



PARLIAMENT OF WESTERN AUSTRALIA

THIRTY-THIRD REPORT
OF THE
LEGISLATION COMMITTEE

IN RELATION TO THE

Strata Titles Amendment Bill 1994

Presented by the Hon Derrick Tomlinson (Chairman)

33
FEBRUARY 1995

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**Report of the Legislative Council
Legislation Committee**

in relation to the

Strata Titles Amendment Bill 1994

Reference

- 1 On 12 April 1994, Hon George Cash, Minister for Mines, moved the following motion which was agreed to by the House¹:

That the Strata Titles Amendment Bill be referred to the Legislation Committee for its consideration and report.

- 2 Parliament was prorogued on 3 May 1994 and the reference to the Committee lapsed. Parliament was opened again on 5 May 1994 and on 12 May 1994 on the motion of Hon George Cash, Leader of the House, the House resolved²:

That the Strata Titles Amendment Bill 1994 be restored to the notice paper and thereafter dealt with at the stage it had reached in the previous session.

This effectively reinstated the reference of the *Bill* to the Committee.

Introduction

- 3 The *Bill* is a bill to amend the *Strata Titles Act 1985*.
- 4 The Committee called for submissions on the *Bill* and received 47³. In September 1994 the Committee sought advisory support through the Minister for Lands, Hon George Cash, to deal with the submissions received, many of which posed complicated legal and technical questions. In October 1994, the Minister appointed Mr John Gladstone, Deputy Commissioner of Titles, to review the submissions and report on them to the Committee.
- 5 Mr Gladstone completed his review of the submissions in November 1994 and presented a draft report to the Committee. The Committee supported Mr Gladstone's recommendation that his proposals for amendments to the *Bill* arising from the submissions be referred to the Strata Titles Consultative Committee⁴ for comment.

¹ 1993/94 WAPD 11853

² 1994 WAPD 288

³ A list of the persons who made submissions to the Committee is attached as Appendix 1.

⁴ A list of the members of the Strata Titles Consultative Committee is attached as Appendix 2.

- 6 Mr Gladstone was able to report to the Committee on the recommendations made by the Strata Titles Consultative Committee in December 1994.
- 7 The following comments and recommendations are largely based on the work of Mr Gladstone and the Strata Titles Consultative Committee. The Committee thanks Mr Gladstone and the Strata Titles Consultative Committee for their valuable contribution to this report.
- 8 The recommendations contained in the following paragraphs do not necessarily reflect the issues identified at the commencement of each paragraph. A solution different from that suggested in a submission may form the basis of a particular recommendation responding to the submission.

Recommendations for Amendments to the *Bill*

- 9 Parliamentary Counsel has drafted amendments to the *Bill* based on the following recommendations. These amendments are attached at Appendix 3. It should be noted that discussions between Parliamentary Counsel and the Department of Land Administration subsequent to the drafting of the amendments has revealed that further minor amendments may be necessary to give effect to the recommendations or to enhance consistency in the *Act*.

10 *Recommendation*

The Committee recommends, given the extensive amendments required, that the current Bill be withdrawn and the suggested amendments be incorporated in a new consolidated Bill to be presented to the House.

Section 3

11 *Definition of "lot".*

- 11.1 The definition of lot in relation to a survey-strata scheme in clause 5(2) (amendment to section 3) should be amended to make it clear that a lot can consist of one or more parts. This would then make it consistent on this issue with a lot in a strata scheme.

11.2 *Recommendation*

That the words "consisting of one or more parts" be added after the words, "lot", in relation to a survey-strata scheme, means land that is shown as a lot", in the new definition of lot in relation to survey strata schemes in clause 5(2) of the Bill.

Section 3A

12 *Notice period for resolutions without dissent.*

12.1 Resolutions without dissent overcome the difficulties of obtaining a unanimous resolution when owners fail to vote or respond to notices of meetings. However, owners who object to a proposal should not be prevented from stopping changes, which previously required unanimous resolutions.

12.2 In certain circumstances, 14 days notice may be inadequate. The inadequacies are further highlighted when a comparison is made between new section 3A (resolutions without dissent) and new section 3B (special resolutions). New section 3B(5) enables persons voting in respect of special resolutions to have 28 days after the date of the general meeting to exercise the power of voting. A similar provision should apply for resolutions without dissent. If this procedure were adopted, it would enable a decision to be made at a general meeting where there is a unanimous resolution or a dissenting vote. However, it would also enable persons who are unable to respond within 14 days, to have the opportunity to consider the proposal and if they wish, to vote against the proposal.

12.3 ***Recommendation***

That new section 3A be modified by adding provisions based on subsections (4) and (5) of section 3B.

Section 3B

13 See paragraph 43.2 of this report.

Section 3C

14 ***Need for ability to amend proposed resolutions without dissent and special resolutions (new sections 3A and 3B).***

14.1 It should be possible to amend, at a general meeting, proposed special resolutions and resolutions without dissent specified in notices calling that general meeting. If the amended resolution is passed at the general meeting, there should be an opportunity for the resolution as amended to be approved or rejected by proprietors not at or represented at the meeting.

14.2 For there to be an ability to amend such a motion at the general meeting, the notice of meeting should specify that the purpose of the meeting is for or includes the passing of the particular motion, and that it may be passed with or without modification.

14.3 ***Recommendation***

That new section 3C be amended to prescribe that the proposed resolution specified in the notice of meeting (section 3C(a)) may provide that it may be passed with or without amendment (provided this is stated in the motion). If passed in an amended form, then that resolution may be approved or rejected by proprietors not at or represented at the meeting under the procedures

prescribed in the new section 3B(5) and proposed to be added to the new section 3A.

If the resolution is passed in an amended form, then the strata company is to be obliged to send an amended notice to proprietors not at or represented at the meeting, within 7 days after the meeting.

Section 4

15 *New section 4(1) be simplified.*

15.1 It is suggested that this section should be redrafted to state that "Land may be subdivided into lots, or lots and common property by the registration of a strata plan or a survey-strata plan".

15.2 ***Recommendation***

That new section 4(1) (clause 8) be re-drafted to state that:

"Land may be subdivided into lots, or lots and common property, by the registration of a strata plan or a survey-strata plan."

Section 5A

16 *The term "survey plan" in new section 5A(i) is not defined. The lack of definition of the term "survey plan" creates uncertainty as to what is the effect of the insertion of this phrase.*

16.1 In the comparable provision, in section 5 in relation to strata plans, reference is made to location plans and floor plans. The meaning of the terms "location plans" and "floor plans" are set out in section 3(1).

16.2 The new section 3(2)(a) provides that the floor plan of a strata plan "may include dimensions or survey information defining that boundary, in the prescribed manner, by reference to the parcel boundary". This phrase could be utilised to show what is meant by "survey plan" in section 5A(1)(b).

16.3 Survey-strata lots are intended to be used in those cases where the owners, to all intents and purposes, act as if they are the owners of lots in ordinary subdivisions. That is, in those cases where each dwelling stands alone.

16.4 Taking into account the use of the word "survey" in "survey-strata lot", the expectations that this will raise the desirability of authorised surveys in the majority of survey-strata schemes, the Committee considers that a survey for the land should be required for survey-strata schemes. It needs to be made clear that survey plans for survey-strata schemes are to be the subject of "authorised surveys" as defined in the *Licensed Surveyors' Act*.

16.5 **Recommendation**

That it be made clear a "survey plan" means a plan that defines, in the prescribed manner, the boundaries of lots and common property by dimensions and survey information obtained from a survey of the parcel.

17 *Reference to lots and common property being distinguished by numbers in new section 5A(1)(b) is inconsistent with section 5 and is unnecessary.*

17.1 It is unclear why it was considered appropriate to specifically state a requirement that lots and common property be distinguished by numbers in the prescribed manner. Section 5(1)(c) of the 1966 Act referred to a drawing illustrating the lots and distinguishing them by number or other symbols. However, the requirement for lots to be distinguished by a number or other symbols was not carried forward into the 1985 Act (see section 5(1)(c)).

17.2 It is suggested that the method of distinguishing lots and common property in both strata plans and survey-strata plans can be adequately dealt with under sections 5(1)(f) and 5A(1)(h). Those sections provide that strata plans and survey-strata plans shall "contain such other features as may be prescribed".

17.3 **Recommendation**

That paragraph (b) of new section 5A(1) (clause 10) be amended to remove the reference to lots and common property being distinguished by numbers.

18 *New section 5A(1)(a) is redundant.*

18.1 Section 4(1) clearly provides that land in both survey-strata plans and strata plans are subdivided into lots or into lots and common property. It therefore appears to be unnecessary to repeat the same concept in new section 5A(1)(a), especially as it is not repeated in section 5 in relation to strata plans.

18.2 **Recommendation**

That new section 5A(1)(a) be deleted.

Section 7

19 *All alterations to a structure in a strata scheme require approval.*

19.1 As drafted, section 7(2)(b) provides that any alteration, no matter how minor and notwithstanding that approval could not be refused under subsection (5), would need to be submitted for approval under sub-section (2). It is clear from the current section 7 that the alterations or extensions being prohibited are those of a structural kind rather than cosmetic or minor alterations.

19.2 **Recommendation**

That paragraph (b) of new section 7(2) be deleted and the following paragraph substituted:

"(b) any alteration of a structural kind to, or extension of, a structure,".

20 ***Obligation to hold a general meeting on receipt of an application for approval of structural extensions.***

20.1 There is an assumption in the new section 7, as it is drafted, that the council will call a general meeting for the purposes of dealing with the resolution which has to be passed without dissent, on receipt of an application. That assumption may be unwarranted. The applicant and other proprietors should have the ability as is provided in relation to requisitions under by-law 11(4), to call a general meeting if the strata council does not comply with its obligations.

20.2 **Recommendation**

That provision be made to require strata councils to submit an application for approval for structural extensions to a general meeting to be held within 35 days after the application is served on the strata company.

If the council does not issue notices within the required time or sets a meeting date later than the required date, then the applicant or any other proprietor can call the meeting. If the strata council calls a general meeting to be held outside the required period but before a meeting convened by a proprietor, then the notice by the strata council should prevail.

21 ***The time limit of 28 days for written notice of decision on applications for approval to structural extensions is inadequate (new section 7(4)(b)).***

21.1 Section 7 of the Act now provides that structural alterations or extensions of a structural kind shall not occur except with the prior approval, expressed by unanimous resolution, of the strata company. The new section 7 will only require a resolution without dissent.

21.2 In many cases, it may not be possible to give a written notice of decision within 28 days of an application as the following steps may be necessary:

21.2.1 On receipt of the application, a council meeting will need to be called. Schedule 1 part 1 by-law 8(2)(a) provides that the council shall meet when any member of the council gives to the other members not less than 7 days notice of a meeting (allow 7 to 14 days).

21.2.2 By new section 3C(a), the council is required to give at least 14 days notice of a general meeting called for the purpose of passing a

resolution without dissent, as required by new section 7(2)(d) (allow 14 to 21 days).

