

STRATA TITLES (PART STRATA) AMENDMENT BILL 1992

NEW SOUTH WALES



EXPLANATORY NOTE

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

The Strata Titles (Leasehold Part Strata) Amendment Bill 1992 is cognate with this Bill.

The object of this Bill is to amend the Strata Titles Act 1973 so as to provide for the subdivision under that Act of part only of a building. Currently, a subdivision under that Act may be effected only for the whole of a building and its site.

Registration of a strata plan that subdivides part only of a building will create a strata scheme for a "stratum parcel" consisting of lots, or lots and common property, and also create a body corporate whose council and officers will administer the scheme. None of the lots created can be a development lot, so staged development under the Act of a stratum parcel is not permitted by the amendments.

There is no limit on the number of such strata schemes that may be created for different parts of the same building and its site. It is not necessary for the whole of a building to be subject to strata schemes, but a further strata scheme is not allowed in a building if the building has been substantially added to since the initial strata scheme for part of the building was created.

The amendments to be made by this Bill are principally concerned with:

- (a) the conveyancing aspects of the subdivision of a part of a building, such as the consequential easements for support and shelter that will be implied; and
- (b) the management of the whole of a building in which a stratum parcel is situated under a strata management statement and ways for resolving disputes that may cause problems among owners and occupiers of the building and certain other interested persons.

Clause 1 specifies the short title of the proposed Act.

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

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

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SCHEDULE 1—AMENDMENTS
CONVEYANCING ISSUES

Requirements for strata subdivisions

Schedule 1 (3) amends section 7 (**Subdivision**) to provide that a subdivision under the Act may divide part of a building into lots, or into lots and common property, and consequently create a stratum parcel.

Schedule 1 (1) (c) inserts a definition of a stratum parcel.

Schedule 1 (1) (b) amends the definition of “location plan” so as to require such a plan to show where a stratum parcel is located.

Schedule 1 (4) substitutes section 8 (**Registration of strata plans**) to restate, in a simpler form, certain of the requirements that must be met by plans that are lodged for registration as strata plans.

Proposed Schedule 1A (**Requirements for strata plans**), to be inserted into the Act by Schedule 1 (28), sets out the matters that must be certified by a registered surveyor before a strata plan is registered, such as the existence of the proposed lots and the fact that a proposed stratum parcel is not in a part of a building added after an earlier stratum parcel was created for a part of the building.

Schedule 1 (2) amends section 6 (**Construction of Act**) to declare that provisions of the Act, other than those relating to the ownership and certification of title, apply to encroachments (except on public places) shown on strata plans. This amendment is a restatement in a more appropriate place of part of section 8 which is itself to be restated in a simpler form.

Easements

Schedule 1 (5) inserts proposed sections 8AA and 8AB. Of the proposed sections:

Section 8AA (**Effect of registration of a strata plan creating a stratum parcel**) will create certain statutory easements for support and shelter when any stratum parcel is created. The easements will apply for the benefit of both the stratum parcel and all other parts of the building concerned and attract all ancillary rights and obligations reasonably necessary to make them effective.

Section 8AB (Easements in certain strata schemes) will give effect to proposed Schedule 1B (Rights and obligations implied in certain easements) to be inserted by Schedule 1 (28). Schedule 1B will set out the terms of certain other easements that may be adopted for the benefit of, or so as to burden, a stratum parcel and other parts of the building in which it is situated. The terms will apply when the following easements are created:

- * a right of vehicular access
- * a right of personal access
- * an easement for a specified service

The implied terms may be modified by the interested parties or by the Supreme Court.

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Staged development schemes

Schedule 1 (6) amends section 8A (**Subdivision of development lots**) to prevent land in a stratum parcel from being subdivided as a development lot following staged development under the Act.

Schedule 1 (1) (a) amends the definition of “development lot” in the Act so as to recognise that a lot in a stratum parcel cannot be a development lot the subject of Staged development under the Act.

Schedule 1 (7) amends section 28A (**Approval of development statement**) to prevent development consent from being given to allow the staged development of land in a stratum parcel.

Variation or termination of strata schemes

Schedule 1 (9) amends section 50 (**Variation of strata scheme consequent on damage to or destruction of building**) to provide that orders made by the Supreme Court may require reinstatement of part of a building included in a stratum parcel.

Schedule 1 (10) amends section 51 (**Termination of strata scheme**) to provide that orders made by the Supreme Court on the winding up of a strata scheme may require the amendment of any strata management statement that affects a building part of which was subject to the strata scheme.

MANAGEMENT ISSUES

Strata management statements

Schedule 1 (8) inserts proposed sections 28R–28W as Division 2B of Part 2. Of the proposed sections:

Section 28R (**Requirement for strata management statement**) will prevent the creation of a stratum parcel unless such a statement is registered for the building and site concerned.

Section 28S (**Formal requirements**) will require the statement to be in a form approved by the Registrar-General and to provide for the following, in accordance with proposed Schedule 1C (Strata management statements) to be inserted by Schedule 1 (28):

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

Schedule 1C will also lay down minimum requirements for the composition of the committee and list some other matters for which the statement may provide, but is not exhaustive of the issues for which such a statement may provide.

Section 28T (Registration of strata management statement) will require particulars of such a statement to be recorded in relevant folios of the Register kept under the Real Property Act.

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Section 28U (**Amendment of strata management statement**) will require any amendment of such a statement to be supported by all bodies corporate for stratum parcels and all other persons holding freehold estates in other parts of the building concerned. An amendment may also be ordered by a court or be required because of a revocation or modification of a development consent.

