

FIRST PRINT

**STRATA TITLES (LEASEHOLD PART STRATA)
AMENDMENT BILL 1992**

NEW SOUTH WALES



EXPLANATORY NOTE

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

This Bill is cognate with the Strata Titles (Part Strata) Amendment Bill 1992.

The object of this Bill is to amend the Strata Titles (Leasehold) Act 1986 so as to make further provision relating to the subdivision under that Act of part only of a building. The amendments are aimed at providing uniformity, as far as is practicable, between that Act and the Strata Titles Act 1973 (after that Act has been amended by the proposed Strata Titles (Part Strata) Amendment Act 1992) in dealing with such subdivisions and their consequences.

The opportunity is taken to standardise certain other provisions in the 1986 Act with those intended to be inserted into the Strata Titles Act 1973 by the proposed Strata Titles (Part Strata) Amendment Act.

A subdivision of part of a building under the 1986 Act creates a leasehold strata scheme for a stratum parcel (consisting of lots, or lots and common property), and there is no limit on the number of such schemes that may be created for different parts of the same building and its site. It is not necessary for the whole of a building to be subject to leasehold strata schemes, but (as a consequence of the proposed amendments) a further such scheme will not be allowed in a building if the building has been substantially added to since the initial leasehold strata scheme for the building was created.

The lessor, lessees and other occupiers of a building in which a new stratum parcel is created will have certain aspects of their use of the building and its site regulated by a strata management statement entered into by the lessor and the lessees of the building, unless excepted from having such a statement by direction of the Minister. Strata management statements will also be able to be entered into by the lessors and lessees of buildings already containing stratum parcels.

Provisions of the 1986 Act relating to the resolution of disputes arising in the administration of leasehold strata schemes currently extend to schemes for stratum parcels that include parts of buildings. However, in appropriate cases, those provisions are varied to take into account more effectively the interests of, and to allow obligations to be imposed on, the lessor and lessees and occupiers of parts of those buildings that are not included in stratum parcels.

Strata Titles (Leasehold Part Strata) Amendment 1992

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be proclaimed.

Clause 3 gives effect to the Schedule of amendments to the Principal Act.

SCHEDULE 1—AMENDMENTS
CONVEYANCING ISSUES

Requirements for strata subdivisions

Schedule 1 (3) amends section 7 (**Registration of strata plans**) to restate, in a simpler form, certain of the requirements that must be met by plans that are lodged for registration as strata plans.

Proposed Schedule 1A (**Requirements for strata plans**), to be inserted into the Act by Schedule 1 (24), sets out the matters that must be certified by a registered surveyor before a strata plan is registered, such as the existence of the proposed lots and the fact that a proposed stratum parcel is not in a part of a building added after an earlier stratum parcel was created for a part of the building.

Schedule 1 (2) amends section 6 (**Subdivision**) to declare that a development lot under the Act or under the Community Land Development Act 1989 cannot be subdivided under the section.

Schedule 1 (1) amends section 5 (**Construction of Act**) to declare that provisions of the Act, other than those relating to the ownership and certification of title, apply to encroachments (except on public places) shown on strata plans. This amendment is a restatement in a more appropriate place of part of section 7.

Easements

Schedule 1 (4) makes a minor amendment to section 9 (**Easements in certain leasehold strata schemes**) to correct a typographical error.

MANAGEMENT ISSUES

Strata management statements

Schedule 1 (5) inserts proposed sections 57A–57F as Division 5A of Part 2. Of the proposed sections:

Section 57A (**Requirement for strata management statement**) will prevent the creation of a stratum parcel unless such a statement is registered for the building and site concerned. This requirement will not apply if the Minister so directs.

A strata management statement may also be registered after the creation of the stratum parcel to which it relates.

Section 57B (**Formal requirements**) will require the statement to be in a form approved by the Registrar-General and to provide for the following, in accordance with proposed Schedule 2A (**Strata management statements**) to be inserted by Schedule 1 (25):

Strata Titles (Leasehold Part Strata) Amendment 1992

- a building management committee
- management of the building and its site
- amendment of the statement
- resolution of disputes about management issues
- service of documents on the committee

Schedule 2A will also lay down minimum requirements for the composition of the committee and list some other matters for which the statement may provide, but is not exhaustive of the issues for which such a statement may provide.

Section 57C (Registration of strata management statement) will require particulars of such a statement to be recorded in relevant folios of the Register kept under the Real Property Act.

Section 57D (Amendment of strata management statement) will require any amendment of such a statement to be supported by all bodies corporate for stratum parcels and all other persons holding registered freehold or leasehold estates in other parts of the building concerned. An amendment may also be ordered by a court or be required because of a revocation or modification of development consent.

Section 57E (Signing of strata management statement) will require a strata management statement, or any amendment of such a statement, to be signed by the holders of specified estates or interests in the building concerned or its site. The Registrar-General may also require certain written consents before registering such a statement.

Section 57F (Effect of strata management statement) will make such a statement binding on all persons who are, for the time being, owners, mortgagees in possession and lessees of the building.

Schedule 1 (7) amends section 88 (Copy of by-laws and strata management statement to be provided) to require the sublessors of any parts of a building that are subject to a leasehold strata scheme to supply a copy of the strata management statement that affects the building to each of their sublessees.

Termination of leasehold strata schemes

Schedule 1 (6) amends section 80 (Termination of leasehold strata scheme) to provide that orders made by the Supreme Court on the winding up of a leasehold strata scheme may require the amendment of any strata management statement that affects a building part of which was subject to the leasehold strata scheme.

Insurance

Schedule 1 (8) substitutes section 115 (Insurance of buildings) to restate, with appropriate changes, the obligations for the insurance of buildings subject to leasehold strata schemes.

Provision is made for the joint insurance of a building containing a stratum parcel by the body corporate for the parcel and all other persons holding registered freehold or leasehold estates in other parts of the building and for apportionment of the premium.

Schedule 1 (9) amends section 120 (Insurable interests) to expand the class of persons declared to have an insurable interest in the whole of a building that includes a stratum parcel so as to include registered owners and lessees of a part of the building that is not included in such a parcel.

Strata Titles (Leasehold Part Strata) Amendment 1992

Schedule 1 (13) substitutes section 143 (**Order to make or pursue insurance claim**) to restate the power of the Commissioner to make such orders and to allow any person who is a registered owner or lessee of a part of a building that contains a stratum parcel or its site to apply for such an order.

The class of possible applicants for such an order is expanded.

Schedule 1 (16) substitutes section 162 (**Orders relating to insurance**) to restate the power to make orders requiring the insurance, or variation of the insurance, of a building containing a leasehold strata scheme. If the building concerned contains a stratum parcel, such an order may require the insurance premium to be paid in specified proportions.

The class of possible applicants for such an order is expanded.

Dispute resolution—conciliation

Schedule 1 (15) inserts proposed section 151A (**Resolution of certain building management disputes**) as Division 2A of Part 5. The proposed section allows the Commissioner to conciliate such disputes in buildings in which stratum parcels are situated, but only with the consent of all parties to the dispute.

Dispute resolution—orders

Schedule 1 (11) amends section 134 (**Orders by Commissioner**) to allow the Commissioner to make orders under Division 2 of Part 5 (including interim orders) with respect to a leasehold strata scheme for a part of a building that will bind not only persons whose interests arise directly from that scheme but also specified other "interested persons".

(Other "interested persons" include bodies corporate or managing agents of leasehold strata schemes for, or owners, lessees, sublessees or occupiers of, other parts of the building.)

Schedule 1 (12) amends section 136 (**General powers of Commissioner to make orders**) to allow orders under that section to be made with respect to a leasehold strata scheme for a part of a building on the application of other interested persons. The Commissioner is required to have regard to any strata management statement for the building concerned before making any order relating to the management of a stratum parcel.

Schedule 1 (14) amends section 146 (**Order relating to keeping of animals**) to ensure that such orders will bind the occupiers of, and all other persons who are or would be bound by a strata management statement for, a building that contains a stratum parcel.

Schedule 1 (17) amends section 171 (**General provisions relating to orders under Division 4 and on appeal**) to extend the class of persons on whom a Strata Titles Board may impose ancillary requirements in an order made by the Board. If such an order relates to a stratum parcel, requirements may be imposed on any "interested person".

Schedule 1 (18) amends section 178 (**Effect of certain orders**) to restate that certain orders have effect, to such extent as is necessary, as resolutions of the body corporate concerned.

Strata Titles (Leasehold Part Strata) Amendment 1992

Schedule 1 (19) amends section 180 (**Penalty for contravention of certain orders**) to allow the body corporate for each stratum parcel situated in a part of the same building to take proceedings for an offence when an order made under Part 5 is contravened, as well as other registered owners and lessees of parts of the building or its site that are not included in a stratum parcel.

Rectification of building defects

Schedule 1 (20) substitutes section 186 (**Structural defects—proceedings as agent**) to restate the current powers of a body corporate to act as agent in:

- ensuring that parts of a building continue to provide support and shelter to other parts of the building; and
- arranging for related building defects to be rectified,

and extend those powers to other “interested persons” where the building concerned contains a stratum parcel.

Dividing fences

Schedule 1 (20) also substitutes section 187 (**Dividing fences**) to restate the current requirement that the body corporate is taken to be the owner of a parcel for the purposes of the Dividing Fences Act and to provide that each body corporate for a stratum parcel that includes part of the building and each other holder of a fee simple interest in a part of the building or its site that is not included in such a parcel are taken to be joint owners, if the building concerned contains a stratum parcel.

Service of documents

Schedule 1 (21) amends section 191 (**Service of documents on body corporate etc.**) to allow service of documents on persons who own parts of buildings that contain stratum parcels (but are not within such a parcel) in any manner authorised by section 170 of the Conveyancing Act. (The manner of service of documents on a building management committee is required to be set out in the relevant strata management statement.)

Power of entry

Schedule 1 (10) amends section 131 (**Procedure after Commissioner receives application**) to allow the Strata Titles Commissioner, on giving notice, to enter any part of a building a part of which is subject to a leasehold strata scheme to look into the issues raised by an application for an order to be made by the Commissioner or a Strata Titles Board under the Act.

Schedule 1 (22) amends section 192 (**Powers of entry by public authority or local council**) to ensure that power to enter part of a building contained in a stratum parcel implies a power to enter another part of the building or its site if it is necessary to effect the authorised entry.

Schedule 1 (23) amends section 193 (**Powers of entry of Commissioner in certain cases**) to confer a similar power of entry on the Commissioner while investigating a possible offence against the Act or by-laws if the alleged offence is related to a stratum parcel.

Strata Titles (Leasehold Part Strata) Amendment 1992

SAVINGS PROVISIONS

Savings

Schedule 1 (26) inserts proposed Schedule 5 (**Transitional and savings provisions**) to preserve the effect of exemption orders made under section 115 (**Insurance of buildings**) immediately before the substitution of that section and of orders, or applications for orders, made under Part 5 (**Disputes**) immediately before the amendment of that Part.

Amendments made by the proposed Act are applied to existing leasehold strata schemes for stratum parcels, but it will not be necessary for them to have strata management statements.

FIRST PRINT

**STRATA TITLES (LEASEHOLD PART STRATA)
AMENDMENT BILL 1992**

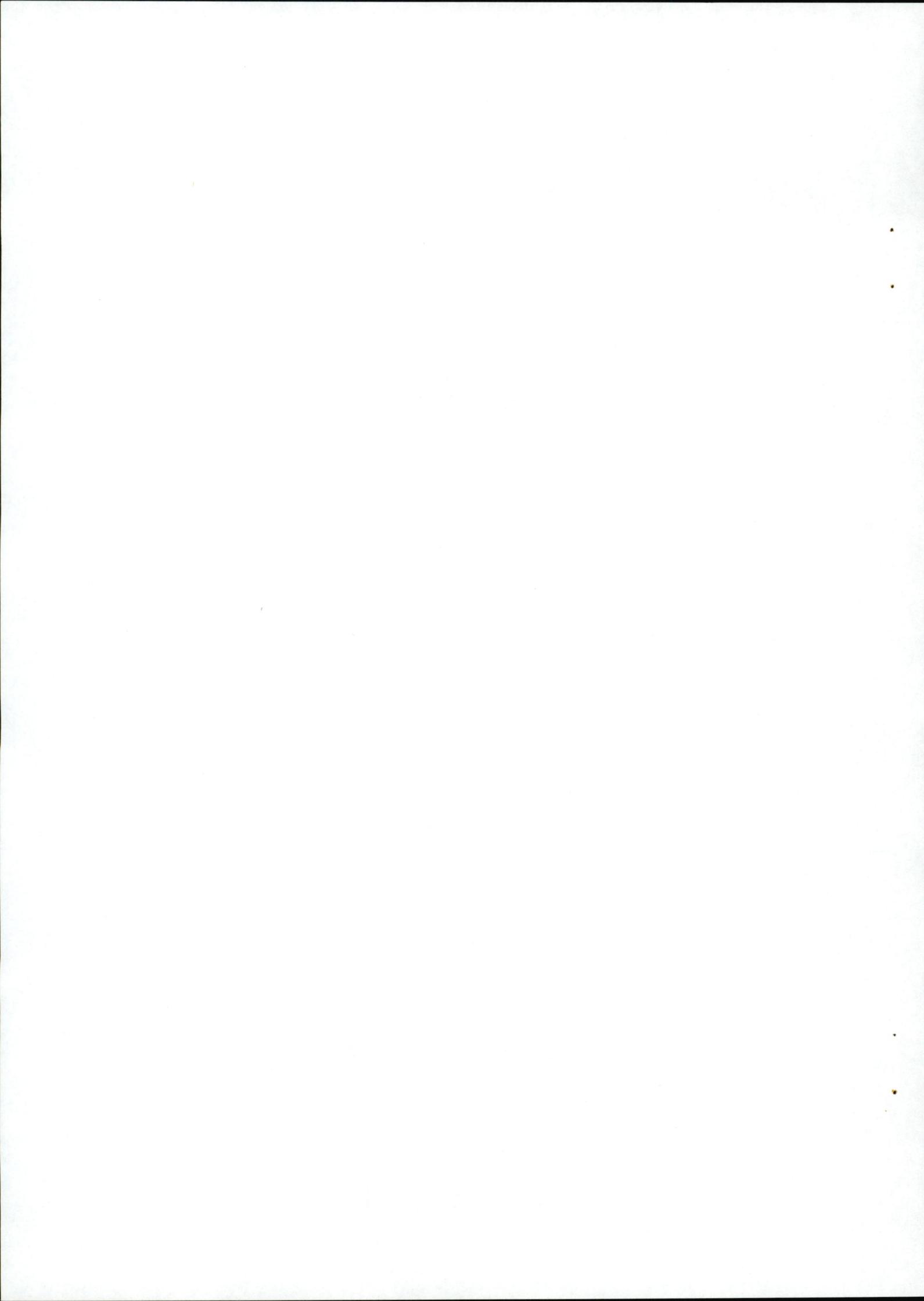
NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Strata Titles (Leasehold) Act 1986 No. 219

SCHEDULE 1—AMENDMENTS



**STRATA TITLES (LEASEHOLD PART STRATA)
AMENDMENT BILL 1992**

NEW SOUTH WALES



No. , 1992

A BILL FOR

An Act to amend the Strata Titles (Leasehold) Act 1986 so as to make further provision for the strata subdivision of parts of buildings; and for related purposes.