21.2.3 At least another 7 days would be needed to allow time for a decision to be made as to what action is necessary to call a council meeting, and to allow time for service, if service is by post.

21.2.4 Another 7 days should be allowed to give notice of the decision to the applicant.

21.2.5 If the proposal made in paragraph 12.2 of this report is followed, a further 28 days will need to be added to this period to allow for votes to be given after the general meeting.

21.3 Accordingly, it could take between 63 and 77 days before a decision can be obtained for three or more lot strata companies. As notice is to be served directly on the other proprietor in a two lot scheme, it is considered that 6 weeks' notice would be consistent with the recommendation at paragraph 12.3.

21.4 **Recommendation**

That new section 7(4)(b) (clause 13) be amended by changing the time for decision on an application from 28 days to 42 days for two lot schemes and to 77 days for other schemes.

22 *As the time involved for written notice of decision on applications for approval to structural extensions is now proposed to be 42 days for two lot schemes and 77 days for other schemes, it is desirable that some additional provisions be inserted that will enable earlier resolution of the issue.*

22.1 **Recommendation**

That new section 7 (clause 13) be amended to provide that alterations can be undertaken where prior approval in writing of all proprietors has been obtained.

It should be required that a copy of the written approval or approvals be served on the strata company. It will be necessary to ensure that exactly the same proposal is approved or, if the approval is subject to conditions or qualifications, that all approvals are subject to the same conditions and qualifications.

23 *For the same reasons noted at paragraph 22 of this report, there needs to be an ability to make early application to the referee to facilitate an early decision by the referee after the time for voting after the general meeting has expired. No provision is needed for two lot schemes, as a decision will be reached in 42 days.*

23.1 **Recommendation**

Section 103E be amended to provide that where a proprietor of a lot in a strata scheme (or a survey-strata scheme) has not been given approval at the general meeting, the proprietor can apply to a referee for an order under section 103E without having to wait until after the 28 days has elapsed to find out if any proprietor has voted against the application. In such a case, the application should not be considered by the referee until at least 35 days after the general meeting.

24 *The need to change "receipt" to "service" of application for approval of structural extensions.*

24.1 The new section 7(4)(b), refers to the receipt of an application by the Strata Company or in a two lot scheme, the other proprietor. This raises difficulties of proof and may even create difficulties in ensuring that the application is "received". The new section 7(4)(b) is incorporated in the proposed section 7B(1) in Appendix 3.

24.2 **Recommendation**

That new section 7(4)(b) (clause 13; see proposed section 7B(1) in Appendix 3) be amended by deleting "receipt" and substituting "service".

25 *Reasons for refusing application for approval of structural alterations - reasons to be supplied by refusing owners rather than the strata company - applies only to strata schemes.*

25.1 Section 7(4) requires amendment. A strata company may be unable to pass a resolution without dissent, merely because one or more owners vote against the resolution. Accordingly, the reasons for refusal may be reasons of individual proprietors, rather than reasons of a majority of the proprietors in the strata company.

25.2 **Recommendation**

That new section 7(4) (clause 13; see proposed section 7B(6) in Appendix 3) be amended to:

- (a) provide that any proprietor may refuse to give approval on any ground that is permitted by section 7(5) but not otherwise;***
- (b) provide that at the time of voting, the dissenting proprietor must state which ground or grounds in section 7(5) justifies his dissenting vote. (There should be a requirement that before a dissenting vote is rejected, the dissenter must be asked to specify the grounds on which that dissent is based and warned that failure to specify one of the grounds referred to in new section 7(4) will result in the dissenting vote being taken as a vote in favour of the application. An additional safeguard***

would be to provide that the requirement and warning should be included in the notice of meeting.);

- (c) provide that the strata company (or in the case of a strata scheme in which there are not more than two lots, the other proprietor) shall give notice in writing of the decision to the applicant;*
- (d) provide that if the application is being refused, the strata company (or in a 2 lot scheme, the other proprietor) shall give notice in writing of the reasons provided by the proprietors voting to refuse the application;*
- (e) take into account that a strata company does not necessarily refuse to give approval but that a resolution to grant that approval has not been passed.*

26 *The phrase "plot ratios" in proposed new section 7(5)(a) is not defined.*

26.1 *A definition of "plot ratios" appears in the Residential Planning Codes and should form the basis of a definition in the Bill.*

26.2 ***Recommendation***

That the phrase "plot ratios" be defined based on the definition in the Residential Planning Codes.

27 *"Open space requirements".*

27.1 *As a result of recent changes to the Residential Planning Codes, it is also appropriate to add "open space requirements" to new section 7(5)(a). Plot ratios are currently applicable to R40 and greater zoning. Open space requirements are applicable to all R zonings. Generally speaking, plot ratios seem to be appropriate for buildings whereas open space requirements are appropriate for land.*

27.2 ***Recommendation***

That:

- (a) section 7(5)(a) be amended to include reference to "open space requirements"; and*
- (b) the terms "plot ratios" and "open space requirements" be defined in section 7(7).*

28 *Inequitable use of plot ratios and open space requirements.*

28.1 *There is a need for survey-strata schemes (as well as strata schemes) to be subject to the restriction that any structures to be erected, altered or extended should not result in plot ratios or open space usages that are inequitable.*

28.2 To impose a requirement that consent should be sought in survey-strata schemes before erecting, altering or extending structures would defeat one of the major reasons for and benefits of a lot in a survey-strata scheme. On the other hand, it is considered desirable that there be a statutory requirement that one lot shall not utilise plot ratio or open space usages unfairly and to the detriment of other lots.

28.3 **Recommendation**

That a section be added (probably section 7A) that the proprietor of a lot in a survey-strata scheme shall not cause or permit

(a) any structure to be erected; or

(b) any alteration of a structural kind to or extension of a structure

on the lot that will upon completion or as a result of such works result in exceeding pro-rata plot ratio restrictions or limitations or failure to meet pro-rata open space requirements for that lot

(i) that are provided in the management statement; or

(ii) if no provision is made in a management statement that are greater than the pro rata area for that lot as to the total area of the parcel.

If the proposed alteration, erection or extension will result in a greater coverage than permitted above, then consents of the other owners should be obtained. In those cases it is proposed that the procedures set out in the new sections 7(2)(c) and (d), (4)(b) and (6) be utilised.

New section 103E will need to be amended also to apply where appropriate to applications for structural extensions in strata schemes.

In addition, it will be necessary to add items in Schedule 2A to include reference to "plot ratios" and "open space" as matters that may be provided for in management statements.

Section 8A

29 ***New section 8A should be revised to ensure that any strata plan of re-subdivision shows the whole of any new lots created by reference to a defined structural feature on a floor plan.***

29.1 **Recommendation**

That requirements of this type, if considered necessary, should be dealt with by regulations. Accordingly, new section 8A(b) (clause 14) should be amended by adding the words ", in the prescribed manner," after the word "define".

30 *New section 8A(a) should be amended to make it clear that the application under that provision is not being registered but is merely to be in a certain format.*

30.1 **Recommendation**

That new section 8A(a) (clause 14) be amended by inserting a semi-colon after the words "the plan".

Section 35A

31 *No requirement to enter address of mortgagee on the roll (see new section 35A(4)(e)). Address details are needed to assist the strata company and members wishing to send notices to mortgagees entitled to vote.*

31.1 Section 35A(4)(e) requires the roll to contain details of the names (but not addresses) of mortgagees of lots notified to the strata company under section 50(7) and Schedule 1, by-law 11(5). If a mortgagee does not give written notice of that mortgagee's mortgage to the strata company then that mortgagee does not need to be noted on the strata company's records for purposes of voting or otherwise. To assist the strata company and members wishing to send notices to mortgagees entitled to vote, it is suggested that the address of the notified mortgagees should appear on the roll.

31.2 **Recommendation**

That the new section 35A(4)(e) (clause 39) be amended by adding "and address" after "name".

32 *Section 35A makes no provision for the maintenance of an address for service on the roll.*

32.1 New section 125(3)(b)(ii) refers to "the proprietor's address for service appearing on the roll maintained by the Strata Company under section 35A". However, section 35A makes no provision for the maintenance of an address for service. New section 35A should be amended accordingly. This will be consistent with clause 82(2)(c) inserting new by-law 1(1a) of Part 1 of Schedule 1.

32.2 **Recommendation**

That new section 35A(4) be amended to have included on the roll the address for service of any proprietor or mortgagee of a lot notified to the strata company.

33 *Notification of mortgages by proprietors of lots.*

33.1 The proposed new section 35A provides that a strata company may make or amend entries in the roll on the basis of information provided by, or on behalf of, a proprietor or a mortgagee of a lot. As the provision is currently drafted, there is capacity under sub-section (3)(b) for a proprietor to incorrectly notify

a strata company that a mortgage has been discharged or as to the address of a mortgagee.

33.2 **Recommendation**

That new section 35A (clause 39) be amended to provide that:

- (a) ***a notification to the strata company of discharge of a mortgage shall be made by the mortgagee or if not made by the mortgagee shall be supported by production of the relevant duplicate certificate of title or a certified copy thereof showing the mortgage as having been discharged; and***
- (b) ***where a change of address of mortgagee is notified, to require the mortgagee or the mortgagee's authorised agent to provide the information.***

34 ***The requirement that a strata company shall make the roll available for inspection at any reasonable time upon request (new section 35A(5)) is inconsistent with the requirement of section 43(1)(b) that information should be made available by the strata company at such time as may be agreed. (See also paragraph 36.9 of this report.)***

34.1 **Recommendation**

- (1) ***That new section 35A(5) (clause 39) be deleted and the roll added as a specific item to the list of documents that can be inspected under section 43(1)(b).***
- (2) ***That clause 39(2) providing for transitional arrangements be modified or other clauses drafted to refer to both the addition to section 43(1) and the change to new section 35A in respect of the roll.***

Section 39A

35 ***Order for termination of contract for services to strata companies should not be limited to those contracts let when a proprietor holds more than 50% of unit entitlement of lots (new section 103D).***

35.1 ***New sections 39A and 103D provide a new power to terminate contracts for services to strata companies. The intent of the sections could easily be frustrated. A vendor mortgagee could control 50% or more of the voting power in a strata company. Two or more proprietors could unfairly join together to enter into a long term contract to the disadvantage of other or subsequent proprietors. One proprietor, through contractual or trust arrangements not readily identifiable to other proprietors, may control voting power at the relevant time.***

35.2 ***To provide more certainty to the parties entering into a contract, it should be provided that the referee may make an order that could be obtained at the***

commencement of the contract. That order could extend the period of 5 years in sub-section (1) to a maximum of 10 years if he is satisfied that the agreement is fair to all current proprietors and that it will be fair to all other proprietors during the specified term of the agreement or 10 years, whichever is the lesser.

