

# Strata Titles Amendment Bill 2018

## EXPLANATORY MEMORANDUM

### Overview of the Strata Titles Amendment Bill 2018

This Bill will amend the *Strata Titles Act 1985* (the current Act) to make strata better, address problems that have arisen in strata, introduce a new form of land ownership (leasehold strata title schemes) and modernise the language and structure of the Act.

Strata managers will be regulated and made more accountable. Owners will have more of a say in the running of their scheme. The management of the strata company will be improved.

Owners will be empowered to improve their scheme and retrofit their scheme to benefit from renewable energy sources. Better ongoing maintenance of schemes will be facilitated. Enforcing by-laws will be easier. Strata disputes will be resolved quickly, cheaply and effectively through a single specialist forum.

Buyers will receive better information about the strata lot they are buying. More flexibility in staged subdivision of strata and survey-strata schemes will be permitted. Safeguards will be introduced for the termination of schemes.

### A. Making strata better

#### 1. Regulating strata managers and making them more accountable

##### 1.1 Extensive statutory duties imposed on strata managers

Statutory duties will be imposed on strata managers to make them more accountable and to encourage higher standards of professional service to be delivered to strata companies. Strata managers:

- a. must act honestly and in good faith
- b. must disclose to the strata company any conflict of interest or commission received
- c. must exercise a reasonable degree of skill, care and diligence
- d. must have a good working knowledge of the *Strata Titles Act 1985*
- e. must have specified educational qualifications
- f. must provide a current police clearance
- g. must have professional indemnity insurance coverage
- h. must not make improper use of information acquired as the strata manager to gain an advantage for themselves or someone else, or cause a detriment to the strata company
- i. must not make improper use of their position as strata manager to gain an advantage for themselves or someone else, or cause a detriment to the strata company
- j. must have a written contract with the strata company and
- k. must hold the strata company's money in a trust account that can be audited

##### 1.2 Enforcement of statutory duties: contract termination and damages claim

The statutory duties will be enforced by the strata company. The strata company is in the best position to see whether the strata manager is complying with the duties.

A strata company will have a statutory right to:

- a. terminate the strata management contract by giving notice if the strata manager breaches the statutory duties or the contract

- b. seek an order from the State Administrative Tribunal for damages against the strata manager if the breach of the statutory duties or breach of the contract causes the strata company to suffer a financial loss

Strata managers will also be required to submit information to Landgate about the number of schemes they manage and the amount of money they manage on behalf of strata companies.

## **2. Improving the management of the strata company**

Strata companies will be able to keep records in electronic format to allow owners to more easily inspect those records. By-laws cannot be oppressive, unreasonable, unfairly prejudicial to or discriminatory against one or more owners. Strata companies will have streamlined procedures for executing documents.

The standards of strata councils will be raised with statutory duties imposed on members of the council of a strata company. Council members will not be able to vote where they have a conflict of interest.

Council members will have a statutory duty:

- a. to act honestly, with loyalty and in good faith in the performance of their functions
- b. to exercise due care and diligence in the performance of their functions
- c. to ensure they do not make improper use of their position as a member to gain, directly or indirectly, an advantage for themselves or for any other person or to cause detriment to the strata company
- d. to inform the council in writing of any conflict of interest as soon as is practicable after they become aware of the conflict.

Council members who breach a statutory duty may be removed from the council, on application to the State Administrative Tribunal.

To encourage owners to volunteer for the council, a council member will not be liable in any civil proceedings for any act that they do in good faith when performing the role of a council member.

## **3. Giving owners more of a say in the running of their scheme**

Owners will have more of a say in how their scheme is managed by allowing voting to occur outside of a meeting, permitting electronic voting, and expressly allowing strata companies to keep records and send notices electronically. Restrictions will be imposed on the use of proxies. Owners will have a forum to review by-laws and resolutions that are unreasonable, oppressive or discriminatory.

## **4. Empowering owners to improve their scheme**

The owners, who make up the strata company, will be empowered to improve the common property within their scheme. It will be easier to obtain approval from the strata company for owners or the strata company to install sustainability infrastructure like solar panels onto common property.

## **5. Facilitate better ongoing maintenance of schemes**

Every strata company for larger schemes will need to prepare a 10 year maintenance plan and to have a reserve fund. The 10 year maintenance plan is aimed at assisting the strata company in deciding how much money it should set aside in their reserve fund.

**6. Make it easier for people in strata to enforce the by-laws**

Owners, occupiers and the strata company will be able to apply to the State Administrative Tribunal to enforce by-laws. The Tribunal may order a penalty be paid where:

- The strata company serves notice on the person and the person continues to breach the by-law
- A person commits a serious breach of the by-laws or
- A person breaches the by-law 3 times.

**7. Buyers will receive better information about the strata lot they are buying.**

Buyers will receive more information about the lot they are buying, including:

- Estimated contributions a buyer will have to pay in the 12 months after settlement
- The minutes from the most recent AGM
- A statement of accounts of the strata company
- Any debts owing against the lot to the strata company
- Whether the lot has the benefit of exclusive use by-laws
- Information about any termination proposal received by the strata company.

**8. Fast and efficient resolution of strata disputes**

The State Administrative Tribunal will become the one-stop-shop for strata disputes and will be given sufficient powers to resolve those disputes quickly, cheaply and effectively.

**Background**

The Tribunal's jurisdiction to resolve strata disputes is limited by the current Act. For example, the Tribunal cannot resolve disputes between a strata manager and a strata company. The Tribunal is also limited to making a monetary order in a strata dispute of no more than \$1000 under the current Act.

The result is that strata disputes are heard in four different forums – the Magistrate's Court, District Court, Supreme Court and the State Administrative Tribunal.

**Expanding the Tribunal's jurisdiction to resolve strata disputes**

The Tribunal will be given the jurisdiction to resolve strata disputes arising from the performance or failure to perform a function conferred or imposed on a person under the amending Act. Examples of the expansion of jurisdiction include that the Tribunal will be able to make orders to resolve disputes:

- a. between the strata manager and the strata company
- b. arising from the seller's obligation to provide a buyer information before and after the contract for the sale of a lot in a scheme
- c. about the validity of a resolution of the strata company and
- d. about the validity of a by-law.

**Increasing the Tribunal's powers to quickly and effectively resolve strata disputes**

The Tribunal's powers will be increased to resolve strata disputes quickly and effectively. Examples of the increased Tribunal powers include:

- a. The \$1000 limit on the Tribunal making monetary orders will be removed
- b. The Tribunal will be given the power to make a summary decision at a directions hearing

- c. People who have standing will be able to apply directly to the Tribunal to resolve a dispute without having to go through other more expensive dispute resolution processes
- d. The Tribunal will have the power to order the strata company to terminate or vary a contract for the provision of a service or amenity to the strata company or owners
- e. where a person (scheme developer or strata manager) has a duty under the amending Act to disclose to the strata company commission they have received and that duty is breached, the Tribunal can order that person to pay the commission to the strata company.

#### Enforcing Tribunal orders will be made easier

Enforcing a non-monetary order (an order to do or not do something) given by the Tribunal is difficult. It requires the Tribunal order and other documents to be filed with the Supreme Court. Enforcing monetary orders of the Tribunal is relatively straight forward and can be done by filing the Tribunal order with a Court.

The amending Bill will give the Tribunal the power to convert a non-monetary order to a monetary order. If a person is ordered by the Tribunal to do something and they do not comply, the Tribunal will be able to order that person to pay money to the other person equal to what it would cost to carry out the non-monetary order.

### **9. Providing for more flexibility in staged subdivision**

Staged subdivision of strata / survey-strata schemes will be made more flexible. If a scheme developer needs to vary a stage of subdivision, they will need to obtain:

- a. A unanimous resolution and
- b. the consents of all people with a designated interest (defined to include mortgagees, etc).

The people with a designated interest will have 60 days to object to the variation in the stage of subdivision and if they do not object after 60 days, they will be taken to have consented. If a person with a designated interest objects within 60 days, the scheme developer can apply to the Tribunal to review the objection. If the Tribunal finds the basis of the objection is unreasonable, the Tribunal can declare that the consent is taken to have been given.

This deemed consent process does not apply to owners (the requirement for a unanimous resolution).

### **10. Safeguards for the termination of schemes**

The first strata schemes in Western Australia were constructed over 50 years ago. Scheme buildings are ageing and many are costing owners large amounts in maintenance. Based on experience in other jurisdictions, termination and redevelopment of strata / survey-strata schemes will become increasingly common. To protect the assets held by all strata owners, the process of terminating a strata scheme will be revised.

#### **10.1 Current law**

Under the current Act there are three ways a strata scheme can be terminated:

- 1. all owners vote to terminate (a unanimous resolution)
- 2. one owner or one mortgagee can apply to the District Court for an order to terminate a scheme (under section 31 of the Act)
- 3. one owner can apply to the District Court for an order (under section 51 of the Act) deeming that a resolution to terminate is unanimous, provided that:
  - a. a special resolution was reached and

- b. the person applying was part of the majority who voted to terminate.

The current Act does not provide adequate safeguards for owners in relation to the termination of a scheme as:

- there is no requirement for a detailed proposal be prepared or even given to other owners before launching the District Court action
- there is no requirement for a vote before applying to the District Court
- there is no additional assistance or safeguards for vulnerable owners to help them in responding to the District Court action and
- the Act provides no guidance to the District Court on how it should assess a termination application.

## **10.2 Termination of schemes overview**

The majority termination process will:

- introduce safeguards for owners
- establish a termination process that is transparent, reasonable and requires a vote, and
- require a full procedural and fairness review by the State Administrative Tribunal to consider all owners' views.

The majority termination process is more than just a vote. There is a complete, transparent process that must be followed.

If the vote produces the required majority, but is not unanimous, the termination proposal must undergo a fairness and procedure review by the Tribunal. A majority termination proposal cannot proceed without an order from the Tribunal.

The Tribunal can only order that a scheme be terminated under a majority vote only if it is satisfied of three key things:

1. the termination process was properly followed, and
2. every owner who objects to the termination will receive at least fair market value for their lot and
3. the proposal to terminate is just and equitable.

The amending Bill provides extensive guidance to assist the Tribunal in deciding whether the proposal is just and equitable. Vulnerable owners will also have access to funding for assistance to respond to the termination proposal.

## **10.3. Detailed process for termination**

Below is a summary of the steps involved in the termination process.

### Step 1. Prepare outline termination proposal

A proponent (who must be an owner or a person who has an option to buy a lot within the scheme) may prepare an outline of the termination proposal with the information listed in section 175 of the Bill.

### Step 2. Serve strata company and distribution to owners and mortgagees

The outline proposal can then be submitted to the strata company which serves it on all owners and mortgagees within 14 days. The strata company must lodge a notification with the Registrar of Titles so that the Registrar can record that a termination proposal is current for the scheme (this is to ensure people who search the scheme documents can see if the strata company has been given a termination proposal).

### Step 3. Vote on outline proposal

All owners and mortgagees have three months to consider the outline proposal, within which time the strata company will hold a general meeting.

- a. If an ordinary resolution (a simple majority vote) is passed in favour of the outline proposal, the proponent can proceed to the next step.
- b. If the strata company does not pass an ordinary resolution in favour of the outline proposal, the termination proposal comes to an end and the Registrar is notified.

### Safeguard to protect strata companies from receiving too many proposals

A termination proposal cannot be submitted to a strata company:

- a. during a period where the strata company has passed an ordinary resolution in favour of an outline proposal and that proposal has not come to an end;
- b. during a period where the strata company has, by ordinary resolution, prohibited termination proposals from being submitted to it; or
- c. during a period for which the Tribunal has (on the application of the strata company) ordered that proposals are not to be submitted to the strata company.

### Step 4. Obtain planning approval

Planning approval is required because when a scheme terminates, all the lots and common property become a single lot. This is regarded as a form of subdivision which requires approval from the Western Australian Planning Commission (WAPC).

If the subdivision gets WAPC approval, the proponent may prepare a full termination proposal. If the WAPC does not approve the subdivision the termination proposal comes to an end.

### Step 5. Prepare full proposal

The proponent prepares a full termination proposal which must contain detailed information (see section 179 of the Bill).

### Step 6. Distribute the detailed proposal to all parties

The strata company must serve the detailed proposal on every owner, registered mortgagee of a lot in the scheme and occupier of a lot in the scheme.

### Step 7. Vote on the full proposal

A vote in favour of the full termination proposal is only effective if it is taken between two and six months after the full termination proposal was served.

Unanimous vote: If the vote to terminate is unanimous there is no need for a Tribunal review. The process for a unanimous termination continues at step 9 below.

### Termination resolution

If the vote is not unanimous but the required percentage of owners vote in favour (referred to as a termination resolution), the proponent can apply to the Tribunal to undertake a fairness and procedure review (step 8).

The vote required to achieve a termination resolution for a full termination proposal before a Tribunal review is:

- for schemes of four or more lots: 75 per cent of lot owners must vote in favour
- for three-lot schemes: owners of at least two lots must vote in favour.
- for two-lot schemes: one lot owner must vote in favour.

Leasehold schemes:

Termination of a leasehold scheme will require a termination resolution and the consent from the owner of the leasehold scheme before it can proceed to the next step.

If the required termination resolution is not attained, the termination proposal comes to an end.

#### Step 8. Apply for a Tribunal review

If the full proposal attains the termination resolution (but not 100 per cent) the proponent must apply to the Tribunal for a fairness and procedure review to confirm the termination resolution, if they wish to proceed further.

#### Tribunal safeguard

A termination proposal can only proceed further if the Tribunal confirms the termination resolution.

The Tribunal cannot give an order confirming the termination resolution unless the Tribunal is satisfied of three key things:

1. the termination process was properly followed and
2. every owner will receive fair market value for their lot or a like for like exchange for the lot and
3. the proposal to terminate is otherwise just and equitable.

If the Tribunal is not satisfied of all three points the Tribunal must order that the termination proposal comes to an end.

#### What the Tribunal must consider

In reviewing the termination proposal the Tribunal must consider:

- the interests of owners of lots in the scheme
- the interests of occupiers of lots in the scheme
- the interests of registered mortgagees and any other person with a registered estate, interest or right over a lot or the common property in the scheme
- evidence of any impropriety in the termination process including evidence of proxy votes being exercised improperly and evidence of false or misleading information in the outline or full termination proposal
- the proportion of owner support for the termination by number of lots and unit entitlement
- the termination infrastructure report and options readily available to address problems identified in the report
- the benefits and detriments of the termination proposal proceeding or not proceeding for owners, occupiers, registered mortgagees and all people with a registered estate, interest or right over a lot or the common property.

#### Fair Market Value and Compensation safeguards: the owner must not be any worse off

In deciding whether each owner who objects will receive fair market value for the lot or a like for like exchange for the lot, the Tribunal must be satisfied that:

- a. the owner will receive an amount that is at least the amount of compensation that would be required to be paid by an acquiring authority under the *Land Administration Act 1997* for taking of the lot without agreement and
- b. the owner will not be disadvantaged in terms of the owner's financial position as a result of the termination of the strata titles scheme.

In considering the amount of compensation that would be payable under the *Land Administration Act 1997* section 241, the Tribunal may also award an additional amount

appropriate to compensate for the taking without agreement (but it may not be more than 10% of the amount otherwise awarded or offered unless the Tribunal is satisfied that exceptional circumstances justify a higher amount).

Without limitation, the Tribunal must consider the loss or damage, if any, sustained by the owner by reason of any of the following:

- i. removal expenses;
- ii. disruption and reinstatement of a business;
- iii. liability for capital gains tax, goods and services tax or other tax or duty;
- iv. conveyancing and legal costs and other costs associated with the creation or discharge of mortgages and other interests, including for the acquisition of a replacement property.

#### Like-for-like

If the objecting owner is being offered a like-for-like replacement lot, the Tribunal must consider:

- whether the value of the replacement lot is equivalent to the fair market value of the current lot and
- how the location, facilities and amenity of the replacement lot compares with the current lot.

#### Orders the Tribunal can make

The Tribunal will have the power to make orders when reviewing a termination proposal which include:

- confirming the termination resolution
- that the scheme should not be terminated
- orders that are required to give effect to the termination proposal, such as to complete a transfer of a lot or vacate a lot.
- If the termination proposal sets out that after termination, the land will be collectively sold to a developer, the Tribunal can order that every lot owner transfer their lot on the terms set out in the termination proposal (the owner will still receive the required fair market value compensation, or, if they took up the offer, a like-for-like replacement lot)
- ordering the discharge of a mortgage on such terms as the Tribunal sees fit.

The Tribunal can also modify the termination proposal to:

- ensure each objecting owner receives fair market value, and
- ensure that lessees will be properly compensated by the proponent, if the termination goes ahead.

#### Step 9. Request WAPC endorse the plan of survey

If the Tribunal orders that the majority termination can proceed, (or the termination proposal was supported by a unanimous resolution) the proponent then needs to request the WAPC endorse the plan of survey required to register the termination. If the plan of survey is not endorsed, the termination proposal comes to an end.

#### Step 10. Apply to the Registrar to register the termination

The termination of the scheme will take effect on registration of the termination with Landgate.

#### Vulnerable owners will be given additional protection (section 190)

The person seeking to terminate a strata scheme must provide funding to vulnerable owners to respond to the proposal. Vulnerable owners can then use that funding to:

- pay for legal advice on the termination proposal.
- pay for expert reports including obtaining a valuation report for their lot.
- pay for expert advice on the taxation and financial implications of the termination.

The Regulations will:

- define who is a vulnerable owner
- specify what amount needs to be set aside for each vulnerable owner and
- specify what the vulnerable owner can use that money for.

#### Expenses associated with a proposed termination (section 189)

The proponent will have to cover the expenses of many activities linked with a termination, including preparing the outline and full termination proposal, making the subdivision applications and paying for the infrastructure and valuation reports. If the strata company needs to do things during the termination process (such as serve notices on the owners or registered mortgagees) the strata company can require the proponent to pay certain expenses arising from a termination, such as serving notices on owners.

### **B. A new form of land ownership – Leasehold strata titles schemes**

The Bill will also introduce a new form of tenure or land ownership to Western Australia: leasehold schemes. A leasehold scheme is essentially a strata / survey-strata scheme created for a fixed period.

A leasehold scheme operates under the same governance framework as a freehold strata / survey-strata scheme with some variations set out below

A leasehold scheme expires on the expiry day for the scheme. Each lot in a leasehold scheme is subject to a registered strata lease. Each strata lease expires on the expiry day of the leasehold scheme.

The owner of the land on which a leasehold scheme is created (by registration of the scheme) is referred to as the owner of the leasehold scheme.

A lot in a leasehold scheme may be bought, sold and mortgaged just like a lot in a freehold scheme.

The owner of a lot in a leasehold scheme is the lessee under a strata lease. The owner of the leasehold scheme is the lessor under a strata lease.

A certificate of title is created and registered for each lot in a leasehold scheme. The owner of a lot in the leasehold scheme (the lessee under the strata lease for that lot) is registered on the certificate of title for that lot as the proprietor of the strata leasehold estate in the lot (which is a leasehold estate that expires on the expiry day for the scheme).

The owner of a lot in a leasehold scheme can deal with or dispose of their lot in a leasehold scheme without the consent of the owner of the leasehold scheme.

Leasehold schemes are particularly useful:

- a. For providing affordable housing and
- b. For the development of freehold land on strategic sites that the government wishes to retain control over in the long term

For example, where freehold land in a train station precinct is owned by a government agency, that land could be subdivided by the government agency into a leasehold scheme and the lots could be sold to raise revenue for the government.

On the expiry of that leasehold scheme, the land and buildings would then revert back to the government agency, ensuring the State retains ownership and control in that strategic site over the long term.

### **C. Making the Act easier to understand by modernising the language**

Many of the changes in the Strata Titles Amendment Bill 2018 do not change the underlying concepts and will result in the Act being much easier to understand.

These can be summarised as follows:

- Modernised language makes the Act easier to understand and use, without changing the concepts. For example, the Act refers to ‘proprietors’, whereas the amending Act refers to ‘owners’. Language has been changed to be gender-neutral. Old fashioned terms have been replaced by modern equivalents, such as must instead of shall, or immediately instead of forthwith.
- Some definitions have been changed to better express the concepts without changing their intended meaning.
- The sections have been amended for greater clarity. Introduced in 1985, the written style of the current Act was a product of its day. It frequently explained concepts in an excessively complex and convoluted way. Many of the changes in the amending Bill retain the same concepts but explain them much more clearly.

### **D. Relocating provisions of the Act so that it easier to navigate**

The Bill will substantially reorder sections of the current Act for greater clarity. The current Act was amended over time so that related topics were scattered throughout, or unrelated topics were grouped together. This had the effect of making the current Act confusing to navigate. The amending Bill has substantially reordered the Act, so that large general principles are dealt with early, and similar concepts are addressed together.

The relocation of provisions is intended to restructure the heavily amended current Act so that it is easier to find material. The restructured amending Act is also intended to align more closely with the structure of the companion legislation (the *Community Titles Bill 2018*) that is to be introduced at the same time as the Bill.

Where changes of the above type have been made, the reason given for the change will be “Amended for greater clarity”. If changes have amended the substance of the Bill, further explanation will be given.