Strata Titles (Leasehold Part Strata) Amendment 1992

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Strata Titles (Leasehold Part Strata) Amendment Act 1992.

Commencement

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

Amendment of Strata Titles (Leasehold) Act 1986 No. 219

3. The Strata Titles (Leasehold) Act 1986 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 5 (**Construction of Act (1973 Act, s. 6)**):

After section 5 (3), insert:

(4) The provisions of this Act, other than those relating to ownership and the certification of title, apply:

- (a) to so much of an encroachment (other than on a public place) shown on a proposed strata plan as is designated for use with a lot—as if it were part of the lot; or
- (b) to the remainder (if any) of such an encroachment and to any other encroachment (other than on a public place) shown on a proposed strata plan—as if it were common property.

(2) Section 6 (**Subdivision (1973 Act, s. 7)**):

After section 6 (3), insert:

(3A) Land that is a development lot under this Act or the Community Land Development Act 1989 cannot be subdivided under this section.

(3) Section 7 (**Registration of strata plans (1973 Act, s. 8)**):

- (a) Omit section 7 (1) (a) and (e)–(j).
- (b) At the end of section 7 (c), insert “or”.

Strata Titles (Leasehold Part Strata) Amendment 1992

SCHEDULE 1—AMENDMENTS—*continued*

(c) Omit section 7 (2) and (2A), insert instead:

(2) A plan intended to be registered as a strata plan must include, as sheets of the plan:

- (a) a location plan; and
- (b) a floor plan; and
- (c) a schedule of unit entitlement.

(2A) The location plan must be endorsed with:

- (a) the address at which documents may be served on the proposed body corporate; and
- (b) a certificate issued by the local council under section 66 in the approved form, unless the plan is lodged by the Crown or a statutory body representing the Crown; and
- (c) a certificate given by a registered surveyor in the approved form certifying that each applicable requirement of Schedule 1A has been met.

The location plan must also identify any encroachment by the building (whether or not on to a public place) and any proposed development lot.

(2B) The floor plan for a leasehold strata scheme that does not provide for common property must show that at least one (or part of one) of the proposed lots is superimposed on another (or part of another) of the proposed lots.

(2C) The schedule of unit entitlement must show as whole numbers the proposed unit entitlement of each lot and the aggregate unit entitlement of all lots.

(2D) A plan intended to be registered as a strata plan that creates a development lot must (unless the plan is lodged by the Crown or a statutory body representing the Crown) be accompanied by:

- (a) a copy of the relevant development statement; and
- (b) the certificate of the consent authority provided under section 41 (4).

Strata Titles (Leasehold Part Strata) Amendment 1992

SCHEDULE 1—AMENDMENTS—*continued*

(2E) The Registrar-General may refuse to register a plan as a strata plan:

- (a) if any requisition made by the Registrar-General with respect to the registration of any lease lodged in connection with registration of the plan has not been complied with; or
- (b) if a plan of survey, within the meaning of the Survey Practice Regulation 1990, of the proposed parcel requested by the Registrar-General and such number of copies of the plan of survey as have been so requested have not been lodged in the office of the Registrar-General; or
- (c) if any requisition made by the Registrar-General concerning the registration of a by-law that confers a right of exclusive use and enjoyment of, or special privileges in respect of, common property has not been complied with.

(2F) The plan of survey must show, should the Registrar-General so request, the relationship by measurement of the building to the perimeter of the proposed parcel and, in the case of a proposed stratum parcel, to the perimeter of the site.

(d) Omit section 7 (4), (5), (9) and (10).

- (4) Section 9 (**Easements in certain leasehold strata schemes**):
From the definition of “service” in section 9 (1), omit “sewage”, insert instead “sewerage”.

- (5) Part 2, Division 5A:

After section 57, insert:

Division 5A—Strata management statements

Requirement for strata management statement (1973 Act, s. 28R)

57A. (1) The Registrar-General must not register a plan as a strata plan creating a stratum parcel unless the Registrar-General also registers a strata management statement for the building and site concerned.

(2) The Registrar-General may waive the requirement made by subsection (1) only on the direction of the Minister given on such grounds as the Minister considers sufficient.

Strata Titles (Leasehold Part Strata) Amendment 1992

SCHEDULE 1—AMENDMENTS—*continued*

(3) The Registrar-General may register a strata management statement for a building and its site at any time part of the building is included in a stratum parcel but is not the subject of such a statement.

Formal requirements (1973 Act, s. 28S)

57B. (1) A strata management statement and any amendment of such a statement must be in the approved form.

(2) A strata management statement as in force from time to time must comply with Schedule 2A and that Schedule applies to any such statement.

(3) The Registrar-General may register a strata management statement and an amendment of such a statement by making such recordings in the Register as the Registrar-General considers appropriate.

(4) The Registrar-General may refuse to register a strata management statement or any amendment of such a statement if the application for registration fails to comply with any requirement made by this Act or the regulations or is not accompanied by the prescribed fee.

Registration of strata management statement (1973 Act, s. 28T)

57C. (1) If a strata management statement has been registered in accordance with this Division, the Registrar-General must record in the folio of the Register relating to the body corporate of the leasehold strata scheme concerned and the common property (if any):

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

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

(2) The Registrar-General must make a like record in the folio of the Register:

(a) for each of the bodies corporate for a leasehold strata scheme for part of the building concerned; and

Strata Titles (Leasehold Part Strata) Amendment 1992

SCHEDULE 1—AMENDMENTS—*continued*

- (b) for each fee simple and leasehold estate that is recorded in a folio of the Register for a part of the building or site concerned that does not form part of a stratum parcel.

Amendment of strata management statement (1973 Act, s. 28U)

57D. (1) A registered strata management statement may be amended only if the amendment is:

- (a) supported by a special resolution of the body corporate for each leasehold strata scheme for part of the building concerned and by each person in whom is vested an estate in fee simple or a leasehold estate, recorded in a folio of the Register kept under the Real Property Act 1900, in any part of that building or its site that is not included in a stratum parcel; or
- (b) ordered under Part 5 or under this or any other Act by a court; or
- (c) consequential on the revocation or modification, under section 103 of the Environmental Planning and Assessment Act 1979, of a development consent.

(2) An amendment of a strata management statement does not have effect under this Division unless it is recorded in the folio of the Register:

- (a) for each of the bodies corporate for a leasehold strata scheme for part of the building concerned; and
- (b) for each freehold and leasehold estate in a part of the building or site concerned that does not form part of a stratum parcel.

Signing of strata management statement (1973 Act, s. 28V)

57E. (1) The Registrar-General may register a strata management statement or any amendment of such a statement only if the statement or amendment is:

- (a) accompanied by a certificate given by the secretary of the body corporate for each leasehold strata scheme (if any) for a part of the building concerned certifying that the statement is supported by a special resolution of the body corporate; and

Strata Titles (Leasehold Part Strata) Amendment 1992

SCHEDULE 1—AMENDMENTS—*continued*

- (b) signed by each person in whom is vested an estate in fee simple or a leasehold estate, recorded in a folio of the Register kept under the Real Property Act 1900, in a part of the building or its site that is not included in a stratum parcel (whether or not it is included in a proposed stratum parcel); and
- (c) signed by every mortgagee, chargee or covenant chargee under a mortgage, charge or covenant charge recorded in a folio of that Register recording such an estate.

(2) In addition, the Registrar-General may refuse to register a strata management statement or an amendment of such a statement unless there have been lodged in the office of the Registrar-General written consents to the registration of the statement or amendment signed by (or by an agent authorised by) such one or more of the following as the Registrar-General determines:

- (a) the judgment creditor under any writ recorded in any such folio or the lessee under any lease, or the judgment creditor under any writ, recorded in the folio of the Register relating to any common property affected by the statement or amendment;
- (b) the caveator under a caveat affecting any estate or interest of any such registered proprietor or lessee, mortgagee, chargee or covenant chargee or under a caveat affecting any such common property.

(3) The Registrar-General may, in a particular case, dispense with any signature required by or under this section without giving notice to any person.

Effect of strata management statement (1973 Act, s. 28W)

57F. (1) A registered strata management statement, as in force for the time being, relating to the management of a building has effect as an agreement under seal containing the covenants referred to in subsection (2) entered into by each person who for the time being is:

- (a) a body corporate of a leasehold strata scheme for part of the building; or

Strata Titles (Leasehold Part Strata) Amendment 1992

SCHEDULE 1—AMENDMENTS—*continued*

- (b) a proprietor, mortgagee in possession or lessee of any of the lots in such a strata scheme; and
 - (c) any other person in whom the fee simple of any part of that building or its site (being a part affected by the statement) is vested, or the mortgagee in possession or lessee of any such part.
- (2) The covenants referred to in this section are:
- (a) a covenant by which those persons jointly and severally agree to carry out their obligations under the registered strata management statement as from time to time in force; and
 - (b) a covenant by which those persons jointly and severally agree to permit the carrying out of those obligations.
- (3) The agreement ceases to have effect under this Division:
- (a) in relation to a person who is described in subsection (1) (b) or (c), on that person ceasing to be a person so described; and
 - (b) in relation to all of the persons described in subsection (1), on termination of all leasehold strata schemes to which the strata management statement relates.
- (4) Subsection (3) does not prejudice or affect any obligation that was incurred by a person, or any right that accrued to a person, under the agreement while the agreement was in force.
- (5) A strata management statement has no effect to any extent to which it is inconsistent with any condition imposed on a development consent relating to the site of the building to which the statement relates, with a by-law or an order under Part 5 or with any other Act or other law.
- (6) Except as may be provided otherwise by this Act or the regulations, a provision in any instrument under which the agreement is excluded, modified or restricted is void.
- (7) A covenant entered into under the agreement does not merge in a transfer of a lease of a lot.
- (8) Part 5 applies to or in relation to matters arising under the agreement.

Strata Titles (Leasehold Part Strata) Amendment 1992

SCHEDULE 1—AMENDMENTS—*continued*

(9) Except as provided by subsection (8), nothing in this section affects any right or remedy that a person may have under a strata management statement apart from a right or remedy under this Division.

(6) Section 80 (**Termination of leasehold strata scheme (1973 Act, s. 51)**):

After section 80 (7) (c), insert:

(c1) the termination or amendment of any strata management statement that relates to the parcel or the amendment of any other strata management statement that relates to the building concerned;

(7) Section 88 (**Copy of by-laws and strata management statement to be provided (1973 Act, s. 58A)**):

(a) After section 88 (1), insert:

(1A) If the lot or common property is affected by a strata management statement, the sublessor must, within that period of 7 days, also provide the sublessee, in accordance with subsection (2), with a copy of the strata management statement as for the time being in force.

Maximum penalty: 1 penalty unit.

(b) In section 88 (2), after “by-laws”, insert “or of a strata management statement”.

(8) Section 115:

Omit the section, insert instead:

Insurance of buildings (1973 Act, s. 83)

115. (1) The body corporate for a leasehold strata scheme for the whole of a building must insure the building and keep the building insured under a damage policy with an approved insurer in the name of the body corporate.

Maximum penalty: 5 penalty units.

(2) The body corporate for each leasehold strata scheme for part of a building and each person in whom is vested an estate in fee simple or a leasehold estate, recorded in a folio of the Register kept under the Real Property Act 1900, in any

Strata Titles (Leasehold Part Strata) Amendment 1992

SCHEDULE 1—AMENDMENTS—*continued*

part of the building or its site that is not included in a stratum parcel must insure the building and keep the building insured under a damage policy effected with an approved insurer in their joint names.

Maximum penalty: 5 penalty units.

(3) In any proceedings for an offence under subsection (2), it is a defence to establish that the defendant was willing to join in the insurance of a building under a damage policy but that the policy could not be effected because another person specified in that subsection was unwilling to join in the application for that policy.

(4) The proportion of a premium for a damage policy in respect of a building referred to in subsection (2) payable by a body corporate or other person is to be apportioned in accordance with the regulations.

(5) On application made to it by a body corporate or other person liable to pay such a proportion, a Board may determine the replacement value of the building and proportion payable and any such determination is binding on each such body corporate and other person.

(6) Any person required by this section to insure a building may make an application in writing to the Commissioner for an order under subsection (7), but a body corporate may make such an application only pursuant to a unanimous resolution.

(7) If, on considering such an application, the Commissioner is of the opinion that compliance with the provisions of subsection (1) or (2) is unnecessary or impracticable, the Commissioner may, subject to subsections (8)–(10), by order in writing:

- (a) exempt the applicant from compliance with those provisions absolutely; or
- (b) with the consent in writing of the applicant, exempt the applicant from compliance with those provisions subject to a condition that the applicant effects such insurance in respect of the building concerned as may be specified in the order.

Strata Titles (Leasehold Part Strata) Amendment 1992

SCHEDULE 1—AMENDMENTS—*continued*

(8) The Commissioner must not make an order under subsection (7) unless each other person required to insure the building:

- (a) has consented in writing to the making of the order; or
- (b) has, before the making of the order, been given an opportunity to make representations to the Commissioner with respect to the application for the order.

(9) A consent for the purposes of this section may be given by a body corporate only pursuant to a unanimous resolution.

(10) If a body corporate is required by a positive covenant to insure the building, an order must not be made under subsection (7) 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) A person to whom an exemption has been granted under subsection (7) is not under a duty to comply with a requirement made by subsection (1) or (2) or any corresponding requirement of a positive covenant, as the case may be, but, if the exemption was granted subject to a condition referred to in subsection (7) (b), is under the duty, if in breach of that condition.