35.3 **Recommendation**

(1) That new section 39A be amended by:

(a) providing as an alternative to sub-section (4)(c) that the section applies if the referee makes an order that he is satisfied that the agreement is unfair to the proprietors of 25% or more of the aggregate unit entitlement of the lots;

(b) adding a new subsection to the following effect:

"The referee may make an order extending the period of 5 years in subsection (1) to a maximum of 10 years if he is satisfied that the agreement is fair to all current proprietors and that it will be fair to all other proprietors during the specified term of the agreement or 10 years, whichever is the lesser.

(2) That new section 103D be amended by:

(a) deleting "other than a proprietor referred to in subsection (4)(c)" in subsection (3) and substituting "of 25% or more of the aggregate unit entitlement in the scheme; and of the lots";

(b) by deleting subsection 4(c).

Section 43

36 Provision of copies of documents.

36.1 One submission proposed that strata companies should be required by the Act to provide to owners upon request a copy of:

36.1.1 minutes of the council's meetings (s 43(1)(b)(iv));

36.1.2 statements of accounts (s 43(1)(b)(vii)); and

36.1.3 a list of contributions to the strata company remaining unpaid (s 43(1)(c)(ii) and (iii)).

36.2 The supplying of information, free of charge, to strata lot proprietors was discussed in the Strata Titles Consultative Committee. In some instances, strata companies do supply this information. The provision of such information can be a time consuming and costly task. Requests for such information could

impose a heavy cost on the strata company, especially if it were to be provided free of charge.

- 36.3 The supply of copies of minutes and other documents to interested owners, instead of them having to inspect the originals would make it easier for those owners to be better informed about their strata company. Usually one set of minutes of a general meeting is provided to proprietors after the meeting. This should be provided free of charge.
- 36.4 Owners may also see benefit in being able to obtain copies of other items listed in section 43(1)(b); eg notices, orders and records under paragraph (ii), plans and specifications under paragraph (iii), and records of resolutions under paragraph (v).
- 36.5 Copies of other documents, such as schedules of unit entitlements (paragraph (i)) are available on a search of the strata plan at the Department of Land Administration (DOLA). The proposed new subsection (4) of section 42 will mean that all by-laws (except perhaps those passed in the previous three months) will be available for search at DOLA 12 months after commencement of that section.
- 36.6 It is suggested that part of the reluctance by some strata companies or managers to provide copies may be because of a lack of appropriate remuneration or covering of costs for that service. In other cases, where there is no photocopier on site, it may be inconvenient and time consuming to provide copies. There are difficult issues involved in setting the appropriate balance between costs of and convenience in the provision of copies of documents.
- 36.7 It may partially alleviate the problem if an amendment were to be made that a strata company may at the strata company's discretion, upon request, provide copies of the documents referred to in paragraph (b) instead of the original documents being inspected. Section 43 already provides for a fee to be prescribed. Strata companies should not provide such copies if that will breach copyright or be unlawful.
- 36.8 Provision should also be made for copies of the roll established under new section 35A(5) to be provided to owners.

36.9 ***Recommendation***

That section 43 be amended to permit the strata company, on request by the applicant and payment of the prescribed fee, to provide copies of documents referred to in section 43(1)(b) and the new section 35A (see paragraph 34.1 of this report). However, copies of minutes of general meetings normally provided to all proprietors following a general meeting should, in that situation, be provided free of charge.

Section 68

37 *Purchaser Protection Provisions.*

- 37.1 One submission received by the Committee noted that many owners of strata titled property are currently at risk due to badly set up and constituted strata companies, ill conceived understanding of insurance and by-law protection and ill conceived understanding of what it is that they own and what are their actual rights.
- 37.2 It was suggested to the Committee that, to alleviate this problem, the duties of original proprietors, under section 68, to provide information to purchasers should be extended to all sales of all strata title lots and to all vendors. In addition, the new section 68 certificate should include:
- 37.2.1 certification that the strata company is properly constituted;
 - 37.2.2 certification that the first annual general meeting has been held in accordance with section 49 of the *Act*;
 - 37.2.3 certification that insurance complies with sections 54 and 55 unless a unanimous resolution not to insure has been passed as a by-law and the by-law has been recorded by the Registrar of Titles;
 - 37.2.4 a search of registered notifications of changes of by-laws.
- 37.3 At the same time as approving drafting of amendments to the *Strata Titles Act 1985* that resulted in the *Strata Titles Amendment Bill 1994*, Cabinet approved drafting of provisions for the protection of purchasers of strata lots. Due to time constraints in having the *Bill* finalised and available for tabling, the *Bill* omitted the partially drafted protection of purchaser provisions. It was indicated that the protection of purchaser proposals would be re-presented to Cabinet as part of a Cabinet Minute proposing additional amendments to the *Act*. The Hon Minister has advised that he proposes to await the recommendations of the Committee before presenting the new Minute to Cabinet, as the Committee may express some views on the issue.
- 37.4 The *Act* presently requires the original proprietor of strata lots, when selling those lots for the first time, to make detailed disclosure to the purchaser of a lot. It is proposed to expand the disclosure requirement to all sales of strata lots and to require all sellers to provide specified information to purchasers as part of the contract process.
- 37.5 The reason for this change is to address the problem that many purchasers of strata lots, particularly two lot schemes in duplex developments, are often not aware when they are buying a lot in a strata scheme that they will have duties and obligations as a member of a strata company. The compulsory provision of information about the strata scheme should alert purchasers of the existence

of by-laws that may affect their enjoyment of the lot and contributions they may be required to make to the day to day costs of maintaining the strata scheme.

- 37.6 Prior to the decision to omit the protection of purchaser provisions from the *Bill*, a draft of the protection provisions had been prepared by Parliamentary Counsel but was not in final form. Since that date, DOLA, in consultation with the Strata Titles Consultative Committee, completed its assessment of the draft provisions and revised instructions were given to Parliamentary Counsel.
- 37.7 The minor amendments required to finalise the purchaser protection provisions have been completed by Parliamentary Counsel and appear under the heading Recommendation 37.13 in Appendix 3.
- 37.8 *Compulsory disclosure:* It is evident that many purchasers buy lots in strata schemes without being aware of their obligations as participants in a strata scheme. One method of addressing this problem is to require the seller of a lot in the strata scheme to provide certain information to the buyer before the buyer enters into a contract to purchase the strata lot. It is recommended that the *Act* should provide for a minimum standard of compulsory disclosure by sellers of lots in strata schemes. A prospective seller should be obliged to attach to the Offer and Acceptance a disclosure certificate incorporating a copy of:
- 37.8.1 the registered or proposed strata plan clearly identifying the lot being sold;
 - 37.8.2 an information booklet, yet to be prepared, proposed to be entitled "What you should know about buying a strata title lot"; and
 - 37.8.3 all non-standard by-laws registered, to be registered or proposed against the strata plan.
- 37.9 The disclosure certificate will alert purchasers that the land being purchased is a lot on a strata plan. It will also alert purchasers that they will be liable to contribute to strata levies raised by the strata company to cover the cost of day to day administration of the strata scheme such as insurance, water consumption and maintenance of the common property. The certificate will also incorporate a declaration of the purchaser's entitlement to inspect the records of the strata company, including the minutes of meetings.
- 37.10 The aim of the certificate is, therefore, to alert purchasers to the fact that the lot is within a strata scheme and that some preliminary enquiries are desirable. It is considered that purchasers should not have the right to waive the compulsory disclosure requirement.
- 37.11 In relation to rights where the disclosure obligation is breached, the preferred option is that, if the compulsory material is not provided to the purchaser before the purchaser enters into the contract, the contract is voidable by the purchaser until settlement. If the disclosure material is provided after contract,

but before settlement, the contract is voidable by the purchaser until 7 business days after provision of the material or settlement, whichever first occurs.

37.12 The Joint Industry Working Party on the *Strata Titles Act*, being a private sector group formed prior to the formation of the Strata Titles Consultative Committee, has written to the Hon Minister seeking early passage of the purchaser protection provisions. A number of the private sector members on the Strata Titles Consultative Committee have been pressing for the commencement of those provisions at the same time as the *Strata Titles Amendment Bill 1994*.

37.13 ***Recommendation***

That the Bill be amended to incorporate the proposed purchaser protection provisions included in the recommended amendments in Appendix 3.

Section 99A

38 *Basis for levying contributions.*

38.1 Under new section 42B (clause 45), by-laws made by a strata company may provide for a method of assessing contributions to be levied on proprietors under section 36 otherwise than in proportion to unit entitlement.

38.2 In recognition that this may operate unfairly against a dissenting proprietor or new proprietor, new section 99A provides for a referee to fix a different method of assessing contributions, including in proportion to unit entitlement. It may be that with a change in owners, the new owners would prefer a different basis of contribution than that set by the referee. It may be desirable to provide that an order under section 99A shall be revoked or amended by a subsequent by-law made by the strata company by a resolution without dissent. This procedure is available in new section 103A(5).

38.3 ***Recommendation***

That new section 99A be amended to incorporate a requirement (in identical terms to new section 103A(5)) that an order made under section 99A shall be revoked or amended by a subsequent by-law made by the strata company by resolution without dissent.

Section 103D

39 See paragraph 35.1 of this report.

Section 103E

40 See paragraphs 23.1 and 28.3 of this report.

Section 103I

41 *The new section 103I, which enables orders to be made by the referee that vary the standard duties of strata companies, should require that these orders be recorded (as in, for example, sections 93, 94, 99A, 103A and 103G).*

41.1 **Recommendation**

That the new section 103I be amended to incorporate a requirement (in identical terms to new section 103A(4)) that orders made by the referee to vary the standard duties of strata companies be recorded by the Registrar of Titles.

As a consequential amendment, new section 115(1)(a) should be amended to included reference to new section 103I.

42 *Insurance requirements.*

42.1 Under the existing Act, strata companies have a discretion to elect not to take out building and public liability insurance cover. It is proposed that the discretion be removed and be replaced by a duty to insure. Section 54(4) makes it clear that, in survey-strata schemes, the strata company is only obliged to insure buildings that are common property within the scheme.

42.2 In recognition that, in the circumstances of some individual strata schemes, eg duplex buildings, it may be appropriate not to effect joint insurance, it is proposed (in section 103I) that the referee have the power to waive the duty. It is noted that there is no power in section 103I for the owners to reinstate the requirements to insure under sections 54 or 55(1)(c). It may be that with a change in owners, the new owners would prefer the strata company to insure under sections 54 and 55(1)(c). It may be desirable to provide that an order under section 103I shall be revoked or amended by a subsequent by-law made by the strata company by a resolution without dissent. This procedure is available in new section 103A(5).

42.3 **Recommendation**

That new section 103I be amended to incorporate a requirement (in identical terms to new section 103A(5)) that an order made under new section 103I shall be revoked or amended by a subsequent by-law made by the strata company by a resolution without dissent.

Part VI, Division 3 - new section

43 *That the proposed new definition of a special resolution (clauses 5 & 6) will enable a two to one majority to have a virtually free reign with regard to expenditure.*

43.1 This issue identified in submissions is only part of a wider concern about protection of minority interests. The purpose of amending the definition of special resolutions was because, as currently defined, it enables a recalcitrant

owner to unreasonably refuse or prevent the obtaining of a special resolution. It may be that sufficient protection for the rights of the recalcitrant owner has not been included in the proposals. Owners in three, four or five lot schemes may, if disagreeing with all of the other owners, be placed in an unfair or unreasonable situation and certainly in a worse position than is currently the case.