### **Notes on how the amending Bill operates**

The amendments to the current Act in the Bill are extensive and complex. This Bill involves a 2-stage approach to amending the current Act. The first stage of amendments in Part 2 Division 2 makes specific amendments to provisions of the current Act.

The second stage of amendments is as follows:

In Part 2 Division 3, clause 82 deletes almost all headings and provisions from the current Act. Clause 83 then inserts sections 4 and 5 and Parts 2 to 14 into the current Act.

The new Parts have gaps. These are to be filled by the relocation of provisions by Division 4.

Sections amended in Part 2 Division 2, and other sections of the current Act that are not amended there, are redesignated or renumbered and relocated by Part 2 Divisions 4 and 6. See clauses 84 and 116.

Division 5 amends the schedules of the current Act.

Schedules 1 and 2 are amended and Schedule 2A is replaced, and with large gaps. These gaps are then to be filled through renumbering and relocation of provisions by Division 6.

Schedules 3 and 4 are retained.

A reference to the amending Act in the clause notes below is a reference to the *Strata Titles Act 1985* as amended by this Bill.

## CLAUSE NOTES

| Bill<br>Clause | ST Act<br>Section | Amendment details   |
|----------------|-------------------|---|
|                |                   | <b>Part 1 — Preliminary</b>   |
|                |                   | This Part contains the title of the amending Act, the commencement provision and provides that notes and examples are not part of the Act.  |
| 1              | -                 | <b>Short title</b><br>This clause provides that when enacted, the Bill will be known as the <i>Strata Titles Amendment Act 2018</i> . (The Act)   |
| 2              | -                 | <b>Commencement</b><br>This clause makes provision for commencement of the Act. Clause 2 (a) provides that sections 1 and 2 of the Act are to come into operation on the day on which the Act receives the Royal Assent.<br>Clause 2 (b) provides that the rest of the Act is to come into operation on a day fixed by proclamation and that different days may be fixed for different provisions.  |
| 3              | -                 | <b>Notes not part of Act</b><br>This clause provides that notes are not part of the Act.  |
|                | -                 | <b>Part 2 – Strata Titles Act 1985 amended</b><br>Part 2 Division 2 makes specific amendments to provisions of the current Act. In Part 2 Division 3, clause 82 deletes almost all headings and provisions from the current Act. Clause 83 then inserts sections 4 and 5 and Parts 2 to 14 into the current Act. The new Parts have gaps. These are to be filled by the relocation of provisions by Division 4. Sections amended in Part 2 Division 2, and other sections of the current Act that are not amended there, are redesignated or renumbered and relocated by Part 2 Divisions 4 and 6. See clauses 84 and 116. Division 5 amends the schedules of the current Act. Some schedules are amended and some are replaced. Schedule 2A is replaced, and with large gaps. These gaps are then to be filled through renumbering and relocation of provisions by Division 6. |
| 4              | -                 | <b>Act amended</b><br>This clause provides that Part 2 will amend the long title of the current Act, and Parts I to VIII. The explanatory note provides detail about how sections will be redesignated, renumbered and relocated by Divisions 4 and 6.  |
| 5              | -                 | <b>Long title replaced</b><br>The long title is amended for greater clarity.  |
| 6              | -                 | <b>Part 1 heading replaced</b><br>Modernises the heading Part I – main headings throughout are no longer Roman Numerals.  |

| Bill Clause | ST Act Section | Amendment details  |
|-------------|----------------|--|
| <b>7</b>    | <b>3</b>       | <p><b>Section 3 amended</b></p> <p>Clause 7(1) deletes a number of definitions that are the current Act. This is to make way for the new definitions in clause 7(2).</p> <p>Clause 7(2) Inserts definitions into section 3, some of which are new definitions which explain new concepts contained in the amending Act and others of which are current terms amended for clarity.</p> <p>Clause 7 subclauses (3) – (11) amend existing definitions for greater clarity. Clause 7(12) explains the how an amendment of a strata titles scheme affects the common property or a lot in the scheme.</p> |
| <b>8</b>    | <b>3A</b>      | <p><b>Section 3A amended</b></p> <p>This clause amends section 3A of the current Act for greater clarity.</p>  |
| <b>9</b>    | <b>3AB</b>     | <p><b>Section 3AB amended</b></p> <p>This clause amends section 3AB of the current Act for greater clarity.</p>  |
| <b>10</b>   | <b>7</b>       | <p><b>Section 7 amended</b></p> <p>This clause amends section 7 of the current Act for greater clarity.</p>  |
| <b>11</b>   | <b>7B</b>      | <p><b>Section 7B amended</b></p> <p>This clause amends section 7B of the current Act for greater clarity.</p>  |
| <b>12</b>   | <b>12A</b>     | <p><b>Section 12A amended</b></p> <p>This clause amends section 12A of the current Act for greater clarity.</p>  |
| <b>13</b>   | <b>21A</b>     | <p><b>Section 21A amended</b></p> <p>This clause amends section 21A of the current Act for greater clarity.</p>  |
| <b>14</b>   | <b>21C</b>     | <p><b>Section 21C amended</b></p> <p>This clause amends section 21C of the current Act for greater clarity.</p>  |
| <b>15</b>   | <b>21D</b>     | <p><b>Section 21D amended</b></p> <p>This clause amends section 21D of the current Act for greater clarity.</p>  |
| <b>16</b>   | <b>21F</b>     | <p><b>Section 21F amended</b></p> <p>This clause amends section 21F of the current Act for greater clarity.</p>  |
| <b>17</b>   | <b>21G</b>     | <p><b>Section 21G amended</b></p> <p>This clause amends section 21G of the current Act for greater clarity.</p>  |
| <b>18</b>   | <b>21I</b>     | <p><b>Section 21I amended</b></p> <p>This clause amends section 21I of the current Act for greater clarity.</p>  |
| <b>19</b>   | <b>21J</b>     | <p><b>Section 21J amended</b></p> <p>This clause amends section 21J of the current Act for greater clarity.</p>  |
| <b>20</b>   | <b>21Q</b>     | <p><b>Section 21Q amended</b></p> <p>This clause amends section 21Q of the current Act for greater clarity.</p>  |
| <b>21</b>   |                | <p><b>Section 21R amended</b></p>  |

| Bill Clause | ST Act Section | Amendment details   |
|-------------|----------------|---|
|             |                | This clause amends section 21R of the current Act for greater clarity.  |
| 22          | 21S            | <b>Section 21S amended</b><br>This clause amends section 21S of the current Act for greater clarity.  |
| 23          | 21T            | <b>Section 21T amended</b><br>This clause amends section 21T of the current Act for greater clarity.  |
| 24          | 21U            | <b>Section 21U amended</b><br>This clause amends section 21U of the current Act for greater clarity.  |
| 25          | 21V            | <b>Section 21V amended</b><br>This clause amends section 21V of the current Act for greater clarity.  |
| 26          | 21W            | <b>Section 21W amended</b><br>This clause amends section 21W of the current Act for greater clarity.  |
| 27          | 21Y            | <b>Section 21Y amended</b><br>This clause amends section 21Y of the current Act for greater clarity.  |
| 28          | 21Z            | <b>Section 21Z amended</b><br>This clause amends section 21Z of the current Act for greater clarity.  |
| 29          | 24             | <b>Section 24 amended</b><br>This clause amends section 24 of the current Act for greater clarity.  |
| 30          | 26             | <b>Review of local government decision</b><br>This clause is amends section 26 of the current Act for greater clarity to provide that the decision of a local government for planning approval relating to a strata titles scheme is subject to the review of the State Administrative Tribunal (Tribunal) under Part 14 of the <i>Planning and Development Act 2005</i> .  |
| 31          | 28             | <b>Variation of strata scheme on damage or destruction of building</b><br>This clause amends section 28 of the current Act, which relates to when a strata scheme is varied because the building has been damaged or destroyed. In the current Act, it was the District Court that could make a variety of orders to vary the scheme. The amending Act retains these powers, transfers the jurisdiction to the Tribunal and extends the provision to leasehold schemes. |
| 32          | 29             | <b>Variation of strata scheme on taking</b><br>This clause amends section 29 of the current Act for clarity and to transfer the jurisdiction from the District Court to the Stata Administrative Tribunal..   |
| 33          | 29A            | <b>Variation of survey- strata scheme on taking</b><br>This clause amends section 29A of the current Act for clarity and to transfer the jurisdiction from the District Court to the Stata Administrative Tribunal.   |
| 34          | 29B            | <b>Acquiring authority to lodge redefining plan after partial taking</b><br>This clause amends Section 29B of the current Act for clarity, in relation to   |

| Bill<br>Clause | ST Act<br>Section | Amendment details   |
|----------------|-------------------|---|
|                |                   | the need for an acquiring authority to lodge a redefining plan with the Registrar after partial taking in a strata scheme.  |
| 35             | 29C               | <b>Termination on compulsory acquisition</b><br>This clause amends Section 29C of the current Act for clarity.  |
| 36             | 31B               | <b>Saving</b><br>This clause amends section 31B of the current Act for clarity.   |
| 37             | 31C               | <b>Resolution by strata company</b><br>This clause amends section 31C of the current Act for clarity.   |
| 38             | 31D               | <b>Notice of resolution may be lodged for registration</b><br>This clause amends section 31D of the current Act for clarity.  |
| 39-45          | 31E -<br>31K      | <b>Multiple section headings</b><br>These clauses amend sections 31E, 31F, 31G, 31H, 31I, 31J and 31K of the current Act for clarity.   |
| 46             | 34                | <b>Contract formalities</b><br>This clause amends section 34 of the current Act for clarity.  |
| 47             | 35                | <b>General Duty</b><br>This clause amends section 35 of the current Act for clarity.<br>Clause 47(2) provides that a strata company may improve or alter the common property. This power to improve common property or alter common property will be:<br>a. subject to the expenditure controls of the strata company; and<br>b where the expenditure exceeds an amount provided in the regulations, a special resolution of the strata company will be required to approve the alteration or improvement of the common property. |
| 48             | 35A               | <b>Roll to be kept by strata company</b><br>This clause amends section 35A of the current Act to:<br>a. provide greater clarity<br>b. increase the penalty from \$400 to \$3000, which is consistent with penalties for equivalent offences in other legislation and<br>c. require additional items be included on the Roll:<br>• the name of the strata company<br>• the name and address for service of each strata manager of the strata company – this is mainly to reflect the new term “strata manager”.                    |
| 49             | 36                | <b>Administrative and reserve funds and contributions</b><br>This clause amends section 36 of the current Act to:<br>a. provide greater clarity<br>b. require a designated strata company to have a reserve fund  |

| Bill<br>Clause | ST Act<br>Section | Amendment details   |
|----------------|-------------------|---|
|                |                   | <p>c. require a designated strata company to prepare a 10 year plan that sets out:</p> <ol style="list-style-type: none"> <li>i. the common property and personal property of the strata company that is likely to require maintenance, repair, renewal or replacement (that is not of a routine nature) in the period covered by the plan; and</li> <li>ii. the estimated costs for the maintenance, repairs, renewal or replacement listed in the report.</li> </ol> <p>The 10 year plan is aimed at assisting the strata company in deciding how much money it should set aside in their reserve fund.</p> <p>A designated strata company is:</p> <ol style="list-style-type: none"> <li>a. a strata company with 10 or more lots or</li> <li>b. a strata company of a class listed in the regulations. The regulations will specify that a strata company with less than 10 lots but with a building replacement value over a certain amount is a designated strata company.</li> </ol> |
| 50             | 37                | <p><b>Section 37 amended</b></p> <p>This clause amends section 37 of the current Act to:</p> <ol style="list-style-type: none"> <li>a. provide greater clarity and</li> <li>b. confirm that a strata company does have these powers: <ul style="list-style-type: none"> <li>• to grant a lease, licence or other rights over common property for the purpose of utility infrastructure or sustainability infrastructure;</li> <li>• for the purpose of performing any of its functions, develop and turn to account any technology, software, or intellectual property that relates to the function and, for that purpose, apply for, hold, exploit, and dispose of any patent, patent rights, copyright, or similar rights;</li> <li>• arrange for the auditing of any accounting records.</li> </ul> </li> </ol>  |
| 51             | 38                | <p><b>Power of strata company to carry out work</b></p> <p>This clause amends section 38 of the current Act for clarity.</p>  |
| 52             | 39A               | <p><b>Power to terminate certain contracts for amenities or services</b></p> <p>This clause amends section 39A to extend the operation of section 39A to include contracts for the provision of amenities to the strata company or owners.</p> <p>The clause also deletes reference to a proprietor applying to the Tribunal for an order that a contract for provision of a service to the strata company or owners is unfair to 25% percent or more of the owners because the Tribunal has been given the very broad power to order a strata company terminate or vary a contract for the provision of services or amenities to the strata company or owners (see section 200(2)(l)).</p>   |
| 53             | 44                | <p><b>Functions and constitution of councils</b></p> <p>This clause amends section 44 of the current Act for clarity to provide for the functions and constitution of the council of a strata company.</p>  |

| Bill Clause | ST Act Section | Amendment details   |
|-------------|----------------|---|
| <b>54</b>   | <b>45</b>      | <b>Corporate body may be officer or council member</b><br>Section 45 of the current Act is amended for greater clarity.   |
| <b>55</b>   | <b>53A</b>     | <b>References in this Part</b><br>This clause amends section 53A of the current Act for clarity.<br>Section 53A (as amended) is redesignated as clause 53A and relocated to Schedule 2A.  |
| <b>56</b>   | <b>53B</b>     | <b>Insurance for lots in single tier strata schemes</b><br>This clause amends section 53B of the current Act for clarity.<br>Section 53B (as amended) is redesignated as clause 53B and relocated to Schedule 2A.   |
| <b>57</b>   | <b>53C</b>     | <b>Insurance for common property in single tier strata schemes</b><br>This clause amends section 53C of the current Act for clarity.<br>Section 53C (as amended) is redesignated as clause 53C and relocated to Schedule 2A.  |
| <b>58</b>   | <b>53D</b>     | <b>Strata company's obligations where it has an insurance function in single tier strata schemes</b><br>This clause amends section 53D of the current Act:<br><ul style="list-style-type: none"> <li>a. for clarity</li> <li>b. to increase the minimum public liability insurance from \$5 million to \$10 million</li> <li>c. to increase the penalty for non-compliance for this clause from \$400, to \$3 000, for consistency with penalties in equivalent legislation</li> <li>d. to provide that it is a defence against a claim of non-compliance with this requirement to insure if the strata company cannot get an insurer to provide this insurance coverage on reasonable terms.</li> </ul> Section 53D (as amended) is redesignated as clause 53D and relocated to Schedule 2A. |
| <b>59</b>   | <b>53E</b>     | <b>Recovery of premium by strata company or owner if no administrative fund in single tier strata schemes</b><br>This clause amends section 53E of the current Act for clarity.<br>Section 53E (as amended) is redesignated as clause 53E and relocated to Schedule 2A.   |
| <b>60</b>   | <b>57</b>      | <b>Insurance for lot</b><br>This clause amends section 57 of the current Act for clarity.   |
| <b>61</b>   | <b>60</b>      | <b>Section 60 amended</b><br>This clause amends section 60 of the current Act for greater clarity.  |
| <b>62</b>   | <b>61</b>      | <b>Section 61 amended</b><br>This clause amends section 61 of the current Act for greater clarity.  |

| Bill Clause | ST Act Section | Amendment details  |
|-------------|----------------|--|
| <b>63</b>   | <b>62</b>      | <b>Section 62 amended</b><br>This clause amends section 62 of the current Act for greater clarity.     |
| <b>64</b>   | <b>62A</b>     | <b>Section 62A amended</b><br>This clause amends section 62A of the current Act for greater clarity.   |
| <b>65</b>   | <b>63</b>      | <b>Section 63 amended</b><br>This clause amends section 63 of the current Act for greater clarity.     |
| <b>66</b>   | <b>64</b>      | <b>Section 64 amended</b><br>This clause amends section 64 of the current Act for greater clarity.     |
| <b>67</b>   | <b>65</b>      | <b>Section 65 amended</b><br>This clause amends section 65 of the current Act for greater clarity.     |
| <b>68</b>   | <b>65A</b>     | <b>Section 65A amended</b><br>This clause amends section 65A of the current Act for greater clarity.   |
| <b>69</b>   | <b>66</b>      | <b>Section 66 amended</b><br>This clause amends section 66 of the current Act for greater clarity.     |
| <b>70</b>   | <b>67</b>      | <b>Section 67 amended</b><br>This clause amends section 67 of the current Act for greater clarity.     |
| <b>71</b>   | <b>122</b>     | <b>Section 122 amended</b><br>This clause amends section 122 of the current Act for greater clarity.   |
| <b>72</b>   | <b>122A</b>    | <b>Section 122A amended</b><br>This clause amends section 122A of the current Act for greater clarity. |
| <b>73</b>   | <b>123</b>     | <b>Section 123 amended</b><br>This clause amends section 123 of the current Act for greater clarity.   |
| <b>74</b>   | <b>123B</b>    | <b>Section 123B amended</b><br>This clause amends section 123B of the current Act for greater clarity. |
| <b>75</b>   | <b>124</b>     | <b>Section 124 amended</b><br>Clause 75 amends section 124 of the current Act for greater clarity.     |
| <b>76</b>   | <b>126</b>     | <b>Section 126 amended</b><br>This clause amends section 126 of the current Act for greater clarity.   |
| <b>77</b>   | <b>129B</b>    | <b>Section 129B amended</b><br>This clause amends section 129B of the current Act for greater clarity. |
| <b>78</b>   | <b>129C</b>    | <b>Section 129C amended</b><br>This clause amends section 129C of the current Act for greater clarity. |

| Bill Clause   | ST Act Section | Amendment details   |
|---------------|----------------|---|
| <b>79</b>     | <b>130</b>     | <p><b>Regulations</b></p> <p>Clause 79 amends section 130 of the current Act:</p> <p>a. for greater clarity</p> <p>b. to provide that the regulations may require a review by the Tribunal of a decision made under the regulations</p> <p>c. to provide that the regulations may impose additional requirements relating to the first annual general meeting of the strata company</p> <p>d. to provide that the fees fixed by the regulations for an application lodged with the Registrar of Titles may include a separate fee for lodgement of a scheme document or an amendment of a scheme document and that the separate fee is payable when the document or amendment of the document is lodged (including in anticipation of the application).</p> <p>e. To increase the maximum penalty for contravention of the regulations from \$400 to \$3 000 for consistency with equivalent provisions in other related legislation</p> <p>f. to provide that the regulations may address transitional matters that may arise after changes have been made to the current Act by the amending act.</p> |
| <b>80</b>     | <b>131A</b>    | <p><b>Section 131A amended</b></p> <p>This clause amends section 131A of the current Act for greater clarity.</p>   |
| <b>81</b>     | <b>131B</b>    | <p><b>Section 131B amended</b></p> <p>This clause amends section 131B of the current Act for greater clarity.</p>   |
| <b>Div. 3</b> |                | <b>Deletion and insertion of provisions in body of Act</b>  |
| <b>82</b>     | -              | <p><b>Deletion of headings and provisions</b></p> <p>Clause 82 deletes almost all headings in the current Act. Clause 82 deletes some provisions from the current Act. Clause 82 re-orders provisions in the current Act, with key concepts addressed early in the amending Act and related topics grouped together.</p>  |
| <b>83</b>     | -              | <p><b>Insertion of sections 4 and 5 and Parts 2 to 14</b></p> <p>Clause 83 inserts sections 4 and 5 and Parts 2 to 14 into the current Act. The new Parts have gaps. These are to be filled by the relocation of provisions by Division 4. Sections amended in Part 2 Division 2, and other sections of the current Act that are not amended there, are redesignated or renumbered and relocated by Part 2 Divisions 4 and 6. See clauses 84 and 116</p> <p>Explanations for each section inserted by clause 83 are outlined below.</p>   |
| <b>83</b>     | <b>4</b>       | <p><b>Notes and examples not part of Act</b></p> <p>This clause declares that a note or example at the end of a clause is to assist understanding and does not form part of the Act.</p>  |