(12) If a person fails to comply with a requirement made by subsection (2) to insure or keep insured a building, any other person who has an obligation to comply with that requirement may either:

- (a) apply to the Board for an order requiring the person failing to comply to join that other person in effecting a damage policy in respect of the building; or
- (b) effect a damage policy in respect of the building in the joint names and, in a court of competent jurisdiction, recover as a debt from the person failing to comply the appropriate proportion, if any, of the amount of the premium for which that person is liable.

Strata Titles (Leasehold Part Strata) Amendment 1992

SCHEDULE 1—AMENDMENTS—*continued*

(9) Section 120 (**Insurable interests (1973 Act, s. 88)**):

Omit section 120 (1), insert instead:

(1) Any person (including a body corporate) is taken to have an insurable interest in the subject-matter of a contract of insurance entered into by the person pursuant to this Division.

(10) Section 131 (**Procedure after Commissioner receives application (1973 Act, s. 101)**):

At the end of section 131 (1) (f), insert:

; and

(g) if the leasehold strata scheme concerned is for part of a building, may for that purpose enter any lot in any stratum parcel that includes part of the building concerned and any other part of the building or its site at any reasonable time on notice given to any occupier of that lot or other part and may enter any common property within the building or its site.

(11) Section 134 (**Orders by Commissioner (1973 Act, s. 104)**):

From section 134 (3), omit “a body corporate, a managing agent, a lessee, any person having an estate or interest in a lot or an occupier of a lot”, insert instead “any interested person (within the meaning of section 136)”.

(12) Section 136 (**General powers of Commissioner to make orders (1973 Act, s. 105)**):

(a) From section 136 (1), omit “a body corporate, a managing agent, the lessor under the scheme, the lessee or an occupier of a lot or any other person who has an estate or interest in a lot subject to a leasehold strata scheme or, in the case of any such scheme the subject of which is a stratum parcel, any person who has the benefit of an easement over, or who has the burden of an easement in favour of, that parcel or any part of it”, insert instead “any interested person in respect of a leasehold strata scheme”.

(b) After section 136 (1), insert:

(1A) In this section, “**interested person**”:

Strata Titles (Leasehold Part Strata) Amendment 1992

SCHEDULE 1—AMENDMENTS—*continued*

- (a) in relation to any leasehold strata scheme, means:
- (i) the body corporate of the scheme; or
 - (ii) the chairman, secretary or treasurer of the body corporate (or of the council of the body corporate) of the scheme; or
 - (iii) a managing agent for the scheme; or
 - (iv) the lessor under the scheme; or
 - (v) the lessee or sublessee of, a person having any other estate or interest in, or an occupier of, a lot in the scheme; and
- (b) in relation to a leasehold strata scheme for a stratum parcel, includes:
- (i) the body corporate of, a managing agent for, a lessee or sublessee of a lot in, a person having any other other estate or an interest in a lot in, or an occupier of a lot in, any other leasehold strata scheme affecting the building; and
 - (ii) any other person for the time being bound by the strata management statement (if any) for the building; and
 - (iii) if there is no strata management statement for the building, any other person who has the benefit of an easement over, or the burden of an easement in favour of, that stratum parcel.
- (c) In section 136 (5) and (6), after “corporate” wherever occurring, insert “or building management committee”.
- (d) From section 136 (5), omit “or the by-laws”, insert instead “, the by-laws or a strata management statement”.
- (e) After section 136 (7), insert:
- (7A) Before making any order relating to the management of a leasehold strata scheme for a stratum parcel or the management of the building concerned or its site, the Commissioner must have regard to the strata management statement (if any) for the building.

Strata Titles (Leasehold Part Strata) Amendment 1992

SCHEDULE 1—AMENDMENTS—*continued*

(7B) Subsection (7A) does not prevent the Commissioner from making an order that is inconsistent with the provisions of a strata management statement or that requires the amendment of such a statement.

(f) At the end of section 136 (8) (c), insert:

; or

(d) for the settlement of a dispute, or the rectification of a complaint, arising out of any requirement made by a strata management statement, unless the statement provides for such disputes or complaints to be referred to the Commissioner for a decision or the order may be made under section 143.

(13) Section 143:

Omit the section, insert instead:

Order to make or pursue insurance claim (1973 Act, s. 109A)

143. (1) The Commissioner may order any person who is entitled to the benefit of insurance effected under this Act to make or pursue an insurance claim in respect of damage to the building or any other property to which the insurance relates.

(2) The Commissioner may make an order only if the Commissioner considers the person has unreasonably refused to make or pursue the claim.

(3) An application for an order under this section may be made:

- (a) by the lessor under the leasehold strata scheme for the building or any part of the building concerned or by any lessee or sublessee of common property or a lot in the scheme; or
- (b) if part of the building is included in a stratum parcel, by each person in whom is vested an estate in fee simple or a leasehold estate, registered under the Real Property Act 1900, in any part of the building or its site that is not included in a stratum parcel.

Strata Titles (Leasehold Part Strata) Amendment 1992

SCHEDULE 1—AMENDMENTS—*continued*

- (14) Section 146 (**Order relating to keeping of animals (1973 Act, s. 112)**):

Omit section 146 (3), insert instead:

(3) Whether or not an order under this section is consistent with any by-law, such an order binds the lessor under the leasehold strata scheme concerned and:

- (a) each lessee, sublessee and occupier of a lot in and the body corporate of the scheme; or
- (b) if the leasehold strata scheme concerned is for a stratum parcel, each person who is or would be bound by a strata management statement for the building and its site.

- (15) Part 5, Division 2A:

After section 151, insert:

**Division 2A—Resolution of certain building
management disputes by Commissioner**

**Resolution of certain building management disputes
(1973 Act, s. 115A)**

151A. (1) The Commissioner may attempt to resolve by conciliation any dispute or complaint relating to the management of a building or its site if any part of the building is included in a stratum parcel.

(2) A dispute or complaint may be referred to the Commissioner by any person who is bound for the time being by the strata management statement relating to the management of the building, whether or not the statement provides for conciliation of the dispute or complaint by the Commissioner.

(3) The Commissioner may attempt conciliation under this section only with the consent of all parties to the dispute or complaint, but (except where section 136 (8) (d) requires the Commissioner to do so) is not required to attempt conciliation before exercising any other function under this Act, by-laws or a strata management statement.

Strata Titles (Leasehold Part Strata) Amendment 1992

SCHEDULE 1—AMENDMENTS—*continued*

(4) The Commissioner may exercise any function conferred on the Commissioner by a strata management statement with respect to the settlement of disputes or the rectification of complaints concerning the management of the building to which the statement relates or its site, but only if the Commissioner considers that the function is appropriate.

(16) Section 162:

Omit the section, insert instead:

Orders relating to insurance (1973 Act, s. 125)

162. (1) A Board may order that insurance must be effected under section 115 for a specified amount, if the Board is satisfied that there is a dispute about the amount for which any such insurance should be effected or the proportions in which it should be paid.

(2) Any such order may require insurance to be effected in accordance with the order for a period of up to 90 days, but does not affect the requirement made by section 115 to keep the building insured after that period.

(3) A Board may order that the amount of any insurance effected under section 115 or 116 (1) (c) must be varied to a specified amount, if the Board considers that the amount for which the insurance is currently effected is unreasonable.

(4) An order under this section must specify by whom the insurance is to be effected or varied and (if the building concerned contains a stratum parcel) the proportions in which the premium is to be paid.

(5) An application for an order under this section may be made:

- (a) by the lessor under the leasehold strata scheme for the building or any part of the building concerned, by any lessee or sublessee of the common property or by a lessee, sublessee or an enrolled mortgagee of, or a person having an interest in, a lot in the scheme; or
- (b) if part of the building is included in a stratum parcel, by each person in whom is vested, or who has an interest in, an estate in fee simple or a leasehold estate,

Strata Titles (Leasehold Part Strata) Amendment 1992

SCHEDULE 1—AMENDMENTS—*continued*

registered under the Real Property Act 1900, in any part of the building or its site that is not included in a stratum parcel, or by any mortgagee under a mortgage registered under that Act of any such estate or interest;
or

(c) by an authority having the benefit of a positive covenant affecting that building or its site.

(17) Section 171 (**General provisions relating to orders under Division 3 and on appeal (1973 Act, s. 133)**):

From section 171 (2), omit “a body corporate, the chairperson, secretary or treasurer of a body corporate or its council, a managing agent, the lessor under the scheme or a lessee or another person having an estate or interest in a lease of a lot or an occupier of a lot”, insert instead “any interested person (within the meaning of section 136)”.

(18) Section 178 (**Effect of certain orders (1973 Act, s. 140)**):

From section 178 (1), omit “be deemed to be a resolution passed by the body corporate for the leasehold strata scheme to which the order relates”, insert instead “, to the extent that they impose a requirement on a body corporate, be taken to have effect as a resolution of the body corporate to do what is needed to comply with the requirement”.

(19) Section 180 (**Penalty for contravention of certain orders (1973 Act, s. 142)**):

Omit section 180 (4), insert instead:

(4) Proceedings for an offence under this section may be taken only:

- (a) in any case, by the applicant for the order; or
- (b) if the order relates to a parcel that is not a stratum parcel, by the body corporate for the parcel; or
- (c) if the order relates to a stratum parcel, by each body corporate for a stratum parcel including part of the building, the lessor under the scheme or any person in whom is vested an estate in fee simple or a leasehold estate, registered under the Real Property Act 1900, in a part of the building or its site that is not included in a stratum parcel.

Strata Titles (Leasehold Part Strata) Amendment 1992

SCHEDULE 1—AMENDMENTS—*continued*

(20) Sections 186, 187:

Omit the sections, insert instead:

Structural defects—proceedings as agent (1973 Act, s. 148)

186. (1) An interested person may take proceedings, under the Building Services Corporation Act 1989 or otherwise, for the rectification of the condition of a part of a building, or a part of the site of a building, if that condition affects or is likely to affect the support or shelter provided by that part to any other part of the building or its site.

(2) Any such proceedings may be taken only if:

- (a) they could have been taken by a proprietor of a lot or by another person in whom is vested an estate in fee simple in a part of the building or its site; and
- (b) they have not been taken by the proprietor or other person within a reasonable time.

(3) Any such proceedings are taken by an interested person as agent for the person who might have taken the proceedings and at the cost of the interested person.

(4) In this section, “**interested person**” means:

- (a) the body corporate of the strata scheme for the building or, if part of the building is included in a stratum parcel, of any strata scheme for part of the building; or
- (b) the lessor under the scheme; or
- (c) any person in whom is vested an estate in fee simple or a leasehold estate, registered under the Real Property Act 1900, in a part of the building or its site that is not included in a parcel.

Dividing fences (1973 Act, s. 149)

187. (1) For the purposes of the Dividing Fences Act 1991:

- (a) the body corporate of a strata scheme for a parcel that is not a stratum parcel is taken to be the owner of the land constituting the parcel; and

Strata Titles (Leasehold Part Strata) Amendment 1992

SCHEDULE 1—AMENDMENTS—*continued*

(b) the body corporate of each strata scheme for a stratum parcel including part of a building (for the purposes of that parcel) and any person, not being a sublessee, in whom is vested a leasehold estate, registered under the Real Property Act 1900, in a part of the building or its site that is not included in a parcel (for the purposes of that part) are taken to be the owners of the land constituting the building and its site.

(2) Subsection (1) does not apply to land that is part of a community scheme under the Community Land Management Act 1989 or to any part of a parcel that is the subject of a lease accepted or acquired by a body corporate under section 22.

(3) A strata management statement may apportion liability arising under the Dividing Fences Act 1991, but only between persons bound by the statement.

(21) Section 191 (**Service of documents on body corporate etc. (1973 Act, s. 153)**):

(a) In section 191 (3), after “body corporate,”, insert “the lessor under the scheme,”.

(b) After section 191 (4), insert:

(5) A document may be served on any person in whom is vested an estate in fee simple or a leasehold estate, registered under the Real Property Act 1900, in a part of a building or its site that is not included in a stratum parcel, but another part of which is so included, in any manner provided by section 170 of the Conveyancing Act 1919.

(22) Section 192 (**Powers of entry by public authority or local council (1973 Act, s. 154)**):

After “that parcel”, insert “(and, if it is a stratum parcel, any other part of the building concerned or its site, whether or not it is part of a parcel)”.

(23) Section 193 (**Powers of entry of Commissioner in certain cases (1973 Act, s. 154A)**):

(a) From section 193 (1), omit “enter upon that part”, insert instead “and of any other part of the building concerned or its site, whether or not it is part of a parcel, enter that part of the parcel”.

Strata Titles (Leasehold Part Strata) Amendment 1992

SCHEDULE 1—AMENDMENTS—*continued*

(b) After section 193 (2) (a), insert:

(a1) a member of the building management committee, if any, for the building concerned; or

(24) Schedule 1A:

Before Schedule 1, insert:

SCHEDULE 1A—REQUIREMENTS FOR STRATA PLANS

(Sec. 7)

Floor plans

1. (1) Each wall, the inner surface or any part of which corresponds substantially to a line shown on the floor plan as a boundary of a proposed lot, must exist.

(2) Each floor or ceiling, the upper or under surface or any part of which forms a boundary of a proposed lot, must exist.

(3) Each wall, floor, ceiling or structural cubic space, by reference to which any boundary of a proposed lot is determined, must exist.

Location plans—no stratum parcel

2. (1) This clause applies if the proposed parcel will not be a stratum parcel.

(2) The building erected on the land comprising the proposed parcel and each proposed lot shown on the location plan must be wholly within the perimeter of that land.

(3) This clause does not apply to so much of any encroachment as is an encroachment referred to in section 67 or an encroachment by the building on to land other than a public place.

Location plans for stratum parcels

3. (1) This clause applies if the proposed parcel will be a stratum parcel.

(2) The proposed parcel must include part of a building and another part of the building must be outside the proposed parcel.

(3) The proposed parcel and that building must be wholly within the perimeter of the site of the building.

Strata Titles (Leasehold Part Strata) Amendment 1992

SCHEDULE 1—AMENDMENTS—*continued*

(4) Each part of that building and so much (if any) of the site as constitute the proposed lots and common property (if any) must be wholly within the proposed parcel.

(5) Subclauses (3) and (4) do not apply to so much of any encroachment as is an encroachment referred to in section 67 or an encroachment by the building on to land other than a public place.

Location plans—encroachments on private land

4. If the building encroaches on to land other than a public place, an appropriate easement must exist or be created in accordance with section 88B of the Conveyancing Act 1919 on registration of the proposed strata plan.

Stratum parcels in certain buildings prohibited

5. A proposed stratum parcel must not include part of a building if:

- (a) a stratum parcel has already been created under this Act or the Strata Titles Act 1973 in respect of the building; and
- (b) the whole or a substantial portion of the part did not form part of the building when the initial stratum parcel for the building was created.