43.2 **Recommendation**

That a section to enable the obtaining of an order setting aside a special resolution in a three, four or five lot scheme be introduced, based on the concepts set out in the proposed new section 103C.

Section 115

44 See paragraph 41 of this report.

Section 125

45 *There are problems relating to service of documents on proprietors under new section 125(3)(b)(ii) where 2 to 5 lot strata companies are exempted from maintaining a roll.*

45.1 New section 125(3)(b)(ii) provides that a proprietor can be served by post at the "address for service appearing on the roll maintained by the strata company under section 35A or, where no such address is specified, by post to the address of the proprietor's lot". This method of service could cause some difficulties in relation to meetings of strata companies, where sections 36A and 36B apply in relation to 2 to 5 lot schemes. Both new sections provide that a strata company need not maintain a roll of proprietors under section 35A(1).

45.2 If a roll is not maintained, service by post could only be to the address of the proprietor's lot. If the proprietor is not an owner occupier and notice is received by the tenant of that lot, the proprietor may never receive notice of the particular meeting and proposed resolutions.

45.3 Failure to keep such a roll may also make it extremely difficult for owners wishing to obtain approval under section 7 to structural extensions to arrange for meetings of a strata company to be called to consider the application, or for other activities.

45.4 **Recommendation**

That new section 125(3)(b)(ii) be amended to make provision for where, pursuant to sections 36A and 36B, no roll is required to be maintained, that service shall be to the address notified in writing to the other proprietors as the address for service".

Schedule 1, Pt 1, by-law 11

46 *14 days notice is required for every general meeting. Therefore, special reference to special resolutions in current Schedule 1, Part 1, by-law 11(5) is no longer appropriate (clause 82).*

46.1 Recommendation

That current Schedule 1, Part 1, by-law 11(5) be amended by deleting the words "Subject to the provisions of the Act relating to special resolutions, not less than 7" and substituting the words "Not less than 14".

Schedule 2, by-law 8

47 *Cleaning windows and doors on boundaries of lots should not be the responsibility of lot proprietors.*

47.1 There appears to be a conflict between section 35(1)(c) and the proposed deemed by-law. Such a by-law also is considered inappropriate for high-rise or multi-storey buildings.

47.2 Recommendation

That current Schedule 2, by-law 8 be deleted and subsequent by-laws re-numbered.

Schedule 2A

48 See paragraph 28.3 of this report.

Schedule 3, clauses 12(2) & 13A

49 *It should be made clear that Schedule 3, clause 12(2) is subject to Schedule 3, clause 13A.*

49.1 Schedule 3, new clause 13A provides a code to the "continuation" or otherwise of unrecorded by-laws granting a right of exclusive use and enjoyment of, or special privileges in respect of, common property. However, Schedule 3, clause 12(2) sets up a different regime in respect of former by-laws made under the 1966 Act.

49.2 Recommendation

That Schedule 3, clause 12(2) be amended to expressly make it subject to Schedule 3, clause 13A.

50 *Provision should be made that a strata company originally constituted under the Strata Titles Act 1966 ("1966 Act strata company") can expressly confirm its existing by-laws and have them recorded before the termination day.*

50.1 By new clause 12(2) of Schedule 3 (clause 85 of the *Bill*), unrecorded by-laws cease to have effect on the termination day. Action then has to be taken within the next 12 months for the by-law to be reinstated. In other words, up to termination day, the by-law may be in force; from termination day until the by-law is reinstated, it does not apply; and when the by-law is reinstated, it applies. This is inequitable and cumbersome.

50.2 ***Recommendation***

That provision be made to enable the strata company to resolve, and have recorded before the termination day, that particular by-laws shall be recorded and continue to operate.

Schedule 3, clause 12(4)

51 *It may be inappropriate to make new by-laws for a 1966 Act strata company start early if there is an objection by a proprietor.*

51.1 Under Schedule 3, clause 12(4) a strata company, by ordinary resolution, may make the new by-laws come into effect early, thus preventing action by a proprietor to continue the existing by-laws.

51.2 ***Recommendation***

That Schedule 3, clause 12(4) be amended by adding after the word "determine", the words, "by resolution without dissent".

Schedule 3, clause 12(5)

52 *It should be made clear that by-laws recorded on a strata plan for a 1966 Act strata company continue in force notwithstanding that they are inconsistent with the deemed by-laws under the current Act.*

52.1 It appears that under Schedule 3, clause 12(5) a former by-law recorded on the strata plan will cease to have effect if it is inconsistent with Schedule 1 or 2. This contrasts with clause 12(1) which expressly provides that the former by-laws apply, and not the deemed by-laws, where they are inconsistent.

52.2 ***Recommendation***

That Schedule 3, clause 12(5) be amended by deleting "the Act" and substituting "any provision of this Act other than Schedules 1 and 2".

53 *Schedule 1 and Schedule 2 by-laws (as amended by the Bill) should, as a basic principle, apply to all strata companies unless contrary to recorded changes of by-laws.*

53.1 The *Bill* will have the effect of providing that 1966 Act strata companies and companies constituted after the *Bill* commences operation, as a basic principle, will have Schedule 1 and Schedule 2 by-laws (as amended by the *Bill*).

Companies constituted between 30 June 1985 and commencement of the *Bill* ("1985 pre-Amendment Bill strata companies"), as a basic principle, will have Parts I and II by-laws that are not amended by the proposed new sections 42(2), 82 and 83. It is considered that this will be confusing to the public and will unnecessarily complicate management.

53.2 **Recommendation**

That, subject to the recommendation in paragraph 54.5, transitional provisions be drafted to ensure that, as a basic principle, the standard by-laws that are to be deemed to apply to all 1985 post-Amendment Bill strata companies (until altered) shall apply to 1985 pre-Amendment Bill strata companies.

54 *1985 pre-Amendment Bill strata companies should, as a general principle, by ordinary resolution, be able to decide that Schedule 2 or any provision of that schedule will not apply to them. One exception would be the current Part II by-laws 1 to 3 (now to be Schedule 2 by-laws 12 to 15) unless they had been repealed or amended by the particular strata company.*

54.1 The recommendation in paragraph 53.2 proposes that the standard Schedule 1 and Schedule 2 by-laws (as amended by the *Bill*) are to apply to 1985 pre-Amendment Bill strata companies.

54.2 The proposed new standard by-laws contain 3 amendments to Schedule 1 by-laws and 12 new by-laws in Schedule 2.

54.3 The substitution of Schedule 1 by-law (1a) for the Schedule 1 by-law (1)(c) and the addition of Schedule 1 by-law 14(4a) are as a result of amendments to sections of the *Act*. The substitution of a new by-law 7 facilitates the conduct of strata meetings. It is suggested that if these amendments are required not to apply to a strata company that that decision should be made by a resolution without dissent. In any event, no provision has been made for 1966 Act strata companies under the equivalent clause in Schedule 3 to amend the standard Schedule 1 by-laws.

54.4 Current Schedule 2 by-laws 1 to 12 impose obligations on proprietors, occupiers and other residents that do not currently exist, unless they have been expressly adopted. Some of those obligations, which are currently optional, may not be appropriate in a particular strata company or may not be desired by proprietors. For example, it is proposed in the recommendation in paragraph 47.2 that Schedule 2 by-law 8 be deleted.

54.5 **Recommendation**

That provision be made for 1985 pre-Amendment Bill strata companies, by ordinary resolution, to decide that Schedule 2 or any provision of that schedule shall not apply to their strata company. The exception would be the current Part II by-laws 1 to 3 (now to be Schedule 2 by-laws 12 to 15) unless they had been repealed or amended by the particular strata company. That resolution

should be required to be lodged with the Registrar of Titles before the termination day.

Schedule 3, clause 13A

55 *Unregistered "exclusive use" rights can be extinguished without adequate protection for affected proprietors in that strata companies are not bound to notify them of their impending loss.*

55.1 Prior to the 1985 Act, exclusive use of common property rights may have been granted pursuant to Part 1, by-law 3(f) or a Part II by-law. In either case, no record of such rights would be recorded on the strata plan. To avoid the uncertainty created by this practice, section 42(8) of the current Act provided that the only by-laws that could grant exclusive use in future would be made under that sub-section. Clause 13 in Schedule 3 to the current Act preserves exclusive use rights created by these two methods.

55.2 This preservation of unregistered rights created before the current Act continues the uncertainty in respect of strata plans registered before commencement of the current Act.

55.3 Clause 85(2) of the *Bill*, amending Schedule 3, is intended to remove that uncertainty.

55.4 The method provided in Schedule 3 (new clause 13A) is to terminate exclusive use and privilege rights unless they are granted by by-law or order made under that clause and recorded by the Registrar of Titles before expiration of 12 months after commencement of section 85(2) of the *Bill*.

55.5 The proprietor has from commencement of clause 85 of the *Bill*:

55.5.1 12 months to ensure that the right or privilege continues without break;

55.5.2 a further 2 years to apply for reinstatement of the right or privilege;

55.5.3 after 3 years to apply for reinstatement if he can satisfy the referee that the justice of the case requires he be given more time to make an application.

55.6 Proprietors may lose their legal entitlement to an exclusive use or special privilege without any action being taken at all, or for a substantial time, to prevent them from exercising their previous rights.

55.7 ***Recommendation***

That the Bill be amended to provide that strata companies be required to serve notice on all proprietors within 6 months of commencement of section 85(2). The notice should provide that if a proprietor claims to be entitled to any exclusive use, rights or special privileges not recorded on the strata plan, action

should be taken under Schedule 3, clause 13A as soon as practicable to prevent extinguishment of the rights and privileges.

Failure to send such a notice should not invalidate the extinguishment of the right or privilege but would form a basis for satisfying the referee that the justice of the case requires an extension of time for reinstating the right or privilege.

Clause 87

56 *Section 83(5) appears to have been inadvertently omitted from the Table to clause 87.*

56.1 Recommendation

That clause 87 be amended by adding section 83(5) to the Table.

Clause 88

57 *That all \$200 maximum penalties should be increased to \$400.*

57.1 There appears to have been an oversight of \$200 penalties appearing in sections 35(2), 39(3), 43(1) and (3), 128(3) and 130. They should have been included in the table appearing in clause 88.

57.2 Recommendation

That clause 88 be amended by adding sections 35(2), 39(3) and 43(1) and (3), 128(3) and 130 to the Table.

Matters to be Referred to the Strata Titles Consultative Committee

58 A number of matters which are not directly relevant to the *Bill* were drawn to the Committee's attention in the submissions received. The Committee formed the view that some of these matters should be referred to the Strata Titles Consultative Committee for consideration in its continuing review of the *Act*.

