

TASMANIA

STRATA TITLES AMENDMENT BILL 2006

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STRATA TITLES AMENDMENT BILL 2006

*(Brought in by the Minister for Primary Industries and Water,
the Honourable David Edward Llewellyn)*

A BILL FOR

An Act to amend the *Strata Titles Act 1998*

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Strata Titles Amendment Act 2006*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

3. Principal Act

In this Act, the *Strata Titles Act 1998** is referred to as the Principal Act.

*No. 17 of 1998

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4. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by omitting the definition of “administrative fund”;
- (b) by omitting the definitions of “boundary structure” and “common property” and substituting the following definitions:

“boundary structure” means a wall, floor, ceiling or fence (with or without a gate) if the wall, floor, ceiling or fence separates a lot from another lot or common property;

“common property” has the meaning given by section 3A;

- (c) by inserting the following definition after the definition of “plan”:

“policy of insurance” means an insurance policy required to be taken out and maintained under this Act;

- (d) by omitting the definition of “special resolution”.

5. Section 3A inserted

After section 3 of the Principal Act, the following section is inserted in Part 1:

3A. Meaning of “common property”

(1) For the purposes of this Act, common property for a strata scheme or community development scheme consists of –

(a) all land within the scheme that is not within the boundaries of a lot; and

(b) all other property administered by the body corporate for the relevant scheme –

and, in a case where the roof of a building forms part of the common property, the guttering attached to the roof or part of the roof is taken to be included in the common property.

(2) The common property for a strata scheme or community development scheme does not include land designated for future development in the master plan for a staged development scheme or a community development scheme.

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6. Section 4 amended (Division of land by strata plan)

Section 4 of the Principal Act is amended by omitting subsection (5) and substituting the following subsection:

- (5) A lot may be created entirely on one level or partially on one level and partially on another or others.

7. Section 5 amended (Requirements for strata plan)

Section 5 of the Principal Act is amended as follows:

- (a) by omitting paragraph (h) from subsection (1);
- (b) by omitting from subsection (4) “or accompanied by”.

8. Section 6 amended (Lodgment of plan for registration)

Section 6 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “The developer” and substituting “A person”;
- (b) by inserting the following subsection after subsection (1):
 - (1A) The plan must be endorsed with a certificate of approval issued by

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the council for the area in which
the site is situated.

(c) by omitting paragraph (a) from
subsection (2).

9. Section 8 amended (Effect of registration)

Section 8 of the Principal Act is amended by
omitting subsection (5).

10. Part 2, Division 4: Heading amended

Division 4 of Part 2 of the Principal Act is
amended by omitting “*Easements*” from the
heading to that Division and substituting
“*Easements, covenants and profits a prendre*”.

**11. Section 14 amended (Creation, &c., of easements,
covenants and profits a prendre)**

Section 14(1) of the Principal Act is amended by
inserting after paragraph (a) the following
paragraph:

(ab) acquire, grant, surrender or otherwise
deal with a profit a prendre in respect of
the common property; or

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12. Section 17 amended (Change of unit entitlements)

Section 17 of the Principal Act is amended by omitting subsection (3).

13. Section 19 amended (Application for amendment)

Section 19(1)(a) of the Principal Act is amended by omitting “unanimous” and substituting “ordinary”.

14. Section 19A inserted

After section 19 of the Principal Act, the following section is inserted in Division 6:

19A. Alteration or addition of buildings

Where –

- (a) a building on a lot or on common property is altered; or
- (b) a new building is added to a lot or common property –

and the alteration or addition requires the approval of the council, an amendment to the strata plan is to be lodged with the Recorder for registration under this Division.