(25) Schedule 2A:

After Schedule 2, insert:

SCHEDULE 2A—STRATA MANAGEMENT STATEMENTS

(Sec. 57B)

Form of strata management statement

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

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

Strata Titles (Leasehold Part Strata) Amendment 1992

SCHEDULE 1—AMENDMENTS—*continued*

Matters that must be included

2. (1) A strata management statement must provide for:

- (a) the establishment and composition of a building management committee and its office bearers; and
- (b) the functions of that committee and those office bearers in managing the building and its site; and
- (c) the manner in which the statement may be amended; and
- (d) the settlement of disputes, or the rectification of complaints, concerning the management of the building or its site, whether by requiring reference of disputes or complaints to the Commissioner or a Board or (with the consent of the person) to any other person for a recommendation or decision or otherwise; and
- (e) the manner in which notices and other documents may be served on the committee.

(2) Each body corporate for a leasehold strata scheme for part of the building and any other person in whom is vested an estate in fee simple in any part of the building or its site that does not form part of a stratum parcel must be members of the building management committee.

(3) Despite subclause (2), any such body corporate or other person may be excluded from membership, but only with the consent of the body corporate supported by a special resolution or with the written consent of the other person.

(4) A body corporate or other corporation that is a member of a building management committee may be represented for the purposes of the committee by a person appointed by, or selected in accordance with, a special resolution or by-law made by the body corporate or a resolution made by the other corporation.

(5) A person who has been so appointed or selected and whose term of office as such a representative has not expired or been terminated by the body corporate or other corporation is, while representing the body corporate or other corporation for those purposes, taken to be the body corporate or other corporation.

Strata Titles (Leasehold Part Strata) Amendment 1992

SCHEDULE 1—AMENDMENTS—*continued*

(6) Nothing in a strata management statement requires the Commissioner or a Board to do anything without the consent of the Commissioner or the Board.

Other matters

3. (1) A strata management statement may include provisions regulating (or providing for the regulation of) any one or more of the following:

- (a) the location, control, management, use and maintenance of any part of the building or its site that is a means of access;
- (b) the storage and collection of garbage on and from the various parts of the building;
- (c) meetings of the building management committee;
- (d) the keeping of records of proceedings of the committee.

(2) A strata management statement may include particulars relating to any one or more of the following:

- (a) safety and security measures;
- (b) the appointment of a managing agent;
- (c) the control of unacceptable noise levels;
- (d) prohibiting or regulating trading activities;
- (e) service contracts;
- (f) an architectural code to preserve the appearance of the building.

(3) This clause does not limit the matters that may be included in a strata management statement.

(4) A strata management statement may incorporate plans and other instruments as part of the statement.

Implied provisions

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

- (a) The building management committee must meet at least once each year.

Strata Titles (Leasehold Part Strata) Amendment 1992

SCHEDULE 1—AMENDMENTS—*continued*

- (b) At least 7 days' notice of a meeting must be given to each person who is a member of the committee. Notice may be given personally or by post or in any way any other notice may be given to the person under this Act.
- (c) The quorum for a meeting of the committee is a majority of the members.
- (d) The decision of a majority of the members present and voting at a meeting of the committee is the decision of the committee.

(26) Schedule 5 (**Transitional and savings provisions**):

After Schedule 4, insert:

SCHEDULE 5—TRANSITIONAL AND SAVINGS PROVISIONS

PART 1—PROVISIONS RELATING TO THE STRATA TITLES (LEASEHOLD PART STRATA) AMENDMENT ACT 1992

Definition

1. In this Part, "**amending Act**" means the Strata Titles (Leasehold Part Strata) Amendment Act 1992.

Transitional

2. (1) This Act, as amended by an amendment made by the amending Act, applies to any leasehold strata scheme for a stratum parcel created before the commencement of the amendment (and to the parcel and building concerned) in the same way as it applies to any such scheme created after the commencement of the amendment (and to the parcel and building concerned).

(2) A strata management statement is not required for a building and its site if a stratum parcel including part of the building was created before the commencement of section 57A, despite subclause (1).

Exemption from insurance

3. An order that exempted a body corporate from any requirement of section 115 immediately before the substitution of that section by the amending Act is, on that substitution:

Strata Titles (Leasehold Part Strata) Amendment 1992

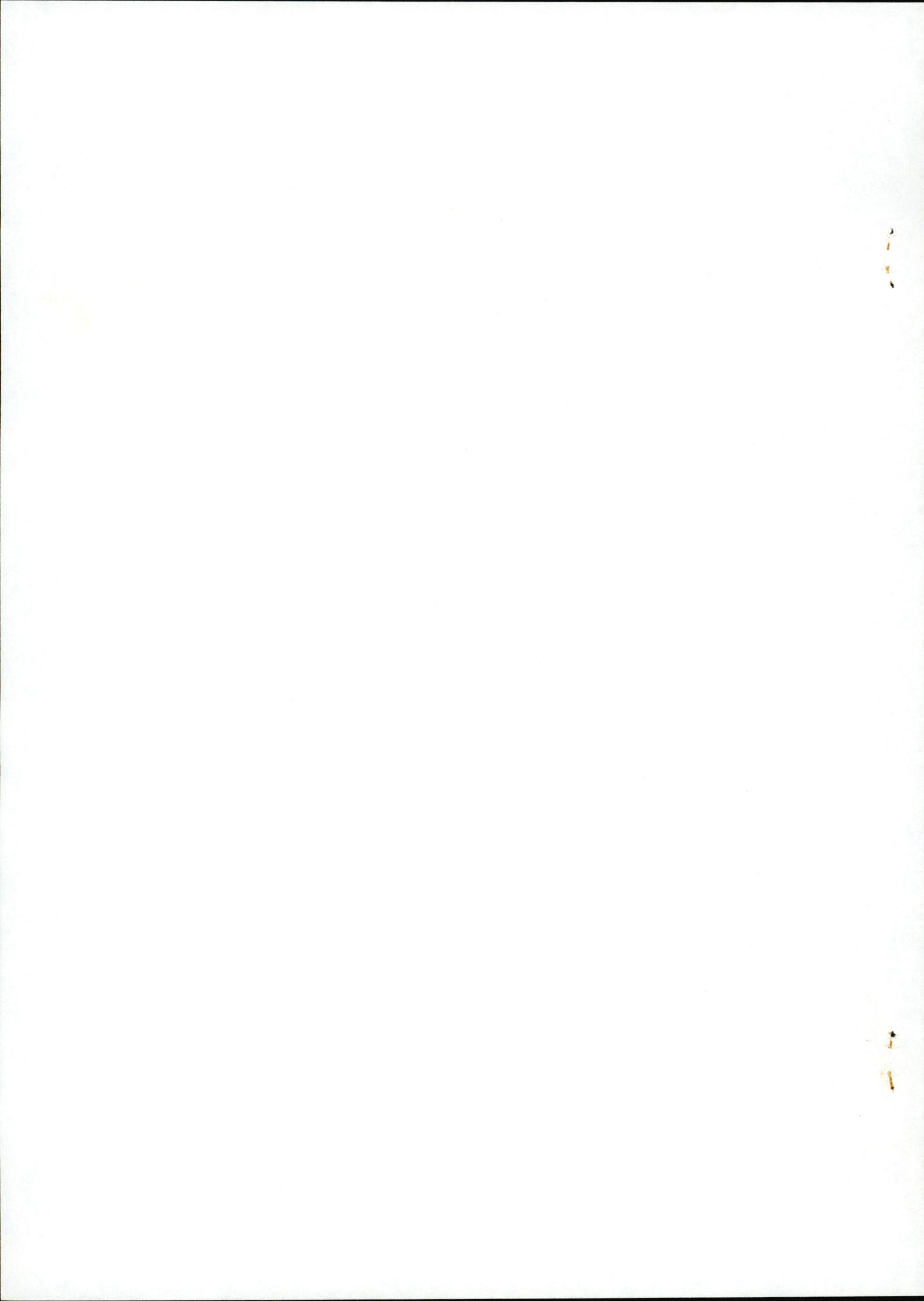
SCHEDULE 1—AMENDMENTS—*continued*

- (a) taken to have been made under that section, as so substituted; and
- (b) taken to exempt the body corporate from the corresponding requirement of that section, as so substituted.

Orders under Part 5

4. (1) An order that was in force under Part 5 immediately before the commencement of any amendment of that Part made by the amending Act is, on the commencement of the amendment, taken to have been made under that Part, as so amended.

(2) An application for an order under Part 5 that was pending immediately before the commencement of any such amendment is, on the commencement of the amendment, taken to have been made under that Part, as so amended.



STRATA TITLES (PART STRATA) AMENDMENT BILL 1992
STRATA TITLES (LEASEHOLD PART STRATA) AMENDMENT BILL 1992

LEGISLATIVE COUNCIL

SECOND READING

THE HON. R.J. WEBSTER, M.L.C.

MINISTER FOR PLANNING AND MINISTER FOR ENERGY.

I move:

That these Bills be now read a second time.

The principal Bill before the House is the Strata Titles (Part Strata) Amendment Bill.

The main purpose of this Bill is to amend the Strata Titles Act 1973 to permit the strata subdivision of part of a building by a private developer and so facilitate the establishment of mixed use developments which may comprise both commercial and private uses, including residential.

The proposed legislation will enable strata subdivision of a building in a manner presently only available to government departments, statutory authorities and local councils under the Strata Titles (Leasehold) Act 1986.

Whilst the Bill has a somewhat limited purpose it has been necessary for it to be couched in technical terms, particularly those parts of it which deal with what its explanatory note refers to as "Conveyancing Issues". Although the explanatory note is fairly comprehensive, it might be helpful for me to explain some of the technical terms used and the underlying reasons for the more complex provisions. Two concepts occurring from time to time are "current plan lot" and "stratum parcel".

...2/. Let us imagine that the

Let us imagine that the intention is to construct a multi-storey building on a privately owned vacant city block. The building, it is proposed, will contain a car-park within its 4 underground levels, commercial retail outlets at ground level, followed by ten floors of office space and finally five floors of residential units at the top of the building. The proposal is that the residential units and some of the car-park would form a separate strata scheme. This is precisely the sort of development which will lend itself to subdivision of the kind contemplated by this Bill.

The vacant block of land on which the building is constructed will be what is known technically as "a current plan lot" i.e., in most cases, a lot in a registered Deposited Plan held in the Land Titles Office.

For the new provisions to operate, the building erected on what was the vacant block must be subdivided horizontally into other lots. This is achieved by lodgment and registration of a further deposited plan, the horizontal subdivision creating new "current plan lots" carved out of the airspace and sub-strata occupied by the new building, so as to become, in effect, cubic spaces.

It then becomes possible to create strata title lots and common property out of one or more of the "current plan lots" which have resulted from the horizontal subdivision. In other words, it is thus possible to create a strata scheme for part of the building.

...3/. These strata title lots

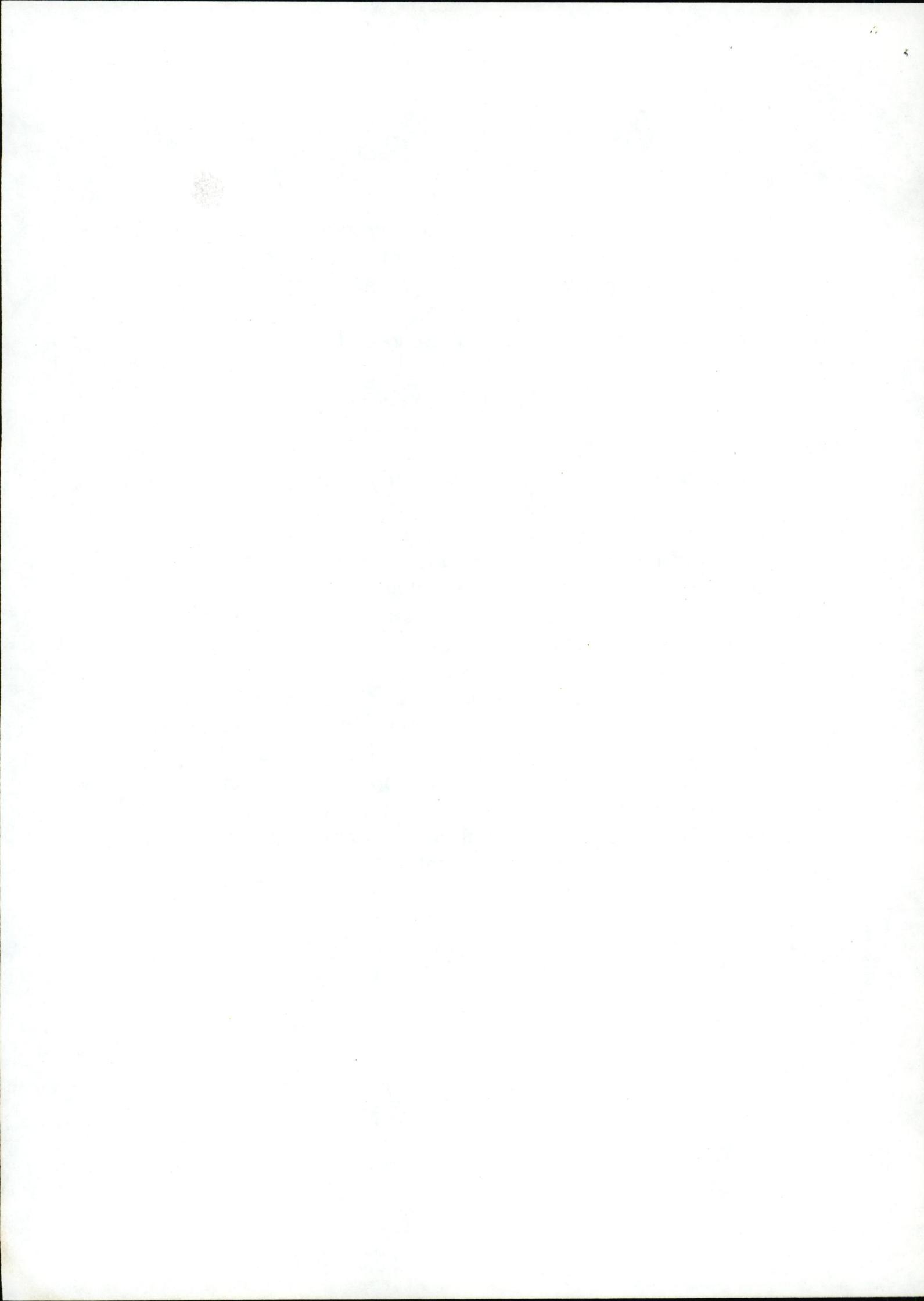
These strata title lots and common property together comprise what the Bill calls a "stratum parcel". The strata plan creating the strata title lots and related common property will itself comprise -

- (i) a location plan showing the building and stratum parcel;
- (ii) a floor plan showing the strata lots; and
- (iii) a schedule of unit entitlement i.e. the index which establishes the relative powers and liabilities of the unit owners.

