

STRATA TITLES (LEASEHOLD) AMENDMENT BILL 1987

NEW SOUTH WALES



EXPLANATORY NOTE

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

This Bill is cognate with the Strata Titles (Amendment) Bill 1987.

The object of this Bill is to effect miscellaneous amendments to the Strata Titles (Leasehold) Act 1986, particularly in relation to the terms and conditions on which individuals are given exclusive rights or privileges with respect to the use of the common property in a leasehold strata scheme.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that, with minor exceptions, the amendments to the Principal Act will commence on a day or days to be appointed by the Governor-in-Council.

Clause 3 gives effect to two Schedules of amendments to the Principal Act.

Clause 4 gives effect to a Schedule of savings and transitional provisions.

Schedule 1 (1) amends section 7 of the Principal Act to empower the Registrar-General to make requisitions with respect to the form of a proposed by-law lodged for registration in connection with a proposed leasehold strata plan. The by-law in question is one lodged by the original lessee of the strata scheme under proposed section 87 (9) (inserted by Schedule 1 (3) (c)).

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Schedule 1 (2) amends section 27 of the Principal Act to require the Registrar-General, when creating a folio of the Register for common property in a leasehold strata scheme, to make appropriate notations of the rights and privileges conferred on individuals, in respect of the common property or any part of it, by a by-law referred to in section 87 (7) of the Principal Act that takes effect on registration of the leasehold strata plan.

Schedule 1 (3) amends section 87 of the Principal Act in relation to by-laws conferring on individuals exclusive rights or privileges over common property in a leasehold strata scheme. Under the section, as amended—

- (a) such a by-law will no longer require a unanimous resolution of the body corporate in order to be made—a special resolution (that is, one passed by 75 per cent of the votes) will be sufficient;
- (b) if more than 1 lessee is granted rights or privileges under such a by-law, the by-law will be deemed to provide (unless it specifies some other arrangement) that any money payable by those lessees to the body corporate for the maintenance and upkeep of the common property will be borne by them proportionately according to the relative proportions of their respective unit entitlements; and
- (c) such a by-law may be made by the original lessee of the strata scheme, by lodging an appropriate instrument, together with the proposed leasehold strata plan, for registration.

Schedule 1 (4) omits section 148 of the Principal Act. Orders of the kind permitted to be made under that section by the Strata Titles Commissioner are now to be made under proposed section 156A (inserted by Schedule 1 (6)) by a Strata Titles Board.

Schedule 1 (5) amends section 156 of the Principal Act as a consequence of the amendments made by Schedule 1 (3).

Schedule 1 (6) inserts a new section 156A into the Principal Act. Under the proposed new section, a Strata Titles Board is empowered to make certain orders adjusting the rights of bodies corporate and the lessees of individual lots in the event of dispute between them concerning exclusive rights or privileges of individuals in respect of common property. The disputes contemplated are ones in which a body corporate and one or more lessees cannot agree as to the terms on which such rights or privileges should be granted, or in which individual lessees not having such rights or privileges think that the terms on which they have been granted to others are unjust. A Board is, in effect, empowered to make a by-law appropriate to the circumstances of the case.

Schedule 1 (7) amends section 179 of the Principal Act as a consequence of the insertion of proposed section 156A by Schedule 1 (6).

Schedule 2 (1) amends section 5 of the Principal Act as a consequence of the amendments made by Schedule 2 (9) and by Schedule 2 (12) to the Strata Titles (Amendment) Bill 1987.

Schedule 2 (2) amends section 86 of the Principal Act to provide that any first annual general meeting of a body corporate, although not convened and held in accordance with the section, but at which business appropriate to such a first annual general meeting is transacted, is nevertheless a valid first annual general meeting.

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Schedule 2 (3) amends section 94 of the Principal Act to impose liability on the body corporate for damage caused to a lot by servants, agents or contractors of the body corporate carrying out any authorised work.

Schedule 2 (4) amends section 99 of the Principal Act to vary the requirements relating to the arrangement of material kept in the strata roll. The amended requirements will avoid duplication of certain matter and generally simplify the keeping of the roll. The section is otherwise amended by the omission of certain matter as a consequence of the substitution of section 113 of the Principal Act by Schedule 2 (9), and by enabling strata roll information to be compiled otherwise than by receipt of notices under that section.

