

133

FIRST PRINT

**STRATA TITLES (LEASEHOLD STAGED DEVELOPMENT)  
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 (Staged Development) Amendment Bill 1992.

The Strata Titles (Leasehold) Act 1986 already contains rather restrictive provisions allowing the development by stages of part or parts of the land subject to a leasehold strata scheme. The object of this Bill is to amend the 1986 Act (and, as far as is practicable, to parallel the amendments intended to be made to the Strata Titles Act 1973 by the proposed Strata Titles (Staged Development) Amendment Act 1992) so as:

- (a) to introduce a more flexible legislative scheme for the development by stages of land (called "development lots") reserved under a leasehold strata scheme for future development and subdivision; and
- (b) to make other unrelated changes, the more important of which will allow:
  - the creation of leasehold strata schemes for land that is not strictly contiguous; and
  - the termination of leasehold strata schemes by the Registrar-General in limited circumstances without prior recourse to the Supreme Court.

The proposed Act also makes consequential amendments to the Environmental Planning and Assessment Act 1979 and the Land and Environment Court Act 1979.

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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 1986 Act.

Clause 4 gives effect to the Schedule of amendments to the Environmental Planning and Assessment Act 1979 and the Land and Environment Court Act 1979.

*Strata Titles (Leasehold Staged Development) Amendment 1992*

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**SCHEDULE 1—AMENDMENT OF STRATA TITLES (LEASEHOLD) ACT  
1986**

**PART 1—AMENDMENTS RELATING TO STAGED DEVELOPMENT**

**Definitions**

Schedule 1 (1) amends section 4 (Definitions) because the instrument describing the development that is permitted to be carried out within a development lot will be called a *strata development contract* under the proposed scheme. Similar instruments are presently called "development statements". The changes are aimed at avoiding confusion with the kinds of instruments referred to in the Community Land Development Act 1989.

**Strata plan registration**

Schedule 1 (2) amends section 7 (Registration of strata plans) which lists the requirements that presently must be met by strata plans.

Schedule 1 (2) (a) removes the requirement that a development lot be illustrated on a location plan.

Schedule 1 (2) (b) requires the initial schedule of unit entitlement for a strata plan that includes a development lot to show the unit entitlement of each development lot and of the residue of the parcel apportioned in accordance with their relative land values. The unit entitlement of each of the developed lots must also be shown in the initial schedule as a proportion (calculated on a market value basis) of the unit entitlement of that residue.

Schedule 1 (2) (c) and (d) make amendments consequential on the changes in terminology and numbering of provisions in Division 5 of Part 2.

**Subdivision after completion of a stage of development**

Schedule 1 (3) substitutes section 10 (Subdivision of development lot) so as to restate, with appropriate modifications, the requirements for registration of a strata plan of subdivision of a development lot after development permitted by the strata development contract has been carried out. The unit entitlement of each of the new lots into which the development lot will be divided must be shown in a schedule of unit entitlement as a proportion (calculated on a market value basis) of the unit entitlement of the development lot.

**Consequential amendments**

Schedule 1 (4) amends section 16 (Conversion of lots into common property) to remove a reference to a repealed provision.

Schedule 1 (5) amends section 32 (Effect of dealings under this Division) to make it clear that the restrictions in that section do not prevent instruments executed in accordance with the proposed amendments from being registered under the 1986 Act.

**Staged development schemes**

Schedule 1 (6) substitutes Division 5 of Part 2 of the Principal Act with a new Division 5 (containing proposed sections 41–57AA). Of the proposed sections:



### *Strata Titles (Leasehold Staged Development) Amendment 1992*

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Section 41 (Explanation of staged development) describes in general terms the concept of staged development. As mentioned above, staged development consists of:

- the progressive development of reserve or development lots in a leasehold strata scheme (which may result in the construction of additional buildings and the carrying out of works such as landscaping); and
- the subdivision of those lots after that development has been carried out (which will create titles for each of the new lots, allowing them to be leased, and the residue of any lease transferred, separately); and
- the allocation of unit entitlements for the new lots. (Unit entitlements determine the proportions in which lessees of lots will be required to contribute to maintenance of the building and other common property.)

Section 42 (Obligations of consent authorities) forbids a consent authority from granting development consent for a subdivision under the 1986 Act that would create a lot reserved for development and for the subsequent subdivision under that Act of that lot unless the lot is identified as a development lot and the consent authority is supplied with a proposed strata development contract describing the intended development.

Section 43 (Form and content of strata development contract) sets out the requirements for strata development contracts. Such a contract must separately describe any "warranted development" (which the developer may be compelled to carry out) and all "authorised proposals" (which the developer may carry out but cannot, merely because of the contract, be forced to carry out).

A strata development contract must include a concept plan illustrating the buildings and works that will result from the proposed development.

Section 44 (Concept plan) sets out the requirements for concept plans and is aimed at ensuring that there will be an up-to-date concept plan filed at the Land Titles Office.

Section 45 (Variation of liability for common property expenses) allows a strata development contract to apportion the liability for common property expenses between the developer and other lessees of lots differently from how they would be apportioned on a unit entitlement basis.

Section 46 (Signing of strata development contract and amendments) lists the persons who will be required to sign a strata development contract and allows the Registrar-General to refuse to register such a contract until the consent of other persons has been obtained.

Section 47 (Registration of strata development contract and amendments) provides for the registration of strata development contracts by the Registrar-General and allows registration to be refused until the certificate of title for the body corporate and the lease of the common property (if any) has been produced.

Section 48 (Notice of strata development contract and amendments) requires the Registrar-General to record in the folio of the Real Property Act Register relating to the body corporate and the lease of the common property (if any) of a leasehold strata scheme particulars about any strata development contract affecting the scheme.

*Strata Titles (Leasehold Staged Development) Amendment 1992*

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Section 49 (Effect of strata development contract) declares that such a contract has effect as an agreement under seal containing covenants that are binding on the persons identified in the proposed section, which include the developer, the lessor under the leasehold strata scheme concerned and the lessees of the lots in the scheme. The implied covenants (set out in proposed Schedule 2AA) will bind any sublessee or mortgagee of a development lot (instead of the developer) while the sublessee or mortgagee is in possession of the development lot.

Section 50 (Amendment of strata development contract) sets out requirements for the amendment of a strata development contract similar to those for amendment of a development contract under the Community Land Management Act 1989.

Section 51 (Approval of amendments by Land and Environment Court) allows an amendment of a strata development contract to be made with the approval of the Land and Environment Court, instead of being supported by a resolution of the body corporate of the leasehold strata scheme concerned.

Section 52 (Use of common property and development lot by developer) authorises the developer to make such use of common property and the development lot as may be necessary to carry out all of the warranted development and authorised proposals contained in a strata development contract. That right must be exercised so as not to cause unreasonable inconvenience to the occupier of any lot in the leasehold strata scheme concerned.

Section 53 (Adding land to a parcel subject to a strata development contract) provides for the addition of land to a parcel containing a development lot by registration of a strata plan of subdivision. Land may be added so as to become common property, a further development lot or an addition to a current development lot, or any combination of them.

Section 54 (Right to complete permitted development) confers on a developer a sufficient vote to make a body corporate decision about a "development concern" even though the decision might otherwise need to be supported by a special or unanimous resolution.

Section 55 (What are "development concerns"?) lists various matters that are, or are not, development concerns. In general terms, carrying out any warranted development or authorised proposal contained in a strata development contract is such a concern, but the subdivision of common property already created and any amendment of the contract itself are not.

Section 56 (Meetings of body corporate relating to development concerns) requires motions relating to development concerns to be dealt with at body corporate meetings separately from other kinds of motions.

Section 57 (Conclusion of development scheme) sets out the various circumstances in which a development scheme established by a strata development contract is concluded. Each strata development contract that does not specify a time for conclusion of the development scheme will be taken to fix the tenth anniversary of its registration as the time for completion.

Section 57AA (Order for extension or conclusion of development scheme) allows the Land and Environment Court to alter the time at which a strata development scheme would otherwise be concluded.



*Strata Titles (Leasehold Staged Development) Amendment 1992*

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**Further consequential amendments**

Schedule 1 (7)–(9), (11) and (13)–(17) amend sections 61, 66, 69, 71, 79, 80, 82, 96 and 98, respectively, to change references to development statements to references to strata development contracts.

Schedule 1 (10) amends section 70 (Registration of plans and notices) to omit requirements relating to the registration of development statements and amendments to them. (Those kinds of requirements for strata development contracts are contained in the proposed Division 5.)

Schedule 1 (12) and (19) omit unnecessary cross-references from sections 72 and 136.

Schedule 1 (18) updates a cross-reference in section 111 (Duties of proprietors and occupiers of lots).

Schedule 1 (21) extends the cross-reference in the heading to Schedule 1A (Requirements for strata plans) because surveyors' certificates referred to in proposed new section 10 will certify compliance with the requirements set out in that schedule.

**Orders for the reallocation of unit entitlements**

Schedule 1 (20) substitutes section 155:

- to expand a Strata Titles Board's current power to order an adjustment of unit entitlements so as to include cases in which there has been a change in the uses to which the parcel may be put; and
- to allow applications for such orders to be made by rating and taxing authorities (such as local councils) whose rates or taxes are related to the value of land.

**Covenants implied in strata development contracts**

Schedule 1 (22) inserts proposed Schedule 2AA which sets out covenants implied in strata development contracts. Among the more important covenants are those:

- that require the standard of materials and the heights of buildings and the density of development in all development carried out under such a contract not to be inferior or substantially different from those of completed buildings forming part of the parcel; and
- that require shelter and subjacent and lateral support, consistent with proper engineering and building practices, and insurance to be provided where vertical staged development is carried out.

**Transitional provisions**

Schedule 1 (23) inserts proposed Part 2 into Schedule 5 (Transitional and savings provisions).

Any development scheme provided by a development statement certified by a consent authority or lodged for registration before the commencement of Part 1 of Schedule 1 to the amending Act will be subject to the provisions of the 1986 Act as in force immediately before that commencement.

## ***Strata Titles (Leasehold Staged Development) Amendment 1992***

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Any proceedings pending in the Land and Environment Court under the 1986 Act when amendments made to the Land and Environment Court Act 1979 by Schedule 2 to the amending Act commence will continue to be dealt with as if those amendments had not been made.

Power is conferred to make further savings and transitional provisions by regulations.

### **PART 2—OTHER AMENDMENTS**

#### **Extension of provisions to additional encroachments**

Schedule 1 (24) amends section 5 (Construction of Act) which extends certain provisions of the 1986 Act relating to lots and common property to encroachments shown on proposed strata plans so that those provisions will also apply to encroachments shown on proposed strata plans of subdivision.

#### **Contiguous land**

Schedule 1 (25) amends section 6 (Subdivision) to allow land that is divided by, or separated by, a natural feature (such as a watercourse), railway, public road, public reserve or drainage reserve to be the subject of a leasehold strata scheme.

#### **Requirements for development consent to strata subdivisions**

Schedule 1 (26) amends section 65 (Other Acts not to apply to subdivisions under Division 1) to make it clear that the section does not prevent development consent from being required under the Environmental Planning and Assessment Act 1979 to a subdivision under the 1986 Act.

#### **Termination of strata schemes**

Schedule 1 (27) inserts proposed section 80A (Termination of strata scheme and leases by Registrar-General) to empower the Registrar-General to terminate leasehold strata schemes in limited circumstances. A scheme that includes a development lot cannot be so terminated and an application for termination must be signed by the lessor under the scheme, all lessees and sublessees of lots and each registered mortgagee, chargee and covenant chargee, except where the Registrar-General agrees otherwise.

### **SCHEDULE 2—AMENDMENT OF OTHER ACTS**

#### **Environmental Planning and Assessment Act 1979**

Section 99 (Lapsing of consent) is amended to supply a missing reference to a strata development contract under the 1986 Act, as amended by the proposed Act.

#### **Land and Environment Court Act 1979**

Section 18 (which confers "Class 2" jurisdiction on the Land and Environment Court) is amended to update references to provisions of the 1986 Act, as amended by the proposed Act. (Section 18, as amended by the proposed Strata Titles (Staged Development) Amendment Act 1992, confers jurisdiction on the Court allowing it to approve amendments to strata development contracts or to dispense with consents to



*Strata Titles (Leasehold Staged Development) Amendment 1992*

such amendments, as an alternative to obtaining the approval or consent of the body corporate, and to make orders relating to the conclusion of certain development schemes.)

Section 20 is amended to update provisions conferring "Class 4" jurisdiction on the Court relating to the enforcement of strata development contracts.

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**TABLE OF PROVISIONS**

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

**SCHEDULE 1—AMENDMENT OF STRATA TITLES (LEASEHOLD) ACT 1986**

**PART 1—AMENDMENTS RELATING TO STAGED DEVELOPMENT**

**PART 2—OTHER AMENDMENTS**

**SCHEDULE 2—AMENDMENT OF OTHER ACTS**

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**STRATA TITLES (LEASEHOLD STAGED DEVELOPMENT)  
AMENDMENT BILL 1992**

**NEW SOUTH WALES**



No. , 1992

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**A BILL FOR**

An Act to amend the Strata Titles (Leasehold) Act 1986 to make more flexible provision for the staged development of land subject to a leasehold strata scheme and for other purposes; and to amend the Environmental Planning and Assessment Act 1979 and the Land and Environment Court Act 1979 consequentially.

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***Strata Titles (Leasehold Staged Development) Amendment 1992***

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

**Short title**

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

**5 Commencement**

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

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

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

**Amendment of other Acts**

15 4. (1) The Environmental Planning and Assessment Act 1979 and the Land and Environment Court Act 1979 (in each case, as amended by the Strata Titles (Staged Development) Amendment Act 1992) are amended as set out in Schedule 2.