| Bill<br>Clause | ST Act<br>Section | Amendment details   |
|----------------|-------------------|---|
| 83             | 5                 | <p><b>Act binds Crown</b></p> <p>This clause provides that the Act is binding on the Crown.</p>   |
| 83             | 6                 | <p><b>Part 2 — Strata titles schemes</b></p> <p><b>Legislative framework</b></p> <p>This clause sets out the legislative framework for the Act.</p> <p>The Act provides for a form of subdivision of land referred to as subdivision by a strata titles scheme.</p> <p>Strata titles schemes will be registered and incorporated in the Register kept under the <i>Transfer of Land Act 1893</i>.</p> <p>The Act should be read in conjunction with the <i>Planning and Development Act 2005</i> and the <i>Transfer of Land Act 1893</i> to understand the planning and registration framework for strata titles.</p>  |
| 83             | 7                 | <p><b>Strata titles schemes</b></p> <p>This clause sets out the requirements and restrictions on the land which may be the subject of subdivision by a strata titles scheme.</p> <p>Note: A strata titles scheme is the term used to refer to a strata scheme or a survey-strata scheme.</p>  |
| 83             | 8                 | <p><b>Freehold schemes and leasehold schemes</b></p> <p>This clause provides that there are freehold and leasehold schemes.</p> <p>Clause 8(3) provides that for a leasehold scheme:</p> <ol style="list-style-type: none"> <li>a. each lot in a leasehold scheme is subject to a strata lease</li> <li>b. the leasehold scheme and the strata lease for each lot in a leasehold scheme expire on the expiry day for the scheme</li> <li>c. the expiry day must be at least 20 years (or some other period specified in the regulations) and not more than 99 years after registration of the scheme</li> <li>d. the leasehold by-laws may provide for the postponement of the expiry day</li> <li>e. the owner of the leasehold scheme is the lessor on each strata lease and the owner of a lot is the lessee of the strata lease for that lot</li> <li>f. that there is a separate certificate of title for the parcel</li> <li>g. that the registered proprietor of the parcel (also known as the owner of the leasehold scheme) is entitled to reversion in the land on the expiry of the scheme / strata leases. This means that on expiry of the scheme, the owner of the scheme becomes the owner of the land in fee simple.</li> </ol> |
| 83             | 9                 | <p><b>Lots — strata schemes and survey-strata schemes</b></p> <p>This clause provides:</p> <ol style="list-style-type: none"> <li>a. clarity on the difference between strata schemes and survey-strata schemes as a result of the different ways lot boundaries are defined in</li> </ol>  |

| Bill<br>Clause | ST Act<br>Section | Amendment details  |
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|                |                   | <p>these two types of schemes</p> <p>b. that where a wall, floor, ceiling or other structural element that is used to define the boundaries of a lot in a strata scheme is removed, the boundaries of the lot remain as defined on the scheme plan. This clause was inserted to overcome the problem where a structural element has been removed, as was highlighted in the case <i>Tipene v Owners of Strata Plan 9485</i> [2015] WASC 30.</p>  |
| 83             | 10                | <p><b>Common property</b></p> <p>This clause clarifies what is common property in a strata titles scheme.</p>  |
| 83             | 11                | <p><b>Subdivision of land by strata titles scheme</b></p> <p>This clause clarifies how land is subdivided by a strata titles scheme by:</p> <p>a. registration of the scheme or</p> <p>b. registration of an amendment of the scheme</p> <p>This clause also clarifies what are the 4 types of amendment of a scheme that are a form of subdivision</p>  |
| 83             | 12                | <p><b>Registration of strata titles scheme</b></p> <p>This clause clarifies that:</p> <p>a. a freehold strata titles scheme is registered when the scheme notice, scheme plan, schedule of unit entitlements and scheme by-laws are registered</p> <p>b. a leasehold scheme is registered when the scheme notice, scheme plan, schedule of unit entitlements, scheme by-laws and a strata lease for each lot are registered</p> <p>c. a registered strata titles scheme is amended when amendments of the relevant scheme documents are registered or recorded in the Register.</p>  |
| 83             | 13                | <p><b>Strata titles</b></p> <p>This clause:</p> <p>a. introduces the concept that the title to land comprised in a lot is a <i>strata title</i>.</p> <p>b. provides that there must be one certificate of title created and registered for every lot in a strata titles scheme</p> <p>c. provides that the strata title for a lot in a freehold scheme confers on the owner:</p> <ol style="list-style-type: none"> <li>i. rights as the proprietor of a fee simple estate in the lot under the <i>Transfer of Land Act 1893</i>;</li> <li>ii. an undivided share in of the fee simple estate in the common property as a tenant in common with the other owners in proportion to their unit entitlement</li> <li>iii. an undivided share in the temporary common property</li> </ol> <p>d. provides that the strata title for a lot in a leasehold scheme confers on the owner of lots:</p> <ol style="list-style-type: none"> <li>i. rights as the proprietor of a strata leasehold estate in the lot under the <i>Transfer of Land Act 1893</i>;</li> </ol> |

| Bill<br>Clause | ST Act<br>Section | Amendment details   |
|----------------|-------------------|---|
|                |                   | <ul style="list-style-type: none"> <li>ii. an undivided share in of the strata leasehold estate in the common property as a tenant in common with the other owners in proportion to their unit entitlement</li> <li>iii. an undivided share in the temporary common property.</li> </ul>  |
| <b>83</b>      | <b>14</b>         | <p data-bbox="427 416 671 454"><b>Strata Company</b></p> <p data-bbox="427 461 1477 600">This clause provides for the establishment of a strata company on registration of a strata titles scheme. The name and address for service of the strata company is as provided in the scheme notice for the strata titles scheme.</p> <p data-bbox="427 622 1477 763">The clause provides that the strata company for a strata titles scheme is a body corporate, has perpetual succession, is capable of suing and being sued and has, subject to this Act, all the powers of a natural person that are capable of being exercised by a body corporate.</p> <p data-bbox="427 786 1409 853">The clause provides that the governing body of a strata company is a council.</p> <p data-bbox="427 875 1477 1055">The members of a strata company are the owners of lots in the scheme. A strata company does not need to have a common seal. (This is to help strata companies conduct their businesses in a convenient manner, especially electronically. The strata company may still choose to have a common seal, if they wish).</p> |
| <b>83</b>      | <b>15</b>         | <p data-bbox="427 1077 1015 1115"><b>Subdivision approval of strata scheme</b></p> <p data-bbox="427 1128 715 1155">This clause clarifies:</p> <ul style="list-style-type: none"> <li>a. the requirement under the current Act to obtain Planning Commission approval of a strata plan or amendment of a strata plan for the subdivision of land by a strata scheme.</li> <li>b. that the Planning Commission may impose conditions when granting subdivision approval</li> <li>c. that a strata plan or amendment of a strata plan cannot be registered until such plan has been endorsed with the unconditional approval by the Planning Commission</li> <li>d. that the regulations may exempt strata plans from needing Planning Commission approval.</li> </ul>  |
| <b>83</b>      | <b>16</b>         | <p data-bbox="427 1570 1123 1608"><b>Application of Planning and Development Act</b></p> <p data-bbox="427 1621 778 1648">This clause clarifies that:</p> <ul style="list-style-type: none"> <li>a. specific sections of the <i>Planning and Development Act 2005</i> do not apply to strata schemes</li> <li>b. specific sections of the <i>Planning and Development Act 2005</i> apply to strata schemes that contain a vacant lot (the current position)</li> </ul>  |
| <b>83</b>      | <b>17</b>         | <p data-bbox="427 1839 1129 1877"><b>Subdivision approval of survey-strata scheme</b></p> <p data-bbox="427 1890 911 1917">This clause is amended for clarity.</p>  |
| <b>83</b>      | <b>18</b>         | <p data-bbox="427 1939 991 1977"><b>Planning (scheme by-laws) condition</b></p> <p data-bbox="427 1991 1477 2045">This clause provides that the conditions of a planning approval applying to a strata titles scheme may include a planning (scheme by-laws) condition.</p>   |

| Bill<br>Clause | ST Act<br>Section | Amendment details   |
|----------------|-------------------|---|
| 83             | 19                | <b>Planning approval of scheme plan or amendment of scheme plan</b><br>This clause sets out the requirements of what needs to be lodged with the Planning Commission and the matters the Planning Commission must be satisfied of to give approval to subdivide.  |
| 83             | 20                | <b>Approval for postponement of expiry day for leasehold scheme</b><br>This clause requires the approval of the Planning Commission to the grant of an option to postpone the expiry day for the scheme (which, if exercised, would have the effect of extending the strata leases for the lots in the scheme) through a leasehold by-law by the owner of a leasehold scheme (the lessor).                              |
| 83             | 21                | <b>Approval for modification of restricted use condition</b><br>This clause clarifies that the approval of the Planning Commission is required for the amendment of a scheme plan that imposes, varies or revokes a restriction of use shown on the scheme plan.  |
| 83             | 22                | <b>Approval under planning (scheme by-laws) condition</b><br>This clause clarifies that the Planning Commission or local government can require a strata company to have by-laws to achieve a planning purpose and that the consent of the Planning Commission or local government are required for the planning (scheme by-laws) condition to be amended or repealed.  |
| 83             | 23                | <b>Requirement for local government approval</b><br>This clause clarifies the current requirement that the local government's approval is required for a subdivision where: <ul style="list-style-type: none"> <li>a. 2 or more lots are being consolidated</li> <li>b. 1 or more lots are being converted into common property or</li> <li>c. land that is common property is being removed from the parcel</li> </ul> |
| 83             | 25                | <b>Long term lease of temporary common property</b><br>This clause introduces the concept of temporary common property to properly explain the common property that a strata company takes a temporary lease over.  |
| 83             | 26                | <b>Long term lease or licence over common property</b><br>This clause clarifies the requirement for local government approval to the grant of a long term lease or licence over common property, which is a requirement of section 19 of the current Act.   |
| 83             | 27                | <b>Review of Planning Commission decision</b><br>This clause replaces section 27 of the current Act for clarity.  |
| 83             | 29                | <b>Scheme notice</b><br>This clause explains that a scheme notice contains the type of information currently recorded against a scheme plan including the name of the scheme, address for service of the scheme and if it is a leasehold scheme, the expiry day for the scheme.   |

| Bill<br>Clause | ST Act<br>Section | Amendment details  |
|----------------|-------------------|--|
| 83             | 30                | <p><b>Scheme name and address for service of strata company</b></p> <p>This clause clarifies how the scheme name and address for service may be amended.</p>   |
| 83             | 31                | <p><b>Postponement of expiry day for leasehold scheme</b></p> <p>This clause sets out that the postponement of an expiry day for a leasehold scheme must not be registered unless it is in accordance with the leasehold by-laws, and it is authorised by the strata company through a resolution without dissent.</p>   |
| 83             | 32                | <p><b>Scheme plan</b></p> <p>This clause retains the concept of a strata / survey-strata plan as provided in sections 5, 5A, 6, 8, 8A, 9, 10, 18 and 19 of the current Act with the addition of the following:</p> <ul style="list-style-type: none"> <li>• Uses the new term ‘scheme plan’, as provided for in the definitions.</li> <li>• Uses the term ‘amendment of a scheme plan’ which includes what is referred to in the current Act as a re-subdivision, consolidation, conversion of a lot to common property, adding land from outside the scheme or removing common property from the scheme</li> <li>• Introduces the requirement for a plan of amendment for the conversion of a lot to common property.</li> </ul>          |
| 83             | 33                | <p><b>Short form easements or restrictive covenants</b></p> <p>This clause retains the concept of creating specific easements on the scheme plan as provided in sections 5D to 5H of the current Act with the addition of the following:</p> <ul style="list-style-type: none"> <li>• Short form restrictive covenants</li> <li>• The ability to create short form easements and restrictive covenants on a plan of amendment of a strata titles scheme.</li> </ul>  |
| 83             | 34                | <p><b>Requirements for registration of scheme plan</b></p> <p>This clause sets out the requirements for registration of a scheme plan, including that the scheme plan is approved by the Planning Commission and, for a strata scheme, the scheme plan is accompanied by an occupancy permit or building approval certificate under the <i>Building Act 2011</i>. The clause further provides for the consents required from the owner and designated interest holders over the whole or part of the parcel of land to be subdivided.</p>  |
| 83             | 35                | <p><b>Requirements for registration of amendment of scheme plan</b></p> <p>This clause clarifies existing requirements which must be met before a scheme plan can be amended, retaining the intent and scope of sections 6, 8A, B and C, 9, 10, 18 and 19 of the current Act.</p> <p>In addition, it sets requirements that for a leasehold scheme plan to be amended, the owner of the leasehold scheme must either be the applicant for registration or have given written consent to the amendment.</p> <p>This clause also modifies existing processes so that certain types of subdivisions are easier to obtain. The new process establishes that under some circumstances, certain subdivisions can go ahead if the holder of a</p> |

| Bill<br>Clause | ST Act<br>Section | Amendment details  |
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|                |                   | <p>designated interest has not made a written objection within 60 days of being given notice. This replaces the old process which required all designated interest holders to provide written consent.</p> <p>The new section also empowers the Tribunal to disregard an unreasonable objection by a person with a designated interest to an amendment of a scheme plan.</p>   |
| 83             | 36                | <p><b>Exemption for staged subdivision</b></p> <p>This clause provides that staged subdivisions subject to subdivision by-laws may be exempted under the regulations from having to obtain resolutions and consents. This clause extends these exemptions to the creation of short form easements and restrictive covenants.</p>   |
| 83             | 37                | <p><b>Schedule of unit entitlements</b></p> <p>This clause retains the concept unit entitlement as provided in section 14 of the current Act and includes that the regulations may prescribe matters relating to the determination of the value of a lot.</p>  |
| 83             | 38                | <p><b>Requirements for registration of amendment of schedule of unit entitlements.</b></p> <p>This clause provides the circumstances when an amendment of a schedule of unit entitlements may be registered.</p>   |
| 83             | 39                | <p><b>Scheme by-laws on registration</b></p> <p>This clause provides for the by-laws created on registration of a strata titles scheme.</p>  |
| 83             | 40                | <p><b>Leasehold by-laws</b></p> <p>Leasehold by-laws provide a mechanism for the owner of a leasehold scheme (essentially the lessor of the parcel of land) to provide the following options:</p> <ol style="list-style-type: none"> <li>a. the grant to the owners of the lots (the lessees under the strata leases) of an option to extend the strata leases by postponing the expiry day for the leasehold scheme;</li> <li>b. the option to provide that compensation will be payable by the owner of the leasehold scheme to the owners of the lots for improvements to those lots</li> </ol> <p>If the by-laws do not contain an option to postpone the expiry day, the life of the leasehold scheme cannot be extended. The expiry day cannot be postponed to a day more than 99 years after the registration of the scheme and must be supported by a resolution without dissent of the strata company. Leasehold by-laws may provide for a fee to be paid to the owner of the leasehold scheme by the owner of a lot where the expiry day is postponed.</p> <p>Leasehold by-laws can only be made, amended or repealed with the consent of the owner of the leasehold scheme.</p> |

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| 83             | 41                | <p><b>Resolution for postponement of expiry day under leasehold by-laws.</b></p> <p>This clause provides that the strata company for a leasehold scheme must pass a resolution without dissent exercise an option to postpone the expiry of a leasehold scheme.</p>   |
| 83             | 42                | <p><b>Staged subdivision by-laws</b></p> <p>This clause provides that staged subdivision by-laws apply as if they were an agreement by the strata company with a person about subdivision of the strata titles scheme in stages. This clause retains the intent and scope of Schedule 2A clause 8 of the current Act relating to compliance between a plan of amendment and the staged subdivision by-laws and defines how staged subdivision by-laws are properly made, amended or repealed – including for leasehold schemes.</p>   |
| 83             | 43                | <p><b>Exclusive use by-laws</b></p> <p>This clause amends existing provisions in the Act to provide greater clarity on the making, amendment, repeal and operation of exclusive use by-laws, including that exclusive use by-laws may provide exclusive use rights over parts of the common property to the owners and occupiers of more than one lot within a scheme.</p>  |
| 83             | 44                | <p><b>Making of scheme by-laws</b></p> <p>This clause provides how governance and conduct by-laws may be made, amended or repealed.</p>   |
| 83             | 45                | <p><b>Application of scheme by-laws</b></p> <p>This clause provides who scheme by-laws apply to, including the strata company, members of the strata company (owners of lots) and occupiers. The by-laws must be complied with as if they were a deed. Leases for lots and common property are taken to contain an agreement that the lessee will comply with the scheme by-laws.</p>   |
| 83             | 46                | <p><b>Invalidity of scheme by-laws</b></p> <p>This clause defines under what circumstances by-laws are invalid.</p>   |
| 83             | 47                | <p><b>Enforcement of scheme by-laws</b></p> <p>The breach of any by-law may result in the Tribunal ordering the person who breached the by-law to pay a penalty to the strata company. A strata company, owner, mortgagee, occupier or owner of a leasehold scheme may apply to the Tribunal to enforce by-laws.</p> <p>If the Tribunal finds that:</p> <ol style="list-style-type: none"> <li>a. the breach of the by-law is serious or</li> <li>b. that the by-law has been breached by that person on 3 occasions or</li> <li>c. that the strata company served notice on a person notifying them they have breached a by-law and that person then breaches the same by-law again,</li> </ol> <p>the Tribunal can order the person who breached the by-law to pay a penalty to the strata company.</p> |

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| 83             | 48                | <p><b>Requirements for registration of amendment to give effect to scheme by-laws</b></p> <p>This clause provides that a strata company must apply to the Registrar of Titles for registration of an amendment of the strata titles scheme to register scheme by-laws as soon as reasonably practicable, and in any event, within 3 months of the by-laws being made, amended or repealed.</p> <p>An amendment of a strata titles scheme to give effect to scheme by-laws may only be registered if the scheme by-laws comply with this Act.</p>  |
| 83             | 49                | <p><b>Relationship with other laws</b></p> <p>This clause clarifies that:</p> <ol style="list-style-type: none"> <li>a. when a strata lease is registered as a scheme document, it is taken to be a registered lease under the <i>Transfer of Land Act 1893</i></li> <li>b. That specific sections in the <i>Transfer of Land Act 1893</i> and <i>Property Law Act 1969</i> do not apply to a strata lease</li> <li>c. that a sublease of a strata lease is subject to those 2 Acts</li> </ol>  |
| 83             | 50                | <p><b>Term of strata lease</b></p> <p>This clause provides that:</p> <ol style="list-style-type: none"> <li>a. a strata lease commences when a lot in a leasehold scheme is created to give effect to a subdivision</li> <li>b. every strata lease expires on the expiry day for the scheme</li> <li>c. that a strata lease cannot be renewed but that its term may be extended by postponement of the expiry day for the scheme.</li> </ol>  |
| 83             | 51                | <p><b>Limitations on powers of owner of leasehold scheme</b></p> <p>This new section imposes limitations on the powers of the owner of a leasehold scheme. The owner of a leasehold scheme:</p> <ol style="list-style-type: none"> <li>a. must not interfere with the use and enjoyment of a lot or common property in the leasehold scheme</li> <li>b. is not required to give their consent to allow the owner of a lot to deal with or dispose of the strata title for the lot (except for circumstances specified in the regulations, such as where the lot has been created for affordable housing purposes and the intent is for that person not to be able to on-sell the lot for profit).</li> <li>c. cannot re-enter a lot in the leasehold scheme except if they are: <ol style="list-style-type: none"> <li>i. authorised by order of the Tribunal or</li> <li>ii. doing so under the leasehold by-laws where an owner of a lot fails to pay the fee for postponement of the expiry day or</li> <li>iii. if the owner of the lot surrenders the strata lease.</li> </ol> </li> </ol> |
| 83             | 52                | <p><b>Content and form of strata lease</b></p> <p>This clause provides that a strata lease:</p> <ol style="list-style-type: none"> <li>a. will be a statutory lease that can contain only the provisions that the regulations allow;</li> <li>b. must identify which provisions in the strata lease, if breached, may result in the Tribunal ordering that the owner of the leasehold scheme may re-enter the lot;</li> </ol>   |