Mixed use development confers obvious benefits in terms of increased building activity, employment and housing, and it is appropriate and timely that there be legislation which will encourage this kind of development.

The demand for such legislation has been demonstrated on a number of occasions. Indeed, honourable members may be aware that the strata subdivision of part of a building has, in fact, been achieved in several major high rise developments, but only at considerable expense and with great legal complexity. This is because when the existing legislation was framed its use for this type of subdivision was not contemplated.

...4/. While developments such as

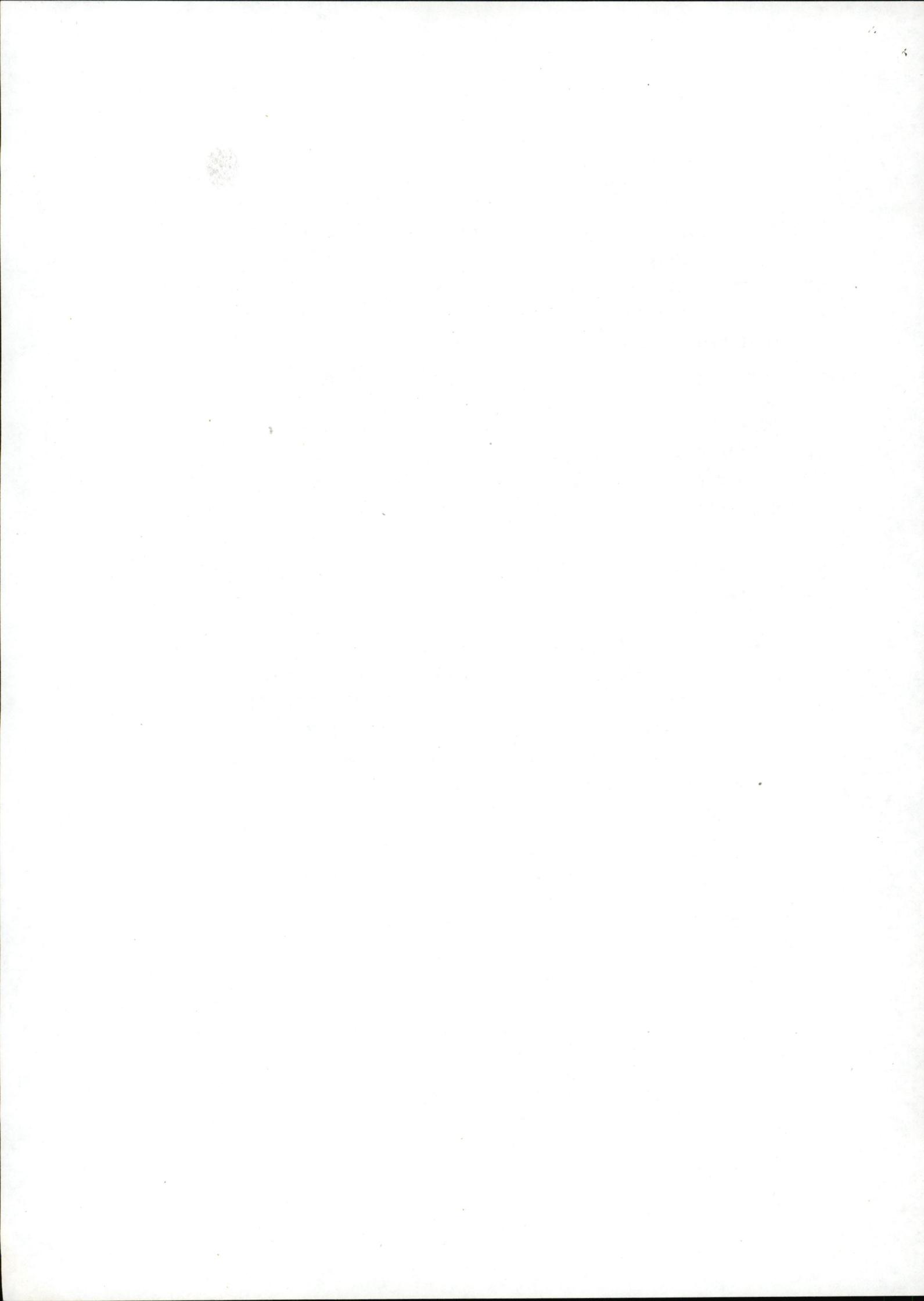


While developments such as Eastgate Towers, at Bondi Junction and the Connaught Building in the city, eventually occurred by way of complicated system of subdivisions and dealings registered under the provisions of the existing Strata Titles Act, projects such as these could have been completed faster and more cheaply if the Act had contained provisions of the type embodied in this Bill.

It seems that the reason the Strata Titles Act does not permit a strata scheme to be created for part only of a building is that at the time it was drafted in 1973 there was a perceived need to keep within the control of one entity (the body corporate) all matters relating to the insurance, management and maintenance of the building and the variation and termination of the strata scheme concerned.

Specifically, the technical bar to part strata subdivision is that under section 8 of the existing Strata Titles Act it is necessary for a surveyor to certify that the building concerned is wholly within the perimeter of the land the subject of the strata plan. It will be seen that where it is intended to partly strata - subdivide a building this requirement of section 8 is not appropriate. Nor is it possible to comply with it.

...5/. Since 1986 there has been



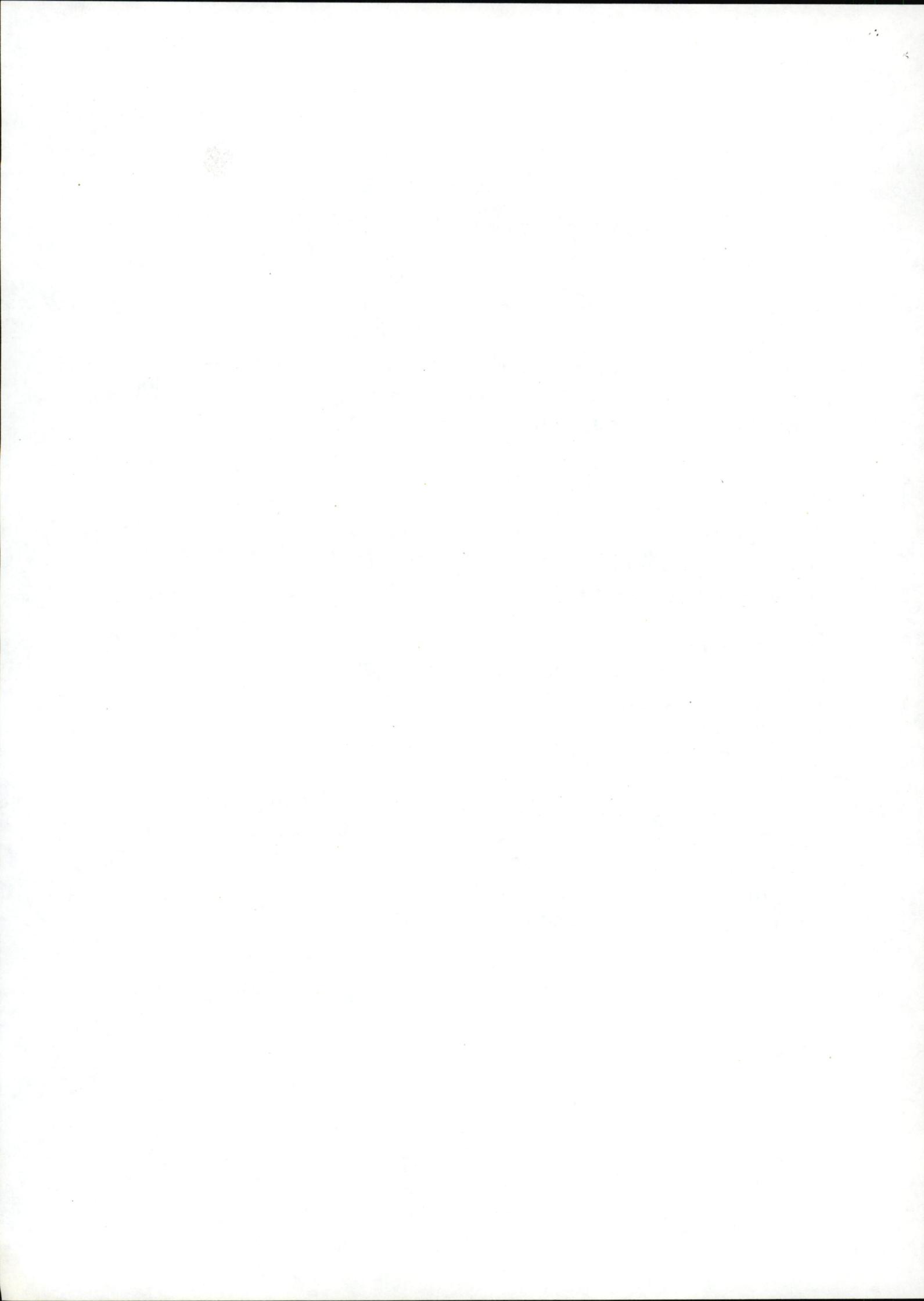
Since 1986 there has been some ability to strata subdivide part only of a building. But, as I have mentioned, the Strata Titles (Leasehold) Act of that year, which introduced this facility, was limited in its application to land owned by government departments, statutory authorities and local councils. Only those bodies could avail themselves of its provisions. That Act did contain, however, provisions which were useful models when it came to formulating the provisions of the subject Bill.

Easements for support and shelter come into effect automatically and statutory forms of easements for access and services may be created to regulate the use and maintenance of the building by the lessees of the strata lots and the owners of the parts of the building not subject to the strata scheme.

Although the Bill is modelled on the Strata Titles (Leasehold) Act and provides for easements for support, shelter, access and services, it also contains additional requirements designed to establish an umbrella control over those component parts of the building that are common to each use area.

Because the legislation will facilitate the subdivision of a building into different parts which will be owned and managed for various and not necessarily compatible purposes, it will also give statutory recognition to the need for adoption of rules and conditions which will regulate the overall control of the development.

...6/. To protect intending

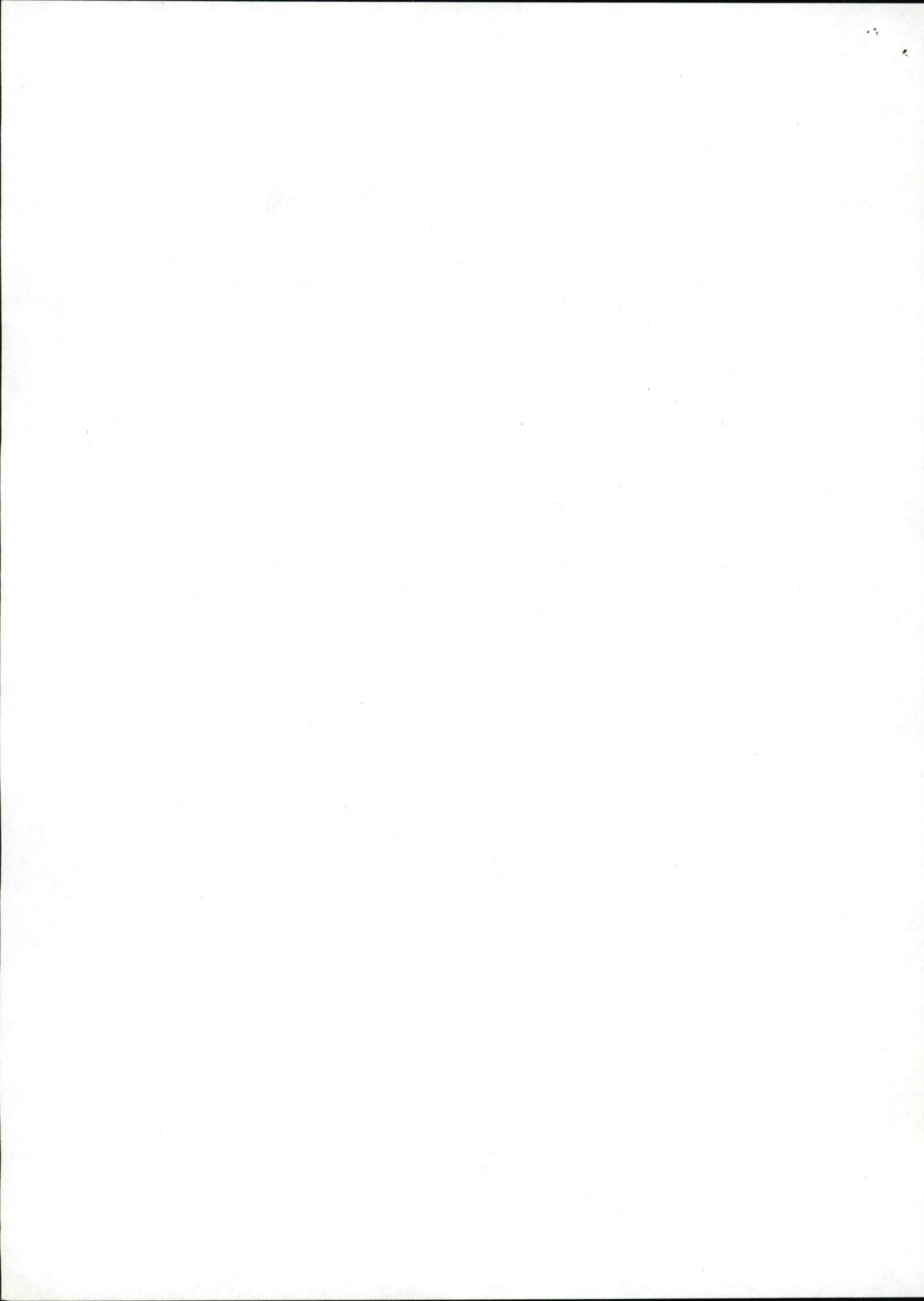


To protect intending purchasers a developer will be obliged to adopt up-front disclosure provisions, set out in a strata management statement to be lodged with the plan. A new Division 2B is to be inserted in the Strata Titles Act to deal with such statements which, under proposed new section 28W are to take effect as agreements under seal entered into by the various interested persons and entities using the building whether as owners, mortgagees in possession, lessees or bodies corporate of strata schemes.