59 Recommendation

That, in addition to any specific recommendations on any of the matters referred to in this section of the report, the Minister for Lands refer the matters raised in this section to the Strata Titles Consultative Committee for consideration and report.

60 Electricity Meters

One submission received by the Committee noted that SECWA refused to provide or read separate electricity meters for lots in a strata scheme. This

causes obvious difficulties and requires further consideration and discussions with Western Power.

61 Surveys

- 61.1 The Association of Consulting Surveyors, Western Australia Inc and the Institution of Surveyors Australia Inc, Western Australian Division have for a considerable time been seeking statutory amendments to impose a requirement that authorised surveys be undertaken in respect of all new strata plans. The Committee received numerous submissions from surveyors regarding the issue of surveys.
- 61.2 The role of surveyors in relation to strata schemes was referred to a sub-committee of the Strata Titles Consultative Committee for consideration and report. On 11 May 1994 the sub-committee met to discuss the issue. Some of the issues raised during the meeting were:
- 61.2.1 Could parcels be divided into strata lots by "sketch on transfer" and what problems would this cause?
 - 61.2.2 Is it necessary for a surveyor to be involved with building stratas?
 - 61.2.3 What standards of measurement are required?
 - 61.2.4 Would it be feasible for other professionals to take responsibility for strata plan boundary and area definition?
- 61.3 It was arranged that the next meeting of the Sub-Committee was to be called after the representatives from the Institution and the Association had reported back to the Sub-Committee on those issues. At 2 February 1995 no report had been received and therefore no meeting had been held.
- 61.4 As the *Bill* introduces survey-strata lots, survey issues were considered in respect of such lots and a recommendation was made at paragraph 16.5 that survey-strata schemes should be the subject of survey.
- 61.5 Another matter relating to surveys which was considered by the Committee was the question whether authorised surveys should include absolute altitude data. Information was sought from the Institution of Surveyors Australia on the feasibility of and cost involved in the inclusion of such data in surveys. The response received indicated that height data could be related to the Australian Height Datum and that its inclusion in a survey would generally not significantly increase the cost of a survey. There would be a significant increase in cost where the nearest State Survey Mark was a considerable distance from the site of the survey.
- 61.6 As the requirements for surveyors' certificates in respect of strata lots generally were not considered in the *Bill*, and as the question of inclusion of height data relates to surveys generally, the Committee considered that the matter was beyond the scope of its reference.

61.7 **Recommendation**

That the Minister for Lands refer the question of surveys in relation to strata titles and titles to land generally, to DOLA and the Strata Titles Consultative Committee for consideration and report.

62 **Strata company records**

One submission received by the Committee suggested that, in conjunction with, or furtherance of, the purchaser protection provisions referred to in paragraph 37, a copy of the minutes of the inaugural annual general meeting should be sent to the Registrar of Titles for registration. The reason for this was the problem of non-compliance which is a general problem of significant proportions in the strata titles area. It is considered it may not be appropriate that these kinds of internal records be available for searching on a public register.

63 **Determination of unit entitlements**

A submission received by the Committee suggested that references to licensed valuers in section 14 and other relevant sections should be deleted. The proposal was that original unit entitlement should be allocated by the original proprietor and changed as decided by the subsequent proprietors of the strata plan. The Committee can foresee difficulties arising in relation to any attempt by proprietors to change unit entitlements. However, the Committee also considers that the matter deserves further consideration.

64 **Maintenance of appurtenances and surface areas**

One of the submissions raised the question of division of responsibility between strata companies and lot proprietors for maintenance of appurtenances and surface areas of walls, floors and ceilings. Repairs to superficial cracks in plaster or ceiling boards and the like (where the standard definition of a lot applies) would appear to be damage to common property. By section 35(1)(c), repair of the common property is the responsibility of the strata company. It is noted that under Part 1, Schedule 1, by-law 2, the proprietor may paint, wallpaper or otherwise decorate the structure. Where a lot proprietor causes damage, it is assumed, although it is not expressly stated, that that lot proprietor would be obliged to repair the damage. This is an issue that warrants further investigation.

65 **Restrictions on structural extensions**

If work on a structure is commenced, but not completed in a reasonable time, this may constitute an eyesore and a problem for the strata company. One submission suggested that proprietors should be compelled to give a completion guarantee before undertaking any such work. The Committee considers that further consideration should be given to this issue.

66 **Failure to elect council**

In some instances strata companies fail to elect a council. In these cases there is a need to provide for satisfactory decision making mechanisms.

67 **Reserve fund**

Section 36(2) of the *Act* provides that strata companies may establish a reserve fund to meet unexpected expenses. It has been suggested that establishment of a reserve fund should be mandatory. The Committee considers that there is merit in this proposal.

68 **Orders of referee should be public records**

68.1 This was the reason given for the proposal that the operations of the strata titles referee should be transferred to the *Small Claims Tribunals Act 1974*. It is acknowledged that it is desirable that orders of the referee and reasons for those orders be a matter of public record. It is not clear whether the reason this is not currently done is because there are no formal provisions in the *Act* to enable it to be done or because the referee does not have sufficient resources to create and maintain a readily accessible list of orders and reasons for orders.

68.2 ***Recommendation***

That the Minister for Lands consult with the Attorney General, and perhaps the Strata Titles Consultative Committee, for the purpose of giving further consideration to this issue.

69 **Powers of referee**

69.1 DOLA has informed the Committee that it has received submissions concerning the enforcement of orders made by the referee. Section 116 of the *Act* provides that a person who contravenes an order made by the referee may be liable to a penalty of \$100 and a daily penalty of \$10. The *Bill* will replace this with a penalty of \$2000 and a daily penalty of \$200.

69.2 The referee may generally make monetary or non-monetary orders. Section 118 of the *Act* provides that, where the referee makes an order that requires the payment of money in favour of a certain person, that person may enforce the order by filing a copy of the referee's order in a Local Court. In such circumstances, the order shall be deemed to be a judgment of the Local Court and may be enforced accordingly.

69.3 Otherwise than as provided in section 116, the *Act* is silent concerning the enforcement of non-monetary orders, such as an order that a person remove an addition to common property, remove a pet, refrain from making noise, obey a by-law etc. In such circumstances, the *Act* relies on the provisions of the *Justices Act 1902*. Section 20 of that Act provides that where, by an Act, any person is made liable to a penalty or punishment for any offence, the matter

may be heard by two or more justices in a summary manner or by a magistrate. Section 42 of the *Justices Act* provides that proceedings before justices may be commenced by a complaint laid by a complainant. The class of complainant is not specified and the legislation would permit, for example, a strata company, by one of its officers, to lay the complaint. Punishment may still not result in implementation of the order.

69.4 DOLA, in conjunction with the Strata Titles Consultative Committee, has given further consideration to the powers of the referee and is particularly concerned to provide a strong incentive to comply with orders made by the referee.

69.5 A proposed solution is to include in the *Strata Titles Act* a contempt provision and a provision that the referee may order that an act be done at the expense of a party refusing to comply with an order (following a similar approach to that adopted in section 140 of the *Supreme Court Act 1935*). The effect of these provisions would be that the referee would have the same powers as a judge for punishment of a person failing to obey an order (including the powers to fine and imprison) and to facilitate the ordered act to be completed. Section 140 of the *Supreme Court Act* provides:

"Court may order act to be done at expense of party refusing

140. If a *mandamus*, granted in an action or otherwise, or a mandatory order, injunction, or judgment for the specific performance of any contract is not complied with, the Court or a Judge, besides or instead of proceedings against the disobedient party for contempt, may direct that the act required to be done may be done so far as practicable by the party by whom the judgment or order has been obtained, or some other person appointed by the Court or Judge, at the cost of the disobedient party, and upon the act being done, the expenses incurred may be ascertained in such manner as the Court or a Judge may direct, and execution may issue for the amount so ascertained, and costs."

69.6 The Committee does not support this proposal. If implemented it may give to strata titles referees unnecessary and excessive judicial powers. These powers would exceed those of referees under the *Small Claims Tribunals Act 1974*.

69.7 ***Recommendation***

That the Minister for Lands refer to the Strata Titles Consultative Committee for specific consideration and report the proposal that the powers of strata titles referees to enforce orders are inadequate and, if they are found to be inadequate, to suggest appropriate means of having referees' orders enforced. The Minister for Lands should, after receiving the report of the Strata Titles Consultative Committee, and if appropriate, consult with the Attorney General on any proposal to broaden the powers of referees.

70 **Exclusive use of common property**

- 70.1 The allocation of car parking bays and other rights of exclusive use of common property causes some contention. These matters should be considered by the Strata Titles Consultative Committee in their ongoing review of the *Act*.

71 **Presentation of strata title plans**

- 71.1 One of the submissions received by the Committee, which was not directly relevant to the *Bill*, suggested that changes should be made to the presentation of strata title plans. In particular it was suggested that:

71.1.1 plans could be presented in a similar way to plans in New South Wales and South Australia;

71.1.2 any strata plan of re-subdivision should show the whole of any new lots created by reference to a defined structural feature on a floor plan; and

71.1.3 any plan of re-subdivision should contain an amended location plan showing the position of the new lot or lots in relation to existing lots.

- 71.2 The Committee considers that many of these issues could be dealt with by appropriate regulations and should be investigated.

71.3 ***Recommendation***

That the Minister for Lands refer these matters to the Department of Land Administration for consideration and report.

Appendix 1: List of Submissions

Sheryal Griggs, Strata Titles Institute
Sly & Weigall, Solicitors
Hon Kim Chance MLC
John Halifax
Pamela Howle
A Richardson
Mrs Helen Connof
John P Zadnik & Co
Peter Spensley Bates (Barrister)
P G S Hope & Partners
John Bullock & Associates
D Gray
Thompson Consulting Surveyors
Sorensen Short and Associates
Leo Mannella, Property People
Neil Kacowicz
Hunt & Rogers Pty Ltd
Frank LeFaucheur
Automated Surveys Pty Ltd
A & F I Clough
Paul Kraft & Associates
Ian W Brandon
Alister Nairn, AUSLIG et al
John Seddon
M C Williamson, School of Surveying & Land Information, Curtin University
Warren F Johnson & Co
Glenn Bush
R J Rule Pty Ltd
Peter Driscoll & Associates Pty Ltd
Alistair Millar, Strata Titles Institute
Peter Schipp, Fugro Survey Pty Ltd
Fugro Survey Pty Ltd
A E Richings
John A Higham & Associates Pty Ltd
A G Thompson, Hille Thompson & Delfos
Kevin McMahan
T L Markey, Trevor Markey Surveying Services
J J F Delfos, Hille Thompson & Delfos
Zuideveld Bennett
R A Holland, Association of Consulting Surveyors WA Inc
K & I Kenneally
J Martin, AIVLE
Peter Munday, Manager Strata Division, Quinn Ballard
P O Waller
D O D Price, Barrister & Solicitor
T & D James
Nigel Prescott

Appendix 2: Strata Titles Consultative Committee

John Gladstone, Chair, Department of Land Administration

Alistair Millar, Association of Consulting Surveyors

Les Wilshusen, Department of Land Administration

Ron Acott, Department of Land Administration

Ian Wight-Pickin, Department of Planning and Urban Development

Barry Bowden, Health Department

Jim Bertram, Health Department

Lyn Barradeen, Institute of Building Surveyors

Colin Shipp, Institution of Surveyors

Bob Kronberger, Law Society of WA

Keith Weymes, Local Government Planners' Association

Jenni Ibrahim, Ministry of Fair Trading

Vin Badham, Ministry of Justice

John Angus, Real Estate Institute of WA

Simon Adam, SECWA

Wayne Reynolds, Settlement Agents Association

Sheryal Griggs, Strata Titles Institute

Paul Smith, Strata Titles Institute

Michael Powell, Strata Titles Joint Industry Working Party

Hugh NanKivell, Strata Titles Referee

Neil Thomson, Urban Development Institute

Warrick Murphy, Valuer General's Office

George Metcalf, Valuer General's Office

Richard Robinson, WA Fire Brigades Board

Roger Bulstrode, Water Authority of WA

Joe D'Orazio, Water Authority of WA

Appendix 3

Draft Amendments to *Bill*

Recommendation 11.2

Clause 5.