Section 28V (Signing of strata management statement) will require a strata management statement, or any amendment of such a statement, to be signed by the holders of specified estates or interests in the building concerned or its site. The Registrar-General may also require certain written consents before registering such a statement.

Section 28W (**Effect of strata management statement**) will make such a statement binding on all persons who are, for the time being, owners, mortgagees in possession and lessees of the building.

Schedule 1 (11) amends section 58A (**Copy of by-laws and strata management statement to be provided**) to require the lessors of any parts of a building that are subject to a strata scheme to supply a copy of the strata management statement that affects the building to each of their lessees.

Insurance

Schedule 1 (12) substitutes section 83 (**Insurance of buildings**) to restate, with appropriate changes, the obligations for the insurance of buildings subject to strata schemes.

Provision is made for the joint insurance of a building containing a stratum parcel by the body corporate for the parcel and owners of other parts of the building and for apportionment of the premium.

Schedule 1 (13) amends section 88 (**Insurable interests**) to declare that an owner of a part of a building that is subject to a strata scheme for a stratum parcel has an insurable interest in the whole of the building.

Schedule 1 (17) substitutes section 109A (**Order to make or pursue insurance claim**) to restate the power of the Commissioner to make such orders and to allow any person who has a fee simple estate in part of a building that contains a stratum parcel or its site to apply for such an order.

Schedule 1 (20) substitutes section 125 (**Orders relating to insurance**) to restate the power to make orders requiring the insurance, or variation of the insurance, of a building containing a strata scheme. If the building concerned contains a stratum parcel, such an order may require the insurance premium to be paid in specified proportions.

Dispute resolution—conciliation

Schedule 1 (19) inserts proposed section 115A (**Resolution of certain building management disputes**) in Division 3A of Part 5. The proposed section allows the Commissioner to conciliate such disputes in buildings in which stratum parcels are situated, but only with the consent of all parties to the dispute.

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Dispute resolution—orders

Schedule 1 (15) amends section 104 (**Orders by Commissioner**) to allow the Commissioner to make orders under Division 3 of Part 5 (including interim orders) with respect to a strata scheme for a part of a building that will bind not only persons whose interests arise directly from that scheme but also specified other “interested persons”.

(Other “interested persons” include bodies corporate or managing agents of strata schemes for, or owners or occupiers of, other parts of the building.)

Schedule 1 (16) amends section 105 (**General powers of Commissioner to make orders**) to allow orders under that section to be made with respect to a strata scheme for a part of a building on the application of other interested persons. The Commissioner is required to have regard to the strata management statement for the building concerned before making any order relating to the management of a stratum parcel.

Schedule 1 (18) amends section 112 (**Order relating to keeping of animals**) to ensure that such orders will bind the occupiers of, and all other persons bound by a strata management statement for, a building that contains a stratum parcel.

Schedule 1 (21) amends section 133 (**General provisions relating to orders under Division 4 and on appeal**) to extend the class of persons on whom a Strata Titles Board may impose ancillary requirements in an order made by the Board. If such an order relates to a stratum parcel, requirements may be imposed on any “interested person”.

Schedule 1 (22) amends section 140 (**Effect of certain orders**) to restate that certain orders have effect, to such extent as is necessary, as resolutions of the body corporate concerned.

Schedule 1 (23) amends section 142 (**Penalty for contravention of certain orders**) to allow the body corporate for each stratum parcel situated in a part of the same building to take proceedings for an offence when an order made under Part 5 is contravened.

Rectification of building defects

Schedule 1 (24) substitutes section 148 (**Structural defects—proceedings as agent**) to restate the current powers of a body corporate to act as agent in:

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

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

Dividing fences

Schedule 1 (24) also substitutes section 149 (Dividing fences) to restate the current requirement that the body corporate is taken to be the owner of a parcel for the purposes of the Dividing Fences Act and to provide that each body corporate for a stratum parcel that includes part of the building and each other holder of a fee simple interest in a part of the building are taken to be joint owners, if the building concerned contains a stratum parcel.

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Service of documents

Schedule 1 (25) mends section 153 (Service of documents on body corporate etc.) to allow service of documents on persons who own parts of buildings that contain stratum parcels in any manner authorised by section 170 of the Conveyancing Act. (The manner of service of documents on a building management committee is required to be set out in the relevant strata management statement.)

Power of entry

Schedule 1 (14) amends section 101 (**Procedure after Commissioner receives application**) to allow the Strata Titles Commissioner, on giving notice, to enter any part of a building a part of which is subject to a strata scheme to look into the issues raised by an application for an order to be made by the Commissioner or a Strata Titles Board under the Act.

Schedule 1 (26) amends section 154 (**Powers of entry by public authority or local council**) to ensure that power to enter part of a building contained in a stratum parcel implies a power to enter another part of the building or its site if it is necessary to effect the authorised entry.

Schedule 1 (27) amends section 154A (**Powers of entry of Commissioner in certain cases**) to confer a similar power of entry on the Commissioner while investigating a possible offence against the Act or by-laws if the alleged offence is related to a parcel.

SAVINGS PROVISIONS

Savings

Schedule 1 (29) amends Schedule 4 (**Transitional and savings provisions**) to preserve the effect of exemption orders made under section 83 (**Insurance of buildings**) immediately before the substitution of that section and of orders, or applications for orders, made under Part 5 (Disputes) immediately before the amendment of that Part.