It will be mandatory for certain matters to be detailed in the management statement, for example, matters relating to management of the building, how the statement may be amended and the manner in which disputes are to be settled. These are prescribed in a new Schedule 1C which is applied by virtue of new section 28S.

The legislation will also encourage developers to disclose in a management statement any other matters which might add to the commercial viability of the development. To aid in the marketing of the development it will be in a developer's interest to include matters such as security and the control of noise levels. Again, the new Schedule 1C addresses these matters.

...7/. In an effort to deter

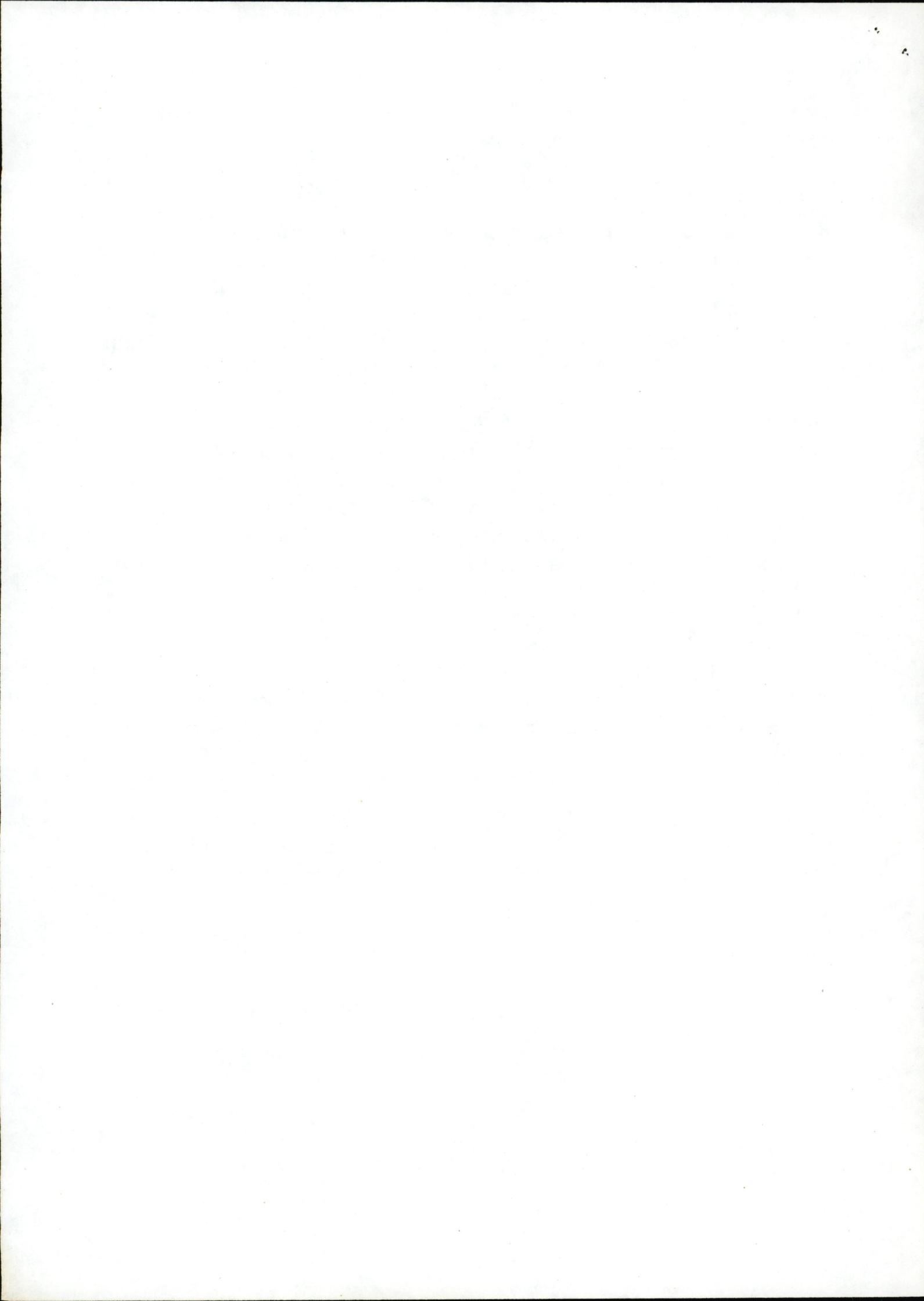


In an effort to deter parties from resorting to litigation in respect of disputes that may arise between the owners of the various parts of the building, a developer will be required to nominate and provide details of the method by which it is intended that such disputes may be resolved and will be encouraged to provide for these issues to be referred to the Strata Titles Commissioner or to arbitration.

While the Strata Titles (Leasehold) Act already allows the creation of a strata scheme for part of a building it does not contain provisions relating to the lodgment of a management statement. The purpose of the second Bill - the Strata Titles (Leasehold Part Strata) Amendment Bill - is to insert such provisions in the leasehold Act. The inclusion of provisions relating to management statements will be beneficial to developments under both Acts and will ensure that, as far as possible, the provisions of each Act continue to mirror each another.

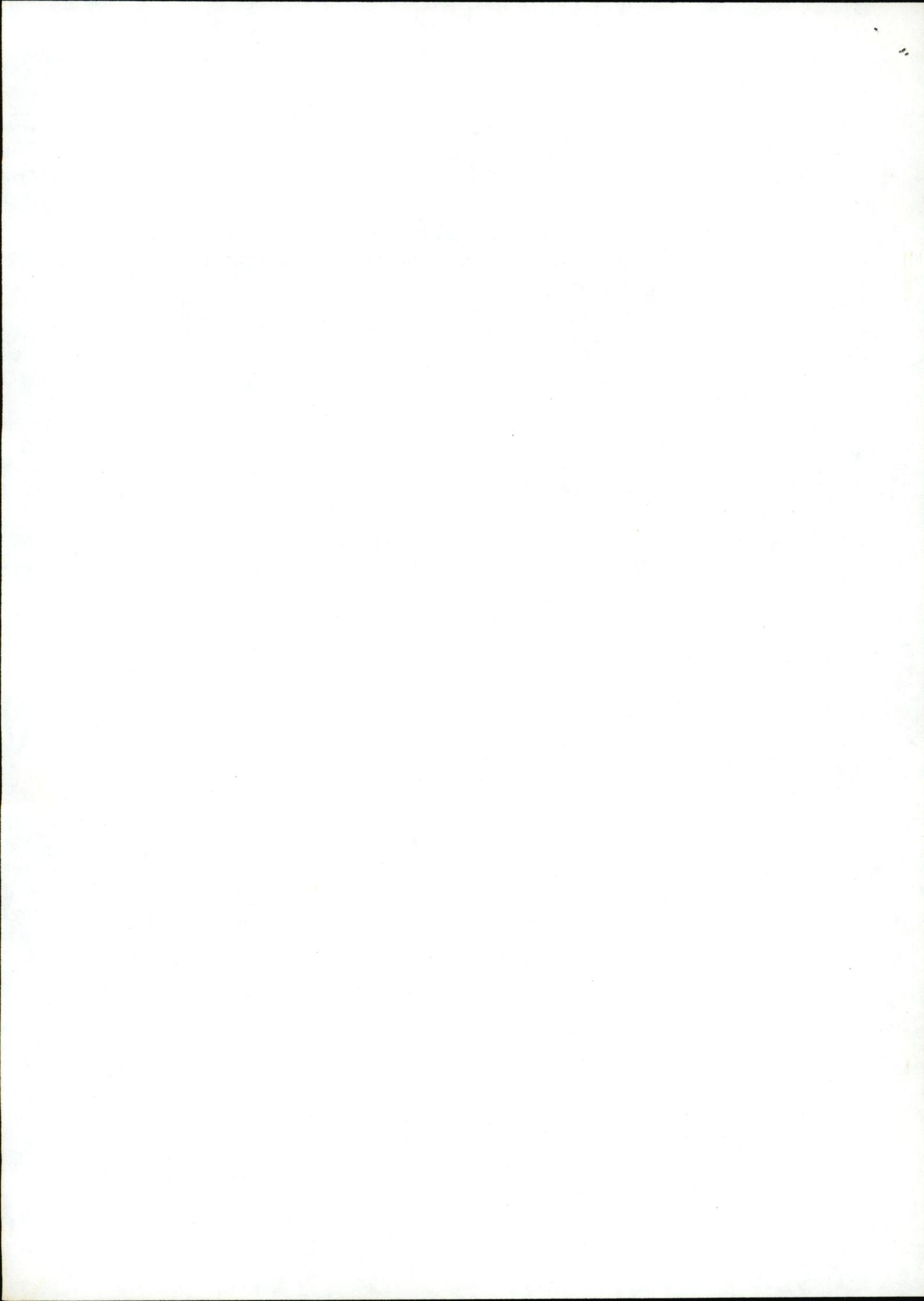
The legislation, which has received the widespread support of government and industry groups, will not only facilitate large scale multi-purpose developments but will also be able to be utilised by smaller land owners such as clubs and other organisations which wish to take advantage of a commercially viable site by selling-off commercial or residential strata units and yet retain totally self contained club rooms and administration offices within the same building.

...8/. These new measures provide



These new measures provide an essential tool for handling the complexities of modern-day development and are another example of the Government's commitment to provide the mechanism for responsible and imaginative land development in the interests of all sections of the community.

I commend the Bills to the House.



**STRATA TITLES (LEASEHOLD PART STRATA)
AMENDMENT ACT 1992 No. 12**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Strata Titles (Leasehold) Act 1986 No. 219

SCHEDULE 1—AMENDMENTS

**STRATA TITLES (LEASEHOLD PART STRATA)
AMENDMENT ACT 1992 No. 12**

NEW SOUTH WALES



Act No. 12, 1992

An Act to amend the Strata Titles (Leasehold) Act 1986 so as to make further provision for the strata subdivision of parts of buildings; and for related purposes. [Assented to 17 March 1992]

Strata Titles (Leasehold Part Strata) Amendment Act 1992 No. 12

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Strata Titles (Leasehold Part Strata) Amendment Act 1992.

Commencement

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

Amendment of Strata Titles (Leasehold) Act 1986 No. 219

3. The Strata Titles (Leasehold) Act 1986 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 5 (**Construction of Act (1973 Act, s. 6)**):

After section 5 (3), insert:

(4) The provisions of this Act, other than those relating to ownership and the certification of title, apply:

- (a) to so much of an encroachment (other than on a public place) shown on a proposed strata plan as is designated for use with a lot—as if it were part of the lot; or
- (b) to the remainder (if any) of such an encroachment and to any other encroachment (other than on a public place) shown on a proposed strata plan—as if it were common property.

(2) Section 6 (**Subdivision (1973 Act, s. 7)**):

After section 6 (3), insert:

(3A) Land that is a development lot under this Act or the Community Land Development Act 1989 cannot be subdivided under this section.

(3) Section 7 (**Registration of strata plans (1973 Act, s. 8)**):

- (a) Omit section 7 (1) (a) and (e)–(j).
- (b) At the end of section 7 (c), insert “or”.

Strata Titles (Leasehold Part Strata) Amendment Act 1992 No. 12

SCHEDULE 1—AMENDMENTS—*continued*

(c) Omit section 7 (2) and (2A), insert instead:

(2) A plan intended to be registered as a strata plan must include, as sheets of the plan:

- (a) a location plan; and
- (b) a floor plan; and
- (c) a schedule of unit entitlement.

(2A) The location plan must be endorsed with:

- (a) the address at which documents may be served on the proposed body corporate; and
- (b) a certificate issued by the local council under section 66 in the approved form, unless the plan is lodged by the Crown or a statutory body representing the Crown; and
- (c) a certificate given by a registered surveyor in the approved form certifying that each applicable requirement of Schedule 1A has been met.

The location plan must also identify any encroachment by the building (whether or not on to a public place) and any proposed development lot.

(2B) The floor plan for a leasehold strata scheme that does not provide for common property must show that at least one (or part of one) of the proposed lots is superimposed on another (or part of another) of the proposed lots.

(2C) The schedule of unit entitlement must show as whole numbers the proposed unit entitlement of each lot and the aggregate unit entitlement of all lots.

(2D) A plan intended to be registered as a strata plan that creates a development lot must (unless the plan is lodged by the Crown or a statutory body representing the Crown) be accompanied by:

- (a) a copy of the relevant development statement; and
- (b) the certificate of the consent authority provided under section 41 (4).

Strata Titles (Leasehold Part Strata) Amendment Act 1992 No. 12

SCHEDULE 1—AMENDMENTS—*continued*

(2E) The Registrar-General may refuse to register a plan as a strata plan:

- (a) if any requisition made by the Registrar-General with respect to the registration of any lease lodged in connection with registration of the plan has not been complied with; or
- (b) if a plan of survey, within the meaning of the Survey Practice Regulation 1990, of the proposed parcel requested by the Registrar-General and such number of copies of the plan of survey as have been so requested have not been lodged in the office of the Registrar-General; or
- (c) if any requisition made by the Registrar-General concerning the registration of a by-law that confers a right of exclusive use and enjoyment of, or special privileges in respect of, common property has not been complied with.

(2F) The plan of survey must show, should the Registrar-General so request, the relationship by measurement of the building to the perimeter of the proposed parcel and, in the case of a proposed stratum parcel, to the perimeter of the site.

(d) Omit section 7 (4), (5), (9) and (10).

(4) Section 9 (**Easements in certain leasehold strata schemes**):

From the definition of “service” in section 9 (1), omit “sewage”, insert instead “sewerage”.

(5) Part 2, Division 5A:

After section 57, insert:

Division 5A—Strata management statements

Requirement for strata management statement (1973 Act, s. 28R)

57A. (1) The Registrar-General must not register a plan as a strata plan creating a stratum parcel unless the Registrar-General also registers a strata management statement for the building and site concerned.

(2) The Registrar-General may waive the requirement made by subsection (1) only on the direction of the Minister given on such grounds as the Minister considers sufficient.

Strata Titles (Leasehold Part Strata) Amendment Act 1992 No. 12

SCHEDULE 1—AMENDMENTS—*continued*

(3) The Registrar-General may register a strata management statement for a building and its site at any time part of the building is included in a stratum parcel but is not the subject of such a statement.

Formal requirements (1973 Act, s. 28S)

57B. (1) A strata management statement and any amendment of such a statement must be in the approved form.