(2) Amendments in Schedule 2 to this Act are taken to commence immediately after those in Schedule 2 to the Strata Titles (Staged Development) Amendment Act 1992, if both of those Schedules commence on the same day.

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20 **SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986**

(Sec. 3)

**PART 1—AMENDMENTS RELATING TO STAGED  
DEVELOPMENT**

25 (1) Section 4 (Definitions (1973 Act, s. 5)):

- (a) From the definitions of "development lot" and "development scheme" in section 4 (1), omit "development statement" wherever occurring, insert instead "strata development contract".
- 30 (b) From section 4 (1), omit the definition of "development statement".

*Strata Titles (Leasehold Staged Development) Amendment 1992*

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**SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—continued**

- (c) In section 4 (1), insert in alphabetical order the following definition:

**“strata development contract”** means a strata development contract, as in force for the time being, registered under Division 5 of Part 2;

5

- (2) Section 7 (Registration of strata plans (1973 Act, s. 8)):

- (a) From section 7 (2A), omit “and any proposed development lot”.

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- (b) Omit section 7 (2C), insert instead:

(2C) The schedule of unit entitlement for a leasehold strata scheme that does not include a development lot must show as whole numbers the aggregate unit entitlement of all lots and the proposed unit entitlement of each lot.

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(2CA) The schedule of unit entitlement for a leasehold strata scheme that includes a development lot must show as whole numbers:

- (a) the aggregate unit entitlement of all lots, whether or not development lots; and

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- (b) apportioned on the basis of land value (within the meaning of the Valuation of Land Act 1916) and so as to total that aggregate unit entitlement:

- the proposed unit entitlement of each development lot; and

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- the proposed unit entitlement of all lots that are not development lots, being the unit entitlement attributable to the residue of the land in the proposed parcel; and

- (c) apportioned on a market value basis and so as to total the proposed unit entitlement of all lots that are not development lots, the proposed unit entitlement of each lot that is not a development lot.

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- (c) From section 7 (2D) (a), omit “development statement”, insert instead “strata development contract”.

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- (d) From section 7 (2D) (b), omit “section 41 (4)”, insert instead “section 42 (2)”.



*Strata Titles (Leasehold Staged Development) Amendment 1992*

SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—*continued*

(3) Section 10:

Omit the section, insert instead:

5        **Subdivision of development lot (1973 Act, s. 8A)**

10. (1) A development lot (which cannot be land within a stratum parcel) may be subdivided into lots, or into lots and common property, by the registration of a plan as a strata plan of subdivision.

10        (2) A plan intended to be registered under this section as a strata plan of subdivision must include, as sheets of the plan:

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

15        (3) The location plan must be endorsed with:

- (a) 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

- 20        (b) a certificate given by a registered surveyor in the approved form certifying that each applicable requirement of Schedule 1A has been met (but which need not certify any matter relating to a lot boundary that was certified in the strata plan or a previous strata plan of subdivision).

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

(4) The schedule of unit entitlement must show as whole numbers:

- 30        (a) the current unit entitlement of the development lot intended to be subdivided; and
- 35        (b) apportioned on a market value basis and so as to total that unit entitlement, the proposed unit entitlement of each lot intended to be created on registration of the strata plan of subdivision.

(4) Section 16 (Conversion of lots into common property (1973 Act, s. 13)):

From section 16 (1), omit "Except as provided by section 45, one", insert instead "One".



*Strata Titles (Leasehold Staged Development) Amendment 1992*

**SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—continued**

- (5) Section 32 (Effect of dealings under this Division (1973 Act, s. 28)):

After section 32 (4), insert:

(5) This section does not prevent the execution in accordance with section 54 of a dealing by a body corporate, or by a developer on behalf of the body corporate, to give effect to a decision about a development concern (within the meaning of section 55) or prevent the registration of a dealing so executed. 5 10

- (6) Part 2, Division 5:

Omit the Division, insert instead:

**Division 5—Staged Development**

**Explanation of staged development (1973 Act, s. 28A)** 15

41. (1) The purpose of this Division is to facilitate the development of a parcel that is subject to a leasehold strata scheme.

(2) The development contemplated consists of:

- the progressive improvement of the parcel by the construction of buildings or the carrying out of works (or both) on a lot or lots reserved for future development (“development lots”); and 20
- the subsequent subdivision under this Act of each such lot and the consequential adjustment of unit entitlements within the scheme. 25

(3) Development lots may be situated wholly or partly above, below or alongside the building to which the leasehold strata scheme initially relates, but must be identified as such in the strata plan for the scheme when that plan is registered. 30

(4) The staged development of a parcel will be carried out subject to a strata development contract that describes separately:

- (a) any proposed development that the developer for the development lot concerned warrants will be carried out and may be compelled to carry out (“warranted development”); and 35

*Strata Titles (Leasehold Staged Development) Amendment 1992*

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SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—*continued*

- 5 (b) any other proposed development that the developer  
will be authorised but cannot be compelled to carry out  
("authorised proposals").

Warranted development and authorised proposals are referred  
to as "**permitted development**" because the body corporate  
for the leasehold strata scheme and other persons having  
estates or interests in lots included in the parcel must allow it  
10 to be carried out in accordance with the contract.

(5) This Division is not intended to prevent the  
development of a parcel otherwise than in accordance with  
this Division.

**Obligations of consent authorities (1973 Act, s. 28B)**

15 42. (1) A consent authority must not, at the same time,  
grant development consent for the subdivision of land by a  
strata plan and the subsequent subdivision of a lot in that  
plan by a strata plan of subdivision unless:

- 20 (a) the lot intended to be subdivided is identified in the  
proposed strata plan as a development lot; and  
(b) the development application is accompanied by a  
proposed strata development contract.

25 (2) When a consent authority grants such a consent, it must  
certify in the approved form that carrying out the permitted  
development would not contravene:

- (a) any condition subject to which the consent was  
granted; or  
30 (b) the provisions of any environmental planning  
instrument that were in force when the consent was  
granted, except to the extent (if any) specified in the  
certificate.

(3) A development consent that purports to have been  
granted in contravention of this section is invalid.

35 **Form and content of strata development contract (1973  
Act, s. 28C)**

43. (1) A strata development contract and any amendment  
of such a contract must be in the approved form.

(2) A strata development contract must include a concept  
plan and a description:



*Strata Titles (Leasehold Staged Development) Amendment 1992*

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SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—*continued*

- (a) of the land comprising the parcel, identifying separately the development lot or lots to which it relates; and 5
  - (b) of any land proposed to be added to that parcel at a later time; and
  - (c) of so much (if any) of the proposed development as the developer is permitted by the contract to carry out and may be compelled to carry out (identified in the contract as “**warranted development**—proposed development subject to a warranty”); and 10
  - (d) of so much (if any) of the proposed development as the developer is permitted by the contract to carry out but cannot, merely because it is described in the contract, be compelled to carry out (identified in the contract as “**authorised proposals**—proposed development *not* subject to a warranty”). 15
- (3) A strata development contract must include such other documents, particulars and information as may be required by the regulations. 20
- (4) A strata development contract cannot provide for the subdivision of common property without the consent, by special resolution, of the body corporate.
- Concept plan (1973 Act, s. 28D)** 25
44. (1) A concept plan must illustrate, in the manner approved by the Registrar-General, the sites proposed for and the nature of the buildings and works that would result from the carrying out of all permitted development under the strata development contract of which the plan forms part. 30
- (2) A concept plan must separately illustrate, in the manner approved by the Registrar-General, the sites proposed for and the nature of such of those buildings and works (if any) as would result from the carrying out of all warranted development. 35
- (3) The Registrar-General may refuse to register an amendment of a strata development contract if it does not include a revised concept plan so that this section will be complied with after the amendment has been registered.



*Strata Titles (Leasehold Staged Development) Amendment 1992*

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**SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—*continued***

**Variation of liability for common property expenses (1973 Act, s. 28E)**

5           45. (1) A strata development contract may apportion the liability for expenses relating to the use or maintenance of the common property of the leasehold strata scheme concerned differently from the way that liability would otherwise be apportioned by the schedule of unit entitlement applicable to  
10           lots under the scheme.

          (2) An apportionment under this section has effect despite the current schedule of unit entitlement, but does not apply to any liability that relates to the use or maintenance of the common property after the development scheme is concluded.  
15

**Signing of strata development contract (1973 Act, s. 28F)**

          46. (1) The Registrar-General may register a strata development contract relating to a development lot in a strata plan or an amendment of such a contract only if the contract or amendment is signed by:  
20

- (a) the developer for the development lot; and
- (b) the lessor under the leasehold strata scheme concerned; and
- 25           (c) each registered lessee (other than the developer) and sublessee of a lot under the scheme; and
- (d) each registered mortgagee, chargee and covenant chargee of a lot or of a registered lease or sublease of a lot under the scheme.

          (2) A strata development contract must be accompanied by the certificate (if any) required to be given by section 42 (Obligations of consent authorities).  
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          (3) The Registrar-General may refuse to register a strata development contract or an amendment of such a contract if there have not been lodged in the office of the Registrar-General written consents to the registration of the contract or amendment signed by (or by an agent authorised by) such one or more of the following as the Registrar-General determines:  
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*Strata Titles (Leasehold Staged Development) Amendment 1992*

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**SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—*continued***

- (a) the judgment creditor under any writ recorded in the folio for the land comprised in the strata plan or for the lease or a sublease of the development lot concerned or, in the case of an amendment, in the folio for any other lease or sublease of a lot; 5
  - (b) the sublessee under any sublease of the common property of the leasehold strata scheme concerned;
  - (c) the caveator under a caveat affecting any estate or interest of any person required to sign the contract because of that estate or interest or under a caveat affecting any such common property. 10
  - (4) Nothing prevents the same person from being more than one of the parties to a strata development contract. 15
- Registration of strata development contract and amendments (1973 Act, s. 28G)**
47. (1) The Registrar-General may register a strata development contract and any amendment of such a contract by making such recordings in the Register as the Registrar-General considers appropriate. 20
- (2) The Registrar-General may refuse to register an amendment of a strata development contract if the certificate of title for the body corporate of the strata scheme concerned and the lease of the common property (if any) has not been produced to the Registrar-General. 25
- (3) The Registrar-General must refuse to register a strata development contract and any amendment of such a contract that contravenes any requirement made of it by this Division. 30
- Notice of strata development contract and amendments (1973 Act, s. 28H)**
48. When a strata development contract is registered, the Registrar-General must record in the folio of the Register relating to the body corporate of the leasehold strata scheme concerned and the lease of the common property (if any): 35
- (a) the existence of the contract and of any subsequent amendment of it that is registered from time to time; and



*Strata Titles (Leasehold Staged Development) Amendment 1992*

**SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—continued**

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

**Effect of strata development contract (1973 Act, s. 28I)**

49. (1) A strata development contract relating to a leasehold strata scheme has effect as an agreement under seal containing the covenants specified in Schedule 2AA entered into by the body corporate and each person who for the time being is:

- (a) the developer concerned; or
- (b) the lessor under the scheme; or
- (c) a lessee (other than that developer) or a sublessee of a lot; or
- (d) a registered mortgagee, chargee or covenant chargee, or an occupier, of a lot or a registered or enrolled mortgagee or chargee of a lease of a lot.

(2) The contract ceases to have effect:

- (a) in relation to a person described in subsection (1) (a), (b), (c) or (d), on that person ceasing to be a person so described; and
- (b) in relation to all of the persons described in subsection (1), when the development scheme to which the contract relates is concluded.

This subsection does not affect any obligation that was incurred by a person, or any right that accrued to a person, under the contract before it ceased to have effect in relation to the person.

(3) A strata development contract does not permit development to be carried out in contravention of this or any other Act or any other law.

(4) A sublessee entitled under a sublease to immediate possession of a development lot is taken to be the developer, and the person who would otherwise be the developer is taken not to be the developer, for the purposes of this Act, the regulations and the strata development contract concerned.



*Strata Titles (Leasehold Staged Development) Amendment 1992*

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**SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—continued**

(5) A mortgagee, chargee or covenant chargee in possession of a development lot is taken to be the developer, and the person who would otherwise be the developer is taken not to be the developer, for the purposes of this Act, the regulations and the strata development contract concerned. 5

(6) A provision in any other contract or instrument under which a strata development contract is excluded, modified or restricted is void. 10

(7) A covenant entered into under a strata development contract does not merge on transfer of a lease of a lot.

(8) Nothing in this section affects any right or remedy a person may have apart from a right or remedy under a strata development contract, with the exception that Part 5 does not apply to matters arising under any such contract. 15

**Amendment of strata development contract (1973 Act, s. 28J)**

50. (1) A strata development contract may be amended by the developer, but any such amendment has effect only if: 20

(a) this section has been complied with in relation to the amendment; and

(b) the amendment is registered.

(2) A proposed amendment that involves a change in the basic architectural or landscaping design of the development, or in its essence or theme, may be made only if it is: 25

(a) approved by the consent authority (if any); and

(b) except where the developer is the only lessee of lots in the leasehold strata scheme concerned, supported by a unanimous resolution of the body corporate of the leasehold strata scheme concerned. 30

(3) An amendment proposed in order to give effect to a change in the law or a change in the requirements of a consent authority may be made only if it is: 35

(a) approved by the consent authority (if any); and

(b) notified to the body corporate of the leasehold strata scheme concerned.