Page 4, line 17 — To insert after "as a lot" the following —

" consisting of one or more parts "

.....

Recommendation 12.3

Clause 6.

Page 7, line 3 — To delete the line and substitute the following —

" (b) against which no vote is cast by a person entitled to exercise the powers of voting conferred under this Act —

(i) voting at the meeting either personally or by proxy; or

(ii) voting in accordance with subsection (2).

(2) A person entitled to exercise the powers of voting conferred under this Act is also to be taken to vote —

(a) in support of a resolution if he signifies in writing that he agrees to the resolution; or

(b) against the resolution if he signifies in writing that he disagrees with the resolution,

within 28 days after the day of the meeting, whether that writing is signed by the person or by another person who at the time of the signing is entitled to exercise the power of voting in place of that person. "

.....

Recommendation 14.3

Clause 6.

Page 9, after line 18 — To insert the following new subsections —

" (2) The requirements of subsection (1) (a) do not prevent a resolution specified in a notice of a meeting being amended at the

meeting if the notice states that the resolution may be amended at the meeting.

(3) If a resolution specified in a notice of a meeting is passed with amendment at the meeting the strata company shall, not later than 7 days after the meeting, serve a copy of the amended resolution on each proprietor who was not present at the meeting either personally or by proxy at the time when the resolution was passed. "

.....

Recommendation 15.2

Clause 8.

Page 10, lines 14 to 20 — To delete the lines and substitute the following —

“(1) Land may be subdivided into lots, or lots and common property, by the registration of a strata plan or a survey-strata plan. ”.

.....

Recommendations 16.5 & 17.3

Clause 10.

Page 12, lines 9 to 12 — To delete the lines and substitute the following —

“(b) contain a survey plan in respect of the parcel, that is a plan that defines, in the prescribed manner, the boundaries of lots and common property by dimensions and survey information obtained from a survey of the parcel; ”.

.....

Recommendation 18.2

Clause 10.

Page 12, lines 7 and 8 — To delete the lines.

.....

Recommendation 19.2

Clause 13.

Page 18, lines 20 and 21 — To delete the lines and substitute the following —

- “ (b) any alteration of a structural kind to, or extension of, a structure, ”.

.....

Recommendation 18.2

[See amendments under 28.3 below.]

.....

Recommendation 19.3

[See amendments under 28.3 below.]

.....

Recommendation 22.1

Clause 13.

Page 18, lines 15 and 16 — To delete the lines and substitute the following —

- “ 7. (1) This section does not apply to —
- (a) a lot in a survey-strata scheme; or
 - (b) the erection of, alteration to or extension of a structure on a lot in a strata scheme if —
 - (i) each proprietor of a lot in the scheme has in writing given approval to the erection, alteration or extension;
 - (ii) that approval, if subject to conditions, is given by each proprietor subject to the same conditions; and
 - (iii) a copy of each such approval is served on the strata company.
- ”.

.....

Recommendation 23.1

Clause 74.

Page 81, after line 7 — To insert the following new subsections —

- “ (4) If —
- (a) a proprietor has made an application to a strata company under section 7A; and
 - (b) the application has been considered at a general meeting at which no vote was passed against the application,

the proprietor may make a conditional application for an order under this section.

- (5) The referee cannot make an order on a conditional application unless a proprietor, voting in accordance with section 3A (2), casts a vote against the application referred to in subsection (4) (a) nor until the expiration of 35 days after the meeting.

”.

.....

Recommendation 22.2

[See amendments under 28.3 below.]

.....

Recommendation 25.2

Clause 13.

Page 19, lines 10 to 20 — To delete the lines and substitute the following new subsections —

- “ (4) Where an application is made to a proprietor in accordance with section 7B the proprietor may refuse to give approval on any ground that is permitted by subsection (5) [as numbered in existing Bill], but not otherwise.
- (5) Where an application is made to a strata company in accordance with section 7B —
 - (a) notice of the general meeting to which the application is to be submitted shall contain or be accompanied by a

statement, in the prescribed form, of the effect of paragraphs (c) and (d);

- (b) the chairman of the general meeting shall before a vote is taken on the application read out the statement referred to in paragraph (a);
- (c) a proprietor may vote —
 - (i) against a resolution to approve the application; or
 - (ii) in favour of a resolution to refuse approval of the application,on any ground that is permitted by subsection (5) [*as numbered in existing Bill*], but not otherwise; and
- (d) a vote referred to in paragraph (c) is of no effect unless the person casting the vote discloses as a ground for his vote one or more of the grounds permitted by subsection (5) [*as numbered in existing Bill*].

”.

.....

Recommendations 26.2, 27.2 & 28.3

Clause 5.

Page 4, after line 21 — To insert the following —

“ “**open space**” means the area of a lot that is not occupied by any building and is to be calculated in such manner as is prescribed;

“**plot ratio**”, in relation to a lot or parcel, means the ratio of the gross total of the areas of all floors in any building on the lot or parcel to the area of the lot or parcel, and is to be calculated in such manner as is prescribed;

”.

.....

Recommendation 27.2(a)

Clause 13.

Page 19, line 24 — To delete the line and substitute the following —

`` breach the plot ratio restrictions or open space requirements for the lot referred to in section 7A (3) ``.

.....

Recommendation 28.3

Clause 13.

Page 18, line 12 — To delete ``section is" and substitute the following —

`` sections are ``.

Page 19, lines 4 to 20 — To delete the lines.

Page 20, lines 7 to 9 — To delete the lines.

Page 20, after line 17 — To insert the following new sections —

`` **Structural extensions restricted, survey-strata schemes**

- 7A.** (1) This section does not apply to a lot in a strata scheme.
- (2) The proprietor of a lot shall not cause or permit —
- (a) any structure to be erected; or
 - (b) any alteration of a structural kind to, or extension of, a structure to be made,
on his lot if on completion of the work the structures on the lot will not conform to plot ratio restrictions or open space requirements for the lot, except —
 - (c) with the prior approval of the proprietor of the other lot in the case of a survey-strata scheme in which there are not more than 2 lots (not including lots designated as common property lots); and
 - (d) in any other case with the prior approval, expressed by resolution without dissent, of the strata company.
- (3) For the purposes of subsection (2) the plot ratio restrictions or open space requirements for a lot are —
- (a) those provided for by the by-laws of the strata company; or

- (b) in the absence of any such provision, those that represent the pro rata entitlements of or requirements for the lot calculated on the proportion that the area of the lot bears to the area of the parcel.

(4) In this section "structure" includes any prescribed improvement.

Further provisions as to approvals for purposes of sections 7 and 7A

7B. (1) A proprietor who wishes to obtain an approval of a proposal that comes within section 7 (2) or 7A (2) shall serve an application on the strata company or the other proprietor, as the case may require, and in the application shall set out details of the proposal and such other information as may be prescribed.

(2) Where an application is made to a strata company under subsection (1) the council of the company shall submit the application to a general meeting of the company convened for the purpose, or for purposes which include that purpose, within 35 days after the application is received ("the allowed period").

(3) If the council does not —

- (a) give notice of such a meeting within 14 days after the application is received to each proprietor and registered mortgagee who has notified his interest to the strata company; or
- (b) convene a general meeting of the company within the allowed period,

any proprietor may convene a general meeting, in the same manner as nearly as possible as that in which meetings are to be convened by the council, and submit the application to that meeting.

(4) Despite subsection (2), a council may submit an application to a general meeting convened by the council after the allowed period if that meeting is held before a meeting is convened by the applicant under subsection (3).

(5) Notice in writing of the decision on an application shall be given to the applicant —

- (a) in the case of a two-lot scheme, by the other proprietor within 42 days after the service of the application on him; and

(b) in any other case, by the strata company within 77 days after service of the application on the company.

(6) If an application made to a strata company for approval under section 7 is not approved, a notice under subsection (5) shall show the ground or grounds disclosed by each proprietor who cast a vote of a kind referred to in section 7 (5) (c).

(7) If notice of a decision is not given to the applicant in accordance with subsection (5) and, where applicable, subsection (6) the approval applied for is to be taken to have been given.

".

Clause 74.

Page 80, lines 24 to 27 — To delete the lines and substitute the following —

“ 103E. (1) A proprietor of a lot who has applied for but not obtained an approval under section 7B may apply to a referee for an order under this section.

".

Page 80, line 30 — To delete “7 (2)” and substitute the following —

“ 7 or 7A, as the case may be, ”.

Page 81, line 4 — To delete “7 (5)” and substitute the following —

“ 7 or 7A, as the case may be ”.

Clause 84.

Page 95, after line 2 — To insert the following —

“ 5A. Plot ratio restrictions and open space requirements. ”.

.....

Recommendation 29.1

Clause 14.

Page 21, line 24 — After “define” to insert the following —

“ , in the prescribed manner, ”.

.....

Recommendation 30.1

Clause 14.

Page 21, line 14 — To insert a semicolon after ``the plan".

.....

Recommendation 31.2

Clause 39.

Page 44, line 19 — To insert the following —

`` and address ".

.....

Recommendation 33.2

Clause 39.

Page 44, line 6 — To insert immediately before ``information" the following —

`` subject to subsection (5), ".

Page 44, after line 20 — To insert the following subsection —

- `` (5) A strata company shall not amend the roll —
 - (a) to reflect the discharge of a mortgage except on the basis of —
 - (i) information provided by the mortgagee or the mortgagee's authorised agent; or
 - (ii) the production of a duplicate or a certified copy of a certificate of title showing the mortgage as having been discharged;
 - or
 - (b) to show a change of address of a mortgagee except on the basis of information provided by, or on behalf of, the mortgagee. "

.....

Recommendation 34.1

Clause 39.

Page 44, lines 21 to 25 — To delete the lines.

Page 44, line 27 — To delete ``or (5)".

Clause 46.