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|                |                   | <p>c. cannot:</p> <ol style="list-style-type: none"> <li>i. grant the owner of the leasehold scheme a right to automatically re-enter the lot where a provision of the lease is breached</li> <li>ii. include any matter contained in leasehold by-laws (the option to postpone the expiry day or the option for the owner of the leasehold scheme to pay compensation to the owner of the lot for improvements made to the lot);</li> <li>iii. require refurbishments or improvements of the lot</li> <li>iv. provide for things dealt with under the STA</li> <li>v. provide for any other matter specified in the regulations.</li> </ol>  |
| 83             | 53                | <p><b>Amendment of strata lease</b></p> <p>This clause clarifies how a strata lease may be amended.</p>   |
| 83             | 54                | <p><b>Enforcement of strata lease</b></p> <p>This clause provides that the owner of a leasehold scheme or the owner of a lot may apply to the Tribunal for enforcement of a covenant or condition in the strata lease or an obligation under this Division.</p>   |
| 83             | 55                | <p><b>Contracting out prohibited</b></p> <p>This clause clarifies that people cannot contract out of the requirements relating to strata leases contained in this Division.</p>   |
| 83             | 56                | <p><b>Application for registration.</b></p> <p>This section provides for the application to register schemes and amendments of schemes, namely the registration of:</p> <ul style="list-style-type: none"> <li>• a new scheme plan</li> <li>• an amendment of a scheme plan</li> <li>• the creation, amendment, repeal of scheme by-laws</li> <li>• the change of the scheme name and address for service</li> <li>• the amendment of the schedule of unit entitlement.</li> </ul> <p>This clause provides for concepts relating to registration contained in the following sections of the current Act:</p> <ul style="list-style-type: none"> <li>• sections 4 and 5 (registration of a strata/survey-strata plan and discharging a short form easement)</li> <li>• section 6 (creation, amendment or repeal of a use restriction)</li> <li>• sections 8 and 9 (registration of a plan of re-subdivision/consolidation)</li> <li>• section 10 (conversion of lot(s) to common property)</li> <li>• section 15 (reallocation of unit entitlement by resolution)</li> <li>• sections 18 and 19 (acquisition and disposal of common property)</li> <li>• section 20 (creation of easements and covenants)</li> <li>• section 42 (creation, amendment or repeal of by-laws)</li> </ul> <p>This clause includes that an application for the registration or amendment of a leasehold scheme must be lodged by the owner of the leasehold scheme.</p> |

| Bill<br>Clause  | ST Act<br>Section | Amendment details  |
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| 83  | 57                | <p><b>Effect of registration</b></p> <p>This clause provides the detail of what is created and what is cancelled on the registration of a strata titles scheme. The relevant lots are created, cancelled or varied as is the common property. Scheme documents come into effect when registered or recorded by the Registrar of Titles.</p>  |
| 83  | 58                | <p><b>Registration process</b></p> <p>This clause specifies the actions required by the Registrar of Titles to register a strata titles scheme or amend a strata titles scheme. A certificate of title will be registered under the Transfer of Land Act 1893 for each lot in a strata titles scheme created on registration of a strata titles scheme or amendment of a strata titles scheme to give effect to a subdivision of land.</p>   |
| 83  | 59                | <p><b>No presumption of validity of scheme by laws</b></p> <p>Clause 83 section 59 provides that:</p> <ol style="list-style-type: none"> <li>1. scheme by-laws may be checked by the Registrar of Titles.</li> <li>2. registered scheme by-laws are not necessarily valid or enforceable.</li> <li>3. The State does not guarantee the validity or enforcement of scheme by-laws.</li> </ol>   |
| <b>Division 2: Re-entry or surrender of strata leases</b> |                   |  |
| 83  | 60                | <p><b>Notice and registration</b></p> <p>This clause provides for the notice and registration requirements where a strata lease in a leasehold scheme is re-entered by the owner of a leasehold scheme or is otherwise surrendered by the owner of a lot.</p>  |
| <b>Division 3: Statutory easements</b>                    |                   |  |
| 83  | 61                | <p><b>Easement for support, shelter and projections — lot</b></p> <p>Clause 83 section 61 provides essentially the same statutory easement that the current Act provides for support and shelter in sections 11 and 12.</p>  |
| 83  | 62                | <p><b>Easement for support, shelter and projections — common property</b></p> <p>This clause clarifies the implied easements provided by sections 11, 12 and 12A of the current Act.</p>   |
| 83  | 63                | <p><b>Utility service easement</b></p> <p>This clause details the rights and responsibilities associated with utility service easements in a strata titles scheme and includes that any documentation pertinent to a utility easement should be shared between the owner of the lot and the strata company. This clause also clarifies that an owner may install a utility conduit over common property or another owner's lot in order to connect their lot to a utility service.</p> |

- 83            64        Common property (utility and sustainability infrastructure) easement**
- This clause provides a mechanism for owners or other people to enter into an agreement with the strata company to install sustainability infrastructure (such as solar panels) or utility infrastructure on common property and that strata company's approval to do so is by an ordinary resolution. This clause also provides that the person who owns the sustainability infrastructure or utility infrastructure is granted an easement over the common property where the infrastructure is located.
- 83            65        Entry under statutory easement**
- This clause details what notice is required to be given and to whom when exercising rights under a statutory easement.
- 83            66        Rectification of damage**
- This clause specifies the requirement to rectify any damage caused in the course of exercising rights under a statutory easement with the proviso

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|                |                   | that the damage was not caused by an unreasonable act by a person.  |
| 83             | 77                | <b>First statutory general meeting</b><br>This clause is amended for clarity.   |
| 83             | 78                | <b>Key documents</b><br>This clause stipulates that the scheme developer must provide the key documents of the scheme to the strata company.  |
| 83             | 79                | <b>Disclosure of remuneration and other benefits</b><br>The objective of this clause is to ensure that the scheme developer discloses all remuneration or benefits from contracts, leases or licences which may bind the strata company. This is to discourage scheme developers from entering into agreements which benefit the scheme developer but may not benefit the owners or the strata company.   |
| 83             | 80                | <b>Defects in scheme buildings or infrastructure</b><br>The objective of this clause is to ensure that a strata company can step into the shoes of the scheme developer under the building contract for scheme buildings and infrastructure in the strata titles scheme in order to remedy building defects. It also excludes the scheme developer from voting on any resolution on building defects for a period of 10 years.  |
| 83             | 81                | <b>Contracting out prohibited</b><br>This clause provides that a contract or arrangement is of no effect to the extent that it purports to exclude or restrict the operation of this Part and that a purported waiver of a right, remedy or benefit conferred on a person under this Part is of no effect.  |
| 83             | 82                | <b>Offence to contravene restricted use condition</b><br>This clause is based upon section 6 of the current Act and is amended for clarity. The penalty is increased from \$2 000 to \$10 000 for consistency with equivalent penalties in other legislation and the daily penalty limit is increased from \$200 to \$1 000 for similar consistency.  |
| 83             | 83                | <b>Use and enjoyment</b><br>This clause provides the owner or occupier of a lot must not use or permit use of the lot, or common property of the strata titles scheme in a way that interferes unreasonably with the use or enjoyment of another lot or the common property by a person who is lawfully on the lot or common property.  |
| 83             | 85                | <b>Person to act for lot owner in certain circumstances</b><br>The objective of this clause is to clarify the actions needed to be taken when an owner can either not be located or lacks the capacity to vote. On application to the Tribunal by a person who the Tribunal considers has a proper interest in the matter the Tribunal may by order dispense with the requirement for the owner to vote or consent on a matter and authorise the Public Trustee or another specified person (with that person's consent) to exercise all or specified powers as the owner of the lot. |

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| <b>Division 2 — Structural alteration of lots</b> |                   |   |
| 83  | 86                | <b>Terms used in this Division</b><br>Defines the terms <i>structural alteration of a lot</i> and <i>structure</i>  |
| 83  | 88                | <b>Structural alteration of lot in survey-strata scheme</b><br>This clause provides for the equivalent of section 7A of the current Act and provides that structural alteration of a lot in a leasehold scheme may be done with the permission of the owner of the leasehold scheme.  |
| 83  | 90                | <b>Order dispensing with approval for structural alteration of lot</b><br>This clause provides that the Tribunal has the power to exempt an owner from obtaining approval for structural alteration of a lot, both before the structural alteration has been made and after the structural alteration has been undertaken.  |
| 83  | 92                | <b>Temporary common property</b><br>This clause establishes the conditions which must be met for a strata company to accept or surrender a lease for temporary common property. It also establishes the conditions which must be met for a leasehold scheme to accept or surrender a lease for temporary common property. The land that is leased must not be subject to a designated interest, unless the Regulations provides otherwise.  |
| 83  | 93                | <b>Transactions affecting common property or parcel</b><br>This clause sets out transactions that the strata company is authorised to enter into by resolution without dissent as if the strata company were the owner of an estate.<br>Transactions include accepting a transfer of land contiguous to the parcel for the purpose of adding the land to the common property, disposing of land comprising common property, granting or surrendering a lease of the common property and accepting or discharging an easement or restrictive covenant. |
| 83  | 95                | <b>Power of strata company to enter any part of parcel</b><br>This clause clarifies the equivalent of section 39 of the current Act.  |
| 83  | 96                | <b>Recovery of records, keys and property</b><br>This clause sets out the conditions under which the strata company can seek to recover records, keys and other property of the strata company from a person. It also updates the penalty from \$400 to \$3 000 for consistency with penalties in equivalent legislation.   |
| 83  | 97                | <b>Required insurance</b><br>This clause (which provides the insurance obligations of a strata company) has been amended for clarity and to increase the required insurance from \$5 000 000 to \$10 000 000. The penalty has been revised from \$400 to \$3 000 for consistency with penalties in equivalent legislation.  |

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|                |                   | A new provision has been added to provide that under certain circumstances the strata company need not use money from an insurance payout to replace or repair whatever insurable asset was damaged.  |
| 83             | 98                | <p data-bbox="427 376 986 409"><b>Notice to member of strata company</b></p> <p data-bbox="427 427 1437 461">This amends the equivalent of section 55A of the current Act for clarity.</p>  |
| 83             | 99                | <p data-bbox="427 483 1027 517"><b>Member may obtain required insurance</b></p> <p data-bbox="427 535 1437 568">This amends the equivalent of section 56A of the current Act for clarity.</p>   |
| 83             | 101               | <p data-bbox="427 591 1147 624"><b>Accounting records and statement of accounts</b></p> <p data-bbox="427 642 600 676">This clause:</p> <ul style="list-style-type: none"> <li data-bbox="475 694 999 728">a. has been amended for clarity and</li> <li data-bbox="475 732 1484 875">b. provides that the accounting records and statement of accounts of a strata company must provide the assets and liabilities along with the income and expenditure of the strata company at the end of the financial year.</li> </ul>   |
| 83             | 102               | <p data-bbox="427 898 539 931"><b>Budget</b></p> <p data-bbox="427 949 600 983">This clause:</p> <ul style="list-style-type: none"> <li data-bbox="475 1001 1426 1066">a. clarifies that the strata company is to prepare a budget for each financial year.</li> <li data-bbox="475 1070 1465 1173">b. provides that a strata company may spend a specified amount per lot without the budget (limited by the regulations or by an amount as set by a special resolution);</li> <li data-bbox="475 1178 1075 1211">c. clarifies other expenditure controls and</li> <li data-bbox="475 1216 1484 1323">d. provides that expenditure on the improvement or alteration of common property, if above a prescribed amount, must be approved by a special resolution.</li> </ul> |
| 83             | 104               | <p data-bbox="427 1346 879 1379"><b>Records and correspondence</b></p> <p data-bbox="427 1397 1453 1529">This clause has been amended for clarity. In addition, there are new requirements for the strata company to keep the new types of document which have been introduced by the amending Act, such as strata management contracts and infrastructure contracts.</p> <p data-bbox="427 1547 1473 1659">Records that also must be kept include disclosures about any conflicts of interest, any resolutions made about how the common seal is to be used, the current budget and the most recent resolutions about contributions</p>  |
| 83             | 106               | <p data-bbox="427 1682 1426 1715"><b>Address for service if no roll maintained in 2, 3, 4 or 5-lot scheme</b></p> <p data-bbox="427 1733 1484 1834">In addition to being amended for clarity, the penalty for This clause has increased from \$400 to \$3 000 for consistency with penalties in equivalent legislation.</p>   |
| 83             | 107               | <p data-bbox="427 1856 1297 1890"><b>Application by person with proper interest in information</b></p> <p data-bbox="427 1908 1461 2036">This clause provides that a person (being a person with a proper interest in information about a strata titles scheme as defined in the clause) may apply in writing to the strata company for information under clause 108, inspection of material under clause 109 or a certificate under clause 110.</p>  |

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| 83             | 108               | <p><b>Contact information</b></p> <p>In addition to being amended for clarity, the penalty of \$400 has been increased to \$3,000 for consistency with penalties in equivalent legislation.</p>   |
| 83             | 109               | <p><b>Inspection of material</b></p> <p>This clause provides for a penalty to apply if the strata company does not make material to which the section applies available for inspection in response to an application under clause 107 within an agreed time, either electronically or in an agreed place.</p> <p>The penalty of \$400 has been increased to \$3,000 for consistency with penalties in equivalent legislation.</p>   |
| 83             | 110               | <p><b>Certificates</b></p> <p>This clause specifies that an applicant for a certificate under clause 107 must be provided with a certificate certifying, as at the date of the certificate, the matters stated in the application within 14 days.</p> <p>The clause provides that a certificate given under the clause is conclusive evidence of the matters stated in the certificate, as at the date of the certificate, in favour of a person taking an estate or interest in a lot for valuable consideration. The penalty of \$400 has been increased to \$3 000 for consistency with penalties in equivalent legislation.</p> |
| 83             | 111               | <p><b>Legal professional privilege and defamation</b></p> <p>This clause establishes that the requirements for the strata company to provide information and certificates does not extend to any information that is the subject of legal professional privilege. Further, it provides that it is a defence to an action for defamation if the defendant proves that the defamatory matter was contained in information or documents required to be given under this subdivision.</p>   |
| 83             | 112               | <p><b>Compliance with scheme by-laws</b></p> <p>This clause provides that the strata company must comply with scheme by-laws and monitor compliance with scheme by-laws by others to whom they apply.</p>   |
| 83             | 113               | <p><b>Enforcement of road laws</b></p> <p>This clause was added to ensure that it was beyond doubt that the strata company can enter into arrangements with a local government about the enforcement of laws relating to roads on the parcel, in particular enforcement of parking.</p>   |
| 83             | 114               | <p><b>Enforcement of local laws</b></p> <p>This clause was added to ensure it was beyond doubt that the strata company can enter into arrangements with a local government in relation to the enforcement of local laws.</p>  |
| 83             | 117               | <p><b>Limitations on exercise of powers</b></p> <p>This clause sets out functions that a strata company does not have the</p>   |

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|                |                   | power to perform. Prohibited functions include but are not limited to mortgaging the common property and acting as guarantor. The regulations may also prescribe functions that may only be exercised by resolution without dissent of the strata company.   |
| 83             | 118               | <b>Common seal and execution of documents</b><br><br>This clause sets out requirements for execution of documents by a strata company. It also makes provision for execution of electronic documents. A strata company may, but is not required to have a common seal.   |
| 83             | 119               | <b>Objectives</b><br><br>This clause sets out the objectives of a strata company in performing its functions. It sets out the matters which must be taken into account in achieving its objectives and requires the strata company not to make decisions or take action that is unreasonable, oppressive, unfairly prejudicial to or discriminatory - against an owner or occupier.  |
| 83             | 120               | <b>Voting</b><br><br>This clause has been amended for greater clarity. In addition, this clause establishes that the system of voting may be electronic or by other means but must enable votes to be cast in a manner to protect the integrity of the voting system.  |
| 83             | 121               | <b>Voting period</b><br><br>This clause clarifies the position under the current Act that the voting period to be allowed for a unanimous resolution, resolution without dissent or special resolution must be 28 days or another period as provided in the regulations.   |
| 83             | 122               | <b>Counting of votes</b><br><br>This clause clarifies how votes are to be counted.   |
| 83             | 123               | <b>Resolutions</b><br><br>This clause clarifies what is a unanimous resolution, a resolution without dissent, a special resolution and an ordinary resolution.   |
| 83             | 124               | <b>Voting by proxy</b><br><br>This clause sets out the requirements for voting by proxy. Regulations may impose limitations on a strata manager being appointed as a proxy.  |
| 83             | 125               | <b>Disqualification from voting as proxy</b><br><br>In addition to being amended for clarity, this clause provides that if a lot owner is present at a meeting, they must cast their vote personally rather than by proxy. The intent of this clause is to minimise the abuse of proxy votes, so that an individual can attend a meeting and vote, even if they have been obliged to give another party the authority to vote on their behalf.<br><br>Further, this clause sets out the detail that must be included in the notice of a resolution, if the resolution is required in relation to the strata company making, varying or extending a strata management contract. |

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| 83             | 126               | <p><b>Exercise of voting power in certain cases</b></p> <p>This clause clarifies the exercise of voting power in certain cases.</p>  |
| 83             | 127               | <p><b>Annual general meetings of strata company</b></p> <p>In addition to being amended for clarity, this clause establishes a new order of business for every AGM: the presentation of copies of certificates and schedules for the insurance required for the scheme.</p>  |
| 83             | 128               | <p><b>Extraordinary general meetings of strata company</b></p> <p>This clause provides for extraordinary general meetings of the strata company.</p>   |
| 83             | 129               | <p><b>Notice requirements for all general meetings</b></p> <p>This clause provides:</p> <ul style="list-style-type: none"> <li>a. for the notice requirements for general meetings</li> <li>b. that the notice of the meeting include which methods of voting are acceptable to the strata company.</li> </ul>   |
| 83             | 130               | <p><b>Quorum at general meetings</b></p> <p>In addition to being amended for clarity, this clause includes a new provision which enables a quorum to be declared as those people present 30 minutes after the appointed time for the general meeting (other than for two lot schemes).</p>   |
| 83             | 131               | <p><b>Holding meetings remotely</b></p> <p>This section was added to enable the strata company to conduct its meetings electronically.</p>   |
| 83             | 132               | <p><b>Conducting business at general meetings</b></p> <p>This clause provides for the conduct of business at general meetings of the strata company</p>  |
| 83             | 133               | <p><b>Resolutions of general meetings</b></p> <p>This clause provides that resolutions passed at a general meeting may be ordinary resolutions unless this Act requires otherwise.</p>   |
| 83             | 134               | <p><b>Performance of restricted council functions in general meeting</b></p> <p>This clause provides that the strata company may prohibit the council from performing a function.</p>  |
| 83             | 137               | <p><b>Council members: general duties and conflicts of interest</b></p> <p>This clause applies to members of the council and persons performing functions of a strata company or body corporate that is a member of the council or an officer of the strata company.</p> <p>The clause sets out that such persons have duties to act honestly, with loyalty and in good faith and to exercise the degree of care and diligence that a reasonable person in the person's position would be reasonably expected to exercise.</p> |

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|                |                   | <p>The clause provides that such persons must not make improper use of their position to gain directly or indirectly an advantage for themselves or any other person or cause detriment to the strata company.</p> <p>The clause imposes a duty to inform the council in writing of conflicts of interest. The clause provides that a member of the council must not vote on a matter in which the member has a conflict of interest.</p> <p>The clause does not apply to a conflict of interest that arises solely from the fact that the person is a member of the strata company.</p>   |
| 83             | 138               | <p><b>Performance of council functions in general meeting if no council or quorum</b></p> <p>This clause provides for the performance of council functions by members of the strata company in general meeting in certain situations, for example, if there is no council or there are insufficient members of the council to constitute a quorum.</p>   |
|                | 140               | <p><b>Special rules for 2, 3, 4 or 5-lot schemes</b></p> <p>This clause clarifies the special rules that apply to the strata company of 2, 3, 4 and 5 lot schemes.</p>   |
| 83             | 141               | <p><b>Protection from liability</b></p> <p>This clause applies to persons who are or have been a member of the council (including when acting as an officer of the strata company) or an individual who performs the functions of a strata company or other body corporate that is a member of the council or an officer of the strata company.</p> <p>The clause provides that no civil liability attaches to persons to which the clause applies for anything the person has done in good faith or omitted to do in the performance of functions.</p>  |
| 83             | 142               | <p><b>Exclusion of Corporations Act</b></p> <p>This clause declares that a strata company and an act or omission of a person, body or other entity in relation to a strata company are excluded matters for the purposes of the <i>Corporations Act 2001</i> (Commonwealth) section 5F in relation to the whole of the Corporations legislation to which Part 1.1A of that Act applies.</p>  |
| 83             | 143               | <p><b>Authorisation of functions of strata manager</b></p> <p>This clause provides that a strata company may, subject to this Part, authorise a person (a strata manager) to perform a specified scheme function.</p> <p>If performance of a function by the strata company requires a resolution and the strata manager is authorised to perform the function, the strata manager may perform the function only if a vote has been taken and passed as required.</p> <p>The clause provides that an Australian legal practitioner does not act as a strata manager in providing services that can, under the Legal Profession</p> |

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|                |                   | <p>Act 2008, be provided only by an Australian legal practitioner.</p> <p>The clause provides for functions that a strata manager cannot be authorised to perform, for example, determining contributions and commencing proceedings on behalf of the strata company.</p> <p>The strata company may perform a function that it has authorised a strata manager to perform but if the strata company performs the function it must notify the strata manager that it has performed the function.</p>  |
| 83             | 144               | <p><b>Requirements to be met by strata manager</b></p> <p>This new section details that a person is not authorised to be a strata manager unless a contract or volunteer agreement is in force.</p> <p>Requirements (as set out in the regulations) must be met by the strata manager and each agent, employee or contractor of the strata manager for</p> <ul style="list-style-type: none"> <li>• criminal record checks</li> <li>• educational or other qualifications</li> <li>• any other matter relevant to the performance of a strata manager's role</li> <li>• professional indemnity insurance.</li> </ul> <p>Volunteer strata managers are not required to hold educational requirements or have professional indemnity insurance to undertake the role.</p>  |
| 83             | 145               | <p><b>Strata management contracts: minimum requirements</b></p> <p>A strata management contract must be in writing and must include details identifying the strata manager's name and company. It must include details such as the duration of the contract, and what the strata manager will do for the strata company, including any conditions. It must set out that the strata manager must give the strata company written reports about functions undertaken, and when they are required. It must set out details around the money payable to the strata manager and specify the bank accounts the strata manager is to use. It must set out how the contract may be terminated and include any other matter that is required by the regulations.</p> <p>Before entering into a strata management contract, the strata manager must disclose details of any conflicting interests they may have. Any variation, extension or renewal of the contract must be in writing.</p> <p>A volunteer agreement for a volunteer strata manager does not need to give company details or require the volunteer strata manager to provide written reports on the functions undertaken.</p> |
| 83             | 146               | <p><b>General duties and conflict of interest</b></p> <p>This clause sets out that the strata manager must act honestly and in good faith and exercise a reasonable degree of skill, care and diligence. They must have a good working knowledge of the Act and must not make improper use of their position to gain advantage or cause detriment to the strata company or one of its members. They must ensure their employees</p>  |

| Bill<br>Clause | ST Act<br>Section | Amendment details   |
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|                |                   | <p>comply with the Act.</p> <p>A strata manager must inform the strata company in writing of any other interest that may conflict with their functions and do so as soon as is practicable after becoming aware of the conflict.</p>  |
| 83             | 147               | <p><b>Disclosure of remuneration and other benefits</b></p> <p>A strata manager must inform the strata company in writing of any remuneration or other benefit they receive (other than from the strata company) in connection with the performance of their functions, as soon as is practicable after becoming aware of the remuneration or other benefit.</p> <p>This only applies to remuneration or other benefit that is less than an amount specified in the regulations.</p>  |
| 83             | 148               | <p><b>Operation of accounts</b></p> <p>A strata manager (other than a volunteer strata manager) must pay all money received on behalf of a strata company into 1 of the following ADI accounts —</p> <ul style="list-style-type: none"> <li>• a separate trust account for the strata company</li> <li>• a pooled trust account solely for the strata companies for which the person is a strata manager;</li> <li>• if the strata company has its own account and has authorised the strata manager to use the account, that account.</li> </ul> <p>A volunteer strata manager must pay all money received into the strata company's ADI account.</p> <p>A strata manager must be able to account separately for money paid or received on behalf of a strata company. Money paid into a trust account is only payable on behalf of the strata company, not for the payment of any other debt. The regulations may provide for other matters relating to the operation of trust accounts by strata managers.</p> |
| 83             | 149               | <p><b>Accounting information</b></p> <p>A strata company can, by written notice, require a strata manager to provide details of:</p> <ul style="list-style-type: none"> <li>• each account operated by the strata manager in performing scheme functions, including the strata company's balance on a specified date.</li> <li>• cheques drawn or amounts transferred out of an account on behalf of the strata company but for which amounts have not, as at a specified date, been paid out.</li> <li>• money paid out or received on behalf of the strata company, including when and how these were paid.</li> <li>• specified transactions</li> </ul> <p>The strata manager must comply with the notice within 7 days. However, a strata manager does not have to provide the information if it related to a matter which occurred more than 7 years before the notice was given.</p>  |