(2) A strata management statement as in force from time to time must comply with Schedule 2A and that Schedule applies to any such statement.

(3) The Registrar-General may register a strata management statement and an amendment of such a statement by making such recordings in the Register as the Registrar-General considers appropriate.

(4) The Registrar-General may refuse to register a strata management statement or any amendment of such a statement if the application for registration fails to comply with any requirement made by this Act or the regulations or is not accompanied by the prescribed fee.

Registration of strata management statement (1973 Act, s. 28T)

57C. (1) If a strata management statement has been registered in accordance with this Division, the Registrar-General must record in the folio of the Register relating to the body corporate of the leasehold strata scheme concerned and the common property (if any):

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

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

(2) The Registrar-General must make a like record in the folio of the Register:

(a) for each of the bodies corporate for a leasehold strata scheme for part of the building concerned; and

Strata Titles (Leasehold Part Strata) Amendment Act 1992 No. 12

SCHEDULE 1—AMENDMENTS—*continued*

- (b) for each fee simple and leasehold estate that is recorded in a folio of the Register for a part of the building or site concerned that does not form part of a stratum parcel.

Amendment of strata management statement (1973 Act, s. 28U)

57D. (1) A registered strata management statement may be amended only if the amendment is:

- (a) supported by a special resolution of the body corporate for each leasehold strata scheme for part of the building concerned and by each person in whom is vested an estate in fee simple or a leasehold estate, recorded in a folio of the Register kept under the Real Property Act 1900, in any part of that building or its site that is not included in a stratum parcel; or
- (b) ordered under Part 5 or under this or any other Act by a court; or
- (c) consequential on the revocation or modification, under section 103 of the Environmental Planning and Assessment Act 1979, of a development consent.

(2) An amendment of a strata management statement does not have effect under this Division unless it is recorded in the folio of the Register:

- (a) for each of the bodies corporate for a leasehold strata scheme for part of the building concerned; and
- (b) for each freehold and leasehold estate in a part of the building or site concerned that does not form part of a stratum parcel.

Signing of strata management statement (1973 Act, s. 28V)

57E. (1) The Registrar-General may register a strata management statement or any amendment of such a statement only if the statement or amendment is:

- (a) accompanied by a certificate given by the secretary of the body corporate for each leasehold strata scheme (if any) for a part of the building concerned certifying that the statement is supported by a special resolution of the body corporate; and

Strata Titles (Leasehold Part Strata) Amendment Act 1992 No. 12

SCHEDULE 1—AMENDMENTS—*continued*

- (b) signed by each person in whom is vested an estate in fee simple or a leasehold estate, recorded in a folio of the Register kept under the Real Property Act 1900, in a part of the building or its site that is not included in a stratum parcel (whether or not it is included in a proposed stratum parcel); and
- (c) signed by every mortgagee, chargee or covenant chargee under a mortgage, charge or covenant charge recorded in a folio of that Register recording such an estate.

(2) In addition, the Registrar-General may refuse to register a strata management statement or an amendment of such a statement unless there have been lodged in the office of the Registrar-General written consents to the registration of the statement or amendment signed by (or by an agent authorised by) such one or more of the following as the Registrar-General determines:

- (a) the judgment creditor under any writ recorded in any such folio or the lessee under any lease, or the judgment creditor under any writ, recorded in the folio of the Register relating to any common property affected by the statement or amendment;
- (b) the caveator under a caveat affecting any estate or interest of any such registered proprietor or lessee, mortgagee, chargee or covenant chargee or under a caveat affecting any such common property.

(3) The Registrar-General may, in a particular case, dispense with any signature required by or under this section without giving notice to any person.

Effect of strata management statement (1973 Act, s. 28W)

57F. (1) A registered strata management statement, as in force for the time being, relating to the management of a building has effect as an agreement under seal containing the covenants referred to in subsection (2) entered into by each person who for the time being is:

- (a) a body corporate of a leasehold strata scheme for part of the building; or

Strata Titles (Leasehold Part Strata) Amendment Act 1992 No. 12

SCHEDULE 1—AMENDMENTS—*continued*

- (b) a proprietor, mortgagee in possession or lessee of any of the lots in such a strata scheme; and
 - (c) any other person in whom the fee simple of any part of that building or its site (being a part affected by the statement) is vested, or the mortgagee in possession or lessee of any such part.
- (2) The covenants referred to in this section are:
- (a) a covenant by which those persons jointly and severally agree to carry out their obligations under the registered strata management statement as from time to time in force; and
 - (b) a covenant by which those persons jointly and severally agree to permit the carrying out of those obligations.
- (3) The agreement ceases to have effect under this Division:
- (a) in relation to a person who is described in subsection (1) (b) or (c), on that person ceasing to be a person so described; and
 - (b) in relation to all of the persons described in subsection (1), on termination of all leasehold strata schemes to which the strata management statement relates.
- (4) Subsection (3) does not prejudice or affect any obligation that was incurred by a person, or any right that accrued to a person, under the agreement while the agreement was in force.
- (5) A strata management statement has no effect to any extent to which it is inconsistent with any condition imposed on a development consent relating to the site of the building to which the statement relates, with a by-law or an order under Part 5 or with any other Act or other law.
- (6) Except as may be provided otherwise by this Act or the regulations, a provision in any instrument under which the agreement is excluded, modified or restricted is void.
- (7) A covenant entered into under the agreement does not merge in a transfer of a lease of a lot.
- (8) Part 5 applies to or in relation to matters arising under the agreement.

Strata Titles (Leasehold Part Strata) Amendment Act 1992 No. 12

SCHEDULE 1—AMENDMENTS—*continued*

(9) Except as provided by subsection (8), nothing in this section affects any right or remedy that a person may have under a strata management statement apart from a right or remedy under this Division.

- (6) Section 80 (**Termination of leasehold strata scheme (1973 Act, s. 51)**):

After section 80 (7) (c), insert:

(c1) the termination or amendment of any strata management statement that relates to the parcel or the amendment of any other strata management statement that relates to the building concerned;

- (7) Section 88 (**Copy of by-laws and strata management statement to be provided (1973 Act, s. 58A)**):

- (a) After section 88 (1), insert:

(1A) If the lot or common property is affected by a strata management statement, the sublessor must, within that period of 7 days, also provide the sublessee, in accordance with subsection (2), with a copy of the strata management statement as for the time being in force.

Maximum penalty: 1 penalty unit.

- (b) In section 88 (2), after “by-laws”, insert “or of a strata management statement”.

- (8) Section 115:

Omit the section, insert instead:

Insurance of buildings (1973 Act, s. 83)

115. (1) The body corporate for a leasehold strata scheme for the whole of a building must insure the building and keep the building insured under a damage policy with an approved insurer in the name of the body corporate.

Maximum penalty: 5 penalty units.

(2) The body corporate for each leasehold strata scheme for part of a building and each person in whom is vested an estate in fee simple or a leasehold estate, recorded in a folio of the Register kept under the Real Property Act 1900, in any

Strata Titles (Leasehold Part Strata) Amendment Act 1992 No. 12

SCHEDULE 1—AMENDMENTS—*continued*

part of the building or its site that is not included in a stratum parcel must insure the building and keep the building insured under a damage policy effected with an approved insurer in their joint names.

Maximum penalty: 5 penalty units.

(3) In any proceedings for an offence under subsection (2), it is a defence to establish that the defendant was willing to join in the insurance of a building under a damage policy but that the policy could not be effected because another person specified in that subsection was unwilling to join in the application for that policy.

(4) The proportion of a premium for a damage policy in respect of a building referred to in subsection (2) payable by a body corporate or other person is to be apportioned in accordance with the regulations.

(5) On application made to it by a body corporate or other person liable to pay such a proportion, a Board may determine the replacement value of the building and proportion payable and any such determination is binding on each such body corporate and other person.

(6) Any person required by this section to insure a building may make an application in writing to the Commissioner for an order under subsection (7), but a body corporate may make such an application only pursuant to a unanimous resolution.

(7) If, on considering such an application, the Commissioner is of the opinion that compliance with the provisions of subsection (1) or (2) is unnecessary or impracticable, the Commissioner may, subject to subsections (8)–(10), by order in writing:

- (a) exempt the applicant from compliance with those provisions absolutely; or
- (b) with the consent in writing of the applicant, exempt the applicant from compliance with those provisions subject to a condition that the applicant effects such insurance in respect of the building concerned as may be specified in the order.

Strata Titles (Leasehold Part Strata) Amendment Act 1992 No. 12

SCHEDULE 1—AMENDMENTS—*continued*

(8) The Commissioner must not make an order under subsection (7) unless each other person required to insure the building:

- (a) has consented in writing to the making of the order; or
- (b) has, before the making of the order, been given an opportunity to make representations to the Commissioner with respect to the application for the order.

(9) A consent for the purposes of this section may be given by a body corporate only pursuant to a unanimous resolution.

(10) If a body corporate is required by a positive covenant to insure the building, an order must not be made under subsection (7) 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) A person to whom an exemption has been granted under subsection (7) is not under a duty to comply with a requirement made by subsection (1) or (2) or any corresponding requirement of a positive covenant, as the case may be, but, if the exemption was granted subject to a condition referred to in subsection (7) (b), is under the duty, if in breach of that condition.

(12) If a person fails to comply with a requirement made by subsection (2) to insure or keep insured a building, any other person who has an obligation to comply with that requirement may either:

- (a) apply to the Board for an order requiring the person failing to comply to join that other person in effecting a damage policy in respect of the building; or
- (b) effect a damage policy in respect of the building in the joint names and, in a court of competent jurisdiction, recover as a debt from the person failing to comply the appropriate proportion, if any, of the amount of the premium for which that person is liable.

Strata Titles (Leasehold Part Strata) Amendment Act 1992 No. 12

SCHEDULE 1—AMENDMENTS—*continued*

(9) Section 120 (**Insurable interests (1973 Act, s. 88)**):

Omit section 120 (1), insert instead:

(1) Any person (including a body corporate) is taken to have an insurable interest in the subject-matter of a contract of insurance entered into by the person pursuant to this Division.

(10) Section 131 (**Procedure after Commissioner receives application (1973 Act, s. 101)**):

At the end of section 131 (1) (f), insert:

; and

(g) if the leasehold strata scheme concerned is for part of a building, may for that purpose enter any lot in any stratum parcel that includes part of the building concerned and any other part of the building or its site at any reasonable time on notice given to any occupier of that lot or other part and may enter any common property within the building or its site.

(11) Section 134 (**Orders by Commissioner (1973 Act, s. 104)**):

From section 134 (3), omit “a body corporate, a managing agent, a lessee, any person having an estate or interest in a lot or an occupier of a lot”, insert instead “any interested person (within the meaning of section 136)”.

(12) Section 136 (**General powers of Commissioner to make orders (1973 Act, s. 105)**):

(a) From section 136 (1), omit “a body corporate, a managing agent, the lessor under the scheme, the lessee or an occupier of a lot or any other person who has an estate or interest in a lot subject to a leasehold strata scheme or, in the case of any such scheme the subject of which is a stratum parcel, any person who has the benefit of an easement over, or who has the burden of an easement in favour of, that parcel or any part of it”, insert instead “any interested person in respect of a leasehold strata scheme”.

(b) After section 136 (1), insert:

(1A) In this section, “interested person”:

Strata Titles (Leasehold Part Strata) Amendment Act 1992 No. 12

SCHEDULE 1—AMENDMENTS—*continued*

- (a) in relation to any leasehold strata scheme, means:
- (i) the body corporate of the scheme; or
 - (ii) the chairman, secretary or treasurer of the body corporate (or of the council of the body corporate) of the scheme; or
 - (iii) a managing agent for the scheme; or
 - (iv) the lessor under the scheme; or
 - (v) the lessee or sublessee of, a person having any other estate or interest in, or an occupier of, a lot in the scheme; and
- (b) in relation to a leasehold strata scheme for a stratum parcel, includes:
- (i) the body corporate of, a managing agent for, a lessee or sublessee of a lot in, a person having any other estate or an interest in a lot in, or an occupier of a lot in, any other leasehold strata scheme affecting the building; and
 - (ii) any other person for the time being bound by the strata management statement (if any) for the building; and
 - (iii) if there is no strata management statement for the building, any other person who has the benefit of an easement over, or the burden of an easement in favour of, that stratum parcel.
- (c) In section 136 (5) and (6), after “corporate” wherever occurring, insert “or building management committee”.
- (d) From section 136 (5), omit “or the by-laws”, insert instead “, the by-laws or a strata management statement”.
- (e) After section 136 (7), insert:
- (7A) Before making any order relating to the management of a leasehold strata scheme for a stratum parcel or the management of the building concerned or its site, the Commissioner must have regard to the strata management statement (if any) for the building.

Strata Titles (Leasehold Part Strata) Amendment Act 1992 No. 12

SCHEDULE 1—AMENDMENTS—*continued*

(7B) Subsection (7A) does not prevent the Commissioner from making an order that is inconsistent with the provisions of a strata management statement or that requires the amendment of such a statement.

(f) At the end of section 136 (8) (c), insert:

; or

(d) for the settlement of a dispute, or the rectification of a complaint, arising out of any requirement made by a strata management statement, unless the statement provides for such disputes or complaints to be referred to the Commissioner for a decision or the order may be made under section 143.

(13) Section 143:

Omit the section, insert instead:

Order to make or pursue insurance claim (1973 Act, s. 109A)

143. (1) The Commissioner may order any person who is entitled to the benefit of insurance effected under this Act to make or pursue an insurance claim in respect of damage to the building or any other property to which the insurance relates.

(2) The Commissioner may make an order only if the Commissioner considers the person has unreasonably refused to make or pursue the claim.

(3) An application for an order under this section may be made:

(a) by the lessor under the leasehold strata scheme for the building or any part of the building concerned or by any lessee or sublessee of common property or a lot in the scheme; or

(b) if part of the building is included in a stratum parcel, by each person in whom is vested an estate in fee simple or a leasehold estate, registered under the Real Property Act 1900, in any part of the building or its site that is not included in a stratum parcel.

Strata Titles (Leasehold Part Strata) Amendment Act 1992 No. 12

SCHEDULE 1—AMENDMENTS—*continued*

- (14) Section 146 (Order relating to keeping of animals (1973 Act, s. 112)):

Omit section 146 (3), insert instead:

(3) Whether or not an order under this section is consistent with any by-law, such an order binds the lessor under the leasehold strata scheme concerned and:

- (a) each lessee, sublessee and occupier of a lot in and the body corporate of the scheme; or
- (b) if the leasehold strata scheme concerned is for a stratum parcel, each person who is or would be bound by a strata management statement for the building and its site.