Page 51, after line 25 — To insert the following —

`` (i) by inserting after subparagraph (i) the following subparagraph —

`` (ia) the roll maintained under section 35A; "; "

Page 53, after line 9 — To insert the following subclause —

[Sub-clause (2) is inserted by 33.9 below] `` (3) A strata company does not commit an offence by contravening section 43 (1) (b) (ia) of the principal Act during the period from the commencement of subsection (1) (a) (i) of this section to the expiration of 12 months after that commencement. "



Recommendation 35.3

Clause 42.

Page 48, lines 21 to 23 — To delete the lines and substitute the following —

`` (c) either —

(i) it was entered into by the strata company when any proprietor held 50% or more of the aggregate unit entitlement of the lots; or

(ii) the referee has, by order made on the application of a proprietor, determined that the agreement is unfair to the proprietors of 25% or more of the aggregate unit entitlement of the lots.

(5) The referee may, on the application of any person made in respect of an agreement, by order extend the period of 5 years provided for by subsection (1), so far as it applies to that agreement, if he is satisfied that the agreement —

(a) is fair to all proprietors; and

(b) will remain fair to all proprietors during the extended period.

(6) An extended period under subsection (5) is not to exceed the term specified in the agreement or a period of 10 years from the time when the agreement was entered into, whichever is the lesser.

(7) The provisions of Part VI apply to an application made to a referee under subsection (4) (c) (ii) or (5) and to an order made by the referee in the same way as they apply to an application and an order made under that Part. "

Clause 74.

Page 80, lines 4 and 5 — To delete `` , other than a proprietor referred to in subsection (4) (c)," and substitute the following —

`` of 25% or more of the aggregate unit entitlement of the lots in the scheme "

Page 80, lines 13 to 15 — To delete the lines.

.....

Recommendation 36.9

Clause 46.

Page 53, after line 9 — To insert the following subclause —

`` (2) After section 43 (1) of the principal Act the following subsection is inserted —

`` (1a) On application made in writing to a strata company by a proprietor or mortgagee of a lot, or by a person authorized in writing by such a proprietor or mortgagee, the strata company may provide to the applicant copies of —

- (a) any document referred to in subsection (1) (b); or
- (b) the roll maintained by the strata company under section 35A,

and, except for one copy of minutes of general meetings of the strata company provided to each proprietor or mortgagee of that lot, may require the applicant to pay the prescribed fee for any copy so provided.

". "

.....

Recommendation 37.13

New clauses.

Page 66, after line 14 — To insert the following new clauses —

`` **Sections 68 and 69 repealed and sections substituted**

64. Sections 68 and 69 of the principal Act are repealed and the following sections are substituted —

`` **Interpretation**

68. In this Part, unless the contrary intention appears —

``**contract**'' means a contract, agreement or document that legally binds the purchaser whether conditionally or unconditionally;

``**original proprietor**'' includes, in respect of a proposed lot or proposed plan, the person who upon registration of the proposed plan becomes the original proprietor;

``**purchaser**'' includes an intending purchaser;

``**vendor**'' includes an intending vendor.

Information to be given to purchaser

69. (1) A purchaser of a lot or proposed lot in a scheme shall be given the notifiable information before he or she signs a contract to buy the lot or proposed lot.

(2) The vendor of a lot or proposed lot in a scheme shall ensure that subsection (1) is complied with either —

(a) by giving the notifiable information to the purchaser on the form referred to in subsection (3); or

(b) by ensuring that the notifiable information forms part of the contract.

(3) A form or forms shall be prescribed for use by vendors in giving the notifiable information under this section.

(4) In any civil proceedings arising out of or connected with a contract, the onus of proving that the notifiable information was duly given in accordance with this Part shall lie upon the vendor.

Notifiable information, all vendors

69A. The notifiable information to be given under section 69 by every vendor is —

- (a) the name and address of the vendor and the purchaser;
- (b) a copy of the registered or proposed strata/survey-strata plan showing each lot or proposed lot to which the contract relates;
- (c) the contents of the by-laws for the scheme that are —
 - (i) in force; or
 - (ii) resolved to be made but not yet in force by virtue of section 42 (4),
but only so far as they amend, repeal or add to the by-laws set out in Schedules 1 and 2;
- (d) the proposed by-laws in respect of a proposed scheme but only so far as they amend, repeal or add to the by-laws set out in Schedules 1 and 2; and
- (e) any information prescribed for the purposes of this section.

Notifiable information — original proprietor

69B. The notifiable information to be given under section 69 by a vendor who is the original proprietor is, in addition to that required by section 69A —

- (a) the unit entitlement of every lot within the scheme and the aggregate unit entitlement, or if the strata/survey-strata plan has not been registered those entitlements as proposed;
- (b) details of every agreement for the provision of any amenity or service to the strata company or to any part of the parcel that —
 - (i) the company or the original proprietor has entered into; or
 - (ii) the original proprietor in his own right or exercising the power of the company proposes to enter into,

including the terms and conditions of every such agreement, the consideration for it, and the estimated costs to the proprietor of the lot;

- (c) particulars of any direct or indirect pecuniary interest that the vendor has in any agreement referred to in paragraph (b), other than as a proprietor;
- (d) the estimated receipts and expenditure of the company for the period of 12 months after registration of the strata/survey-strata plan;
- (e) the estimated contributions of the proprietor under section 36 (1) and (2) during the period referred to in paragraph (d);
- (f) details of every lease granted or proposed to be granted to the purchaser or any other person in relation to the common property;
- (g) details of every licence, right of exclusive use and enjoyment, or special privilege granted or proposed to be granted to the purchaser or any other person in relation to the common property.

Variation of information also to be notified

69C. (1) The vendor under a contract to sell a lot or proposed lot shall by notice in writing inform the purchaser of full particulars of any notifiable variation of the information given under section 69.

(2) Notice under subsection (1) shall be given as soon as the vendor becomes aware of the variation.

Notifiable variations

69D. For the purposes of section 69C, a notifiable variation occurs if before the registration of the purchaser as proprietor of the lot or proposed lot or earlier avoidance of the contract —

- (a) the company, or the original proprietor in his own right or exercising the power of the company —
 - (i) enters into an agreement of the kind described in section 69B (b) in relation to any part of the parcel, other than an agreement which is the same as a proposed agreement notified under that section; or
 - (ii) varies any existing agreement of that kind whereby the rights of the purchaser are likely to be affected;

- (b) the company or the original proprietor exercising the power of the company —
 - (i) makes a by-law other than a by-law which is the same as a proposed by-law notified under section 69A (c) or (d); or
 - (ii) amends or repeals any by-law;
- (c) the unit entitlement of any lot or the aggregate unit entitlement is not the same as the unit entitlement or proposed unit entitlement or the aggregate unit entitlement or proposed aggregate unit entitlement, as the case may be, that was notified under section 69B (a);
- (d) a lease, licence, right or privilege in relation to the common property —
 - (i) is granted, other than a lease, licence, right or privilege which is the same as a proposed lease, licence, right or privilege that was notified under section 69B (f) or (g); or
 - (ii) is varied in addition to or contrary to the terms of any lease, licence, right or privilege details of which were so notified.

When purchaser may avoid contract

69E. (1) Subject to subsection (2), if a vendor has failed to give to a purchaser information that substantially complies with section 69 or 69C and at the time required by that section, the purchaser has a right to avoid the contract by notice in writing given to the vendor before the settlement of the contract.

(2) If under subsection (1) a purchaser has a right to avoid a contract but before notice of avoidance is given the vendor gives to the purchaser information that substantially complies with section 69 or 69C, the purchaser's right under subsection (1) must be exercised within 7 working days after that information is given.

(3) If the vendor gives to the purchaser information that substantially or partially complies with section 69 or 69C within 7 working days before the settlement date designated in the contract, the purchaser may, despite the contract, postpone the time for settlement beyond the settlement date by not more than 7 working days after that information is given.

(4) In this section —

``**settlement**'' means the time at which the purchaser pays to the vendor the purchase price, or the balance of the purchase price, in exchange for the documents of title;

``**working days**'' means Monday to Friday but excluding, in the case of a contract relating to land in any area of the State, a

day that is a public holiday in that area or throughout the State.

Effect of avoidance

69F. Upon the avoidance of a contract under this section, the vendor is liable to repay to the purchaser all moneys paid by the purchaser under the contract and such moneys shall be recoverable, by action as for a debt, by the purchaser accordingly. "

Section 70 amended

65. Section 70 of the principal Act is amended —

- (a) by deleting "or a real estate" and substituting the following —
" , real estate agent or settlement ";
- (b) by deleting "or real estate" and substituting the following —
" , real estate agent or settlement "; and
- (c) by repealing subsections (6) and (7).

Sections 70A and 70B inserted

66. After section 70 of the principal Act the following sections are inserted —

" **Contracting out prohibited**

70A. (1) A contract or arrangement is of no effect to the extent that it purports to exclude or restrict the operation of this Part or the rights and remedies conferred on a purchaser by this Part.

(2) A purported waiver of a right, remedy or benefit conferred on a purchaser by this Part is of no effect.

Saving

70B. Except as provided by sections 69E, 70 (3) and (4) and 70A, this Part does not apply so as to render any contract illegal or void or to empower any party to avoid the contract. "

Transitional provision

67. Despite their repeal by section 64, sections 68 and 69 of the principal Act continue to apply to any contract, agreement or document entered into before the commencement of section 64 and the provisions inserted into the principal Act by that section do not apply to any such contract, agreement or document. "

.....

Recommendations 41.1 & 42.3

Clause 73.

Page 77, after line 20 — To insert the following —

`` (7) An order under this section is to be taken to be revoked or amended to the extent that it is inconsistent with a by-law, or an amendment of a by-law, subsequently made by the strata company by resolution without dissent. ``.

Clause 74.

Page 85, after line 9 — To insert the following —

`` (4) An order under this section is of no effect until a copy of the order has been recorded by the Registrar of Titles under section 115 on the strata/survey-strata plan to which it relates.

(5) An order under this section is to be taken to be revoked or amended to the extent that it is inconsistent with a by-law, or an amendment of a by-law, subsequently made by the strata company by resolution without dissent. ``.

Clause 75.

Page 87, line 30 — To delete ``or 103G" and substitute the following —

`` , 103G or 103I ``.

.....

Recommendation 43.2

Clause 6.

Page 8, after line 32 — To insert the following —

`` (6) A special resolution referred to in subsection (3) does not have effect —

- (a) until the expiration of the period referred to in section 103D (2)*; or
- (b) if an application is made for an order under that section, until the application is dismissed, or withdrawn; or
- (c) if the referee refuses to make the order, until the time for appeal under Division 4 has expired or any appeal has been dismissed or withdrawn or determined in such a way that an order under section 103D* is not made.

[* *the new section 103D to be inserted under this recommendation*]

(7) In subsection (3) ``lot" does not include a lot in a survey-strata scheme that is designated as a common property lot. ``.

Clause 74.