*Strata Titles (Leasehold Staged Development) Amendment 1992*

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SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—*continued*

5 (4) Any other proposed amendment that would require a change in the terms of a development consent may be made only if it is:

- (a) approved by the consent authority; and
- (b) supported by a special resolution of the body corporate of the leasehold strata scheme concerned.

10 (5) Any other proposed amendment that would not require a change in the terms of a development consent may be made only if:

- (a) it is supported by an ordinary resolution of the body corporate of the leasehold strata scheme concerned; and
- 15 (b) the application for registration, or the contract as intended to be amended, is accompanied by a certificate, given in the approved form by the consent authority (if any), to the effect that a change in the terms of any development consent is not required.

20 (6) A consent authority that approves an amendment of a strata development contract must provide the applicant for the approval with a copy of the instruments, plans and drawings that describe and illustrate the amendment and a certificate in the approved form to the effect:

- 25 (a) that the copy describes and illustrates the approved amendment; and
- (b) that the contract, if amended as approved by the authority, would not be inconsistent with any related development consent.

30 **Approval of amendments by Land and Environment Court (1973 Act, s. 28K)**

35 51. (1) An amendment of a strata development contract is not required to be supported by a resolution of a body corporate if the amendment is approved by the Land and Environment Court.

(2) Such an approval may be given only if the Court is satisfied:

- (a) that a motion supporting the amendment has been defeated; or



*Strata Titles (Leasehold Staged Development) Amendment 1992*

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**SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—*continued***

- (b) that the notice of intention to move such a motion has been given but a meeting to consider the motion has not been held within a reasonable time after the giving of the notice; or 5
  - (c) that the consent to the amendment of a mortgagee, chargee or covenant chargee or of a sublessee has been sought but has been refused.
- (3) An application for such an approval must be served on: 10
  - (a) the consent authority; and
  - (b) the body corporate; and
  - (c) each person (other than the applicant) who is the lessee of a development lot; and
  - (d) each registered or enrolled mortgagee, chargee, 15
    - covenant chargee and sublessee of a lot in the leasehold strata scheme concerned.
- Use of common property and development lot by developer (1973 Act, s. 28L)**
- 52. (1) When carrying out permitted development under a strata development contract, a developer is entitled to use any common property or development lot to which the contract relates: 20
  - (a) to the extent necessary to carry out the development; or
  - (b) to such other extent as may be specified in the contract, which may confer on the developer an exclusive (or any lesser) right to occupy specified common property. 25
- (2) A right conferred by this section may be exercised despite any other provision of this Act or any provision of the by-laws or of an order under section 157, but must be exercised in a manner that does not cause unreasonable inconvenience to the occupier of any lot. 30
- (3) Any provisions of a strata development contract that relate to the maintenance or upkeep of common property to which the contract relates have effect despite any provision of the by-laws or of an order under section 157. 35



*Strata Titles (Leasehold Staged Development) Amendment 1992*

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**SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—*continued***

**Adding land to a parcel subject to a strata development contract (1973 Act, s. 28M)**

5        53. (1) Land may be added to a parcel containing a development lot by registration of a strata plan of subdivision in accordance with the regulations.

(2) A strata plan of subdivision that adds land may be registered only if:

10        (a) the land consisting of the former parcel and the additional land could be the subject of a strata plan had the land in the former parcel not already been subdivided under this Act; and

15        (b) the strata development contract, as in force when the strata plan of subdivision is registered, provides for the land to be added to the parcel and states whether, on its being added to the parcel, the land will become common property, a further development lot or an addition to an existing development lot, or any specified combination of them; and

20        (c) a plan showing as a single lot the additional land and the former parcel has been lodged for registration under the Conveyancing Act 1919.

25        (3) On registration of such a strata plan of subdivision, the land becomes common property, a further development lot or an addition to an existing development lot, or any specified combination of them, as provided by the strata development contract.

30        **Right to complete permitted development (1973 Act, s. 28N)**

35        54. (1) The vote of a developer who is permitted to carry out development because it is included in a strata development contract is sufficient to pass or defeat a motion included in the notice for a meeting of the body corporate or of the council of the body corporate if the passing or defeat of the motion would have the effect of making a decision about a development concern.

40        (2) It is not necessary for a decision about a development concern to be supported by a special or unanimous resolution of a body corporate, despite any other provision of this Act.

*Strata Titles (Leasehold Staged Development) Amendment 1992*

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**SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—*continued***

(3) A dealing, plan or other instrument may be executed either by the body corporate or by a developer on behalf of the body corporate for the purpose of giving effect to a decision about a development concern. 5

(4) The regulations may impose requirements for the execution of dealings, plans and other instruments by bodies corporate and developers and may require verification by statutory declaration of the circumstances in which they were executed. 10

**What are “development concerns”? (1973 Act, s. 28O)**

55. (1) The following are development concerns for the purposes of this Division:

(a) erecting structures, carrying out works or effecting other improvements in accordance with the strata development contract; 15

(b) creating easements, dedicating land, making by-laws or entering into covenants or management or other agreements in accordance with that contract; 20

(c) creating or using common property in accordance with that contract;

(d) creating or using a development lot in accordance with that contract;

(e) using water, sewerage, drainage, gas, electricity, oil, garbage, conditioned air, telephone or other services available to the parcel, or installing additional services, in accordance with that contract; 25

(f) providing and using means of access or egress to or from a development lot, or to or from the common property, in accordance with that contract; 30

(g) subdivision of a development lot, or excising a development lot from the parcel, in accordance with that contract;

(h) carrying out any other development that is permitted to be carried out because it is included in that contract. 35

(2) The following are not development concerns for the purposes of this Division:

(a) subdivision of common property that has been created by a registered plan; 40



*Strata Titles (Leasehold Staged Development) Amendment 1992*

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SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—*continued*

- 5 (b) amendment of a strata development contract, regardless of whether the subject-matter involved is, or relates to, a development concern.

**Meetings of body corporate relating to development concerns (1973 Act, s. 28P)**

- 10 56. (1) A motion, the passing or defeat of which at a meeting of the body corporate or of the council of the body corporate would have the effect of making a decision about a development concern, must be:

- (a) identified as relating to a development concern in the notice for the meeting; and  
(b) moved separately from any other kind of motion.

- 15 (2) An extraordinary general meeting of the body corporate for the purpose of making a decision about a development concern may be convened under Schedule 4 by the developer or the lessees of not fewer than one quarter of the lots in the leasehold strata scheme concerned that are not development lots.

- 20 (3) In convening any such extraordinary general meeting, the developer or any of those lessees may give notice of the meeting on behalf of the council of the body corporate.

- 25 (4) The presence of the developer (or, if the developer is a corporation, of the company nominee of the corporation) constitutes a sufficient quorum for any meeting of the body corporate or of the council of the body corporate of which notice has been duly given, but only while business relating to a development concern is being dealt with.

- 30 (5) For the purpose only of allowing development permitted by a strata development contract to be carried out, a developer (or, if the developer is a corporation, the company nominee of the corporation) may exercise such of the other functions of a body corporate bound by the contract or of any other person having functions under the leasehold strata scheme concerned as may be prescribed by the regulations.

- 35 (6) This section has effect despite any other provision of this Act.



*Strata Titles (Leasehold Staged Development) Amendment 1992*

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**SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—continued**

**Conclusion of development scheme (1973 Act, s. 28Q)**

57. (1) For the purposes of this Division, a development scheme to which a strata development contract relates is concluded when any of the following occurs: 5

- (a) any development consent required for carrying out the scheme is revoked;
- (b) a strata plan of subdivision is registered which subdivides the development lot to which the contract relates or subdivides the residue of that development lot after excision of part of that lot in accordance with the contract; 10
- (c) the time predicted by the contract for conclusion of the development scheme arrives; 15
- (d) a notice in the approved form, signed in accordance with subsection (3) and stating that the development scheme to which the contract relates has concluded, is registered by the Registrar-General;
- (e) the development scheme is concluded under section 57AA by an order of the Land and Environment Court; 20
- (f) the leasehold strata scheme concerned is terminated under Part 3 by an order of the Supreme Court.

(2) A strata development contract is taken to predict, as the time for conclusion of the development scheme to which it relates: 25

- (a) the time for completion of that development scheme specified in the contract; or
- (b) if no such time is specified, the tenth anniversary of the day on which the contract was registered. 30

(3) A notice is signed in accordance with this subsection only if:

- (a) it is signed by the developer concerned; and
- (b) it is signed by the lessor under the scheme, except where the lessor is the developer; and 35
- (c) it is signed by each registered mortgagee, chargee, covenant chargee and sublessee of the development lot, and by each registered mortgagee and chargee of a lease of that lot; and

*Strata Titles (Leasehold Staged Development) Amendment 1992*

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**SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—continued**

5 (d) it is accompanied by a certificate, given in the approved form by the body corporate for the strata scheme concerned, certifying that the relevant agreement is supported by a unanimous resolution of the body corporate.

10 (4) The Registrar-General is required to make an appropriate record of the conclusion of a development scheme in the folio for the body corporate and the lease of the common property (if any) of the leasehold strata scheme concerned.

**Order for extension or conclusion of development scheme  
(1973 Act, s. 28QA)**

15 57AA. (1) On application made to it by any person bound by a strata development contract, the Land and Environment Court may, by its order, do either or both of the following:

20 (a) defer (either generally or to a specified time) the time at which a development scheme would otherwise be concluded;

(b) fix a time for the conclusion of a development scheme, whether it is an earlier or a later time than it would otherwise be.

25 (2) Notice of such an application is to be served, in accordance with rules of court, on:

(a) the developer concerned; and

(b) the lessor under the scheme, except where the lessor is the developer; and

30 (c) each lessee (other than that developer) of a lot, each registered or enrolled mortgagee, chargee, covenant chargee and sublessee of a lot and each registered mortgagee and chargee of a lease of a lot; and

(d) the body corporate; and

35 (e) the consent authority (if any) that granted the relevant development consent; and

(f) the Registrar-General; and

(g) such other persons (if any) as the Land and Environment Court may direct.



*Strata Titles (Leasehold Staged Development) Amendment 1992*

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**SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—*continued***

- (3) Each person entitled to be served with notice of the application is entitled to appear and be heard in proceedings relating to the application. 5
- (4) An order under this section may:
- (a) contain such provisions relating to the leasehold strata scheme as are, in the opinion of the Land and Environment Court, necessary because of the conclusion of the development scheme; and 10
  - (b) require the payment of money to or by the body corporate or the lessees of lots to any one or more of them in addition to, or instead of, any award of damages in the exercise of the jurisdiction conferred by section 20 (2) (d) of the Land and Environment Court Act 1979; and 15
  - (c) contain such other provisions and make such other requirements as, in the opinion of the Land and Environment Court, are just and equitable in the circumstances of the case. 20
- (5) The Land and Environment Court may, from time to time, vary an order under this section on the application of any person entitled to apply for such an order.
- (7) **Section 61 (Readjustment of leasehold strata scheme for purposes of resumption (1973 Act, s. 32)):** 25
- From section 61 (4) (c), omit "development statement", insert instead "strata development contract".
- (8) **Section 66 (Approval of proposed strata plans and strata plans of subdivision and of conversion of lots into common property (1973 Act, s. 37)):** 30
- From section 66 (2) (b) (ii), omit "development statement", insert instead "strata development contract".
- (9) **Section 69 (Appeal against local council refusing approval (1973 Act, s. 40)):**
- From section 69 (1) (d), omit "development statement", insert instead "strata development contract". 35



*Strata Titles (Leasehold Staged Development) Amendment 1992*

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**SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—*continued***

- (10) Section 70 (**Registration of plans and notices (1973 Act, s. 41)**):
- 5       (a) Omit section 70 (3)–(5).
- (b) From section 70 (7), omit “, building alteration plan, development statement or amendment of a development statement”, insert instead “or building alteration plan”.
- (11) Section 71 (**Provisions applying to strata plans etc. (1973 Act, s. 42)**):
- 10       From section 71 (2) and (3), omit “development statement” wherever occurring, insert instead “strata development contract”.
- (12) Section 72 (**Registrar-General’s power to adjust unit entitlements (1973 Act, s. 43)**):
- 15       From section 72 (1), omit “referred to in section 7 (1) (g), 10 (2) (c), 13 (1) or 14 (a)”, insert instead “of unit entitlement”.
- (13) Section 79 (**Variation of leasehold strata scheme consequent on damage to or destruction of building (1973 Act, s. 50)**):
- 20       From section 79 (6) (c), omit “development statement”, insert instead “strata development contract”.
- (14) Section 80 (**Termination of leasehold strata scheme (1973 Act, s. 51)**):
- From section 80 (7) (c), omit “development statement”, insert instead “strata development contract”.
- 25   (15) Section 82 (**Consequences of making an order under section 79 or 80 (1973 Act, s. 53)**):
- From section 82 (1), omit “development statement” wherever occurring, insert instead “strata development contract”.
- 30   (16) Section 96 (**Statutory restrictions on powers of body corporate (1973 Act, s. 66)**):
- From section 96 (1) (b), omit “development statement”, insert instead “strata development contract”.
- 35   (17) Section 98 (**Duties of body corporate (1973 Act, s. 68)**):
- From section 98 (1), omit “development statement” wherever occurring, insert instead “strata development contract”.

