI OF THE STRATA TITLES ACT 1973—
continued

(3) Section 153 (**Service of documents on body corporate, etc.**)—

Section 153 (3)—

After “a lot”, insert “or on a covenant chargee having the benefit of a covenant charge affecting a lot”.

SCHEDULE 7

(Sec. 3)

AMENDMENTS TO SCHEDULE 2 TO THE STRATA TITLES ACT
1973

(1) Part 1 (**Meetings other than first annual general meeting**)—

(a) Clause 1 (**General meetings of body corporate**)—

(i) Clause 1 (4) (a)—

Omit “first mortgagee of a lot”, insert instead “, where the strata roll shows that the lot is subject to a mortgage or covenant charge, each first mortgagee and covenant chargee”.

(ii) Clause 1 (4) (b)—

Omit “of a lot”, insert instead “or covenant chargee”.

(iii) Clause 1 (6) (c) (i)—

Omit the subparagraph, insert instead:

- (i) in the case of a proprietor of a lot subject to a first mortgage or a covenant charge shown on the strata roll, only if the mortgagee or, if a covenant charge is shown on the strata roll as having priority to the mortgage or there is no mortgage, only if the covenant chargee refuses or neglects to exercise the voting power conferred by this Part;

Strata Titles (Covenants) Amendment 1986

SCHEDULE 7—*continued*

AMENDMENTS TO SCHEDULE 2 TO THE STRATA TITLES ACT
1973—*continued*

(iv) Clause 1 (6) (c) (ii)—

After “or first mortgagee”, insert “or in respect of which the person is a covenant chargee”.

(b) Clause 2 (**Persons entitled to vote at general meetings**)—

Clause 2 (2)—

Omit “a first mortgagee of a lot, as shown on the strata roll, or, where the first mortgagee is a corporation, the company nominee, as shown on that roll, of that corporation”, insert instead:

where a lot is subject to a mortgage or a covenant charge, or to both, shown on the strata roll—

- (a) the mortgagee or, if the mortgagee is a corporation, the company nominee, as shown on that roll, of that corporation; or
- (b) the company nominee, as shown on that roll, of the covenant chargee,

under the mortgage or covenant charge shown on that roll as being first in priority.

(c) Clause 14 (**Requisition for motion to be included on agenda for general meeting**)—

Clause 14 (2)—

Omit “who but for the existence of a mortgage over his lot”, insert instead “of a lot who, but for the fact that the lot is subject to a mortgage or covenant charge,”.

Strata Titles (Covenants) Amendment 1986

SCHEDULE 7—*continued*AMENDMENTS TO SCHEDULE 2 TO THE STRATA TITLES ACT
1973—*continued*

(2) Part 2 (First annual general meeting)—

(a) Clause 3 (Notice of meeting and contents thereof)—

(i) Clause 3 (1)—

Omit “first mortgagee of a lot”, insert instead “, where the strata roll shows that the lot is subject to a mortgage or covenant charge, each first mortgagee and covenant charge”.

(ii) Clause 3 (1) (b) (i)—

Omit the subparagraph, insert instead:

- (i) in the case of a proprietor of a lot subject to a first mortgage or a covenant charge shown on the strata roll, only if the mortgage or, if the covenant charge is shown on the strata roll as having priority to the mortgage or there is no mortgage, only if the covenant charge refuses or neglects to exercise the voting power conferred by this Part;

(iii) Clause 3 (1) (b) (ii)—

After “or first mortgagee”, insert “or in respect of which the person is a covenant charge”.

(iv) Clause 3 (2)—

Omit “or first mortgagee of a lot”, insert instead “, first mortgagee or covenant charge”.

(v) Clause 3 (3)—

Omit “Where it is served on a first mortgagee of a lot”, insert instead “Where the lot to which the notice relates is subject to a mortgage or covenant charge and the notice is served on the mortgagee or covenant charge”.

Strata Titles (Covenants) Amendment 1986

SCHEDULE 7—*continued*

AMENDMENTS TO SCHEDULE 2 TO THE STRATA TITLES ACT
1973—*continued*

(b) Clause 4 (**Restrictions on submitting motions**)—

Clause 4 (3)—

Omit “who but for the existence of a mortgage over his lot”, insert instead “of a lot who, but for the fact the lot is subject to a mortgage or covenant charge,”.

(c) Clause 5 (**Persons entitled to vote at meeting**)—

Clause 5 (2)—

Omit “a first mortgagee of a lot, as shown on the strata roll, or, where the first mortgagee is a corporation, the company nominee, as shown on that roll, of that corporation”, insert instead:

where a lot is subject to a mortgage or a covenant charge, or both, shown on the strata roll—

(a) the mortgagee or, if the mortgagee is a corporation, the company nominee, as shown on that roll, of that corporation; or

(b) the company nominee, as shown on that roll, of the covenant chargee,

under the mortgage or covenant charge shown on that roll as being first in priority.