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| 83             | 150               | <p><b>Audits</b></p> <p>A strata manager who operates an account must, if the strata company has an auditor, give the auditor access to statements of the account.</p> <p>The strata manager must provide the auditor with any document or information they have relating to money paid or received on behalf of the strata company that the auditor requires.</p>  |
| 83             | 151               | <p><b>Termination of strata management contract</b></p> <p>This clause sets out the grounds on which a strata company may terminate a strata management contract. Those grounds are if the strata manager—</p> <ul style="list-style-type: none"> <li>• has contravened this Act; or</li> <li>• has contravened the contract; or</li> <li>• is bankrupt or insolvent or</li> <li>• is convicted of an offence punishable by imprisonment for 12 months or longer and the strata company is satisfied that the offence affects their suitability to perform the strata manager's functions (this also applies to a director or chief executive officer of the strata manager).</li> </ul> <p>If satisfied there are proper grounds for termination of the contract, the strata company may terminate it by giving the strata manager written notice specifying the date (at least 28 days after the notice) when termination will occur, and inform the strata manager of their right to apply to the Tribunal for review of the decision.</p> <p>Before a strata company terminates the contract it must give the strata manager a written show cause notice, stating that it proposes to terminate the contract, the grounds for doing so and the evidence relied on. It must invite the strata manager to make written submissions as to why the contract should not be terminated, specifying at least 14 days for the receipt of such written submission.</p> <p>If the strata manager makes a written submission, the strata company must give it proper consideration within the period specified in the show cause notice.</p> <p>The clause provides that nothing in this clause affects the operation of clause 115 in relation to a strata management contract.</p> |
| 83             | 152               | <p><b>Return of records and other property</b></p> <p>If the strata management contract is terminated, the strata manager must return the strata company's records, keys and other property, within 28 days after the termination of the contract (even if the strata manager has made an application for review of the decision to terminate).</p> <p>The strata company may agree to the property being made available for collection by another strata manager they have engaged, or having the property returned in some other manner. A strata manager cannot exercise any claim or lien on the property.</p>  |

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| 83                                    | 153               | <p><b>Provision of information about industry</b></p> <p>The regulations may require a strata manager (but not a volunteer strata manager) to lodge a periodic return at Landgate containing aggregated information about strata titles schemes managed by the strata manager. This will be information ordinarily kept by a strata manager and readily available.</p> <p>This will be so that Landgate can publish a list of strata managers (if it chooses to do so) and use the information to develop policy and advise the government on matters related to strata managers.</p>   |
| 83                                    | 154               | <p><b>Contracting out prohibited</b></p> <p>This clause prohibits any contract or arrangement that seeks to exclude or restrict the requirements laid out in this Part.</p>   |
| 83                                    | 155               | <p><b>Protection from liability</b></p> <p>This clause protects a volunteer strata manager from civil liability in the execution of his/her duties as a strata manager if such duties are carried out in good faith. The liability is instead attached to the strata company.</p>   |
| <b>Part 10 - Protection of Buyers</b> |                   |   |
| 83                                    | 156               | <p><b>Information to be given before contract</b></p> <p>This clause provides the information a seller must give a buyer before a contract for the sale of a lot in a strata titles scheme is signed, which includes the name and address of the seller.</p> <p>The following information relating to the strata titles scheme must be provided to the buyer:</p> <ul style="list-style-type: none"> <li>• the scheme notice, scheme plan, scheme by-laws (including those not yet registered) and schedule of unit entitlements</li> <li>• the strata lease for the lot, if it is a leasehold scheme</li> <li>• the name and address for service of the strata company.</li> </ul> <p>One of the following, in relation to the minutes:</p> <ul style="list-style-type: none"> <li>• minutes of the most recent annual general meeting and any extraordinary general meetings held since then; or</li> <li>• a statement that the strata company does not keep minutes of its meetings; or</li> <li>• a statement that the seller has been unable to get a copy of the minutes, and the reason why.</li> </ul> <p>One of the following, in relation to a statement of accounts:</p> <ul style="list-style-type: none"> <li>• the last statement of accounts; or</li> <li>• a statement that the strata company does not prepare a statement of accounts; or</li> <li>• a statement that the seller has been unable to get a statement of accounts, and the reason why.</li> </ul> <p>If the seller has received notice of a current termination proposal, a copy</p> |

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must be given to the buyer.

The seller must give the buyer specific information about the lot, including:

- the location of the lot on the scheme plan,
- the definition (boundaries) of the lot, as contained in the scheme plan
- the unit entitlement of the lot, in addition to the sum of the unit entitlements of all the lots in the scheme
- contributions that will be payable by the owner (amount and due date), if this has been determined by the strata company in the last year, but if not, a reasonable estimate of these details after the proposed settlement date
- details of any debt owed by the owner of the lot to the strata company including how the debt arose, the date and the amount outstanding
- details of any exclusive use by-laws that apply to the lot.
- other information required by the regulations.

If the lot has not yet been created, the information which is required is:

- the latest version of any draft scheme documents, with any amendments, relevant to the lot
- a reasonable estimate of unit entitlement, and any other matter, such as contributions payable, which are relevant to the lot as proposed.

Certain extra information is required in any of the following circumstances:

- the strata titles scheme has not been registered or
- the first annual general meeting has not been held or
- the scheme developer owns 50% or more of the lots in the strata titles scheme, or lots with an aggregate unit entitlement of 50% of the scheme.

If the above circumstances apply and the scheme developer is the seller, the buyer must be given all of the following additional information:

- a statement of the estimated income and expenditure of the strata company for the 12 months after the proposed settlement date
- details of any required disclosure that the scheme developer has to make to the strata company, (for example in relation to remuneration or other benefit arising from a contract, lease or licence entered into)
- details of any existing or proposed contract for the provision of services or amenities to the strata company or its members, arranged by the scheme developer or the strata company, including its terms and conditions, the consideration and the estimated costs to the members of the strata company.
- details of the terms and conditions of any lease, licence, right of exclusive use and enjoyment or special privilege (or proposed lease, licence, right of exclusive use and enjoyment or special

| Bill<br>Clause | ST Act<br>Section | Amendment details   |
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|                |                   | <p>privilege) over common property.</p> <p>In all cases, the seller must give the buyer the information in the approved form or include it in the contract in the manner set out in the regulations.</p> <p>In any court or tribunal proceedings connected with a contract for the sale of a lot, it is the seller who must prove that the required information was given.</p>  |
| 83             | 157               | <p><b>Information to be given after contract</b></p> <p>This clause provides the information which is to be given to a buyer after the contract has been signed.</p> <p>After the contract is signed, if a notifiable variation occurs the seller must inform the buyer in writing, with information that a reasonable person would consider enough to let the buyer make an informed assessment about whether they are materially prejudiced by it. The regulations may provide that if the notice contains certain particulars about a specified type of notifiable variation, then it will be enough information for such a decision to be made.</p> <p>If a notifiable variation arises, the seller must let the buyer know:</p> <ul style="list-style-type: none"> <li>• as soon as practicable, if the seller becomes aware of it less than 15 working days before the settlement date</li> <li>• not more than 10 working days after becoming aware it, in any other case.</li> </ul> <p>However, the seller doesn't need to notify the buyer if the contract sets out a proposed action or matter (that would otherwise be a notifiable variation), which, when complete did not differ from that described. The seller must give the buyer written notice of completion of the action or matter as soon as practicable if it is within 15 working days of the settlement date, or not more than 10 working days in any other case. This information must be enough that a reasonable person would consider it sufficient to enable an informed assessment as to whether the completed action or matter differs from what was described in the contract.</p> <p>If a court or tribunal proceeding arises in relation to a notifiable variation which happens after the contract is signed, it is the seller who has to prove that proper notice was given to the buyer.</p> |
| 83             | 158               | <p><b>Delay in settlement for failure to give information</b></p> <p>This section provides that a buyer may, by written notice to the seller, postpone the settlement date if:</p> <ul style="list-style-type: none"> <li>• the seller did not provide all of the required information before the contract was signed; or</li> <li>• a notifiable variation arises and the seller didn't comply with the notification requirements.</li> </ul>  |
| 83             | 159               | <p><b>Avoidance of contract for failure to give information</b></p> <p>This clause establishes that a buyer may avoid a contract at any time before the settlement date if the seller has not complied with the</p>   |

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|                |                   | <p>requirement to give the information they were required to give the buyer as required by section 156, and if they were now to do so, the buyer would receive information or a document that discloses a material prejudice to them. Note that proving material prejudice is the buyer's responsibility.</p> <p>However, if the seller gives the buyer a notice substantially complying with the section 156 requirements before the buyer avoids the contract, the buyer only has 15 working days in which to avoid. However, if the seller gives the buyer a notice substantially complying with the notifiable variation requirements before the buyer avoids the contract, the buyer only has 15 working days in which to avoid.</p>                              |
| 83             | 160               | <p><b>Avoidance of contract on notification of variation for material prejudice</b></p> <p>This clause provides that if a seller gives the buyer notice of a notifiable variation, the buyer may avoid the contract at any time within 15 working days if —</p> <ul style="list-style-type: none"> <li>• it wasn't a notifiable variation which, when complete, was as described in the contract (as per section 157(4)) and</li> <li>• the buyer is materially prejudiced by the information or document disclosed (something the buyer must be able to prove).</li> </ul>  |
| 83             | 161               | <p><b>Avoidance of contract for failure to disclose type 1 notifiable variation</b></p> <p>This clause provides that a buyer may avoid a contract any time before the settlement date if a type 1 notifiable variation occurs and the seller does not substantially comply with the requirement to give notice of the variation within the required time.</p> <p>However, if the seller gives notice which substantially complies with the notifiable variation requirements before the buyer avoids the contract, the buyer only has 15 working days within which to avoid the contract.</p>  |
| 83             | 162               | <p><b>Avoidance of contract for failure to disclose type 2 notifiable variation</b></p> <p>This clause provides that a buyer may avoid a contract any time before the settlement date if a type 2 notifiable variation occurs and the seller does not substantially comply with the requirement to give notice of the variation within the required time, and if they were now to do so, the buyer would receive information or a document that would disclose material prejudice to the buyer (proof of which lies on the buyer).</p> <p>However, if the seller gives notice which substantially complies with the notifiable variation requirements before the buyer avoids the contract, the buyer only has 15 working days within which to avoid the contract.</p> |
| 83             | 163               | <p><b>Proposed lot contract</b></p> <p>This clause provides for the equivalent of section 70 in the current Act (requires deposits for an off the plan sale of a strata / survey-strata lot to be held by a specified class of person).</p>  |

| Bill Clause | ST Act Section | Amendment details   |
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| 83          | 164            | <p><b>Avoidance of contract — manner and effect</b></p> <p>This clause provides that notice of avoidance of a contract must be given by the buyer to the seller in writing, specifying the grounds for avoidance, including details of the material prejudice to the buyer, if evidence of this is required (Note that no material prejudice needs to be proved if there was a failure to disclose a type 1 notifiable variation).</p> <p>If a contract is avoided the buyer may recover all money under the contract and a person who is holding a deposit or other amount must repay the deposit or other amount to the buyer, minus (if applicable) any amount due to the seller, for example as rent.</p> |
| 83          | 165            | <p><b>Contracting out prohibited</b></p> <p>This clause provides that it is not possible for a contract to exclude the operation of this Part</p>   |
| 83          | -              | <p><b>Part 11 — Variation of strata titles scheme by Tribunal</b></p> <p><b>Division 1 — On damage or destruction</b></p> <p><b>Division 2 — On compulsory acquisition</b></p> <p><b>Division 3 — Notice of applications</b></p> <p>-</p> <p><b>Part 12 — Termination of strata titles scheme</b></p> <p>-</p> <p><b>Division 1 — Introduction</b></p>  |
| 83          | 171            | <p><b>Forms of termination</b></p> <p>This clause summarises the different types of termination:</p> <ul style="list-style-type: none"> <li>• A leasehold scheme terminates on the expiry day for the scheme</li> <li>• A leasehold or freehold scheme terminates <ul style="list-style-type: none"> <li>○ if there is a termination proposal and the process referred to in Division 3 is followed</li> <li>○ all the lots are owned by the same person and the process referred to in Division 4 is followed</li> <li>○ as set out in Division 7 on the taking under the <i>Land Administration Act 1997</i> of all of the lots in the scheme.</li> </ul> </li> </ul>                                       |
| 83          | - -            | <p><b>Division 2 — Expiry of leasehold scheme</b></p>   |
|             | 172            | <p><b>Notification of expiry</b></p> <p>At least 1 month prior to expiry of a leasehold scheme the scheme owner or a leasehold lot owner must notify the Registrar of the impending expiry of the scheme. If the owner does not do this, the notice may be given by an owner of a lot in the scheme, who may then recover the cost of doing so as a debt in a court of competent jurisdiction from the owner of the leasehold scheme.</p>   |
|             | -              | <p><b>Division 3 — Termination proposal</b></p>   |
| 83          | 173            | <p><b>Proponent</b></p> <p>The termination of a strata titles scheme may be proposed by <i>the</i></p>  |

| Bill<br>Clause | ST Act<br>Section | Amendment details   |
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| 83             | 174               | <p data-bbox="427 253 1469 360"><i>proponent</i> who must be either the owner of, or have a contractual right to purchase, a lot in the strata titles scheme; or a body corporate formed by 2 or more such persons.</p> <p data-bbox="427 376 906 405"><b>Outline of termination proposal</b></p> <p data-bbox="427 427 1449 568">The proponent must submit an outline of the termination proposal to the strata company, and, if it is a leasehold scheme, the owner of the leasehold scheme. However, an outline cannot be submitted during a period in which:</p> <ul data-bbox="427 591 1481 846" style="list-style-type: none"> <li>• the strata company has resolved to support a different termination outline proposal</li> <li>• the strata company has resolved by ordinary resolution to prohibit termination proposals being submitted to the strata company</li> <li>• the Tribunal has prohibited termination proposals being submitted to the strata company (on application by the strata company or the owner of the leasehold scheme).</li> </ul> |
| 83             | 175               | <p data-bbox="427 1066 1070 1095"><b>Content of outline of termination proposal</b></p> <p data-bbox="427 1122 1458 1406">The outline must contain sufficient detail to identify the proponent of the proposal, and the scheme to be terminated. It will contain an explanation for the termination, which could include difficulties with raising enough money for repair. It would describe any offers to lot owners and what is proposed for the land after termination, including any planning approvals required and whether these comply with a relevant planning scheme or interim development order in force. Timeframes and stages would be indicated along with an explanation of the process of termination.</p> <p data-bbox="427 1429 1422 1570">The outline will include details of any arrangements for independent advice or representation that the proponent must make for vulnerable persons. An outline of a termination proposal must be in the approved form.</p>   |
| 83             | 176               | <p data-bbox="427 1592 1390 1659"><b>Ordinary resolution and support of owner of leasehold scheme required to proceed further</b></p> <p data-bbox="427 1682 1442 1783">A termination proposal can only proceed further if, within 3 months, the strata company of a freehold scheme resolved by ordinary resolution to support further consideration of it.</p> <p data-bbox="427 1805 1458 1942">If it is a leasehold scheme, the owner of the leasehold scheme must give written notice to the strata company supporting consideration of a full proposal in addition to the strata company passing an ordinary resolution to support it.</p>  |

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|                |                   | For a 2-lot scheme, an ordinary resolution is taken to be passed if the vote attached to 1 of the lots is cast in favour of the resolution, regardless of the unit entitlement of the lot.  |
| 83             | 177               | <p data-bbox="427 376 906 409"><b>Approval of plan of subdivision</b></p> <p data-bbox="427 427 1485 712">If the outline proposal has the required support of the strata company (and the support of the owner of the leasehold scheme in the case of a leasehold scheme) under section 176 of the amending Act, the proponent can make an application under the <i>Planning and Development Act 2005</i> Part 10 (section 135 of that Act) for approval of a plan of subdivision on the basis that the parcel would no longer be subdivided by a strata titles scheme. If that planning approval is given, the termination proposal can proceed further.</p>   |
| 83             | 178               | <p data-bbox="427 734 628 768"><b>Full proposal</b></p> <p data-bbox="427 786 1465 1032">If approval of a plan of subdivision is obtained the proponent can then submit a full termination proposal to the strata company, and, if it is a leasehold scheme, the owner of the leasehold scheme. However, this cannot occur if it is more than 12 months since the support for the outline proposal was received, or if the Tribunal has prohibited termination proposals being submitted for a period (on application by the strata company or the owner of the leasehold scheme).</p> <p data-bbox="427 1055 1374 1160">For a leasehold scheme, the proponent must give the owner of the leasehold scheme written notice of the date the full proposal was submitted to the strata company.</p> <p data-bbox="427 1182 1449 1395">Within 14 days of being given the full proposal, a strata company must serve it on each owner, occupier, registered mortgagee or caveator of a lot in the strata titles scheme; or a person with an interest in a lot as lessee, tenant or mortgagee recorded in the strata company roll, or an occupier of common property. The strata company must lodge notice of receipt of the proposal with the Registrar of Titles.</p> <p data-bbox="427 1417 1481 1485">Any modification of the full proposal must go through the same process. A modification cannot be submitted 14 days before voting on the proposal.</p> |
| 83             | 179               | <p data-bbox="427 1507 791 1541"><b>Content of full proposal</b></p> <p data-bbox="427 1559 1422 1664">A full proposal must include the material required to be included in the outline and the approved plan of subdivision. It must describe what is proposed to be offered to owners of lots including contracts:</p> <ul data-bbox="427 1686 1473 2042" style="list-style-type: none"> <li>• for the sale and purchase of lots, with the name and address of any buyer, purchase price or a description of how this will be determined, details of contracts for sale and purchase including proposed settlement dates, or a description of how these are to be determined, any deductions proposed to be made out of the purchase price or how these are to be determined</li> <li>• under which the owner of a lot acquires an interest in land in exchange, including the choices available to owners or how these will be determined, the interests in land proposed to be acquired by the owners and other terms and conditions of the exchange</li> </ul>   |

| Bill<br>Clause | ST Act<br>Section | Amendment details   |
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|                |                   | <ul style="list-style-type: none"> <li>• under which the owner of a lot is to have an interest in the land on termination of the strata titles scheme or is to have a right or option for the acquisition of an interest in the land following its subdivision or development</li> </ul> <p>The proposal must describe, in detail what is to happen</p> <ul style="list-style-type: none"> <li>• on termination of the scheme in terms of registered mortgages over the lots and other estates and interests in a lot or common property that are registered or recorded in the Register.</li> <li>• on termination of the strata titles scheme in terms of the contractual rights of occupiers of lots or common property in the scheme</li> <li>• in terms of subdivision and development of the land following termination, including plans for demolition, subdivision, architectural plans, and what planning approvals are required for these, including the extent to which the proposal does not comply with the relevant planning scheme or interim development order in force under the <i>Planning and Development Act 2005</i>.</li> <li>• in relation to the stages and timeframes proposed for progress of the proposal if it proceeds, including expectations for when vacant possession of lots and common property will be required</li> <li>• to temporarily relocate owners of lots, including any payments proposed to be made to owners to enable this.</li> </ul> <p>The proposal must include:</p> <ul style="list-style-type: none"> <li>• a statement of the current assets and liabilities of the scheme, and any current or pending legal proceedings which the strata company is or proposes to be a party to</li> <li>• the proposed steps to wind up the strata company, including the realisation of the assets and liabilities, and</li> <li>• any other information required by the regulations.</li> <li>• a termination infrastructure report on the state and condition of scheme buildings and infrastructure on the common property in the scheme, the work that would be needed to repair or replace the buildings and infrastructure, and the estimated cost of doing so</li> <li>• a termination valuation report by a licensed valuer setting out a current valuation of the market value of each lot in the strata titles scheme. The regulations may prescribe matters relating to the how the market value of a lot for the purpose of the full proposal is to be determined.</li> </ul> |
| 83             | 180               | <p><b>Support of owner of leasehold scheme required</b></p> <p>The owner of the leasehold scheme must give a written notice of support to the strata company within three months of the full proposal being submitted to the strata company. A strata company must tell the proponent (in writing) that it has received this notice, as soon as is reasonably practicable.</p>  |
| 83             | 181               | <p><b>Meetings and submissions</b></p> <p>After receiving the full proposal, the strata company must hold a general meeting (or more than one) unless it is a proposal that cannot proceed</p>  |