Page 79, after line 17 — To insert the following —

`` **Order cancelling special resolution**

103D. (1) Where a special resolution has been passed by a strata company for a scheme in which there are 3, 4 or 5 lots a proprietor who did not vote, either personally or by proxy, in favour of the resolution may apply to a referee for an order under this section.

(2) An application under subsection (1) cannot be made by a proprietor later than —

- (a) the 28th day after the day of the meeting at which the special resolution was passed; or
- (b) if any vote in support of the resolution was cast under section 3B (5), the 56th day after the day of the meeting or the 28th day after service of notice of passing of the special resolution on the proprietor, whichever first occurs.

(3) An order under this section is an order declaring that a special resolution specified in the order is to be deemed not to have been passed by the strata company.

(4) On the making of an application by a proprietor under subsection (1), the referee may make an order under this section if he is satisfied that the other proprietors have acted unreasonably in passing the special resolution.

(5) In subsection (1) "lot" does not include a lot in a survey-strata scheme that is designated as a common property lot.

."

.....

Recommendation 45.4

Clause 39.

Page 44, after line 12 — To insert the following —

- `` (c) the address for service of any proprietor or mortgagee of a lot who has notified an address for service to the strata company;

."

Clause 78.

Page 89, after line 16 — To insert the following —

- `` (iii) where under section 36A or 36B a roll is not maintained by a strata company, by post to the address notified under subsection (3a);

."

Page 89, after line 17 — To insert the following subclause —

- `` (3) After section 125 (3) of the principal Act the following subsections are inserted —

- `` (3a) Where under section 36A or 36B a roll is not maintained by a strata company for a scheme, the proprietor of a lot in the scheme shall

notify the strata company and each of the other proprietors in writing of his address for service.

Penalty: \$400.

(3b) Where on a change of ownership a proprietor of a lot in a scheme for which a roll is not maintained under section 36A or 36B notifies an address for service to the other proprietors, each of the other proprietors shall notify the new proprietor of their respective addresses for service.

Penalty: \$400.

". "

.....

Recommendation 46.1

Clause 82.

Page 92, lines 18 and 19 — To delete the lines and substitute the following —

“ previously numbered, in by-law 11 (5), by deleting “Subject to the provisions of the Act relating to special resolutions, not less than 7” and substituting the following —

“ Not less than 14 ”. ”.

.....

Recommendation 47.2

Clause 83.

Page 93, after line 14 — To insert the following —

“ (3) Schedule 2 to the principal Act is amended by repealing by-law 8.

(4) Schedule 2 to the principal Act is amended by renumbering by-laws 9, 10, 11 and 12 to be by-laws 8, 9, 10 and 11 respectively. ”.

Page 93, line 16 — To insert the following after “by-law 12” —

“ , as previously re-numbered, ”.

Page 93, line 19 — To delete “13” and substitute the following —

“ 12 ”.

Page 94, line 2 — To delete “14” and substitute the following —

“ 13 ”.

Page 94, line 10 — To delete “15” and substitute the following —

“ 14 ”.

.....
Recommendation 49.2

Clause 84.

Page 95, line 25 — To delete "subclause (4)" and substitute the following —

" this clause and clause 13A ".

.....

Recommendation 51.2

Clause 85.

Page 96, line 12 — After "determine" to insert the following —

" , by resolution without dissent, ".

.....

Recommendation 52.2

Clause 85.

Page 96, line 18 — To delete "this Act" and substitute the following —

Page 96, line 18 — To delete "this Act" and substitute the following —

" any provision of this Act other than Schedules 1 and 2 ".

.....

Recommendations 50.2 & 54.5

Clause 85.

Page 95, after line 20 — To insert the following —

" **85.** (1) Schedule 3 to the principal Act is amended in clause 12 (1) by deleting "Schedule 1" and substituting the following —

" Schedules 1 and 2 ".

Page 95, line 21 — To delete "85. (1)" and substitute the following —

" (2) ".

Page 96, line 7 — To delete "the former" and substitute the following —

" this ".

Page 96, after line 14 — To insert the following —

“(5) A company continued as a strata company for a scheme by operation of clause 4 may determine that —

- (a) despite subclause (2) (a), a by-law that is consistent with this Act, other than Schedules 1 and 2, is to continue to have effect after the termination day; or
- (b) despite subclause (2) (b), Schedule 2 or any provision of that Schedule does not apply in respect of that scheme.

(6) A determination under subclause (5) does not have effect unless notification is recorded before the termination day, in the form prescribed under section 42 (4), on the relevant strata plan registered under the former Act.

Page 96, line 30 to page 97, line 11 — To delete the lines and substitute the following —

- (i) a strata company has purportedly exercised a power conferred by subclause (5) [*new*] or (6) [*old*] but has acted beyond power; or
- (ii) a power so conferred should have been exercised by a strata company but the company has failed to do so;

and

- (b) an order to be made by a referee —
 - (i) declaring a by-law purportedly continued or re-instated under this clause to be invalid;
 - (ii) continuing or re-instating a by-law that should be continued or re-instated by a strata company under this clause; or
 - (iii) re-instating all provisions or any provision of Schedule 2 if it should not have been made inapplicable by determination made under this clause,

as the case may require.

.....

Recommendation 53.2

Clause 45.

Page 51, after line 21 — To insert the following —

“(b) **Transitional provision**

42C. (1) Subject to Schedule 4, the application of section 42 (2), as inserted by section 44 (1) of the *Strata Titles Amendment Act 1995* extends to strata companies constituted under section 32 before the commencement of section 44 of that Act.

(2) Schedule 4 has effect to make transitional provisions for the purposes of subsection (1).

(3) Subsection (1) has effect subject to clause 12 of Schedule 3.

New clause.

^^

SCHEDULE 4

(Section 42C)

**TRANSITIONAL PROVISIONS FOR BY-LAWS OF
PRE-1995 STRATA COMPANIES OTHER THAN
COMPANIES TO WHICH SCHEDULE 3 APPLIES**

1. Section 42 (2) inserted in the principal Act by section 44 (1) of the *Strata Titles Amendment Act 1995* applies to a strata company constituted under section 32 (other than a company to which clause 4 of Schedule 3 applies) before the commencement of section 44 (1) of that Act ("a post-1985 company") upon the expiration of 12 months from that commencement ("the transition day").
2. A by-law made by a post-1985 company ceases to have effect on and after the transition day except to the extent that it is consistent with this Act, other than Schedules 1 and 2, and is recorded on the strata plan.
3. A post-1985 company may determine that clause 1 applies for the purposes of the strata scheme as from a day that is sooner than the transition day.
4. A post-1985 company for a scheme may determine that despite clause 2 —
 - (a) a by-law that is consistent with this Act, other than Schedules 1 and 2, is to continue to have effect after the transition day; or
 - (b) Schedule 2 or any provision of that Schedule does not apply in respect of that scheme.
5. A determination under clause 4 does not have effect unless notification is recorded before the transition day, in the form prescribed under section 42 (4), on the relevant strata plan.
6. Within 12 months after the transition day a strata company may re-instate a by-law that ceased to have effect by virtue of clause 2.
7. A re-instatement under clause 6 shall have effect upon notification being recorded, in the form prescribed under section 42 (4), on the relevant strata plan.
8. Section 93 applies, with all necessary modifications, to enable —
 - (a) an order of a referee to be applied for where —
 - (i) a strata company has purportedly exercised a power conferred by clause 4 or 6 but has acted beyond power; or
 - (ii) a power so conferred should have been exercised by a company but the company has failed to do so;and
 - (b) an order to be made by a referee —
 - (i) declaring a by-law purportedly continued or re-instated under this Schedule to be invalid;
 - (ii) continuing or re-instating a by-law that should be continued or re-instated by a strata company under this Schedule; or
 - (iii) re-instating all provisions or any provision of Schedule 2 if it should not have been made inapplicable by determination made under this clause,

as the case may require.

- 9. An application for an order referred to in clause 8 cannot be made after the expiration of 3 years from the commencement of section 45 of the *Strata Titles Amendment Act 1995*, but a referee may extend that period if a proprietor applies for an extension and satisfies the referee that the justice of the case requires that the period be extended. "

[These amendments to clause 45 and the new Schedule 4 still need some revision.]

.....

Recommendation 55.7

Clause 85.

Page 100, after line 7 — To insert the following clause —

`` **Strata companies to notify proprietors of operation of clause 13A**

13B. (1) A strata company for a scheme shall give notice in the prescribed form to the proprietor of each lot in the scheme.

(2) The notice shall be given not later than 6 months after the commencement of section 85 (2) of the *Strata Titles Amendment Act 1994*.

(3) The prescribed form shall —

- (a) state the effect of clause 13A (1);
- (b) advise any proprietor affected by that clause to take action under that clause for the protection of his rights as soon as is practicable; and
- (c) provide for the full text of clause 13A to be attached to the form when notice is given under subclause (1).

(4) Failure of a strata company to give notice under this clause does not affect the operation of clause 13A (1) but is a ground for the grant of an extension of time under clause 13A (7). "

.....

Recommendation 56.1

Clause 87.

Page 100, line 28 — To insert after ``51," the following —

`` 83 (5), "

.....

Recommendation 57.2

Clause 88.

Page 101, line 13 — To delete the line and substitute the following —

`` Sections 35 (2), 39 (2), 42 (7), 43 (1) and (3), 48 (1), 54 (1), 55 (1), 128 (3) and 130 (i). ``.

.....

Miscellaneous Amendment

Clause 41.

Page 46, line 27 — To delete ``an" and substitute the following —

`` any ``.

Amendments arising from s. 46 (12) of the *Planning Legislation*
Amendment Act (No. 2) 1994

Clause 5.

Page 5, lines 1 to 3 — To delete the lines.

Clause 10.

Page 13, line 17 — To delete ``State Planning".

Page 15, line 6 — To delete ``State Planning".

Page 15, line 8 — To delete ``that" and substitute the following —

`` the ".

Page 15, lines 15 and 16 — To delete ``State Planning".

Page 15, line 17 — To delete ``that" and substitute the following —

`` the ".

Clause 11.

Page 17, lines 4 and 5 — To delete the lines and substitute the following —

`` Commission was required under this Act, the Commission approves ".

Clause 14.

Page 22, line 27 — To delete ``State Planning".

Clause 15.

Page 25, lines 11 to 15 — To delete the lines and substitute the following —

`` (a) in paragraph (a) by deleting ``in accordance with that section and signed by the Chairman of the Commission"; and ".

Clause 27.

Page 31, line 4 — To delete ``State Planning".

Page 31, lines 23 to 25 — To delete the lines.

Clause 28.

Page 32, line 29 — To delete ``State Planning".

Page 33, line 28 — To delete ``State Planning".

Clause 30.

Page 35, line 5 — To delete ``State Planning".

Page 35, line 23 — To delete ``State Planning".

Clause 35.

Page 40, lines 20 and 21 — To delete the lines and substitute the following —

`` Commission stating that it consents to the ".

Clause 91.

Page 102, lines 17 to 29 — To delete the lines.