***Strata Titles (Leasehold Staged Development) Amendment 1992***

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**SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—*continued***

- (18) **Section 111 (Duties of lessees and other occupiers of lots (1973 Act, s. 80)):**  
     From section 111 (2), omit "section 48", insert instead 5  
     "section 52".
- (19) **Section 136 (General powers of Commissioner to make orders (1973 Act, s. 105)):**  
     Omit section 136 (8), insert instead:  
     (8) Nothing in this Division authorises the Commissioner 10  
     to make an order of the kind that may be made under section  
     61, 79, 80 or 97 by the Supreme Court.
- (20) **Section 155:**  
     Omit the section, insert instead:  
     **Order for reallocation of unit entitlements (1973 Act, 15**  
     **s. 119)**  
     155. (1) A Board may make an order allocating unit  
     entitlements among the lots that are subject to a leasehold  
     strata scheme in the manner specified in the order.  
     (2) An order may be made only if the Board considers, 20  
     after having regard to the respective values of the lots and (if  
     a strata development contract is in force in relation to the  
     leasehold strata scheme) to such other matters as the Board  
     considers relevant, that the allocation of unit entitlements  
     among the lots: 25  
     (a) was unreasonable when the strata plan was registered  
     or when a strata plan of subdivision was registered; or  
     (b) became unreasonable because of a change in the  
     permitted land use, being a change (whether or not 30  
     because of a rezoning) in the ways in which the whole  
     or any part of the parcel could lawfully be used,  
     whether with or without development consent.  
     (3) An application for an order may be made:  
     (a) by the lessor under the scheme; or  
     (b) by a lessee of a lot (whether or not a development lot) 35  
     within the parcel; or  
     (c) by the body corporate; or



*Strata Titles (Leasehold Staged Development) Amendment 1992*

SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—*continued*

- 5 (d) by the local council, or by any other public or local authority constituted by or under an Act or any statutory body representing the Crown, being an authority or body that is empowered to impose a rate, tax or other charge by reference to a valuation of land.
- 10 (4) An application for an order must be accompanied by a certificate specifying the valuation, at the relevant time of registration or immediately after the change in the permitted land use, of each of the lots to which the application relates.
- 15 (5) The certificate must have been given by the holder of a current certificate of registration under the Valuers Registration Act 1975 as a practising real estate valuer authorised under that Act to make such a valuation (a "qualified valuer").
- 20 (6) A Board may, if it makes an order reallocating unit entitlements that were not allocated in accordance with a valuation of a qualified valuer and, in the opinion of the Board, were allocated unreasonably by a developer, also order:
- 25 (a) despite section 152, the payment by the developer to the applicant for the order of the costs incurred by the applicant, including fees and expenses reasonably incurred in obtaining the valuation and the giving of evidence by a qualified valuer; and
- 30 (b) the payment by the developer of such amounts as may be assessed by the Board to represent any overpayments (due to the unreasonable allocation) for which liability arose not earlier than 6 years before the date of the order to any one or more of the following:
- the lessor under the scheme;
  - the lessees of lots;
  - the body corporate.
- 35 (7) An amount ordered to be paid under this section may be recovered as a debt in a court of competent jurisdiction.
- (21) Schedule 1A (Requirements for strata plans):  
From the heading, omit "(Sec. 7)", insert instead "(Secs. 7, 10)".



*Strata Titles (Leasehold Staged Development) Amendment 1992*

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SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—*continued*

(22) Schedule 2AA:

After Schedule 2, insert:

**SCHEDULE 2AA—COVENANTS IMPLIED IN  
STRATA DEVELOPMENT CONTRACTS** 5  
(Sec. 49)

**Warranted development**

1. The developer agrees with the other parties jointly, and  
with each of them severally: 10

- that the developer must carry out the development (if  
any) described and identified as “**warranted  
development**—proposed development subject to a  
warranty” in the strata development contract; and
- that the developer must carry out any such 15  
development in accordance with the covenants set out  
and implied in the contract.

**Permission to carry out warranted development and  
authorised proposals**

2. The parties, other than the developer, jointly and 20  
severally agree with the developer that the developer is  
permitted to carry out, in accordance with the covenants set  
out or implied in the contract:

- the warranted development (if any); and
- such other development as is described and identified 25  
as “**authorised proposals**—proposed development *not*  
subject to a warranty” in the contract.

**Body corporate expenses**

3. The developer agrees with the body corporate that the  
developer will pay the reasonable expenses incurred by the 30  
body corporate:

- in repairing damage to the common property caused in  
carrying out the permitted development, except damage  
due to normal wear and tear; and
- for any water, sewerage, drainage, gas, electricity, oil, 35  
garbage, conditioned air or telephone service (and any  
other service prescribed by the regulations) used in  
carrying out that development; and

*Strata Titles (Leasehold Staged Development) Amendment 1992*

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SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—*continued*

- 5                   • for additional administrative costs connected with that development, such as the cost of giving notice of and holding any meeting required to obtain approval of a strata plan of subdivision.

**Standard of development**

- 10           4. The developer agrees with the other parties that:
- the standard of materials used, finishes effected, common property improvements, landscaping, roadways and paths; and
  - the heights of buildings, other structures and works and the density of development,

15           in all development permitted to be carried out by the contract must not be inferior to or substantially different from those of the completed buildings and other structures and works forming part of the parcel, except to the extent (if any) that the contract specifies.

**Unauthorised use of the parcel**

- 20           5. The developer agrees with the other parties that the developer will not use any part of the parcel or cause any part of the parcel to be used except:
- to the extent necessary to carry out the development permitted to be carried out by the strata development contract; or
  - to such other extent as may be specified in the contract.

**Restoration of common property**

- 30           6. The developer agrees with the other parties to make good, as soon as is practicable, any damage to the common property arising out of performance of the contract, whether or not the contract contemplates or permits the damage.

**Restoration of development lot**

- 35           7. The developer agrees with the other parties to make good, as soon as is practicable, any damage to a development lot arising out of performance of the contract, whether or not the contract contemplates or permits the damage.



*Strata Titles (Leasehold Staged Development) Amendment 1992*

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**SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—*continued***

For the purposes of this covenant, “**damage**” does not include damage necessarily resulting from having carried out (in accordance with the contract) development that is permitted by the contract to be carried out. 5

**Additional covenants for vertical staged development**

8. If the contract permits development to be carried out within a development lot that is wholly or partly directly above a part of the parcel that is not a development lot, the developer agrees with the other parties: 10

- to minimise any disruption caused to other occupiers of the parcel by the carrying out of permitted development or otherwise; and
- to ensure that, while permitted development is being carried out, shelter and subjacent and lateral support, consistent with proper engineering and building practices, are provided such other parts of the parcel as are capable of being sheltered or of enjoying that support; and 15 20
- to keep the developer insured, while permitted development is being carried out, under a policy of indemnity (that complies with the regulations) with an insurer approved for the purposes of Division 5 of Part 4 against claims for damage to property, or for death or personal injury, arising out of or resulting from the carrying out of permitted development. 25

(23) Schedule 5 (Transitional and savings provisions):

After Part 1, insert:

**PART 2—PROVISIONS RELATING TO THE  
STRATA TITLES (LEASEHOLD STAGED  
DEVELOPMENT) AMENDMENT ACT 1992** 30

**Regulations**

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the Strata Titles (Leasehold Staged Development) Amendment Act 1992. 35

(2) Such a provision may, if the regulations so provide, take effect on the date of assent to that Act or on a later date.



*Strata Titles (Leasehold Staged Development) Amendment 1992*

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SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—*continued*

(3) To the extent to which such a provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done before the date of that publication.

**Transitional arrangements for certain development schemes**

2. (1) This Act, as in force immediately before the commencement of Part 1 of Schedule 1 to the Strata Titles (Leasehold Staged Development) Amendment Act 1992, applies to a development scheme provided for, and represented by, a development statement:

(a) that was certified under section 41 (4) before that commencement; or

(b) that, not needing to be so certified, was duly lodged for registration before that commencement.

(2) The Land and Environment Court Act 1979, as in force immediately before the commencement of Schedule 2 to the Strata Titles (Leasehold Staged Development) Amendment Act 1992, applies to any proceedings:

(a) that are commenced after that commencement in the Land and Environment Court; and

(b) that relate to any such development scheme or development statement.

**Proceedings pending in Land and Environment Court**

3. The Land and Environment Court Act 1979, as in force immediately before the commencement of Schedule 2 to the Strata Titles (Leasehold Staged Development) Amendment Act 1992, applies to any proceedings that are, at that commencement, pending in the Land and Environment Court under this Act.

*Strata Titles (Leasehold Staged Development) Amendment 1992*

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**SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—continued**

**PART 2—OTHER AMENDMENTS**

- (24) Section 5 (**Construction of Act (1973 Act, s. 6)**):  
     In section 5 (4), after “strata plan” wherever occurring, insert “or strata plan of subdivision”. 5
- (25) Section 6 (**Subdivision (1973 Act, s. 7)**):  
     After section 6 (1), insert:  
     (1A) For the purposes of this section, land is contiguous to other land even if it is divided by, or separated from the other land by, a natural feature (such as a watercourse), a railway, a public road, a public reserve or a drainage reserve. 10
- (26) Section 65 (**Other Acts not to apply to subdivisions under Division 1 (1973 Act, s. 36)**):  
     At the end of section 65, insert: 15  
     (2) This section does not affect any requirement to obtain development consent under the Environmental Planning and Assessment Act 1979 to a subdivision to be effected under Division 1.
- (27) Section 80A: 20  
     After section 80, insert:  
     **Termination of leasehold strata scheme and leases by Registrar-General (1973 Act, s. 51)**  
     80A. (1) On receiving an application under this section, the Registrar-General may: 25  
         (a) make an order terminating a leasehold strata scheme;  
         or  
         (b) refuse to terminate a scheme.  
     A refusal by the Registrar-General to terminate a leasehold strata scheme does not preclude an application to the Supreme Court under section 80 for termination of the scheme. 30  
     (2) An application must relate to a parcel that is not subject to a strata development contract.  
     (3) Except where the Registrar-General agrees otherwise, the application must be signed by: 35  
         (a) the lessor under the scheme; and

*Strata Titles (Leasehold Staged Development) Amendment 1992*

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SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—*continued*

- 5 (b) each registered lessee and sublessee of a lot under the scheme; and
- (c) each registered mortgagee, chargee and covenant chargee of a lot or of a registered lease or sublease of a lot or of the common property (if any) under the scheme.
- 10 (4) The application must bear the consent of the consent authority (if any) for subdivision of the land to which it relates.
- 15 (5) Details of the proposed termination, and a statement of intention to make the application, must, except where the Registrar-General otherwise agrees, be published at least 14 days before the application is made:
- (a) in a daily newspaper circulating generally in Sydney; and
- (b) in a local newspaper circulating generally in the area in which the parcel is situated; and
- 20 (c) in the Gazette.
- (6) The application must be accompanied by:
- (a) the certificates of title for all the leases of lots in the scheme, the registered leases of those lots and the lease of the common property (if any), except where the
- 25 Registrar-General agrees otherwise; and
- (b) such other documents, consents and evidence as the Registrar-General may require; and
- (c) if the Registrar-General so requires, a plan for the parcel acceptable for registration as a deposited plan and signed or consented to as required by Division 3 of
- 30 Part 23 of the Conveyancing Act 1919.
- (7) An order terminating a leasehold strata scheme takes effect on being recorded by the Registrar-General in the folio for the land comprising the parcel.
- 35 (8) When an order terminating a leasehold strata scheme takes effect:



*Strata Titles (Leasehold Staged Development) Amendment 1992*

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**SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—*continued***

- (a) the body corporate is dissolved and the leasehold strata scheme is terminated; and
- (b) the former leases of each former lot and the former lease of the common property (if any) are determined; and 5
- (c) the persons who, immediately before the order took effect, were lessees or sublessees of the lots the subject of the leasehold strata scheme cease to be lessees or sublessees of the lots subject to that scheme; and 10
- (d) the former lessees of the lots are liable for the liabilities of the body corporate in shares proportional to the unit entitlements of their former lots; and
- (e) any legal proceedings begun by or against the body corporate may be completed by or against the former lessees; and 15
- (f) the assets of the former body corporate immediately before the order took effect vest in the former lessor under the scheme or, if the application so provides, in the former lessees as tenants in common in shares proportional to the unit entitlements of their former lots (or in such of the former lessees or such other proportions as may be set out in the application); and 20
- (g) the land that comprises the former parcel is vested in the former lessor under the scheme freed and discharged from any mortgage or charge registered, immediately before termination of the scheme, in the folio for a lease of a lot or the common property (if any) under the former scheme. 25 30
- (9) On recording an order terminating a leasehold strata scheme, the Registrar-General:
  - (a) is to cancel the folios for the leases and any subleases of lots and the lease of the common property (if any) in the former parcel; and 35

*Strata Titles (Leasehold Staged Development) Amendment 1992*

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**SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—continued**

- 5 (b) may make such other recordings in the Register as the Registrar-General considers appropriate to give effect to the termination and its consequences.
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**SCHEDULE 2—AMENDMENT OF OTHER ACTS**

(Sec. 4)

**Environmental Planning and Assessment Act 1979 No. 203**

**Section 99 (Lapsing of consent):**

- 10 In section 99 (5A) (a), after "1973", insert "or the Strata Titles (Leasehold) Act 1986".

**Land and Environment Court Act 1979 No. 204**

- (1) Section 18 (Class 2—local government and miscellaneous appeals and applications):
- 15 From section 18 (f), omit "sections 46, 49 and 51", insert instead "sections 51 and 57AA".
- (2) Section 20 (Class 4—environmental planning and protection and development contract civil enforcement):
- 20 From section 20 (5), omit "section 47", insert instead "section 49".
-

FIRST PRINT

**STRATA TITLES (LEASEHOLD STAGED DEVELOPMENT)  
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 (Staged Development) Amendment Bill 1992.