- (15) Part 5, Division 2A:

After section 151, insert:

**Division 2A—Resolution of certain building
management disputes by Commissioner**

**Resolution of certain building management disputes
(1973 Act, s. 115A)**

151A. (1) The Commissioner may attempt to resolve by conciliation any dispute or complaint relating to the management of a building or its site if any part of the building is included in a stratum parcel.

(2) A dispute or complaint may be referred to the Commissioner by any person who is bound for the time being by the strata management statement relating to the management of the building, whether or not the statement provides for conciliation of the dispute or complaint by the Commissioner.

(3) The Commissioner may attempt conciliation under this section only with the consent of all parties to the dispute or complaint, but (except where section 136 (8) (d) requires the Commissioner to do so) is not required to attempt conciliation before exercising any other function under this Act, by-laws or a strata management statement.

Strata Titles (Leasehold Part Strata) Amendment Act 1992 No. 12

SCHEDULE 1—AMENDMENTS—*continued*

(4) The Commissioner may exercise any function conferred on the Commissioner by a strata management statement with respect to the settlement of disputes or the rectification of complaints concerning the management of the building to which the statement relates or its site, but only if the Commissioner considers that the function is appropriate.

(16) Section 162:

Omit the section, insert instead:

Orders relating to insurance (1973 Act, s. 125)

162. (1) A Board may order that insurance must be effected under section 115 for a specified amount, if the Board is satisfied that there is a dispute about the amount for which any such insurance should be effected or the proportions in which it should be paid.

(2) Any such order may require insurance to be effected in accordance with the order for a period of up to 90 days, but does not affect the requirement made by section 115 to keep the building insured after that period.

(3) A Board may order that the amount of any insurance effected under section 115 or 116 (1) (c) must be varied to a specified amount, if the Board considers that the amount for which the insurance is currently effected is unreasonable.

(4) An order under this section must specify by whom the insurance is to be effected or varied and (if the building concerned contains a stratum parcel) the proportions in which the premium is to be paid.

(5) An application for an order under this section may be made:

- (a) by the lessor under the leasehold strata scheme for the building or any part of the building concerned, by any lessee or sublessee of the common property or by a lessee, sublessee or an enrolled mortgagee of, or a person having an interest in, a lot in the scheme; or
- (b) if part of the building is included in a stratum parcel, by each person in whom is vested, or who has an interest in, an estate in fee simple or a leasehold estate,

Strata Titles (Leasehold Part Strata) Amendment Act 1992 No. 12

SCHEDULE 1—AMENDMENTS—*continued*

registered under the Real Property Act 1900, in any part of the building or its site that is not included in a stratum parcel, or by any mortgagee under a mortgage registered under that Act of any such estate or interest;
or

- (c) by an authority having the benefit of a positive covenant affecting that building or its site.

- (17) Section 171 (**General provisions relating to orders under Division 3 and on appeal (1973 Act, s. 133)**):

From section 171 (2), omit “a body corporate, the chairperson, secretary or treasurer of a body corporate or its council, a managing agent, the lessor under the scheme or a lessee or another person having an estate or interest in a lease of a lot or an occupier of a lot”, insert instead “any interested person (within the meaning of section 136)”.

- (18) Section 178 (**Effect of certain orders (1973 Act, s. 140)**):

From section 178 (1), omit “be deemed to be a resolution passed by the body corporate for the leasehold strata scheme to which the order relates”, insert instead “, to the extent that they impose a requirement on a body corporate, be taken to have effect as a resolution of the body corporate to do what is needed to comply with the requirement”.

- (19) Section 180 (**Penalty for contravention of certain orders (1973 Act, s. 142)**):

Omit section 180 (4), insert instead:

(4) Proceedings for an offence under this section may be taken only:

- (a) in any case, by the applicant for the order; or
 (b) if the order relates to a parcel that is not a stratum parcel, by the body corporate for the parcel; or
 (c) if the order relates to a stratum parcel, by each body corporate for a stratum parcel including part of the building, the lessor under the scheme or any person in whom is vested an estate in fee simple or a leasehold estate, registered under the Real Property Act 1900, in a part of the building or its site that is not included in a stratum parcel.

Strata Titles (Leasehold Part Strata) Amendment Act 1992 No. 12

SCHEDULE 1—AMENDMENTS—*continued*

(20) Sections 186, 187:

Omit the sections, insert instead:

Structural defects—proceedings as agent (1973 Act, s. 148)

186. (1) An interested person may take proceedings, under the Building Services Corporation Act 1989 or otherwise, for the rectification of the condition of a part of a building, or a part of the site of a building, if that condition affects or is likely to affect the support or shelter provided by that part to any other part of the building or its site.

(2) Any such proceedings may be taken only if:

- (a) they could have been taken by a proprietor of a lot or by another person in whom is vested an estate in fee simple in a part of the building or its site; and
- (b) they have not been taken by the proprietor or other person within a reasonable time.

(3) Any such proceedings are taken by an interested person as agent for the person who might have taken the proceedings and at the cost of the interested person.

(4) In this section, “**interested person**” means:

- (a) the body corporate of the strata scheme for the building or, if part of the building is included in a stratum parcel, of any strata scheme for part of the building; or
- (b) the lessor under the scheme; or
- (c) any person in whom is vested an estate in fee simple or a leasehold estate, registered under the Real Property Act 1900, in a part of the building or its site that is not included in a parcel.

Dividing fences (1973 Act, s. 149)

187. (1) For the purposes of the Dividing Fences Act 1991:

- (a) the body corporate of a strata scheme for a parcel that is not a stratum parcel is taken to be the owner of the land constituting the parcel; and

Strata Titles (Leasehold Part Strata) Amendment Act 1992 No. 12

SCHEDULE 1—AMENDMENTS—*continued*

(b) the body corporate of each strata scheme for a stratum parcel including part of a building (for the purposes of that parcel) and any person, not being a sublessee, in whom is vested a leasehold estate, registered under the Real Property Act 1900, in a part of the building or its site that is not included in a parcel (for the purposes of that part) are taken to be the owners of the land constituting the building and its site.

(2) Subsection (1) does not apply to land that is part of a community scheme under the Community Land Management Act 1989 or to any part of a parcel that is the subject of a lease accepted or acquired by a body corporate under section 22.

(3) A strata management statement may apportion liability arising under the Dividing Fences Act 1991, but only between persons bound by the statement.

(21) Section 191 (**Service of documents on body corporate etc. (1973 Act, s. 153)**):

(a) In section 191 (3), after “body corporate,”, insert “the lessor under the scheme,”.

(b) After section 191 (4), insert:

(5) A document may be served on any person in whom is vested an estate in fee simple or a leasehold estate, registered under the Real Property Act 1900, in a part of a building or its site that is not included in a stratum parcel, but another part of which is so included, in any manner provided by section 170 of the Conveyancing Act 1919.

(22) Section 192 (**Powers of entry by public authority or local council (1973 Act, s. 154)**):

After “that parcel”, insert “(and, if it is a stratum parcel, any other part of the building concerned or its site, whether or not it is part of a parcel)”.

(23) Section 193 (**Powers of entry of Commissioner in certain cases (1973 Act, s. 154A)**):

(a) From section 193 (1), omit “enter upon that part”, insert instead “and of any other part of the building concerned or its site, whether or not it is part of a parcel, enter that part of the parcel”.

Strata Titles (Leasehold Part Strata) Amendment Act 1992 No. 12

SCHEDULE 1—AMENDMENTS—*continued*

(b) After section 193 (2) (a), insert:

(a1) a member of the building management committee, if any, for the building concerned; or

(24) Schedule 1A:

Before Schedule 1, insert:

SCHEDULE 1A—REQUIREMENTS FOR STRATA PLANS

(Sec. 7)

Floor plans

1. (1) Each wall, the inner surface or any part of which corresponds substantially to a line shown on the floor plan as a boundary of a proposed lot, must exist.

(2) Each floor or ceiling, the upper or under surface or any part of which forms a boundary of a proposed lot, must exist.

(3) Each wall, floor, ceiling or structural cubic space, by reference to which any boundary of a proposed lot is determined, must exist.

Location plans—no stratum parcel

2. (1) This clause applies if the proposed parcel will not be a stratum parcel.

(2) The building erected on the land comprising the proposed parcel and each proposed lot shown on the location plan must be wholly within the perimeter of that land.

(3) This clause does not apply to so much of any encroachment as is an encroachment referred to in section 67 or an encroachment by the building on to land other than a public place.

Location plans for stratum parcels

3. (1) This clause applies if the proposed parcel will be a stratum parcel.

(2) The proposed parcel must include part of a building and another part of the building must be outside the proposed parcel.

(3) The proposed parcel and that building must be wholly within the perimeter of the site of the building.

Strata Titles (Leasehold Part Strata) Amendment Act 1992 No. 12

SCHEDULE 1—AMENDMENTS—*continued*

(4) Each part of that building and so much (if any) of the site as constitute the proposed lots and common property (if any) must be wholly within the proposed parcel.

(5) Subclauses (3) and (4) do not apply to so much of any encroachment as is an encroachment referred to in section 67 or an encroachment by the building on to land other than a public place.

Location plans—encroachments on private land

4. If the building encroaches on to land other than a public place, an appropriate easement must exist or be created in accordance with section 88B of the Conveyancing Act 1919 on registration of the proposed strata plan.

Stratum parcels in certain buildings prohibited

5. A proposed stratum parcel must not include part of a building if:

- (a) a stratum parcel has already been created under this Act or the Strata Titles Act 1973 in respect of the building; and
- (b) the whole or a substantial portion of the part did not form part of the building when the initial stratum parcel for the building was created.

(25) Schedule 2A:

After Schedule 2, insert:

SCHEDULE 2A—STRATA MANAGEMENT STATEMENTS

(Sec. 57B)

Form of strata management statement

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

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

SCHEDULE 1—AMENDMENTS—*continued*

Matters that must be included

2. (1) A strata management statement must provide for:

- (a) the establishment and composition of a building management committee and its office bearers; and
- (b) the functions of that committee and those office bearers in managing the building and its site; and
- (c) the manner in which the statement may be amended; and
- (d) the settlement of disputes, or the rectification of complaints, concerning the management of the building or its site, whether by requiring reference of disputes or complaints to the Commissioner or a Board or (with the consent of the person) to any other person for a recommendation or decision or otherwise; and
- (e) the manner in which notices and other documents may be served on the committee.

(2) Each body corporate for a leasehold strata scheme for part of the building and any other person in whom is vested an estate in fee simple in any part of the building or its site that does not form part of a stratum parcel must be members of the building management committee.

(3) Despite subclause (2), any such body corporate or other person may be excluded from membership, but only with the consent of the body corporate supported by a special resolution or with the written consent of the other person.

(4) A body corporate or other corporation that is a member of a building management committee may be represented for the purposes of the committee by a person appointed by, or selected in accordance with, a special resolution or by-law made by the body corporate or a resolution made by the other corporation.

(5) A person who has been so appointed or selected and whose term of office as such a representative has not expired or been terminated by the body corporate or other corporation is, while representing the body corporate or other corporation for those purposes, taken to be the body corporate or other corporation.

Strata Titles (Leasehold Part Strata) Amendment Act 1992 No. 12

SCHEDULE 1—AMENDMENTS—*continued*

(6) Nothing in a strata management statement requires the Commissioner or a Board to do anything without the consent of the Commissioner or the Board.

Other matters

3. (1) A strata management statement may include provisions regulating (or providing for the regulation of) any one or more of the following:

- (a) the location, control, management, use and maintenance of any part of the building or its site that is a means of access;
- (b) the storage and collection of garbage on and from the various parts of the building;
- (c) meetings of the building management committee;
- (d) the keeping of records of proceedings of the committee.

(2) A strata management statement may include particulars relating to any one or more of the following:

- (a) safety and security measures;
- (b) the appointment of a managing agent;
- (c) the control of unacceptable noise levels;
- (d) prohibiting or regulating trading activities;
- (e) service contracts;
- (f) an architectural code to preserve the appearance of the building.

(3) This clause does not limit the matters that may be included in a strata management statement.

(4) A strata management statement may incorporate plans and other instruments as part of the statement.

Implied provisions

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

- (a) The building management committee must meet at least once each year.

Strata Titles (Leasehold Part Strata) Amendment Act 1992 No. 12

SCHEDULE 1—AMENDMENTS—*continued*

- (b) At least 7 days' notice of a meeting must be given to each person who is a member of the committee. Notice may be given personally or by post or in any way any other notice may be given to the person under this Act.
- (c) The quorum for a meeting of the committee is a majority of the members.
- (d) The decision of a majority of the members present and voting at a meeting of the committee is the decision of the committee.

(26) Schedule 5 (**Transitional and savings provisions**):

After Schedule 4, insert:

SCHEDULE 5—TRANSITIONAL AND SAVINGS PROVISIONS

PART 1—PROVISIONS RELATING TO THE STRATA TITLES (LEASEHOLD PART STRATA) AMENDMENT ACT 1992

Definition

1. In this Part, "**amending Act**" means the Strata Titles (Leasehold Part Strata) Amendment Act 1992.

Transitional

2. (1) This Act, as amended by an amendment made by the amending Act, applies to any leasehold strata scheme for a stratum parcel created before the commencement of the amendment (and to the parcel and building concerned) in the same way as it applies to any such scheme created after the commencement of the amendment (and to the parcel and building concerned).

(2) A strata management statement is not required for a building and its site if a stratum parcel including part of the building was created before the commencement of section 57A, despite subclause (1).

Exemption from insurance

3. An order that exempted a body corporate from any requirement of section 115 immediately before the substitution of that section by the amending Act is, on that substitution:

Strata Titles (Leasehold Part Strata) Amendment Act 1992 No. 12

SCHEDULE 1—AMENDMENTS—*continued*

- (a) taken to have been made under that section, as so substituted; and
- (b) taken to exempt the body corporate from the corresponding requirement of that section, as so substituted.

Orders under Part 5

4. (1) An order that was in force under Part 5 immediately before the commencement of any amendment of that Part made by the amending Act is, on the commencement of the amendment, taken to have been made under that Part, as so amended.

(2) An application for an order under Part 5 that was pending immediately before the commencement of any such amendment is, on the commencement of the amendment, taken to have been made under that Part, as so amended.

[*Minister's second reading speech made in—
Legislative Assembly on 26 February 1992
Legislative Council on 4 March 1992*]