Schedule 2 (5) amends section 100 of the Principal Act in relation to the information contained in a strata roll that may be obtained by members of the public from a body corporate upon payment of a fee. The effect of the amendment is to combine information previously obtainable under 2 separate certificates (with payment of 2 fees) so that it is contained in 1 certificate (and may be obtained on payment of 1 fee).

Schedule 2 (6) amends section 101 of the Principal Act to abrogate the requirement that there be a minimum number of 3 persons to serve on the council of a body corporate.

Schedule 2 (7) amends section 104 of the Principal Act so that a proposal by the council of a body corporate may be vetoed by persons controlling one-third (rather than one-half) of the voting power on the body corporate who oppose the proposal.

Schedule 2 (8) repeals section 106 of the Principal Act. The section provided that in certain cases a proposal by the council of a body corporate involving expenditure had to be supported by a special resolution (that is, one passed by 75 per cent of the votes). As a consequence of the amendment made by Schedule 2 (7), the provisions of the section are considered redundant.

Schedule 2 (9) repeals section 113 of the Principal Act and replaces it with 2 new sections. The old section 113 provided that persons having certain specified interests in a lot in a leasehold strata scheme could (or had to, in some cases) notify the body corporate that they had those interests. The interests concerned were such as gave rise, or might in the event of certain contingencies have given rise, to an entitlement by those persons to vote at meetings of the body corporate. The section also provided that sublease interests in a lot had to be notified. The obligation to notify sublease interests remains, and is re-enacted as proposed new section 113A. The requirements of the old section 113 have been simplified so as to require notice to be given only of interests giving rise to a vested entitlement to vote.

Schedule 2 (10) amends section 125 of the Principal Act to provide that the costs of effluent services in respect of land included in a leasehold strata scheme are to be charged to and payable by the body corporate in the same way as the costs of water, sewerage and drainage services are charged and payable.

Schedule 2 (11) amends section 129 of the Principal Act to enable the Commissioner to obtain information, without charge, from a strata roll.

Schedule 2 (12) amends section 132 of the Principal Act to require the Commissioner, when referring an application for an order under Part 5 of the Principal Act to a Strata Titles Board, to serve a copy of the application on any person against whom the proposed order is directed.

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Schedule 2 (13) amends section 135 of the Principal Act to enable the Commissioner to make interim orders in relation to applications for an order by a Board as well as applications for an order by the Commissioner.

Schedule 2 (14) amends section 146 of the Principal Act to enable the Commissioner, if satisfied that a body corporate has, in a particular case, unreasonably withheld its consent under a by-law that prohibits the keeping of an animal on a lot or the common property without the consent of the body corporate, to declare that the animal may be kept in accordance with the order.

Schedule 2 (15) amends section 151 of the Principal Act to require a body corporate to display for 2 weeks, on the notice board for the leasehold strata scheme, a copy of an order of the Commissioner that has been served on it.

Schedule 2 (16) amends section 161 of the Principal Act to extend the time within which an application for an order under that section may be made from 14 days to 28 days after the relevant leasehold resolution was made.

Schedule 2 (17) amends section 162 of the Principal Act to enable an application for an order under that section to be made by any person having an interest in a lot in the relevant leasehold strata scheme.

Schedule 2 (18) amends section 165 of the Principal Act to allow a Strata Titles Board, on sufficient cause shown, to extend (from 21 days to 90 days) the time within which an appeal may be lodged against an order of the Commissioner.

Schedule 2 (19) amends section 173 of the Principal Act to require a body corporate to display for 2 weeks, on the notice board for the leasehold strata scheme, a copy of an order of a Board that has been served on it.

Schedule 2 (20) amends Schedule 3 to the Principal Act (which contains the statutory by-laws)—

- (a) to provide that, under those by-laws, the secretary of the body corporate shall be responsible for general administrative and secretarial duties in connection with the body corporate's affairs; and
- (b) to add to the by-law concerning the keeping of animals the requirement that a body corporate will not unreasonably refuse its approval to a person's keeping an animal in the person's lot or on the common property.

Schedule 2 (21) amends Schedule 4 to the Principal Act in relation to voting rights of co-lessees. Co-lessees will now be able to vote with the consent of their co-lessees (usually spouses) at the meeting or if they are the co-lessees first named on the strata roll.

Schedule 3 enacts appropriate savings, transitional and other provisions in connection with the amendments made by the proposed Act.