| Bill<br>Clause | ST Act<br>Section | Amendment details   |
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| 83             | 182               | <p>further. At the meeting, members of the strata company may resolve that the proponent leave the meeting while the proposal is discussed, or not attend at all (if the proponent is not a member of the strata company.)</p> <p>Those parties who must be served a full proposal must be given a reasonable opportunity to make submissions to the proponent and the strata company.</p> <p>The council may discuss a termination proposal with the proponent and inform the owners of the discussions, and of any additional information provided and make recommendations to the owners about the proposal.</p> <p>The regulations may impose additional requirements about the process required for consideration of a termination proposal.</p> <p><b>Vote</b></p> <p>This clause details how voting is to be conducted when a termination proposal is put to the vote. There are time restrictions to be followed and a maximum of 3 votes taken.</p> <p>A termination resolution is passed if all lot owners vote yes, with each lot having 1 vote counted.</p> <p>A termination resolution is passed subject to confirmation of the Tribunal, when the vote is less than 100% under specific conditions defined in this clause.</p> <p>The Registrar of Titles must be notified of the termination proposal outcome.</p> <p>A termination proposal must be put to the vote unless it is a proposal that cannot proceed further. The voting period must be between 2 and 6 months from the strata company serving the full proposal.</p> <p>An independent person must be appointed to tally and count the votes on the proposal. One vote may be cast for each lot, and all votes have equal value. A termination resolution is passed if the number of votes in favour is unanimous. A termination resolution is passed subject to confirmation of the Tribunal, for a strata titles scheme with</p> <ul style="list-style-type: none"> <li>• 2 lots — if at least 1 vote is cast in favour of the termination proposal</li> <li>• 3 lots — if at least 2 votes are cast in favour of the termination proposal</li> <li>• more than 3 lots — if the number of votes cast in favour of the termination proposal is at least 75% of the total number of lots in the scheme.</li> </ul> <p>After a termination resolution is passed the strata company must give written notice of this to the Registrar of Titles (in an approved form), the proponent and if it is a leasehold scheme, the owner of the leasehold scheme. The notice must include a statement of whether confirmation of the termination resolution by the Tribunal is required.</p> <p>The regulations may impose additional requirements about the process</p> |

| Bill<br>Clause | ST Act<br>Section | Amendment details  |
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|                |                   | for voting on a termination proposal.  |
| <b>83</b>      | <b>183</b>        | <p data-bbox="427 309 1198 336"><b>Confirmation of termination resolution by Tribunal</b></p> <p data-bbox="427 360 1477 611">If the required vote was achieved, the proponent can apply to the Tribunal for confirmation of the termination resolution within 28 days (or within an extension of that period given by the Tribunal). The submission must include the full proposal, all submissions made to the proponent and any other material specified in the regulations. The strata company, and if it is a leasehold scheme, the owner of the leasehold scheme, are entitled to a copy of this submission, and are taken to be parties to the proceedings.</p> <p data-bbox="427 636 1477 846">Within 14 days of receipt of the application the strata company must serve notice of it on every owner, occupier or registered mortgagee of a lot, any occupier of common property and any person the Tribunal requires to be served. If the strata titles scheme is, or includes a retirement village, a notice of the application must be served on the person designated the Commissioner by the <i>Retirement Villages Act 1992</i>.</p> <p data-bbox="427 871 1414 1043">A person who is required to be served with notice of the application is entitled to appear and be heard or make written submissions to the Tribunal. The Tribunal may make an order confirming the termination resolution, (which may be subject to it being modified in a specified manner) or make a decision not to make such an order.</p> <p data-bbox="427 1068 1437 1133">The Tribunal cannot give an order confirming the termination resolution unless the Tribunal is satisfied of three key things:</p> <ol data-bbox="427 1158 1477 1563" style="list-style-type: none"> <li>1. the termination process was properly followed and</li> <li>2. every owner will receive fair market value for their lot (eg: apartment) or a like for like exchange for the lot and</li> <li>3. the proposal to terminate is otherwise just and equitable having regard to the interests of: <ul style="list-style-type: none"> <li>• the owners of the lots in the strata titles scheme</li> <li>• the owner, if it is a leasehold scheme</li> <li>• occupiers of the lots and occupiers of the common property</li> <li>• registered mortgagees</li> <li>• any other person with an estate or interest registered or recorded in the Register.</li> </ul> </li> </ol> <p data-bbox="427 1588 1433 1653">If the Tribunal is not satisfied of all three points the Tribunal must order that the termination proposal comes to an end.</p> <p data-bbox="427 1677 1473 1778">In deciding whether each owner who objects will receive fair market value for the lot or a like for like exchange for the lot, the Tribunal must be satisfied that:</p> <ol data-bbox="427 1803 1445 2016" style="list-style-type: none"> <li>a. the owner will receive an amount that is at least the amount of compensation that would be required to be paid by an acquiring authority under the Land Administration Act 1997 for taking of the lot without agreement and</li> <li>b. the owner will not be disadvantaged in terms of the owner's financial position as a result of the termination of the strata titles scheme.</li> </ol> |

| Bill<br>Clause | ST Act<br>Section | Amendment details  |
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|                |                   | <p>In considering the amount of compensation that would be payable under the <i>Land Administration Act 1997</i> section 241, the Tribunal may also award an additional amount appropriate to compensate for the taking without agreement (but it may not be more than 10% of the amount otherwise awarded or offered, unless the Tribunal is satisfied that exceptional circumstances justify a higher amount).</p> <p>Without limitation, the Tribunal must consider the loss or damage, if any, sustained by the owner by reason of any of the following:</p> <ol style="list-style-type: none"> <li>i. removal expenses;</li> <li>ii. disruption and reinstatement of a business;</li> <li>iii. liability for capital gains tax, goods and services tax or other tax or duty;</li> <li>iv. conveyancing and legal costs and other costs associated with the creation or discharge of mortgages and other interests, including for the acquisition of a replacement property.</li> </ol> <p>If the objecting owner is being offered a like-for-like replacement lot, the Tribunal must consider:</p> <ul style="list-style-type: none"> <li>• whether the value of the replacement lot is equivalent to the fair market value of the current lot and</li> <li>• how the location, facilities and amenity of the replacement lot compares with the current lot.</li> </ul> <p>Without limitation, the Tribunal must consider the following:</p> <ul style="list-style-type: none"> <li>• evidence of any impropriety in the termination process including evidence of proxy votes being exercised improperly and evidence of false or misleading information in the outline or detailed termination proposal</li> <li>• the proportion of owner support for the termination by number of lots and unit entitlement</li> <li>• the termination infrastructure report and options readily available to address problems identified in the report</li> <li>• any arrangements for the owner of a lot to buy back into the subdivided land following redevelopment</li> <li>• the benefits and detriments of the termination proposal proceeding or not proceeding for owners, occupiers, registered mortgagees and all people with a registered estate, interest, right over a lot or the common property.</li> </ul> <p>If not satisfied that the termination proposal provides fair market value to owners who object and is otherwise just and equitable, but that it would be if it were modified, the Tribunal may confirm the termination resolution subject to the termination proposal being modified in the specified manner.</p> <p>The modifications may include for the proponent to make a payment to someone who is leasing or renting a lot or common property in the strata titles scheme. The modifications must not be less advantageous to any</p> |

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|                |                   | <p>owner (or, if it is a leasehold scheme, the owner of the leasehold scheme), than the termination proposal without modification.</p> <p>The Tribunal's powers under this clause are exercisable only by a judicial member (or by the Tribunal constituted of a judicial member and other members).</p> <p>A strata company must, as soon as practicable after being given notice of the decision of the Tribunal on an application under this clause:</p> <ol style="list-style-type: none"> <li>a. lodge with the Registrar of Titles notice of the decision in the approved form; and</li> <li>b. give written notice of the decision to each person entitled to receive notice of the application.</li> </ol> |
| 83             | 184               | <p><b>Endorsement of subdivision approval on plan</b></p> <p>If a termination proposal can proceed further after a vote of the strata company, including, if required, because the Tribunal confirms the termination resolution, then the proponent needs to request the WAPC endorse the plan of survey required to register the termination. If the plan of survey is not endorsed, the termination proposal comes to an end.</p>  |
| 83             | 185               | <p><b>Application for termination of scheme</b></p> <p>This clause details what is required for an application for termination to be lodged with the Registrar of Titles, including time limits and the requirement to have completed each of the required steps.</p>  |
| 83             | 186               | <p><b>Withdrawal of termination proposal</b></p> <p>This clause provides the actions which must be carried out if a proponent of termination decides not to proceed.</p>   |
| 83             | 187               | <p><b>Notice that termination proposal cannot proceed further</b></p> <p>This clause provides the reasons where a proposal cannot proceed, and what needs to be done in this instance.</p>   |
| 83             | 188               | <p><b>Notices received by Registrar of Titles</b></p> <p>This clause details the actions of the Registrar of Titles to record notifications under this Division in the Register and record a notice of withdrawal as a withdrawal of all earlier notifications recorded in the Register about the termination proposal.</p>  |
| 83             | 189               | <p><b>Costs of process</b></p> <p>A strata company may charge the proponent reasonable fees to cover costs associated with undertaking an activity relating to a termination proposal. This must not exceed any limits imposed by the regulations. A strata company does not have to undertake the activity until the fees have been paid.</p> <p>If the strata company undertakes the relevant activity before receiving payment it can recover, in a court of competent jurisdiction, the fees as a debt owed to it by the proponent.</p>  |

| Bill<br>Clause | ST Act<br>Section | Amendment details  |
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| 83             | 190               | <p><b>Arrangements for independent advice or representation for owners</b></p> <p>The regulations may require the proponent to enter into specified arrangements for the owners to obtain independent advice or representation in connection with the proposal.</p> <p>The arrangements may include a requirement for the proponent to pay an amount to be held in trust for owners of lots who meet specified criteria to obtain independent legal advice or representation, valuation advice or reports or financial or taxation advice in connection with the proposal.</p> <p>Note: The main purpose of the arrangements is to ensure that vulnerable owners have access to independent advice about a termination proposal</p>  |
| 83             | 191               | <p><b>Application for termination by single owner</b></p> <p>This clause gives the procedure for termination of a scheme when all lots in a strata titles scheme are owned by the same person. For a leasehold scheme, if the applicant is not the owner of the leasehold scheme, the owner of the leasehold scheme must also give written consent to the termination.</p>   |
|                |                   | <p><b>Division 5 — Directions for winding up of strata company</b></p>   |
| 83             | 192               | <p><b>Order for directions about winding up of strata company</b></p> <p>Before a strata titles scheme is terminated, an application may be made to the Tribunal for an order for directions about winding up the strata company by any one of the following:</p> <ul style="list-style-type: none"> <li>• an owner</li> <li>• a registered mortgagee</li> <li>• the strata company</li> <li>• a judgement creditor of the strata company</li> <li>• the owner of the leasehold scheme, if it is a leasehold scheme.</li> </ul> <p>The application can be made as part of proceedings before the Tribunal for the confirmation of a termination resolution. An order under this clause may include directions for the:</p> <ul style="list-style-type: none"> <li>• disposition of property</li> <li>• discharge of the liabilities</li> <li>• administration and functions</li> </ul> <p>of the strata company.</p> <p>The applicant and any person to whom a copy of the application has been given is entitled to appear and be heard and apply for the variation of an order under this clause. An order under this clause prevails over steps specified in a termination proposal for the winding up of the strata company.</p> |

**Division 6 — Notice, application and registration process****83 193 Notice of expiry or application for termination of scheme**

A notice of the expiry of a leasehold scheme or an application for termination of a strata titles scheme must be made to the Registrar of Titles in the approved form.

An application for termination must be accompanied by

- the plan of survey endorsed with the approval of the Planning Commission
- evidence in the approved form that the requirements of this Act for the termination of the scheme have been complied with
- if applicable, a statement of how each item registered or recorded in the Register is to be dealt with, and documents necessary for that purpose
- the fee fixed by the regulations.

An application for termination of a strata titles scheme can be made before the plan of survey required for termination of the scheme is endorsed with the approval of the Planning Commission, but the registration cannot be cancelled until the plan of survey is so endorsed.

**83 194 Registration process for termination of scheme**

This clause details what the Registrar of Titles must complete on receipt of an application for termination.

**83 195 Effect of termination of scheme**

This clause details the effects of the termination of a strata titles scheme.

**83 Division 7 — Termination on compulsory acquisition****Part 13 — Tribunal proceedings****83 197 Scheme disputes**

The Tribunal will resolve scheme disputes as specified in this clause. The clause details the possible disputing parties, and the topics the Tribunal may resolve.

It also provides a definition of scheme participants in order to clarify disputing parties and provides guidelines as to what are not scheme disputes.

**83 198 Procedure**

The Tribunal may authorise a member of a strata titles scheme to make an application on behalf of a strata company where it is satisfied the strata company has unreasonably refused to make the application itself. It can also authorise expenditure of strata company funds for legal costs.

Those entitled to a copy of an application or the notice are each member of the strata company, mortgagees of lots and occupiers of lots that would be affected. It falls on the strata company to provide a copy to these parties.

The *State Administrative Tribunal Act 2004 section 47* describes the circumstances where a dispute is considered frivolous or lacking in

substance. This clause provides additional circumstances where the Tribunal may dismiss the application.

**83            199    Declarations**

This clause provides that the Tribunal may make declarations instead of, or as well as, an order and these declarations can only be made by a legally qualified member.

Declarations may be made that a person has or has not contravened this Act or scheme by-laws; a scheme by-law is invalid; a decision or resolution of the strata company is or is not invalid; the appointment of an officer is or is not valid; a settlement date or contract of sale is or is not valid.

**83            200    Orders**

The Tribunal may make any order the Tribunal considers appropriate to resolve a dispute or proceeding for a proceeding under the amending Act. Without limitation, these orders may include:

- requiring a scheme document to be amended in a specified manner (including in a manner that effects a subdivision), subject to registration requirements and approvals,
- requiring reinstatement of a structural element by reference to which a lot in a strata scheme is defined,
- determination of the form and location of utility conduits,
- requiring a scheme developer to reimburse a strata company for benefits the owner has received,
- determination of actions needed to be taken or not taken by a member of the strata company,
- authorising a specified person to preside at a general meeting,
- authorising a specified person to preside at a meeting of the council of the strata company,
- removing a specified person from office as a council member,
- appointing a person to the council of a strata company,
- varying or terminating a strata management contract,
- requiring a strata company to take, or refrain from a specified action (to sell or acquire real or personal property; to enter into, vary or terminate a contract including a contract for services or amenities to the strata company or the members of the strata company; to pursue a particular insurance claim; to vary the amount of insurance coverage; to allow the keeping of an animal or prohibit the keeping of an animal on a lot or common property),
- requiring a person to take a specified action or refrain from taking a specified action to remedy or prevent a further contravention of the act,
- that the strata company is taken to have or not to have passed a specified resolution,
- a person must pay money to another person for compensation for pecuniary loss suffered or to adjust the position or rights of the parties as a result of the termination or variation of a contract
- the return of a deposit to a former buyer who validly avoided buying a lot,
- appointing an administrator of the strata company.

When the Tribunal makes an order requiring the strata manager or scheme developer to pay an amount to the strata company it may prohibit any indemnity for that payment.

Orders may be back dated and may be effective on default of another order and they may remain in force for a specified time determined by a date, event or further order.

**83        201    Interim orders**

The Tribunal may make interim orders in urgent circumstances which remain in force for up to 3 months and which may be renewed within that period or revoked or varied by the Tribunal.

**83        202    Decision not to make order or declaration**

The Tribunal may decide not to make an order or declaration.

**83        203    Certain powers only exercisable by judicial member or legally qualified member**

An order can only be made by a judicial member of the Tribunal if the order affects a title, the order confirms a termination resolution, or the regulations require it.

An order can only be made by a legally qualified member if the regulations require it.

**83        204    Limitations on orders**

The Tribunal cannot make an order

- requiring a schedule of unit entitlements to be amended unless the schedule of unit entitlements would require amendment to comply with this Act (ie: When allocated, the proportion that a unit entitlement of a lot bears to the sum of the unit entitlements of all the lots in the strata titles scheme must not be greater than 5% more, or 5% less, than the proportion that the value of the lot bears to the sum of the value of all the lots in the strata titles scheme),
- that the strata company has passed a termination resolution or a resolution required for postponing the expiry day for a leasehold scheme or other specified resolutions (unless the Tribunal is satisfied of certain things)
- to vary the insurance cover unless the current cover is excessive or inadequate,
- to allow or prevent keeping animals unless the strata company is being unreasonable,
- in regard to compensation for personal injury or death,
- for payment of money in a dispute between a buyer and a prospective buyer (other than to order repayment of a deposit or other money to the buyer),
- in any circumstances prohibited by the regulations.

**83        205    Administrator of strata company**

The Tribunal may appoint an administrator to perform a specified task or

function in accordance with conditions specified by the Tribunal. No other person can perform the administrator's tasks or functions, anything the administrator does has the same effect as if the person normally doing the task or function had done it and the Tribunal may change or revoke the order of appointment. The administrator appointed must keep records of the tasks or functions performed and provide this to the strata company.

**83            206        Contributions for money payable by strata company**

This clause gives the Tribunal discretion, if it makes an order that requires a strata company to pay money, to:

- direct that the money (and any costs) be paid by the strata company are to be paid out of contributions levied in the proportions specified in the order
- direct the strata company to levy contributions in accordance with the order
- prohibit the strata company from levying a contribution that would be payable by an owner in the scheme where the owner is another party to the dispute.

**83            207        Enforcement of order to act**

This clause will enable the Tribunal to convert a non-monetary order (an order to act) to a monetary order. If a person is ordered by the Tribunal to do something and they do not comply, the Tribunal can order that person to pay money to the other person equal to what it would cost to carry out the order to act.

Enforcing a non-monetary order (an order to act) given by the Tribunal, currently requires the Tribunal order and other documents to be filed with the Supreme Court. Enforcing a monetary order of the Tribunal is relatively straight forward and can be done by lodging the Tribunal order with the relevant court.

**83            208        Order overrides existing scheme by-laws**

This clause confirms that the order of a Tribunal prevails over the scheme by-laws for a strata titles scheme.

**83            209        Original jurisdiction**

This clause clarifies that, unless stated otherwise, a proceeding to resolve a dispute in the Tribunal under this Act comes within the Tribunal's original jurisdiction.

**83            210        Internal review of order or declaration**

This clause enables a party to a Tribunal proceeding to apply, if leave is given by the Tribunal, for an internal review of a decision of a kind specified in the regulations, provided the order was not made by a judicial member of the Tribunal. The review may affirm, vary or set aside the Tribunal order and the application must be made within 28 days of the order being made.

## **Part 14 — Miscellaneous**

- 83 215 Address for service**  
This clause provides that an address for service under the Act must be within Australia. An electronic address may be provided in addition.
- 83 216 Service of documents on strata company, owners and others**  
This clause sets out requirements for service of documents on a strata company, owners and others
- 83 218 Correction of errors by Registrar of Titles**  
This clause sets out the powers of the Commissioner of Titles and Registrar of Titles in relation to correction of errors in the Register and scheme documents. It also provides for the manner in which the error must be corrected
- 83 222 Disposition Statement**  
This clause provides for a regulation making power to deal with registration of a disposition statement for the discharge, withdrawal, removal or bringing forward of items registered or recorded for the scheme or to provide evidence.
- 83 223 Requirements under the *Transfer of Land Act 1893***  
This clause states that requirements under the *Transfer of Land Act 1893* may relate to matters under this Act
- 83 227 Review of this Act**  
This clause provides that the Act is to be reviewed after 5 years.
- 83 228 Transitionals and savings: Schedules 3, 4 and 5**  
This clause provides for the operation of transitional and savings provisions. The clauses in Schedules 3 and 4 of the current Act are retained in the amending Act.
- 84 Division 4 — Sections relocated to Parts 2 to 14**  
**Sections relocated to Parts 2 to 14**  
This clause re-orders and re-numbers sections throughout the current Act, to provide a more logical structure.
- 85 References to renumbered provisions in other laws or other documents**  
A reference in another law or another document to a provision renumbered under this Division is a reference to the provision as renumbered unless the contrary intention appears.
- Division 5 — Amendment of Schedule**
- 86 Sch. 1 Schedule 1 heading replaced**  
This clause amends the heading of Schedule 1 to Governance By-laws, the new concept introduced in the definitions.
- 87 Sch. 1 Duties of owner**  
**bl. 1** Clauses 86(2) and (3) amend Schedule 1 by-law 1 for clarity.