The Strata Titles (Leasehold) Act 1986 already contains rather restrictive provisions allowing the development by stages of part or parts of the land subject to a leasehold strata scheme. The object of this Bill is to amend the 1986 Act (and, as far as is practicable, to parallel the amendments intended to be made to the Strata Titles Act 1973 by the proposed Strata Titles (Staged Development) Amendment Act 1992) so as:

- (a) to introduce a more flexible legislative scheme for the development by stages of land (called "development lots") reserved under a leasehold strata scheme for future development and subdivision; and
- (b) to make other unrelated changes, the more important of which will allow:
  - the creation of leasehold strata schemes for land that is not strictly contiguous; and
  - the termination of leasehold strata schemes by the Registrar-General in limited circumstances without prior recourse to the Supreme Court.

The proposed Act also makes consequential amendments to the Environmental Planning and Assessment Act 1979 and the Land and Environment Court Act 1979.

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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 1986 Act.

Clause 4 gives effect to the Schedule of amendments to the Environmental Planning and Assessment Act 1979 and the Land and Environment Court Act 1979.



*Strata Titles (Leasehold Staged Development) Amendment 1992*

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**SCHEDULE 1—AMENDMENT OF STRATA TITLES (LEASEHOLD) ACT  
1986**

**PART 1—AMENDMENTS RELATING TO STAGED DEVELOPMENT**

**Definitions**

Schedule 1 (1) amends section 4 (Definitions) because the instrument describing the development that is permitted to be carried out within a development lot will be called a *strata development contract* under the proposed scheme. Similar instruments are presently called "development statements". The changes are aimed at avoiding confusion with the kinds of instruments referred to in the Community Land Development Act 1989.

**Strata plan registration**

Schedule 1 (2) amends section 7 (Registration of strata plans) which lists the requirements that presently must be met by strata plans.

Schedule 1 (2) (a) removes the requirement that a development lot be illustrated on a location plan.

Schedule 1 (2) (b) requires the initial schedule of unit entitlement for a strata plan that includes a development lot to show the unit entitlement of each development lot and of the residue of the parcel apportioned in accordance with their relative land values. The unit entitlement of each of the developed lots must also be shown in the initial schedule as a proportion (calculated on a market value basis) of the unit entitlement of that residue.

Schedule 1 (2) (c) and (d) make amendments consequential on the changes in terminology and numbering of provisions in Division 5 of Part 2.

**Subdivision after completion of a stage of development**

Schedule 1 (3) substitutes section 10 (Subdivision of development lot) so as to restate, with appropriate modifications, the requirements for registration of a strata plan of subdivision of a development lot after development permitted by the strata development contract has been carried out. The unit entitlement of each of the new lots into which the development lot will be divided must be shown in a schedule of unit entitlement as a proportion (calculated on a market value basis) of the unit entitlement of the development lot.

**Consequential amendments**

Schedule 1 (4) amends section 16 (Conversion of lots into common property) to remove a reference to a repealed provision.

Schedule 1 (5) amends section 32 (Effect of dealings under this Division) to make it clear that the restrictions in that section do not prevent instruments executed in accordance with the proposed amendments from being registered under the 1986 Act.

**Staged development schemes**

Schedule 1 (6) substitutes Division 5 of Part 2 of the Principal Act with a new Division 5 (containing proposed sections 41–57AA). Of the proposed sections:

*Strata Titles (Leasehold Staged Development) Amendment 1992*

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Section 41 (Explanation of staged development) describes in general terms the concept of staged development. As mentioned above, staged development consists of:

- the progressive development of reserve or development lots in a leasehold strata scheme (which may result in the construction of additional buildings and the carrying out of works such as landscaping); and
- the subdivision of those lots after that development has been carried out (which will create titles for each of the new lots, allowing them to be leased, and the residue of any lease transferred, separately); and
- the allocation of unit entitlements for the new lots. (Unit entitlements determine the proportions in which lessees of lots will be required to contribute to maintenance of the building and other common property.)

Section 42 (Obligations of consent authorities) forbids a consent authority from granting development consent for a subdivision under the 1986 Act that would create a lot reserved for development and for the subsequent subdivision under that Act of that lot unless the lot is identified as a development lot and the consent authority is supplied with a proposed strata development contract describing the intended development.

Section 43 (Form and content of strata development contract) sets out the requirements for strata development contracts. Such a contract must separately describe any "warranted development" (which the developer may be compelled to carry out) and all "authorised proposals" (which the developer may carry out but cannot, merely because of the contract, be forced to carry out).

A strata development contract must include a concept plan illustrating the buildings and works that will result from the proposed development.

Section 44 (Concept plan) sets out the requirements for concept plans and is aimed at ensuring that there will be an up-to-date concept plan filed at the Land Titles Office.

Section 45 (Variation of liability for common property expenses) allows a strata development contract to apportion the liability for common property expenses between the developer and other lessees of lots differently from how they would be apportioned on a unit entitlement basis.

Section 46 (Signing of strata development contract and amendments) lists the persons who will be required to sign a strata development contract and allows the Registrar-General to refuse to register such a contract until the consent of other persons has been obtained.

Section 47 (Registration of strata development contract and amendments) provides for the registration of strata development contracts by the Registrar-General and allows registration to be refused until the certificate of title for the body corporate and the lease of the common property (if any) has been produced.

Section 48 (Notice of strata development contract and amendments) requires the Registrar-General to record in the folio of the Real Property Act Register relating to the body corporate and the lease of the common property (if any) of a leasehold strata scheme particulars about any strata development contract affecting the scheme.



*Strata Titles (Leasehold Staged Development) Amendment 1992*

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Section 49 (Effect of strata development contract) declares that such a contract has effect as an agreement under seal containing covenants that are binding on the persons identified in the proposed section, which include the developer, the lessor under the leasehold strata scheme concerned and the lessees of the lots in the scheme. The implied covenants (set out in proposed Schedule 2AA) will bind any sublessee or mortgagee of a development lot (instead of the developer) while the sublessee or mortgagee is in possession of the development lot.

Section 50 (Amendment of strata development contract) sets out requirements for the amendment of a strata development contract similar to those for amendment of a development contract under the Community Land Management Act 1989.

Section 51 (Approval of amendments by Land and Environment Court) allows an amendment of a strata development contract to be made with the approval of the Land and Environment Court, instead of being supported by a resolution of the body corporate of the leasehold strata scheme concerned.

Section 52 (Use of common property and development lot by developer) authorises the developer to make such use of common property and the development lot as may be necessary to carry out all of the warranted development and authorised proposals contained in a strata development contract. That right must be exercised so as not to cause unreasonable inconvenience to the occupier of any lot in the leasehold strata scheme concerned.

Section 53 (Adding land to a parcel subject to a strata development contract) provides for the addition of land to a parcel containing a development lot by registration of a strata plan of subdivision. Land may be added so as to become common property, a further development lot or an addition to a current development lot, or any combination of them.

Section 54 (Right to complete permitted development) confers on a developer a sufficient vote to make a body corporate decision about a "development concern" even though the decision might otherwise need to be supported by a special or unanimous resolution.

Section 55 (What are "development concerns"?) lists various matters that are, or are not, development concerns. In general terms, carrying out any warranted development or authorised proposal contained in a strata development contract is such a concern, but the subdivision of common property already created and any amendment of the contract itself are not.

Section 56 (Meetings of body corporate relating to development concerns) requires motions relating to development concerns to be dealt with at body corporate meetings separately from other kinds of motions.

Section 57 (Conclusion of development scheme) sets out the various circumstances in which a development scheme established by a strata development contract is concluded. Each strata development contract that does not specify a time for conclusion of the development scheme will be taken to fix the tenth anniversary of its registration as the time for completion.

Section 57AA (Order for extension or conclusion of development scheme) allows the Land and Environment Court to alter the time at which a strata development scheme would otherwise be concluded.



### *Strata Titles (Leasehold Staged Development) Amendment 1992*

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#### **Further consequential amendments**

Schedule 1 (7)–(9), (11) and (13)–(17) amend sections 61, 66, 69, 71, 79, 80, 82, 96 and 98, respectively, to change references to development statements to references to strata development contracts.

Schedule 1 (10) amends section 70 (Registration of plans and notices) to omit requirements relating to the registration of development statements and amendments to them. (Those kinds of requirements for strata development contracts are contained in the proposed Division 5.)

Schedule 1 (12) and (19) omit unnecessary cross-references from sections 72 and 136.

Schedule 1 (18) updates a cross-reference in section 111 (Duties of proprietors and occupiers of lots).

Schedule 1 (21) extends the cross-reference in the heading to Schedule 1A (Requirements for strata plans) because surveyors' certificates referred to in proposed new section 10 will certify compliance with the requirements set out in that schedule.

#### **Orders for the reallocation of unit entitlements**

Schedule 1 (20) substitutes section 155:

- to expand a Strata Titles Board's current power to order an adjustment of unit entitlements so as to include cases in which there has been a change in the uses to which the parcel may be put; and
- to allow applications for such orders to be made by rating and taxing authorities (such as local councils) whose rates or taxes are related to the value of land.

#### **Covenants implied in strata development contracts**

Schedule 1 (22) inserts proposed Schedule 2AA which sets out covenants implied in strata development contracts. Among the more important covenants are those:

- that require the standard of materials and the heights of buildings and the density of development in all development carried out under such a contract not to be inferior or substantially different from those of completed buildings forming part of the parcel; and
- that require shelter and subjacent and lateral support, consistent with proper engineering and building practices, and insurance to be provided where vertical staged development is carried out.

#### **Transitional provisions**

Schedule 1 (23) inserts proposed Part 2 into Schedule 5 (Transitional and savings provisions).

Any development scheme provided by a development statement certified by a consent authority or lodged for registration before the commencement of Part 1 of Schedule 1 to the amending Act will be subject to the provisions of the 1986 Act as in force immediately before that commencement.

### ***Strata Titles (Leasehold Staged Development) Amendment 1992***

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Any proceedings pending in the Land and Environment Court under the 1986 Act when amendments made to the Land and Environment Court Act 1979 by Schedule 2 to the amending Act commence will continue to be dealt with as if those amendments had not been made.

Power is conferred to make further savings and transitional provisions by regulations.

#### **PART 2—OTHER AMENDMENTS**

##### **Extension of provisions to additional encroachments**

Schedule 1 (24) amends section 5 (Construction of Act) which extends certain provisions of the 1986 Act relating to lots and common property to encroachments shown on proposed strata plans so that those provisions will also apply to encroachments shown on proposed strata plans of subdivision.

##### **Contiguous land**

Schedule 1 (25) amends section 6 (Subdivision) to allow land that is divided by, or separated by, a natural feature (such as a watercourse), railway, public road, public reserve or drainage reserve to be the subject of a leasehold strata scheme.

##### **Requirements for development consent to strata subdivisions**

Schedule 1 (26) amends section 65 (Other Acts not to apply to subdivisions under Division 1) to make it clear that the section does not prevent development consent from being required under the Environmental Planning and Assessment Act 1979 to a subdivision under the 1986 Act.

##### **Termination of strata schemes**

Schedule 1 (27) inserts proposed section 80A (Termination of strata scheme and leases by Registrar-General) to empower the Registrar-General to terminate leasehold strata schemes in limited circumstances. A scheme that includes a development lot cannot be so terminated and an application for termination must be signed by the lessor under the scheme, all lessees and sublessees of lots and each registered mortgagee, chargee and covenant chargee, except where the Registrar-General agrees otherwise.

#### **SCHEDULE 2—AMENDMENT OF OTHER ACTS**

##### **Environmental Planning and Assessment Act 1979**

Section 99 (Lapsing of consent) is amended to supply a missing reference to a strata development contract under the 1986 Act, as amended by the proposed Act.

##### **Land and Environment Court Act 1979**

Section 18 (which confers "Class 2" jurisdiction on the Land and Environment Court) is amended to update references to provisions of the 1986 Act, as amended by the proposed Act. (Section 18, as amended by the proposed Strata Titles (Staged Development) Amendment Act 1992, confers jurisdiction on the Court allowing it to approve amendments to strata development contracts or to dispense with consents to

*Strata Titles (Leasehold Staged Development) Amendment 1992*

such amendments, as an alternative to obtaining the approval or consent of the body corporate, and to make orders relating to the conclusion of certain development schemes.)

Section 20 is amended to update provisions conferring "Class 4" jurisdiction on the Court relating to the enforcement of strata development contracts.

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FIRST PRINT

**STRATA TITLES (LEASEHOLD STAGED DEVELOPMENT)  
AMENDMENT BILL 1992**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

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

**SCHEDULE 1—AMENDMENT OF STRATA TITLES (LEASEHOLD) ACT 1986**

**PART 1—AMENDMENTS RELATING TO STAGED DEVELOPMENT**

**PART 2—OTHER AMENDMENTS**

**SCHEDULE 2—AMENDMENT OF OTHER ACTS**

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**STRATA TITLES (LEASEHOLD STAGED DEVELOPMENT)  
AMENDMENT BILL 1992**

**NEW SOUTH WALES**



No. , 1992

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**A BILL FOR**

An Act to amend the Strata Titles (Leasehold) Act 1986 to make more flexible provision for the staged development of land subject to a leasehold strata scheme and for other purposes; and to amend the Environmental Planning and Assessment Act 1979 and the Land and Environment Court Act 1979 consequentially.

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***Strata Titles (Leasehold Staged Development) Amendment 1992***

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

**Short title**

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

**5 Commencement**

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

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

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

**Amendment of other Acts**

15 4. (1) The Environmental Planning and Assessment Act 1979 and the Land and Environment Court Act 1979 (in each case, as amended by the Strata Titles (Staged Development) Amendment Act 1992) are amended as set out in Schedule 2.

(2) Amendments in Schedule 2 to this Act are taken to commence immediately after those in Schedule 2 to the Strata Titles (Staged Development) Amendment Act 1992, if both of those Schedules commence on the same day.

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20 **SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986**

(Sec. 3)

**PART 1—AMENDMENTS RELATING TO STAGED  
DEVELOPMENT**

25 (1) Section 4 (Definitions (1973 Act, s. 5)):

- (a) From the definitions of "development lot" and "development scheme" in section 4 (1), omit "development statement" wherever occurring, insert instead "strata development contract".
- 30 (b) From section 4 (1), omit the definition of "development statement".

*Strata Titles (Leasehold Staged Development) Amendment 1992*

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**SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—continued**

- (c) In section 4 (1), insert in alphabetical order the following definition:

**“strata development contract”** means a strata development contract, as in force for the time being, registered under Division 5 of Part 2;

5

- (2) Section 7 (Registration of strata plans (1973 Act, s. 8)):

- (a) From section 7 (2A), omit “and any proposed development lot”.

10

- (b) Omit section 7 (2C), insert instead:

(2C) The schedule of unit entitlement for a leasehold strata scheme that does not include a development lot must show as whole numbers the aggregate unit entitlement of all lots and the proposed unit entitlement of each lot.

15

(2CA) The schedule of unit entitlement for a leasehold strata scheme that includes a development lot must show as whole numbers:

- (a) the aggregate unit entitlement of all lots, whether or not development lots; and

20

- (b) apportioned on the basis of land value (within the meaning of the Valuation of Land Act 1916) and so as to total that aggregate unit entitlement:

- the proposed unit entitlement of each development lot; and
- the proposed unit entitlement of all lots that are not development lots, being the unit entitlement attributable to the residue of the land in the proposed parcel; and

25

- (c) apportioned on a market value basis and so as to total the proposed unit entitlement of all lots that are not development lots, the proposed unit entitlement of each lot that is not a development lot.

30

- (c) From section 7 (2D) (a), omit “development statement”, insert instead “strata development contract”.

35

- (d) From section 7 (2D) (b), omit “section 41 (4)”, insert instead “section 42 (2)”.



*Strata Titles (Leasehold Staged Development) Amendment 1992*

SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—*continued*

(3) Section 10:

Omit the section, insert instead:

5        **Subdivision of development lot (1973 Act, s. 8A)**

10. (1) A development lot (which cannot be land within a stratum parcel) may be subdivided into lots, or into lots and common property, by the registration of a plan as a strata plan of subdivision.

10        (2) A plan intended to be registered under this section as a strata plan of subdivision must include, as sheets of the plan:

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

15        (3) The location plan must be endorsed with:

- (a) 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

- 20        (b) a certificate given by a registered surveyor in the approved form certifying that each applicable requirement of Schedule 1A has been met (but which need not certify any matter relating to a lot boundary that was certified in the strata plan or a previous strata plan of subdivision).

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

(4) The schedule of unit entitlement must show as whole numbers:

- 30        (a) the current unit entitlement of the development lot intended to be subdivided; and
- 35        (b) apportioned on a market value basis and so as to total that unit entitlement, the proposed unit entitlement of each lot intended to be created on registration of the strata plan of subdivision.

(4) Section 16 (Conversion of lots into common property (1973 Act, s. 13)):

From section 16 (1), omit "Except as provided by section 45, one", insert instead "One".

*Strata Titles (Leasehold Staged Development) Amendment 1992*

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**SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—*continued***

- (5) Section 32 (Effect of dealings under this Division (1973 Act, s. 28)):

After section 32 (4), insert:

(5) This section does not prevent the execution in accordance with section 54 of a dealing by a body corporate, or by a developer on behalf of the body corporate, to give effect to a decision about a development concern (within the meaning of section 55) or prevent the registration of a dealing so executed. 5 10

- (6) Part 2, Division 5:

Omit the Division, insert instead:

**Division 5—Staged Development**

**Explanation of staged development (1973 Act, s. 28A)** 15

41. (1) The purpose of this Division is to facilitate the development of a parcel that is subject to a leasehold strata scheme.

(2) The development contemplated consists of:

- the progressive improvement of the parcel by the construction of buildings or the carrying out of works (or both) on a lot or lots reserved for future development (“development lots”); and 20
- the subsequent subdivision under this Act of each such lot and the consequential adjustment of unit entitlements within the scheme. 25

(3) Development lots may be situated wholly or partly above, below or alongside the building to which the leasehold strata scheme initially relates, but must be identified as such in the strata plan for the scheme when that plan is registered. 30

(4) The staged development of a parcel will be carried out subject to a strata development contract that describes separately:

- (a) any proposed development that the developer for the development lot concerned warrants will be carried out and may be compelled to carry out (“warranted development”); and 35



*Strata Titles (Leasehold Staged Development) Amendment 1992*

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SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—*continued*

- 5 (b) any other proposed development that the developer  
will be authorised but cannot be compelled to carry out  
("authorised proposals").

Warranted development and authorised proposals are referred  
to as "**permitted development**" because the body corporate  
for the leasehold strata scheme and other persons having  
estates or interests in lots included in the parcel must allow it  
10 to be carried out in accordance with the contract.

(5) This Division is not intended to prevent the  
development of a parcel otherwise than in accordance with  
this Division.

**Obligations of consent authorities (1973 Act, s. 28B)**

15 42. (1) A consent authority must not, at the same time,  
grant development consent for the subdivision of land by a  
strata plan and the subsequent subdivision of a lot in that  
plan by a strata plan of subdivision unless:

- 20 (a) the lot intended to be subdivided is identified in the  
proposed strata plan as a development lot; and  
(b) the development application is accompanied by a  
proposed strata development contract.

25 (2) When a consent authority grants such a consent, it must  
certify in the approved form that carrying out the permitted  
development would not contravene:

- (a) any condition subject to which the consent was  
granted; or  
30 (b) the provisions of any environmental planning  
instrument that were in force when the consent was  
granted, except to the extent (if any) specified in the  
certificate.

(3) A development consent that purports to have been  
granted in contravention of this section is invalid.

35 **Form and content of strata development contract (1973  
Act, s. 28C)**

43. (1) A strata development contract and any amendment  
of such a contract must be in the approved form.

(2) A strata development contract must include a concept  
plan and a description:



*Strata Titles (Leasehold Staged Development) Amendment 1992*

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SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—*continued*

- (a) of the land comprising the parcel, identifying separately the development lot or lots to which it relates; and 5
  - (b) of any land proposed to be added to that parcel at a later time; and
  - (c) of so much (if any) of the proposed development as the developer is permitted by the contract to carry out and may be compelled to carry out (identified in the contract as “**warranted development**—proposed development subject to a warranty”); and 10
  - (d) of so much (if any) of the proposed development as the developer is permitted by the contract to carry out but cannot, merely because it is described in the contract, be compelled to carry out (identified in the contract as “**authorised proposals**—proposed development *not* subject to a warranty”). 15
- (3) A strata development contract must include such other documents, particulars and information as may be required by the regulations. 20
- (4) A strata development contract cannot provide for the subdivision of common property without the consent, by special resolution, of the body corporate.
- Concept plan (1973 Act, s. 28D)** 25
44. (1) A concept plan must illustrate, in the manner approved by the Registrar-General, the sites proposed for and the nature of the buildings and works that would result from the carrying out of all permitted development under the strata development contract of which the plan forms part. 30
- (2) A concept plan must separately illustrate, in the manner approved by the Registrar-General, the sites proposed for and the nature of such of those buildings and works (if any) as would result from the carrying out of all warranted development. 35
- (3) The Registrar-General may refuse to register an amendment of a strata development contract if it does not include a revised concept plan so that this section will be complied with after the amendment has been registered.

*Strata Titles (Leasehold Staged Development) Amendment 1992*

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SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—*continued*

**Variation of liability for common property expenses (1973 Act, s. 28E)**

5           45. (1) A strata development contract may apportion the  
liability for expenses relating to the use or maintenance of the  
common property of the leasehold strata scheme concerned  
10           differently from the way that liability would otherwise be  
apportioned by the schedule of unit entitlement applicable to  
lots under the scheme.

(2) An apportionment under this section has effect despite  
the current schedule of unit entitlement, but does not apply to  
any liability that relates to the use or maintenance of the  
common property after the development scheme is  
15           concluded.

**Signing of strata development contract (1973 Act, s. 28F)**

20           46. (1) The Registrar-General may register a strata  
development contract relating to a development lot in a strata  
plan or an amendment of such a contract only if the contract  
or amendment is signed by:

- (a) the developer for the development lot; and
- (b) the lessor under the leasehold strata scheme concerned;  
and
- 25           (c) each registered lessee (other than the developer) and  
sublessee of a lot under the scheme; and
- (d) each registered mortgagee, chargee and covenant  
chargee of a lot or of a registered lease or sublease of a  
lot under the scheme.

30           (2) A strata development contract must be accompanied by  
the certificate (if any) required to be given by section 42  
(Obligations of consent authorities).

35           (3) The Registrar-General may refuse to register a strata  
development contract or an amendment of such a contract if  
there have not been lodged in the office of the Registrar-  
General written consents to the registration of the contract or  
amendment signed by (or by an agent authorised by) such  
one or more of the following as the Registrar-General  
determines:



*Strata Titles (Leasehold Staged Development) Amendment 1992*

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**SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—*continued***

- (a) the judgment creditor under any writ recorded in the folio for the land comprised in the strata plan or for the lease or a sublease of the development lot concerned or, in the case of an amendment, in the folio for any other lease or sublease of a lot; 5
  - (b) the sublessee under any sublease of the common property of the leasehold strata scheme concerned;
  - (c) the caveator under a caveat affecting any estate or interest of any person required to sign the contract because of that estate or interest or under a caveat affecting any such common property. 10
  - (4) Nothing prevents the same person from being more than one of the parties to a strata development contract. 15
- Registration of strata development contract and amendments (1973 Act, s. 28G)**
47. (1) The Registrar-General may register a strata development contract and any amendment of such a contract by making such recordings in the Register as the Registrar-General considers appropriate. 20
- (2) The Registrar-General may refuse to register an amendment of a strata development contract if the certificate of title for the body corporate of the strata scheme concerned and the lease of the common property (if any) has not been produced to the Registrar-General. 25
- (3) The Registrar-General must refuse to register a strata development contract and any amendment of such a contract that contravenes any requirement made of it by this Division. 30
- Notice of strata development contract and amendments (1973 Act, s. 28H)**
48. When a strata development contract is registered, the Registrar-General must record in the folio of the Register relating to the body corporate of the leasehold strata scheme concerned and the lease of the common property (if any): 35
- (a) the existence of the contract and of any subsequent amendment of it that is registered from time to time; and



*Strata Titles (Leasehold Staged Development) Amendment 1992*

**SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—continued**

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

**Effect of strata development contract (1973 Act, s. 28I)**

49. (1) A strata development contract relating to a leasehold strata scheme has effect as an agreement under seal containing the covenants specified in Schedule 2AA entered into by the body corporate and each person who for the time being is:

- (a) the developer concerned; or
- (b) the lessor under the scheme; or
- (c) a lessee (other than that developer) or a sublessee of a lot; or
- (d) a registered mortgagee, chargee or covenant chargee, or an occupier, of a lot or a registered or enrolled mortgagee or chargee of a lease of a lot.

(2) The contract ceases to have effect:

- (a) in relation to a person described in subsection (1) (a), (b), (c) or (d), on that person ceasing to be a person so described; and
- (b) in relation to all of the persons described in subsection (1), when the development scheme to which the contract relates is concluded.

This subsection does not affect any obligation that was incurred by a person, or any right that accrued to a person, under the contract before it ceased to have effect in relation to the person.

(3) A strata development contract does not permit development to be carried out in contravention of this or any other Act or any other law.

(4) A sublessee entitled under a sublease to immediate possession of a development lot is taken to be the developer, and the person who would otherwise be the developer is taken not to be the developer, for the purposes of this Act, the regulations and the strata development contract concerned.

*Strata Titles (Leasehold Staged Development) Amendment 1992*

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**SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—continued**

(5) A mortgagee, chargee or covenant chargee in possession of a development lot is taken to be the developer, and the person who would otherwise be the developer is taken not to be the developer, for the purposes of this Act, the regulations and the strata development contract concerned. 5

(6) A provision in any other contract or instrument under which a strata development contract is excluded, modified or restricted is void. 10

(7) A covenant entered into under a strata development contract does not merge on transfer of a lease of a lot.

(8) Nothing in this section affects any right or remedy a person may have apart from a right or remedy under a strata development contract, with the exception that Part 5 does not apply to matters arising under any such contract. 15

**Amendment of strata development contract (1973 Act, s. 28J)**

50. (1) A strata development contract may be amended by the developer, but any such amendment has effect only if: 20

(a) this section has been complied with in relation to the amendment; and

(b) the amendment is registered.

(2) A proposed amendment that involves a change in the basic architectural or landscaping design of the development, or in its essence or theme, may be made only if it is: 25

(a) approved by the consent authority (if any); and

(b) except where the developer is the only lessee of lots in the leasehold strata scheme concerned, supported by a unanimous resolution of the body corporate of the leasehold strata scheme concerned. 30

(3) An amendment proposed in order to give effect to a change in the law or a change in the requirements of a consent authority may be made only if it is: 35

(a) approved by the consent authority (if any); and

(b) notified to the body corporate of the leasehold strata scheme concerned.