Clause 86(4) deletes sub-by-law 1(2) from Schedule 1 (sub-by-law 1(2) is relocated to Schedule 2 because it is a conduct by-law).

- 88 Sch. 1 Power of proprietor to decorate**  
 (2) Clause 87 deletes by-law 2 from Schedule 1 (by-law 2 is relocated to Schedule 2 because it is a conduct by-law).
- 89 Sch. 1 Power of strata company regarding submeters**  
 bylaw Schedule 1 by-law 3 is amended for clarity  
 (3)
- 90 Sch 1 Constitution of council**  
 Bylaw Schedule 1 by-law 4 is amended for clarity.  
 (4)
- 91 Sch 1 Election of council**  
 By-law Schedule 1 by-law 5 is amended for clarity  
 (5)
- 92 Sch 1 Chairman, secretary and treasurer of council**  
 By-law Schedule 1 by-law 6 amended:  
 (6) a. for clarity and  
 b. to provide what happens when a vacancy exists on the council.
- 93 Sch 1 Chairman, secretary and treasurer of strata company**  
 By-law Schedule 1 by-law 7 is amended for clarity.  
 (7)
- 94 Sch 1 Meetings of council**  
 By-law Schedule 1 by-law 8 is amended for clarity  
 (8)
- 95 Sch 1 Powers and duties of secretary of strata company**  
 By-law Schedule 1 by-law 9 amended for clarity.  
 (9)
- 96 Sch 1 Powers and duties of treasurer of strata company**  
 By-law Schedule 1 by-law 10 is amended for clarity  
 (10)
- 97 Sch 1 Schedule 1 by-laws 11 to 15 deleted**  
 By-law The intent of this change is to move important provisions around meetings  
 11 – of the strata company, such as how they are convened, the proceedings,  
 15 how votes may be taken, and the execution of documents into the main  
 body of the Act. These are vital elements to the running of the strata  
 company, which should be established in the main body of the Act, rather  
 than being in by-laws which may be amended.

- 98 Sch 2 Schedule 2 heading replaced**  
Schedule 2 provides for the default Conduct by-laws..
- 99 Sch 2 Vehicles**  
**By-law (1)** This clause amends by-law 1 for clarity and inserts parking by-laws that were in Schedule 1 to Schedule 2 to reflect that parking matters are actually conduct by-laws.
- 100 Sch 2 Obstruction of common property**  
**By-law (2)** Similar to the previous clause, this relocates by-laws providing that lot owners, occupiers and visitors must not cause a nuisance to others in the scheme from the Governance by-laws into the Conduct by-laws Schedule.
- 101 Sch 2 Damage to laws etc. on common property**  
**By-law (3)** Schedule 2 by-law 3 is amended for clarity
- 102 Sch 2 Behaviour of proprietors and occupiers**  
**By-law (4)** Schedule 2 by-law 4 is amended for clarity
- 103 Sch 2 Children playing upon common property in building**  
**By-law (5)** This by-law related to children playing on common property and will be deleted because it is an example of a by-law that is unreasonable.
- 104 Sch 2 Depositing rubbish etc. on common property**  
**By-law (6)** Schedule 2 by-law 6 is amended for clarity.
- 105 Sch 2 Drying of laundry items**  
**By-law (7)** Schedule 2 by-law 7 is amended for clarity
- 106 Sch 2 Storage of inflammable liquids, etc**  
**By-law (8)** Schedule 2 by-law 8 is amended for clarity
- 107 Sch 2 Moving furniture etc. on or through common property**  
**By-law (9)** Schedule 2 by-law 9 is amended for clarity
- 108 Sch 2 Floor coverings**  
**By-law (10)** Schedule 2 by-law 10 is amended for clarity.
- 109 Sch 2 Garbage disposal**  
**By-law (11)** Schedule 2 by-law 11 is amended for clarity

- 110 Sch 2 Additional duties of proprietors, occupiers, etc.**  
**By-law** Schedule 2 by-law 12 is amended for clarity.  
**(12)**
- 111 Sch 2 Notice of alteration of lot**  
**By-law** Schedule 2 by-law 13 is amended for clarity  
**(13)**
- 112 Sch 2 Appearance of lot**  
**By-law** Schedule 2 by-law 14 is amended for clarity  
**(14)**
- 113 Sch 2 Decoration of, and affixing items to, inner surface of lot**  
**new** This clause relocates a by-law about an owner decorating their lot (a form  
**By-law** of conduct) from the Schedule 1 Governance by-laws to the Schedule 2  
 Conduct by-laws.  
**(15)**
- 114 Sch Schedule 2A replaced**  
**2A** This amending clause brings about a substantial improvement in the  
 ordering of the Act. It brings together special provisions for single tier  
 strata schemes, and places them in Schedule 2A within the Act. These  
 single tier strata schemes are a 'special case' previously scattered in  
 assorted provisions throughout the current Act.  
 As part of its structural reordering of the Act, this amending clause inserts  
 numerous headings which improve the structure of the Act.
- 115 Sch Transitional and savings provisions**  
**3** This clause amends the Schedule 3 heading and confirms that the  
 clauses in Schedule 3 of the current Act (being the transitional and  
 savings provisions related to the transition from the *Strata Titles Act 1966*  
 to the *Strata Titles Act 1985*) are retained in Schedule 3 of the amending  
 Act.
- 116 Sch Transitional provisions for by-laws of strata companies other than**  
**4 companies to which Schedule 3 applies**  
 This clause amends the Schedule 4 heading and confirms that the  
 clauses in Schedule 4 of the current Act (being the transitional and  
 savings provisions related to the transition from the *Strata Titles Act 1985*  
 to the *Strata Titles Amendment Act 1995*) are retained in Schedule 4 of  
 the amending Act.
- 117 Sch Sections relocated to Schedule 2A**  
**2A** Related to amending clause 114, this clause inserts sections into  
 Schedule 2A which are related to special provisions for single tier strata  
 schemes. This is aimed at improving the logical ordering of the Act. The  
 Table in clause 117 lists which sections are relocated to Schedule 2A,  
 what their clause number is and what the clause heading will be.

- 118 - References to redesignated provisions in other laws or other documents.**  
A reference in another law or another document to a provision redesignated under this Division is a reference to the provision as redesignated unless the contrary intention appears.
- 119 Sch (5) Transitional provisions for Strata Titles Amendment Act 2018**  
**(new)** The intent of this amending clause is to create (new) Schedule 5, which includes transitional provisions for the *Strata Titles Amendment Act 2018*.
- 119 Sch 5 Terms used**  
**(new)** This clause defines terms used in this Schedule: *amending Act* and *commencement day*.  
1
- 119 Sch 5 Continuance of strata title schemes**  
**(new)** This clause provides that the amending Act does not affect the continued existence of:  
2
  - a strata scheme or survey-strata scheme
  - a lot or common property
  - an estate or interest in a lot or common property
  - a strata company, its council or its officers.
Each strata/survey-strata plan, by-laws, schedule of unit entitlement which are registered before the commencement day will continue to be registered as scheme documents after commencement day.
- 119 Sch 5 Scheme notice**  
**(new)** This clause provides that the name and the address for service of existing strata companies will continue to exist as part of a scheme notice after the amending Act commences.  
3
- 119 Sch 5 Scheme by-laws**  
**(new)** This clause provides transitional arrangements for by-laws.  
4
- 119 Sch 5 Schedule of unit entitlements**  
**(new)** This clause provides the schedule of unit entitlement of registered strata / survey-strata schemes continue to be the schedule of unit entitlements after commencement day.  
5
- 119 Sch 5 Council members and officers**  
**(new)** This clause provides transitional requirements for a member of the council or officer of a strata company to inform the strata council in writing of any conflict of interest and to not vote on any matter (other than being an owner of a lot) related to the conflict of interest on or after commencement day.  
6
- 119 Sch 5 Applications lodged with Registrar of Titles before commencement day**  
**(new)** This clause provides that applications lodged with the Registrar of Titles to register:  
7
  - a plan of re-subdivision or plan of consolidation

- the conversion of lot(s) to common property
- the acquisition, lease or disposal of common property
- the creation or surrender of an easement or restrictive covenant
- the reallocation of unit entitlement,

which is yet to be processed before the commencement day is to be treated as an application to amend a scheme plan and the schedule of unit entitlements as the case may be.

- 119 Sch 5 Approvals and certificates**
- (new) 8** This clause provides that certificates required from licensed valuers and surveyors or to be approved by the Planning Commission and local government to accompany a strata / survey-strata plan before the commencement day are taken to comply with the requirements or be approved under the amending Act. The regulations may impose time limits to register scheme documents or the amendment of them.
- 119 Sch 5 Utility service easement**
- (new) 9** This clause applies to utility conduits whether already installed or to be installed on or after the commencement day.
- 119 Sch 5 Scheme developers**
- (new) 10** This clause provides that unless already done so, a scheme developer must disclose to the strata company in writing any remuneration and other benefits that the scheme developer may have in the contract, lease or licence (in relation to section 79 of the amending Act) entered into before the commencement day.
- 119 Sch 5 Structural alteration of a lot**
- (new) 11** This clause provides that an order dispensing with approval of a structural alteration of a lot can apply to a structural alteration made before the commencement day.
- 119 Sch 5 Records and correspondence**
- (new) 12** This clause provides that existing strata company records and reports must continue to be kept in accordance with section 104 of the amending Act by the strata company on and after the commencement day.
- 119 Sch 5 Strata managers**
- (new) 13** This clause provides transitional arrangements for strata managers.
- 119 Sch 5 Scheme disputes**
- (new) 14** This clause provides that:
- a. a scheme dispute may involve an event that occurred or a matter that arose before commencement day and
  - b. the Tribunal may apply the objectives set out in section 119 of the amending Act to a dispute arising from an event or matter which arose before the commencement day.
- 119 Sch 5 Administrators**
- (new)** This clause provides transitional arrangements for an administrator of a

- 15 strata company.
- 119 **Sch 5 Schedule 2A**  
(new) This clause provides that (other than those clauses in Part 1), the clauses in Schedule 2A are identically numbered to the sections of the current Act before the commencement day.  
16
- 119 **Sch 5 Short form easements and restrictive covenants**  
(new) This clause provides transitional arrangements for easements created under section 5D of the current Act prior to commencement day.  
17
- 119 **Sch 5 Restricted use conditions**  
(new) This clause provides transitional arrangements for a restriction of use under section 6 of the current Act.  
18
- 119 **Sch 5 Approvals for structural alterations**  
(new) This clause provides transitional arrangements for an approval given under section 7 or 7A of the current Act.  
19
- 119 **Sch 5 Temporary common property**  
(new) This clause provides that land leased as common property before the commencement day is taken to be temporary common property under the amending Act.  
20
- 119 **Sch 5 Termination of strata scheme by unanimous resolution**  
(new) This clause provides transitional arrangements for the unanimous termination of strata schemes and survey-strata schemes.  
21
- 119 **Sch 5 Roll**  
(new) This clause provides transitional arrangements for the roll kept by a strata company.  
22
- 119 **Sch 5 Financial management**  
(new) This clause provides transitional arrangements for:  
23
  - a. the administrative fund
  - b. the reserve fund
  - c. contributions or other arrangements determined under section 36 of the current Act and
  - d. authorised expenditure of the strata company.
- 119 **Sch 5 Extension of contract termination period**  
(new) This clause provides transitional arrangements for an existing extension period.  
24
- 119 **Sch 5 Provision of information**  
(new) This clause provides transitional arrangements for any existing application for supply of information and certificates under section 43 of the current Act.  
25

- 119 Sch 5 Authorisation of body corporate**  
**(new)** This clause provides transitional arrangements for an individual authorised under section 45 of the current Act.  
**26**
- 119 Sch 5 Restrictions of power of expenditure**  
**(new)** This clause provides that the expenditure amount per lot fixed by special resolution before the commencement day will continue to be the expenditure amount under the amending Act.  
**27**
- 119 Sch 5 Insurance in transitional period**  
**(new)** This clause provides that existing insurance of a strata company which complies with the current Act prior to the commencement day does not need to comply with the amending Act for 12 months after the commencement day.  
**28**
- 119 Sch 5 Protection of buyers**  
**(new)** This clause provides Part 5 of the current Act applies (as if the amending Act had not been enacted) to:  
**29**
- a. a contract for the sale and purchase of a lot in a strata titles scheme entered into before commencement day; and
  - b. the buyer and seller for the contract; and
  - c. any person who has been paid money in relation to that contract.
- 119 Sch 5 Proceedings**  
**(new)** This clause provides transitional arrangements for proceedings.  
**30**

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### **Part 3 — Other Acts amended**

#### **Division 1 — *Building Act 2011* amended**

- 120** - This Division amends the *Building Act 2011*. This Act has important links to the Act, because if building works are required, a person who wants to lodge a strata plan for registration or an amendment of a plan being a subdivision must obtain approvals under this Act.
- 121** - **Section 3 Amended**  
 Section 3 of the *Building Act 2011* is amended to insert the new term 'strata lease'.
- 122** - **Section 5 amended**  
 Section 5 of the *Building Act 2011* is amended to provide for the owner of a lot in a leasehold scheme.
- 123** - **Section 50 deleted**  
 Section 50 of the *Building Act 2011* is to be deleted.
- 124** - **Division 2 - *Caravan Parks and Camping Grounds Act 1995* amended**  
 This Division amends the *Caravan Parks and Camping Grounds Act 1995*, to make a change necessary because of the amending Act.

- 125** - **Section 5 amended**  
Section 5 of the *Caravan Parks and Camping Grounds Act 1995* is amended to reflect the new definitions in the amending Act
- 126** - **Division 3 — *Credit Act 1984* amended**  
This Division amends the *Credit Act 1984* to make a change necessary because of the amending Act
- 127** - **Section 5 amended**  
Section 5 of the *Credit Act 1984* is amended to delete an outdated reference to the *Strata Titles Act 1966*, replacing it with the correct terminology in the amending Act.
- 128** - **Division 4 — *Credit (Administration) Act 1984* amended**  
This Division amends the *Credit (Administration) Act 1984*, to make a change necessary because of the amending Act.
- 129** - **Section 4 amended**  
This clause amends the *Credit Administration Act 1984* by updating references to the amending Act.
- 130** - **Division 5 — *Duties Act 2008* amended**  
This Division amends the *Duties Act 2008* to make changes necessary because of the amending Act.  
This clause provides Division 5 amends the *Duties Act 2008* ('Duties Act'). The Duties Act imposes a number of kinds of duty including transfer duty on dutiable transactions.
- 131** - **Section 3 of the *Duties Act 2008* amended**  
Section 3 of the Duties Act provides the definitions that apply across the Act. This clause inserts the definitions of 'lease' and 'strata lease'.  
A strata lease is considered akin to a freehold strata or survey-strata interest in that it requires a purchase of an interest in land that can be enjoyed for the term of the lease (which can be up to 99 years), has a transferable certificate of title, and confers on the owner of the leasehold lot rights and obligations similar to those held by proprietors of freehold strata and survey-strata lots. Generally, the duty treatment of leasehold lots subject to a strata lease will be similar to transactions for freehold strata or survey-strata lots.  
The effect of the definition of 'lease' is that any reference to 'lease' in the Duties Act will not include a strata lease, including section 11(2)(b) which provides a transfer or an agreement for the transfer of a lease is not a dutiable transaction if no consideration is paid or agreed to be paid. This means the transfer, or agreement for the transfer, of a strata lease is a dutiable transaction even if consideration is not paid for the transaction. This is consistent with the duty treatment of the transfer of a freehold strata or survey-strata lot.  
'Strata lease' takes its meaning from section 3(1) of the amending Act.

**132 - Section 17 of the *Duties Act 2008* amended**

An acquisition of new dutiable property on its creation, grant or issue is a dutiable transaction under section 11(1)(f) of the *Duties Act 2008*. Section 17(1) defines 'new dutiable property' to include land in Western Australia. Section 17(2) sets out what is excluded from being new dutiable property.

Subclause (1) amends section 17(2) by inserting two types of property that are not to be treated as new dutiable property, and accordingly will not be dutiable upon their creation.

Proposed section 17(2)(ac) provides an estate in land created as a strata lot in a freehold or leasehold scheme on the registration of a strata titles scheme, or an amendment of a strata titles scheme, will not be new dutiable property. For a leasehold scheme, this will exclude the creation of the strata lease over the leasehold lots from duty.

When a lot is created and a strata title comes into existence, the lot vests in the same owner of the parcel of land or lot, or owners if there is more than one in the same manner (as tenants in common or as joint tenants) and proportion (if held as tenants in common) as they owned the land or lot, prior to subdivision. The creation of a new lot in the name of the same owner or owners should not be dutiable and the lot is therefore excluded from being new dutiable property.

Proposed section 17(2)(ad) ensures an estate in land created on the termination of a strata titles scheme is not new dutiable property, and therefore not dutiable upon its creation, grant or issue.

On termination of a strata titles scheme, the land becomes a parcel of land that is not subdivided by a strata titles scheme. For a leasehold scheme, the person who was the owner of the scheme immediately before the termination becomes the owner of the parcel of land. If there is a surrender of the strata lease as a result of the termination, the surrender is subject to duty, and any estate in land that is created when the leasehold scheme terminates should not also be subject to duty.

The creation of an estate in land on the termination of a freehold scheme should not be dutiable as the persons who were owners of the lots immediately before the termination of the strata titles scheme become the owners of the parcel of land as tenants in common in shares proportional to their unit entitlements of their respective lots.

Subclause (2) inserts section 17(3) to provide new dutiable property that is land in Western Australia includes an extension of the term of a strata lease by the postponement of the expiry day under proposed section 50(3) of the current Act. The effect of section 17(3) is postponing the expiry day of a strata lease will be a dutiable transaction as it extends an interest in the land and holds value.

**133 - Section 18 amended**

Section 11(1)(g) of the *Duties Act 2008* specifies that a surrender of special dutiable property is a dutiable transaction. Section 18 sets out what constitutes special dutiable property.

This clause inserts 'a strata lease' in section 18 as a new type of special dutiable property. It is noted that section 18(c) will not apply to the

surrender of a strata lease because a reference to 'lease' will not include a strata lease after section 3 is amended by clause 130.

The effect of this clause is a surrender of a strata lease will be a dutiable transaction irrespective of whether consideration is paid for the surrender. This includes where a strata lease is surrendered on the termination of a leasehold scheme in accordance with a termination proposal prior to the expiry day. This ensures a consistent treatment with the direct transfer of strata leases which is dutiable even if consideration is not paid for the transfer.

A leasehold scheme that terminates on the expiry of the scheme does not constitute a surrender of special dutiable property and is not dutiable.

The owner of the leasehold scheme is liable to pay duty on the surrender of the lease (section 19 and column 4 of the Table in Schedule 1 of the *Duties Act 2008*). The dutiable value of the surrender of the strata lease is determined by section 27 of the *Duties Act 2008*. Section 28(3), which sets out how to calculate the dutiable value of the surrender of a lease, will not apply to determine the dutiable value of the surrender of a strata lease because 'lease' in that section will not include a strata lease.

**134 - Section 87 amended**

This clause defines a conditional agreement to be an agreement for the transfer of dutiable property where completion of the agreement is conditional upon the happening of certain events specified in section 87(2) and in an instrument effecting or evidencing the agreement. Section 87(2)(j) describes the vendor obtaining the approval for the subdivision of land or the registration of a strata or survey-strata plan as an event for the purposes of section 87(1).

This clause amends section 87(2)(j)(ii) to ensure the terminology is consistent with the amending Act by replacing 'strata/survey-strata plan' with 'strata titles scheme or an amendment of a strata titles scheme'.

**135 - Section 90 amended**

Section 90 of the *Duties Act 2008* provides a definition of the term 'issue of title conditional agreement'. Section 90(b) provides an issue of title conditional agreement may be a conditional agreement for the sale of a strata lot upon which a building for commercial, residential or mixed use purposes will be constructed.

This clause amends section 90(b) to ensure the terminology is consistent with the amending Act by replacing 'strata lot' in section 90(b)(i) with 'lot in a strata scheme within the meaning of the *Strata Titles Act 1985*' and deleting 'strata' in section 90(b)(ii).

**136 - Section 112 amended**

Section 112(6) of the *Duties Act 2008* provides duty is not chargeable on certain transactions that occur by operation of the current Act to the extent that the consideration for the transaction is an interest in common property.

As the sections of the current Act referred to in section 112(6) will be redesignated and relocated, this clause replaces the section references

with the equivalent section of the amending Act.

**137 - Division 6 — *Environmental Protection Act 1986* amended**

This Division amends the *Environmental Protection Act 1986* to make changes necessary because of the amending Act.

**138 - Section 3 amended**

This clause amends the *Environmental Protection Act 1986* to replace terminology used in the current Act with terminology used in the amending Act.

**139 - Division 7 — *First Home Owner Grant Act 2000* amended**

This Division amends the *First Home Owner Grant Act 2000*.

This clause provides Division 7 amends the *First Home Owner Grant Act 2000* which provides for the payment of a grant to first home owners.