*Strata Titles (Leasehold Staged Development) Amendment 1992*

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SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—*continued*

5 (4) Any other proposed amendment that would require a change in the terms of a development consent may be made only if it is:

- (a) approved by the consent authority; and
- (b) supported by a special resolution of the body corporate of the leasehold strata scheme concerned.

10 (5) Any other proposed amendment that would not require a change in the terms of a development consent may be made only if:

- (a) it is supported by an ordinary resolution of the body corporate of the leasehold strata scheme concerned; and
- 15 (b) the application for registration, or the contract as intended to be amended, is accompanied by a certificate, given in the approved form by the consent authority (if any), to the effect that a change in the terms of any development consent is not required.

20 (6) A consent authority that approves an amendment of a strata development contract must provide the applicant for the approval with a copy of the instruments, plans and drawings that describe and illustrate the amendment and a certificate in the approved form to the effect:

- 25 (a) that the copy describes and illustrates the approved amendment; and
- (b) that the contract, if amended as approved by the authority, would not be inconsistent with any related development consent.

30 **Approval of amendments by Land and Environment Court (1973 Act, s. 28K)**

35 51. (1) An amendment of a strata development contract is not required to be supported by a resolution of a body corporate if the amendment is approved by the Land and Environment Court.

(2) Such an approval may be given only if the Court is satisfied:

- (a) that a motion supporting the amendment has been defeated; or



*Strata Titles (Leasehold Staged Development) Amendment 1992*

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**SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—*continued***

- (b) that the notice of intention to move such a motion has been given but a meeting to consider the motion has not been held within a reasonable time after the giving of the notice; or 5
  - (c) that the consent to the amendment of a mortgagee, chargee or covenant chargee or of a sublessee has been sought but has been refused.
  - (3) An application for such an approval must be served on: 10
    - (a) the consent authority; and
    - (b) the body corporate; and
    - (c) each person (other than the applicant) who is the lessee of a development lot; and
    - (d) each registered or enrolled mortgagee, chargee, 15
      - covenant chargee and sublessee of a lot in the leasehold strata scheme concerned.
- Use of common property and development lot by developer (1973 Act, s. 28L)**
- 52. (1) When carrying out permitted development under a strata development contract, a developer is entitled to use any common property or development lot to which the contract relates: 20
    - (a) to the extent necessary to carry out the development; or
    - (b) to such other extent as may be specified in the contract, which may confer on the developer an exclusive (or any lesser) right to occupy specified common property. 25
  - (2) A right conferred by this section may be exercised despite any other provision of this Act or any provision of the by-laws or of an order under section 157, but must be exercised in a manner that does not cause unreasonable inconvenience to the occupier of any lot. 30
  - (3) Any provisions of a strata development contract that relate to the maintenance or upkeep of common property to which the contract relates have effect despite any provision of the by-laws or of an order under section 157. 35

*Strata Titles (Leasehold Staged Development) Amendment 1992*

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**SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—continued**

**Adding land to a parcel subject to a strata development contract (1973 Act, s. 28M)**

5        53. (1) Land may be added to a parcel containing a development lot by registration of a strata plan of subdivision in accordance with the regulations.

10        (2) A strata plan of subdivision that adds land may be registered only if:

15        (a) the land consisting of the former parcel and the additional land could be the subject of a strata plan had the land in the former parcel not already been subdivided under this Act; and

20        (b) the strata development contract, as in force when the strata plan of subdivision is registered, provides for the land to be added to the parcel and states whether, on its being added to the parcel, the land will become common property, a further development lot or an addition to an existing development lot, or any specified combination of them; and

25        (c) a plan showing as a single lot the additional land and the former parcel has been lodged for registration under the Conveyancing Act 1919.

30        (3) On registration of such a strata plan of subdivision, the land becomes common property, a further development lot or an addition to an existing development lot, or any specified combination of them, as provided by the strata development contract.

**Right to complete permitted development (1973 Act, s. 28N)**

35        54. (1) The vote of a developer who is permitted to carry out development because it is included in a strata development contract is sufficient to pass or defeat a motion included in the notice for a meeting of the body corporate or of the council of the body corporate if the passing or defeat of the motion would have the effect of making a decision about a development concern.

40        (2) It is not necessary for a decision about a development concern to be supported by a special or unanimous resolution of a body corporate, despite any other provision of this Act.



*Strata Titles (Leasehold Staged Development) Amendment 1992*

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**SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—*continued***

(3) A dealing, plan or other instrument may be executed either by the body corporate or by a developer on behalf of the body corporate for the purpose of giving effect to a decision about a development concern. 5

(4) The regulations may impose requirements for the execution of dealings, plans and other instruments by bodies corporate and developers and may require verification by statutory declaration of the circumstances in which they were executed. 10

**What are “development concerns”? (1973 Act, s. 28O)**

55. (1) The following are development concerns for the purposes of this Division:

(a) erecting structures, carrying out works or effecting other improvements in accordance with the strata development contract; 15

(b) creating easements, dedicating land, making by-laws or entering into covenants or management or other agreements in accordance with that contract; 20

(c) creating or using common property in accordance with that contract;

(d) creating or using a development lot in accordance with that contract;

(e) using water, sewerage, drainage, gas, electricity, oil, garbage, conditioned air, telephone or other services available to the parcel, or installing additional services, in accordance with that contract; 25

(f) providing and using means of access or egress to or from a development lot, or to or from the common property, in accordance with that contract; 30

(g) subdivision of a development lot, or excising a development lot from the parcel, in accordance with that contract;

(h) carrying out any other development that is permitted to be carried out because it is included in that contract. 35

(2) The following are not development concerns for the purposes of this Division:

(a) subdivision of common property that has been created by a registered plan; 40



*Strata Titles (Leasehold Staged Development) Amendment 1992*

SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—*continued*

- (b) amendment of a strata development contract, regardless of whether the subject-matter involved is, or relates to, a development concern.

**Meetings of body corporate relating to development concerns (1973 Act, s. 28P)**

56. (1) A motion, the passing or defeat of which at a meeting of the body corporate or of the council of the body corporate would have the effect of making a decision about a development concern, must be:

- (a) identified as relating to a development concern in the notice for the meeting; and  
(b) moved separately from any other kind of motion.

(2) An extraordinary general meeting of the body corporate for the purpose of making a decision about a development concern may be convened under Schedule 4 by the developer or the lessees of not fewer than one quarter of the lots in the leasehold strata scheme concerned that are not development lots.

(3) In convening any such extraordinary general meeting, the developer or any of those lessees may give notice of the meeting on behalf of the council of the body corporate.

(4) The presence of the developer (or, if the developer is a corporation, of the company nominee of the corporation) constitutes a sufficient quorum for any meeting of the body corporate or of the council of the body corporate of which notice has been duly given, but only while business relating to a development concern is being dealt with.

(5) For the purpose only of allowing development permitted by a strata development contract to be carried out, a developer (or, if the developer is a corporation, the company nominee of the corporation) may exercise such of the other functions of a body corporate bound by the contract or of any other person having functions under the leasehold strata scheme concerned as may be prescribed by the regulations.

(6) This section has effect despite any other provision of this Act.

*Strata Titles (Leasehold Staged Development) Amendment 1992*

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**SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—*continued***

**Conclusion of development scheme (1973 Act, s. 28Q)**

57. (1) For the purposes of this Division, a development scheme to which a strata development contract relates is concluded when any of the following occurs: 5

- (a) any development consent required for carrying out the scheme is revoked;
- (b) a strata plan of subdivision is registered which subdivides the development lot to which the contract relates or subdivides the residue of that development lot after excision of part of that lot in accordance with the contract; 10
- (c) the time predicted by the contract for conclusion of the development scheme arrives; 15
- (d) a notice in the approved form, signed in accordance with subsection (3) and stating that the development scheme to which the contract relates has concluded, is registered by the Registrar-General;
- (e) the development scheme is concluded under section 57AA by an order of the Land and Environment Court; 20
- (f) the leasehold strata scheme concerned is terminated under Part 3 by an order of the Supreme Court.

(2) A strata development contract is taken to predict, as the time for conclusion of the development scheme to which it relates: 25

- (a) the time for completion of that development scheme specified in the contract; or
- (b) if no such time is specified, the tenth anniversary of the day on which the contract was registered. 30

(3) A notice is signed in accordance with this subsection only if:

- (a) it is signed by the developer concerned; and
- (b) it is signed by the lessor under the scheme, except where the lessor is the developer; and 35
- (c) it is signed by each registered mortgagee, chargee, covenant chargee and sublessee of the development lot, and by each registered mortgagee and chargee of a lease of that lot; and



*Strata Titles (Leasehold Staged Development) Amendment 1992*

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**SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—continued**

5 (d) it is accompanied by a certificate, given in the approved form by the body corporate for the strata scheme concerned, certifying that the relevant agreement is supported by a unanimous resolution of the body corporate.

10 (4) The Registrar-General is required to make an appropriate record of the conclusion of a development scheme in the folio for the body corporate and the lease of the common property (if any) of the leasehold strata scheme concerned.

**Order for extension or conclusion of development scheme  
(1973 Act, s. 28QA)**

15 57AA. (1) On application made to it by any person bound by a strata development contract, the Land and Environment Court may, by its order, do either or both of the following:

20 (a) defer (either generally or to a specified time) the time at which a development scheme would otherwise be concluded;

(b) fix a time for the conclusion of a development scheme, whether it is an earlier or a later time than it would otherwise be.

25 (2) Notice of such an application is to be served, in accordance with rules of court, on:

(a) the developer concerned; and

(b) the lessor under the scheme, except where the lessor is the developer; and

30 (c) each lessee (other than that developer) of a lot, each registered or enrolled mortgagee, chargee, covenant chargee and sublessee of a lot and each registered mortgagee and chargee of a lease of a lot; and

(d) the body corporate; and

35 (e) the consent authority (if any) that granted the relevant development consent; and

(f) the Registrar-General; and

(g) such other persons (if any) as the Land and Environment Court may direct.



*Strata Titles (Leasehold Staged Development) Amendment 1992*

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**SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—*continued***

- (3) Each person entitled to be served with notice of the application is entitled to appear and be heard in proceedings relating to the application. 5
- (4) An order under this section may:
- (a) contain such provisions relating to the leasehold strata scheme as are, in the opinion of the Land and Environment Court, necessary because of the conclusion of the development scheme; and 10
  - (b) require the payment of money to or by the body corporate or the lessees of lots to any one or more of them in addition to, or instead of, any award of damages in the exercise of the jurisdiction conferred by section 20 (2) (d) of the Land and Environment Court Act 1979; and 15
  - (c) contain such other provisions and make such other requirements as, in the opinion of the Land and Environment Court, are just and equitable in the circumstances of the case. 20
- (5) The Land and Environment Court may, from time to time, vary an order under this section on the application of any person entitled to apply for such an order.
- (7) **Section 61 (Readjustment of leasehold strata scheme for purposes of resumption (1973 Act, s. 32)):** 25
- From section 61 (4) (c), omit "development statement", insert instead "strata development contract".
- (8) **Section 66 (Approval of proposed strata plans and strata plans of subdivision and of conversion of lots into common property (1973 Act, s. 37)):** 30
- From section 66 (2) (b) (ii), omit "development statement", insert instead "strata development contract".
- (9) **Section 69 (Appeal against local council refusing approval (1973 Act, s. 40)):**
- From section 69 (1) (d), omit "development statement", insert instead "strata development contract". 35

***Strata Titles (Leasehold Staged Development) Amendment 1992***

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**SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—*continued***

- (10) Section 70 (**Registration of plans and notices (1973 Act, s. 41)**):
- 5       (a) Omit section 70 (3)–(5).
- (b) From section 70 (7), omit “, building alteration plan, development statement or amendment of a development statement”, insert instead “or building alteration plan”.
- (11) Section 71 (**Provisions applying to strata plans etc. (1973 Act, s. 42)**):
- 10       From section 71 (2) and (3), omit “development statement” wherever occurring, insert instead “strata development contract”.
- (12) Section 72 (**Registrar-General’s power to adjust unit entitlements (1973 Act, s. 43)**):
- 15       From section 72 (1), omit “referred to in section 7 (1) (g), 10 (2) (c), 13 (1) or 14 (a)”, insert instead “of unit entitlement”.
- (13) Section 79 (**Variation of leasehold strata scheme consequent on damage to or destruction of building (1973 Act, s. 50)**):
- 20       From section 79 (6) (c), omit “development statement”, insert instead “strata development contract”.
- (14) Section 80 (**Termination of leasehold strata scheme (1973 Act, s. 51)**):
- From section 80 (7) (c), omit “development statement”, insert instead “strata development contract”.
- 25   (15) Section 82 (**Consequences of making an order under section 79 or 80 (1973 Act, s. 53)**):
- From section 82 (1), omit “development statement” wherever occurring, insert instead “strata development contract”.
- 30   (16) Section 96 (**Statutory restrictions on powers of body corporate (1973 Act, s. 66)**):
- From section 96 (1) (b), omit “development statement”, insert instead “strata development contract”.
- 35   (17) Section 98 (**Duties of body corporate (1973 Act, s. 68)**):
- From section 98 (1), omit “development statement” wherever occurring, insert instead “strata development contract”.



*Strata Titles (Leasehold Staged Development) Amendment 1992*

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**SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—continued**

- (18) **Section 111 (Duties of lessees and other occupiers of lots (1973 Act, s. 80)):**  
     From section 111 (2), omit "section 48", insert instead 5  
     "section 52".
- (19) **Section 136 (General powers of Commissioner to make orders (1973 Act, s. 105)):**  
     Omit section 136 (8), insert instead:  
     (8) Nothing in this Division authorises the Commissioner 10  
     to make an order of the kind that may be made under section  
     61, 79, 80 or 97 by the Supreme Court.
- (20) **Section 155:**  
     Omit the section, insert instead:  
     **Order for reallocation of unit entitlements (1973 Act, 15**  
     **s. 119)**  
     155. (1) A Board may make an order allocating unit  
     entitlements among the lots that are subject to a leasehold  
     strata scheme in the manner specified in the order.  
     (2) An order may be made only if the Board considers, 20  
     after having regard to the respective values of the lots and (if  
     a strata development contract is in force in relation to the  
     leasehold strata scheme) to such other matters as the Board  
     considers relevant, that the allocation of unit entitlements  
     among the lots: 25  
     (a) was unreasonable when the strata plan was registered  
     or when a strata plan of subdivision was registered; or  
     (b) became unreasonable because of a change in the  
     permitted land use, being a change (whether or not 30  
     because of a rezoning) in the ways in which the whole  
     or any part of the parcel could lawfully be used,  
     whether with or without development consent.  
     (3) An application for an order may be made:  
     (a) by the lessor under the scheme; or  
     (b) by a lessee of a lot (whether or not a development lot) 35  
     within the parcel; or  
     (c) by the body corporate; or



*Strata Titles (Leasehold Staged Development) Amendment 1992*

SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—*continued*

- 5 (d) by the local council, or by any other public or local authority constituted by or under an Act or any statutory body representing the Crown, being an authority or body that is empowered to impose a rate, tax or other charge by reference to a valuation of land.
- 10 (4) An application for an order must be accompanied by a certificate specifying the valuation, at the relevant time of registration or immediately after the change in the permitted land use, of each of the lots to which the application relates.
- 15 (5) The certificate must have been given by the holder of a current certificate of registration under the Valuers Registration Act 1975 as a practising real estate valuer authorised under that Act to make such a valuation (a “qualified valuer”).
- 20 (6) A Board may, if it makes an order reallocating unit entitlements that were not allocated in accordance with a valuation of a qualified valuer and, in the opinion of the Board, were allocated unreasonably by a developer, also order:
- 25 (a) despite section 152, the payment by the developer to the applicant for the order of the costs incurred by the applicant, including fees and expenses reasonably incurred in obtaining the valuation and the giving of evidence by a qualified valuer; and
- 30 (b) the payment by the developer of such amounts as may be assessed by the Board to represent any overpayments (due to the unreasonable allocation) for which liability arose not earlier than 6 years before the date of the order to any one or more of the following:
- the lessor under the scheme;
  - the lessees of lots;
  - the body corporate.
- 35 (7) An amount ordered to be paid under this section may be recovered as a debt in a court of competent jurisdiction.
- (21) Schedule 1A (Requirements for strata plans):  
From the heading, omit “(Sec. 7)”, insert instead “(Secs. 7, 10)”.

*Strata Titles (Leasehold Staged Development) Amendment 1992*

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SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—*continued*

(22) Schedule 2AA:

After Schedule 2, insert:

**SCHEDULE 2AA—COVENANTS IMPLIED IN  
STRATA DEVELOPMENT CONTRACTS** 5  
(Sec. 49)

**Warranted development**

1. The developer agrees with the other parties jointly, and  
with each of them severally: 10

- that the developer must carry out the development (if  
any) described and identified as “**warranted  
development**—proposed development subject to a  
warranty” in the strata development contract; and
- that the developer must carry out any such 15  
development in accordance with the covenants set out  
and implied in the contract.

**Permission to carry out warranted development and  
authorised proposals**

2. The parties, other than the developer, jointly and 20  
severally agree with the developer that the developer is  
permitted to carry out, in accordance with the covenants set  
out or implied in the contract:

- the warranted development (if any); and
- such other development as is described and identified 25  
as “**authorised proposals**—proposed development *not*  
subject to a warranty” in the contract.

**Body corporate expenses**

3. The developer agrees with the body corporate that the  
developer will pay the reasonable expenses incurred by the 30  
body corporate:

- in repairing damage to the common property caused in  
carrying out the permitted development, except damage  
due to normal wear and tear; and
- for any water, sewerage, drainage, gas, electricity, oil, 35  
garbage, conditioned air or telephone service (and any  
other service prescribed by the regulations) used in  
carrying out that development; and



*Strata Titles (Leasehold Staged Development) Amendment 1992*

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SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—*continued*

- 5                   • for additional administrative costs connected with that development, such as the cost of giving notice of and holding any meeting required to obtain approval of a strata plan of subdivision.

**Standard of development**

- 10           4. The developer agrees with the other parties that:
- the standard of materials used, finishes effected, common property improvements, landscaping, roadways and paths; and
  - the heights of buildings, other structures and works and the density of development,

15           in all development permitted to be carried out by the contract must not be inferior to or substantially different from those of the completed buildings and other structures and works forming part of the parcel, except to the extent (if any) that the contract specifies.

**Unauthorised use of the parcel**

- 20           5. The developer agrees with the other parties that the developer will not use any part of the parcel or cause any part of the parcel to be used except:
- 25           • to the extent necessary to carry out the development permitted to be carried out by the strata development contract; or
  - to such other extent as may be specified in the contract.

**Restoration of common property**

- 30           6. The developer agrees with the other parties to make good, as soon as is practicable, any damage to the common property arising out of performance of the contract, whether or not the contract contemplates or permits the damage.

**Restoration of development lot**

- 35           7. The developer agrees with the other parties to make good, as soon as is practicable, any damage to a development lot arising out of performance of the contract, whether or not the contract contemplates or permits the damage.



*Strata Titles (Leasehold Staged Development) Amendment 1992*

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**SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—*continued***

For the purposes of this covenant, “**damage**” does not include damage necessarily resulting from having carried out (in accordance with the contract) development that is permitted by the contract to be carried out. 5

**Additional covenants for vertical staged development**

8. If the contract permits development to be carried out within a development lot that is wholly or partly directly above a part of the parcel that is not a development lot, the developer agrees with the other parties: 10

- to minimise any disruption caused to other occupiers of the parcel by the carrying out of permitted development or otherwise; and
- to ensure that, while permitted development is being carried out, shelter and subjacent and lateral support, consistent with proper engineering and building practices, are provided such other parts of the parcel as are capable of being sheltered or of enjoying that support; and 15 20
- to keep the developer insured, while permitted development is being carried out, under a policy of indemnity (that complies with the regulations) with an insurer approved for the purposes of Division 5 of Part 4 against claims for damage to property, or for death or personal injury, arising out of or resulting from the carrying out of permitted development. 25

(23) Schedule 5 (Transitional and savings provisions):

After Part 1, insert:

**PART 2—PROVISIONS RELATING TO THE  
STRATA TITLES (LEASEHOLD STAGED  
DEVELOPMENT) AMENDMENT ACT 1992** 30

**Regulations**

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the Strata Titles (Leasehold Staged Development) Amendment Act 1992. 35

(2) Such a provision may, if the regulations so provide, take effect on the date of assent to that Act or on a later date.

*Strata Titles (Leasehold Staged Development) Amendment 1992*

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**SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—continued**

(3) To the extent to which such a provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done before the date of that publication.

**Transitional arrangements for certain development schemes**

2. (1) This Act, as in force immediately before the commencement of Part 1 of Schedule 1 to the Strata Titles (Leasehold Staged Development) Amendment Act 1992, applies to a development scheme provided for, and represented by, a development statement:

(a) that was certified under section 41 (4) before that commencement; or

(b) that, not needing to be so certified, was duly lodged for registration before that commencement.

(2) The Land and Environment Court Act 1979, as in force immediately before the commencement of Schedule 2 to the Strata Titles (Leasehold Staged Development) Amendment Act 1992, applies to any proceedings:

(a) that are commenced after that commencement in the Land and Environment Court; and

(b) that relate to any such development scheme or development statement.

**Proceedings pending in Land and Environment Court**

3. The Land and Environment Court Act 1979, as in force immediately before the commencement of Schedule 2 to the Strata Titles (Leasehold Staged Development) Amendment Act 1992, applies to any proceedings that are, at that commencement, pending in the Land and Environment Court under this Act.



*Strata Titles (Leasehold Staged Development) Amendment 1992*

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**SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—continued**

**PART 2—OTHER AMENDMENTS**

- (24) Section 5 (**Construction of Act (1973 Act, s. 6)**):  
     In section 5 (4), after “strata plan” wherever occurring, insert “or strata plan of subdivision”. 5
- (25) Section 6 (**Subdivision (1973 Act, s. 7)**):  
     After section 6 (1), insert:  
     (1A) For the purposes of this section, land is contiguous to other land even if it is divided by, or separated from the other land by, a natural feature (such as a watercourse), a railway, a public road, a public reserve or a drainage reserve. 10
- (26) Section 65 (**Other Acts not to apply to subdivisions under Division 1 (1973 Act, s. 36)**):  
     At the end of section 65, insert: 15  
     (2) This section does not affect any requirement to obtain development consent under the Environmental Planning and Assessment Act 1979 to a subdivision to be effected under Division 1.
- (27) Section 80A: 20  
     After section 80, insert:  
     **Termination of leasehold strata scheme and leases by Registrar-General (1973 Act, s. 51)**  
     80A. (1) On receiving an application under this section, the Registrar-General may: 25  
         (a) make an order terminating a leasehold strata scheme;  
         or  
         (b) refuse to terminate a scheme.  
     A refusal by the Registrar-General to terminate a leasehold strata scheme does not preclude an application to the Supreme Court under section 80 for termination of the scheme. 30  
     (2) An application must relate to a parcel that is not subject to a strata development contract.  
     (3) Except where the Registrar-General agrees otherwise, the application must be signed by: 35  
         (a) the lessor under the scheme; and



*Strata Titles (Leasehold Staged Development) Amendment 1992*

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SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—*continued*

- (b) each registered lessee and sublessee of a lot under the scheme; and
- 5 (c) each registered mortgagee, chargee and covenant chargee of a lot or of a registered lease or sublease of a lot or of the common property (if any) under the scheme.
- 10 (4) The application must bear the consent of the consent authority (if any) for subdivision of the land to which it relates.
- 15 (5) Details of the proposed termination, and a statement of intention to make the application, must, except where the Registrar-General otherwise agrees, be published at least 14 days before the application is made:

  - (a) in a daily newspaper circulating generally in Sydney; and
  - (b) in a local newspaper circulating generally in the area in which the parcel is situated; and
  - 20 (c) in the Gazette.
- (6) The application must be accompanied by:

  - 25 (a) the certificates of title for all the leases of lots in the scheme, the registered leases of those lots and the lease of the common property (if any), except where the Registrar-General agrees otherwise; and
  - (b) such other documents, consents and evidence as the Registrar-General may require; and
  - 30 (c) if the Registrar-General so requires, a plan for the parcel acceptable for registration as a deposited plan and signed or consented to as required by Division 3 of Part 23 of the Conveyancing Act 1919.
- (7) An order terminating a leasehold strata scheme takes effect on being recorded by the Registrar-General in the folio for the land comprising the parcel.
- 35 (8) When an order terminating a leasehold strata scheme takes effect:

*Strata Titles (Leasehold Staged Development) Amendment 1992*

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**SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—*continued***

- (a) the body corporate is dissolved and the leasehold strata scheme is terminated; and
- (b) the former leases of each former lot and the former lease of the common property (if any) are determined; and 5
- (c) the persons who, immediately before the order took effect, were lessees or sublessees of the lots the subject of the leasehold strata scheme cease to be lessees or sublessees of the lots subject to that scheme; and 10
- (d) the former lessees of the lots are liable for the liabilities of the body corporate in shares proportional to the unit entitlements of their former lots; and
- (e) any legal proceedings begun by or against the body corporate may be completed by or against the former lessees; and 15
- (f) the assets of the former body corporate immediately before the order took effect vest in the former lessor under the scheme or, if the application so provides, in the former lessees as tenants in common in shares proportional to the unit entitlements of their former lots (or in such of the former lessees or such other proportions as may be set out in the application); and 20
- (g) the land that comprises the former parcel is vested in the former lessor under the scheme freed and discharged from any mortgage or charge registered, immediately before termination of the scheme, in the folio for a lease of a lot or the common property (if any) under the former scheme. 25 30
- (9) On recording an order terminating a leasehold strata scheme, the Registrar-General:
  - (a) is to cancel the folios for the leases and any subleases of lots and the lease of the common property (if any) in the former parcel; and 35

*Strata Titles (Leasehold Staged Development) Amendment 1992*

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**SCHEDULE 1—AMENDMENT OF STRATA TITLES  
(LEASEHOLD) ACT 1986—*continued***

- 5 (b) may make such other recordings in the Register as the Registrar-General considers appropriate to give effect to the termination and its consequences.
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**SCHEDULE 2—AMENDMENT OF OTHER ACTS**

(Sec. 4)

**Environmental Planning and Assessment Act 1979 No. 203**

**Section 99 (Lapsing of consent):**

- 10 In section 99 (5A) (a), after "1973", insert "or the Strata Titles (Leasehold) Act 1986".

**Land and Environment Court Act 1979 No. 204**

- (1) Section 18 (Class 2—local government and miscellaneous appeals and applications):

- 15 From section 18 (f), omit "sections 46, 49 and 51", insert instead "sections 51 and 57AA".

- (2) Section 20 (Class 4—environmental planning and protection and development contract civil enforcement):

- 20 From section 20 (5), omit "section 47", insert instead "section 49".
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