**140 - Section 6 amended**

Section 6 of the *First Home Owner Grant Act 2000* is amended to introduce the new concept of 'strata lease', introduced by this amending Act.

It is intended for the first home owner grant to be available to purchasers of a leasehold lot subject to a strata lease provided the requirements of the *First Home Owner Grant Act 2000* are met. To qualify for a grant, an applicant must have, or will have on the completion of the transaction, a relevant interest in land on which a home is built.

Section 6(1) lists the types of interests in land that will constitute a 'relevant interest'. It includes an estate in fee simple in the land and other interests in land including leasehold interests granted by the State or Commonwealth. It does not currently include a leasehold interest in freehold (non-Crown) land.

This clause amends section 6 to expand the definition of relevant interest to include a strata lease of the land, as defined in section 3(1) of the Strata Titles Act.

**141 - Section 14B amended**

This clause defines a 'special eligible transaction' and outlines the circumstances in which an eligible transaction will be considered to be a special eligible transaction.

Section 14B(6)(a) provides that a contract to purchase a new home on a proposed lot on a proposed plan of subdivision of land (including a proposed strata plan or survey-strata plan) will be considered to be a special eligible transaction only if the building work is completed before a relevant date.

This clause amends section 14B(6)(a) to replace the references to strata plan and survey-strata plan with terms consistent with the amending Act. The amendment does not change the policy and section 14B(6)(a) will continue to apply to 'off the plan' contracts.

**142 - Division 8 — *Heritage of Western Australia Act 1990* amended**

This Division amends the *Heritage of Western Australia Act 1990* to make

changes necessary because of the amending Act.

**143 - Section 78 amended**

Section 78 of the *Heritage of Western Australia Act 1990* amended to reflect a cross-referencing change which occurred due to the restructuring of this amending Act.

**144 - Division 9 — *Land Administration Act 1997* amended**

This Division amends the *Land Administration Act 1997* to make changes necessary because of the amending Act.

**145 - Section 3 amended**

Section 3 of the *Land Administration Act 1997* is amended to introduce the new term 'leasehold scheme'.

**146 - Section 16 amended**

16 of the *Land Administration Act 1997* is amended by inserting that if the due performance of conditions by the holder of the land are varied, the charge is to be taken to secure the performance of the varied conditions.

**147 - Section 35 amended**

Section 35 of the *Land Administration Act 1997* is amended by stating that if the Minister for Lands intends to forfeit the freehold reversion in land which has been subdivided by a leasehold scheme:

- a. the leasehold scheme will continue and the Minister will be the owner of the leasehold scheme in accordance with the amending Act until the termination of the leasehold scheme,
- b. the Minister may deal with the freehold reversion in the land in accordance with the amending Act
- c. if the Minister re-enters a lot in a leasehold scheme in accordance with the amending Act, the Minister may deal with that lot in accordance with the amending Act

**148 - Section 72 amended**

Section 72 of the *Land Administration Act 1997* is amended to reflect new terminology in the amending Act.

**149 - Section 75 amended**

Section 75 of the *Land Administration Act 1997* is amended as follows:

- Conditional tenure land cannot be subdivided except by a leasehold scheme and with the written permission of the Minister.
- Strata leases and scheme by-laws are invalid if they are inconsistent with the conditions concerning the specified use; and
- a strata lease is taken to contain a condition that the lot must not be used for a purpose that is inconsistent with the conditions of the specified use; and
- If the owner of the leasehold scheme or the strata company refuses or fails to take action to enforce a strata lease or scheme by-laws the Minister may take that action as if the Minister were the owner of the leasehold scheme or the strata company.
- The Minister may vary the conditions concerning the specified use

- For leasehold schemes, an application for variation of the conditions concerning the specified use must be accompanied by evidence to the satisfaction of the Minister that the strata company has passed a resolution without dissent in favour of the variation.

**150 - Division 10 — Land Information Authority Act 2006 amended**

This Division amends the *Land Information Authority Act 2006*, to make a change necessary because of this amending Act.

**151 - Section 94A amended**

Section 94A of the *Land Information Authority Act 2006* is amended to update the cross-referencing to a provision in the amending Act.

**152 - Division 11 — Land Tax Assessment Act 2002 amended**

This Division amends the *Land Tax Assessment Act 2002*

This clause provides this Division amends the *Land Tax Assessment Act 2002* ('LTAA') which relates to the assessment and collection of tax upon land.

**153 - Section 43A amended**

Section 43A of the LTAA provides a concession for the amount of land tax payable on subdivided lots owned at 30 June each year. The concession allows subdividers to pay land tax on the lower "englobo" value of the land, rather than the full subdivided value of the lots, for one year after the creation of the lots if the conditions of the section are satisfied.

Section 43A(1)(a) currently excludes a lot created pursuant to a strata plan but not a survey-strata plan from the assessment of land tax under section 43A. This exclusion continues to apply to strata lots, including lots in leasehold strata schemes, after the Strata Titles Act is amended. This clause amends section 43A to replace the terminology in section 43A(1)(a) with those consistent with the amending Act.

**154 - Section 43B inserted**

Section 43B inserted into the *Land Tax Assessment Act 2002* at the end of Part 3 Division 5:

As an interest in a strata lease is considered akin to a freehold strata or survey-strata interest, the owner of a lot in a leasehold scheme is treated as the owner of the lot for the purposes of assessing land tax. This will result in the owner of the lot in a leasehold scheme having the same rights and obligations as the owner of a freehold lot in relation to their land tax liability. The liability will be determined on their use of the lot, enabling them to qualify for exemptions, such as where the lot is used as a principal place of residence.

This clause inserts a new exemption into the LTAA to exempt the interest in land that has been subdivided by the leasehold scheme for the duration of that scheme. The purpose of the exemption is to ensure land tax is not payable on both the freehold land that has been subdivided and the leasehold lots.

Section 43B(1) defines 'parcel' for the purposes of section 43B to have the same meaning as in section 3(1) of the Strata Titles Act, which is land subdivided by a strata titles scheme.

Section 43B(2) exempts land for an assessment year if at midnight on 30 June in the previous financial year, the land has been subdivided by a leasehold scheme.

Under the Strata Titles Act, land is subdivided by a leasehold scheme by registration of the scheme. Once subdivided, the owner of the leasehold scheme holds a freehold reversionary interest in the parcel. Section 43B(2)(a) exempts an interest in land that is a freehold reversion in a parcel that has been subdivided by a leasehold scheme registered under the Strata Titles Act.

Under the proposed amendments to clause 3(1)(d) of the Glossary, the parcel is subdivided for the purposes of assessing land tax when the scheme plan or amendment of the scheme plan is endorsed by the Western Australian Planning Commission ('WAPC') or if endorsement is not required, when an occupancy permit or a building certificate is granted. This occurs prior to the registration of a leasehold scheme, at which point the owner of the parcel holds the freehold in possession in the parcel.

Section 43B(2)(b) exempts an interest in land that is the freehold in possession in the parcel if at midnight on 30 June in the previous financial year, the parcel has been subdivided for the purposes of assessing land tax but not under the Strata Titles Act. Once the parcel has been subdivided for land tax purposes, it is the leasehold lots that are subject to land tax.

**155 - Glossary amended**

Subclause (1) deletes the definitions of terms that will be redundant once the LTAA has been amended by this Bill.

Subclause (2) replaces 'strata title home unit' in paragraph (a) of the definition of 'home unit' with 'lot as defined in the *Strata Titles Act 1985* section 3(1)'. The newly inserted paragraph (a) is the equivalent of the definition of 'strata title home unit'. The definition of 'home unit' is relevant to the definition of 'owner'.

Subclause (3) replaces paragraph (b) of the definition of 'owner', which currently defines 'owner' in relation to a strata title home unit. The new definition provides that 'owner' in relation to a lot as defined in the Strata Titles Act means the owner of the lot within the meaning of that Act. The definition of 'owner' is relevant in determining who is liable to pay land tax.

Subclause (4) amends clause 2(1) of the Glossary which defines 'lot' as used in the LTAA. This clause replaces the definition of a lot depicted in a strata plan or a survey-strata plan where the land the subject of the plan has been subdivided for the purposes of land tax.

The newly inserted clause 2(1)(a)(vii) defines lot to include the whole of the land the subject of a lot defined in a scheme plan or amendment of a scheme plan where the land the subject of the plan has been subdivided as referred to in clause 3(1)(d). This includes a freehold or leasehold lot

defined in a scheme plan or amendment of a scheme plan for a strata scheme or a survey-strata scheme where the land the subject of the plan has been subdivided for the purposes of assessing land tax.

Subclause (5) deletes clauses 3(1)(d) and (e) which provide when land the subject of a strata plan or a survey-strata plan is taken to be subdivided and inserts a new clause 3(1)(d). Under the newly inserted clause 3(1)(d)(i), land the subject of a scheme plan or amendment of a scheme plan is taken to be subdivided when the plan is endorsed under section 15(4) or 17(3) of the amending Act.

Section 15(4) of the amending Act requires a strata plan or amendment of a strata plan to be endorsed with the unconditional approval of the WAPC before the plan or amendment can be registered, unless the Regulations exempt it from this requirement. This is the equivalent of a certificate issued under section 25 of the Strata Titles Act referred to in the current clause 3(1)(d)(i) of the Glossary.

Section 17(3) of the Strata Titles Act requires the unconditional approval of a survey-strata scheme plan or amendment of the plan by the WAPC before the plan or amendment can be registered. This is the equivalent of a statement being endorsed on a survey-strata plan under section 25B of the Strata Titles Act referred to in the current clause 3(1)(e) of the Glossary.

Under the newly inserted clause 3(1)(d)(ii), if a scheme plan or amendment of a scheme plan does not require the unconditional approval of the WAPC, the land is taken to be subdivided when an occupancy permit or a building approval certificate is granted under the *Building Act 2011*.

- 156** - **Division 12 — Local Government Act 1995 amended**  
This Division amends the *Local Government Act 1995*, to make a change necessary because of this amending Act.
- 157** - **Section 1.4 amended**  
Section 1.4 of the *Local Government Act 1995* is amended to reflect the new category 'owner of a lot in a leasehold scheme.'
- 158** - **Division 13 — Perth Parking Management Act 1999 amended**  
This Division amends the *Perth Parking Management Act 1999* to make a change necessary because of this amending Act.
- 159** - **Section 4 amended**  
This Division amends the *Perth Parking Management Act 1999* to make a change necessary because of this amending Act.
- 160** - **Division 14 — Planning and Development Act 2005 amended**  
This Division amends the *Planning and Development Act 2005* to make changes necessary because of this amending Act.
- 161** - **Section 4 amended**  
Section 4 of the *Planning and Development Act 2005* is amended, to reflect new terminology introduced in this amending Act.

- 162** - **Section 136 amended**  
 This clause deals with the application of section 136(1) of the *Planning and Development Act 2005* to strata titles schemes under this Act.  
 Section 136 applies to common property or a lot in a strata titles scheme. A reference to a “lot” in that section includes reference to a lot in a strata titles scheme.  
 Section 136 does not apply to: the sale of, agreement to sell or grant of an option of purchase of common property or part of a lot, if the transaction is associated with a subdivision by registration of an amendment of a strata titles scheme.
- 163** - **Section 148 deleted**  
 Section 148 of the *Planning and Development Act 2005* is deleted.
- 164** - **Section 150 amended**  
 Section 150 of the *Planning and Development Act 2005* is amended to reflect a change in terminology introduced by the amending Act.
- 165** - **Section 152 amended**  
 Section 152 of the *Planning and Development Act 2005* is amended to reflect a change in terminology introduced by the amending Act.
- 166** - **Part 10 Division 5A inserted**  
 After section 164, the following heading is to be inserted:  
**Division 5A — Integration of subdivision and development**  
**164A. Integration of subdivision and development**  
 This clause inserts a new Division 5A and provision into the *Planning and Development Act 2005* which deals with integration of subdivision and development approvals.
- 167** - **Section 165 amended**  
 Section 165 of the *Planning and Development Act 2005* is amended to reflect the changed terminology effected by the amending Act.
- 168** - **Section 167 amended**  
 Section 167 of the *Planning and Development Act 2005* is amended to reflect terminology used in the amending Act.
- 169** - **Section 168 amended**  
 Section 168 of the *Planning and Development Act 2005* is amended to reflect terminology used in the amending Act.
- 170** - **Schedule 2 amended**  
 Schedule 2 of the *Planning and Development Act 2005* is amended to reflect cross-referencing changes due to the reordering of the amending Act.
- 171** - **Division 15 — Property Law Act 1969 amended**  
 This Division amends the *Property Law Act 1969* to make changes necessary because of this amending Act.

- 172** - **Section 68A amended**  
 Section 68A of the *Property Law Act 1969* is amended to provide that Part VII of the *Property Law Act 1969* has effect subject to the *Strata Titles Act 1985*. This clarifies that provisions relating to strata leases under the amending Act prevail over Part VII of the *Property Law Act 1969*.
- 173** - **Division 16 — Rates and Charges (Rebates and Deferments) Act 1992 amended**  
 This Division amends the *Rates and Charges (Rebates and Deferments) Act 1992* to make changes necessary because of this amending Act.  
 This clause provides this Division amends the *Rates and Charges (Rebates and Deferments) Act 1992* ('RCRD Act'). The RCRD Act allows rebates on, or deferral of payment of certain amounts payable by way of rates or charges by eligible pensioners or seniors. These rates and charges include local government rates, water service charges, emergency services levy and underground electricity charges.
- 174** - **Section 27 amended**  
 An eligible pensioner or senior can apply to have their entitlement to land registered if a prescribed charge is payable on that land. Section 27 of the RCRD Act provides if a person holds an estate in fee simple in possession in land or a relevant interest in land, the land is treated as belonging to that person. This clause amends section 27 to include a strata lease as a new category of land that a person can own for the purposes of the RCRD Act.
- 175** - **Section 28 amended**  
 This clause updates the cross reference to the provisions relating to rates, taxes and charges in the Strata Titles Act in section 28(2)(a)(ii) of the RCRD Act with the equivalent provisions of the amending Act.
- 176** - **Section 33 amended**  
 Section 33 provides an applicant whose entitlement is registered in relation to any prescribed charge on the land is authorised to receive a rebate or to defer payment of the charge until the registration is amended or cancelled.  
 This clause amends section 33(1) to include a strata lease so that if a person's entitlement to a strata lease is registered, the person is entitled to pay a rebated amount or to defer payment of any prescribed charges.
- 177** - **Section 43 amended**  
 Section 43 of the *Rates and Charges (Rebates and Deferments) Act 1992* is amended to introduce the concept of owner of a lot in a leasehold scheme.  
 Section 43(2) provides in relation to any land, deferment of the payment of a charge may only be allowed if the person liable to pay the charge is the sole owner of the fee simple in possession in that land. The exceptions to this rule are where the property is the subject of a 'purple title', the property is co-owned by the spouse or de facto partner of the person or

the other owners occupy the land as their principal place of residence and are also eligible to defer the payment of the charge.

This clause amends section 43(2)(a) so that the rule regarding sole ownership (subject to the exceptions) also applies to a person who owns a strata lease.

- 178** - **Division 17 — *Real Estate and Business Agents Act 1978* amended**  
 This Division amends the *Real Estate and Business Agents Act 1978* to make changes necessary because of this amending Act
- 179** - **Section 61 amended**  
 Section 61 of the *Real Estate and Business Agents Act 1978* is amended to reflect the new terminology of the amending Act.
- 180** - **Section 131A amended**  
 Section 131A of the *Real Estate and Business Agents Act 1978* is amended to reflect the new terminology of the amending Act.
- 181** - **Division 18 — *Residential Tenancies Act 1987* amended**  
 This Division amends the *Residential Tenancies Act 1987* to make a change necessary because of this amending Act.
- 182** - **Section 5 amended**  
 Section 5 of the *Residential Tenancies Act 1987* is amended to clearly provide that a strata lease is not subject to the *Residential Tenancies Act 1987*.
- 183** - **Division 19 — *Retirement Villages Act 1992* amended**  
 This Division amends the *Retirement Villages Act 1992* to make a change necessary because of this amending Act.
- 184** - **Section 54 amended**  
 This clause amends the *Retirement Villages Act 1992* to ensure that the prohibition on the Tribunal dealing with a question as to the title to land under that Act does not derogate from the jurisdiction of the Tribunal under this Act in relation to a retirement village that is also a strata titles scheme
- 185** - **Division 20 — *Sale of Land Act 1970* amended**  
 This Division amends the *Sale of Land Act 1970* to make a change necessary because of this amending Act.
- 186** - **Section 11 amended**  
 Section 11 of the *Sale of Land Act 1970* is amended to reflect the changes to definitions in the amending Act.
- 187** - **Division 21 — *Settlement Agents Act 1981* amended**  
 This Division amends the *Settlement Agents Act 1981* to make changes necessary because of this amending Act.

- 188** - **Section 46 amended**  
Section 46 of the *Settlement Agents Act 1981* is amended to permit a licensee holding a real estate settlement agent's licence to effect a settlement of land the subject of a strata lease.
- 189** - **Section 47 amended**  
Section 47 of the *Settlement Agents Act 1981* is amended to exclude a business settlement agent from effecting settlement of a leasehold interest where that leasehold interest is an interest in land subject to a leasehold scheme.
- 190** - **Division 22 - *Swan and Canning Rivers Management Act 2006* amended**  
This Division amends the *Swan and Canning Rivers Management Act 2006* to make changes necessary because of this amending Act.
- 191** - **Section 3 amended**  
Section 3 of the *Swan and Canning Rivers Management Act 2006* is amended to reflect the new category of owner of a lot in a leasehold scheme.
- 192** - **Section 28 amended**  
Section 28 of the *Swan and Canning Rivers Management Act 2006* is amended to establish that a strata lease is a type of lease recognised in this section.
- 193** - **Division 23 — *Transfer of Land Act 1893* amended**  
This Division amends the *Transfer of Land Act 1893* to make changes necessary because of this amending Act.
- 194** - **Section 3 amended**  
Section 3 of the *Transfer of Land Act 1893* is amended to ensure that any provisions in the *Strata Titles Act 1985* in relation to strata leases will prevail if there is any inconsistency with the *Transfer of Land Act 1893*.
- 195** - **Section 4 amended**  
Section 4 of the *Transfer of Land Act 1893* is amended to delete the definition of strata / survey-strata plan.
- 196** - **Section 11 amended**  
Section 11 of the *Transfer of Land Act 1893* is amended to include in the Assistant Registrar's powers reference to things to be done by the Registrar under any other Act.
- 197** - **Section 48B amended**  
Section 48B of the *Transfer of Land Act 1893* is amended to provide that duplicate certificates of title will not issue to the owner of a lot in a leasehold scheme.
- 198** - **Section 65A amended**  
This clause inserts a new subclause which states that where an easement is created on a scheme plan under Part IVA of that Act or as a short form easement or restrictive covenant under the amending Act, it is not

necessary for a memorandum of an easement to be entered on the certificates of title for the dominant and servient tenements the subject of that plan.

- 199** - **Section 129A amended**  
This clause inserts a new subclause which states that where a restrictive covenant is created on a scheme plan under Part IVA of that Act or as a short form restrictive covenant under the amending Act, it is not necessary for a memorandum of a restrictive covenant to be entered on the certificates of title for the burdened and benefited land the subject of that plan.
- 200** - **Section 129C amended**  
Section 129C of the *Transfer of Land Act 1893* is amended to delete the reference to common property in the definition of 'lot'.
- 201** - **Section 136A amended**  
Section 136A of the *Transfer of Land Act 1893* is amended to reflect the changed definition of scheme plan under the amending Act.
- 202** - **Section 136F amended**  
Section 136F of the *Transfer of Land Act 1893* is amended to reflect the changed definition of scheme plan under the amending Act.
- 203** - **Section 198 amended**  
This clause amends section 198 to include reference to the amending Act in the Acts to which the protection against liability for officers acting bona fide under this section applies
- 204** - **Section 239 amended**  
This clause amends section 239(1)(b) to insert: a scheme document, or any item registered for a strata titles scheme under the amending Act in the list of documents that may be inspected on payment of the prescribed fee.
- 205** - **Division 24 — Valuation of Land Act 1978 amended**  
This Division amends the *Valuation of Land Act 1978* to make changes necessary to update cross references to sections that have been relocated by the amending Act.
- 206** - **Section 24 amended**  
This clause deletes the specific reference to relocated sections of the amending Act and retains the effect of section 24 of the *Valuation of Land Act 1978*.
- 207** - **Section 37 amended**  
This clause deletes the specific reference to a relocated section of the amending Act and retains the effect of section 37 of the *Valuation of Land Act 1978*.
- 208** - **Division 25 — Water Services Act 2012 amended**  
This Division amends the *Water Services Act 2012* to make changes necessary because of this amending Act.

- 209** - **Section 71 amended**  
Section 71 of the *Water Services Act 2012* is amended to reflect a change of terminology (owner to replace proprietor) in the amending Act.
- 210** - **Section 124 amended**  
Section 124 of the *Water Services Act 2012* is amended to update the cross reference to a Division and to reflect the change of formatting of headings in the amending Act.
- 211** - **Section 125 amended**  
Section 125 of the *Water Services Act 2012* is amended to reflect the changed section numbering in the amending Act.