15. Section 31 amended (Application for, and grant of, certificate of approval)

Section 31 of the Principal Act is amended as follows:

(a) by omitting paragraph (c) from subsection (3) and substituting the following paragraph:

(c) if the proposal relates to an existing building for which a change of use is proposed, that all requirements under the *Building Act 2000* for a change of use have been complied with and that there has been substantial compliance with all other requirements under that Act relating to the scheme and to any buildings existing at the date of the application and in particular with –

(i) any safety requirements, including provision for fire exits; and

(ii) requirements for sanitary facilities; and

(b) by inserting the following subsections after subsection (4):

(5) Where a permit for use or development is required, under the relevant planning scheme approved under the *Land Use*

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Planning and Approvals Act 1993, for the proposed use of the lots, a certificate of approval may be issued only if –

- (a) the required permit has been issued; and
 - (b) any separation of buildings would not contravene that planning scheme.
- (6) A council must refuse an application for a certificate of approval if the council reasonably considers that the proposal is for a subdivision within the meaning of Part 3 of the *Local Government (Building and Miscellaneous Provisions) Act 1993*.

16. Section 31AA inserted

After section 31 of the Principal Act, the following section is inserted in Division 9:

31AA. Requirement for staged development scheme

Where an application for a certificate of approval is made wholly or partly in respect of vacant land, the council may refuse the application on the ground that

an application for a staged development scheme under section 38 should be made.

17. Section 31A substituted

Section 31A of the Principal Act is repealed and the following section is substituted:

31A. Lot taken not to be subdivision

A lot in a strata scheme is not a lot for the purposes of a subdivision within the meaning of Part 3 of the *Local Government (Building and Miscellaneous Provisions) Act 1993*.

18. Section 71 amended (Establishment of body or bodies corporate)

Section 71 of the Principal Act is amended by inserting after subsection (4) the following subsection:

- (5) A body corporate must, as soon as practicable after it is established, appoint a chairperson, secretary and treasurer.

19. Section 72 amended (Merger and division of bodies corporate)

Section 72 of the Principal Act is amended by inserting after subsection (1) the following subsection:

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(1A) A division of a body corporate does not affect the ownership of the common property.

20. Section 75 amended (General meetings of body corporate)

Section 75 of the Principal Act is amended as follows:

(a) by omitting subsection (1) and substituting the following subsections:

(1) It is the duty of the original proprietor to call and hold the first annual general meeting of the body corporate, which must be held –

(a) within 3 months after the registration of the strata plan; or

(b) on the sale of at least one-half of the lots contained in that plan –

whichever is the earlier.

Penalty: Fine not exceeding 50 penalty units.

(1A) On giving notice for the first annual general meeting of the body corporate, the original proprietor must specify in the

notice the nature of the business to be transacted at the meeting and must, at the meeting, produce a policy or policies of insurance.

- (b) by omitting from subsection (4)(c) “special or”;
- (c) by omitting subsection (6).

21. Section 79 amended (Committee of management)

Section 79(2) of the Principal Act is amended by omitting “special or”.

22. Section 80 amended (Appointment of manager)

Section 80(2) of the Principal Act is amended by omitting “or” second occurring and substituting “of”.

23. Section 81 amended (Functions of body corporate)

Section 81(1) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (b) “control and manage” and substituting “control, manage and improve”;
- (b) by omitting from paragraph (d) “special” and substituting “ordinary”;

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(c) by inserting the following paragraph after paragraph (d):

(da) to allocate spaces to lots for vehicle parking on the common property;

24. Section 83 amended (Contributions)

Section 83 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “or for any other purpose as agreed by an ordinary resolution” after “expenditure”;
- (b) by omitting from subsection (5) “authorised in writing by an owner” and substituting “having an interest in a lot”;
- (c) by omitting from subsection (5)(d) “owner.” and substituting “owner; and”;
- (d) by inserting the following paragraphs after paragraph (d) in subsection (5):
 - (e) information in relation to any funds of the body corporate administered by it; and
 - (f) information on any legal action to which the body corporate is a party; and
 - (g) any other matters that the body corporate considers relevant.

25. Section 86 repealed

Section 86 of the Principal Act is repealed.

26. Section 87 amended (Address for service)

Section 87 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

- (2) A body corporate must give the Recorder notification of any change in its address for service and, on that notification, the Recorder is to change the address for service accordingly.

27. Section 88 amended (Mailbox)

Section 88 of the Principal Act is amended by omitting subsection (2).

28. Section 89 amended (Appointment of administrator)

Section 89(3) of the Principal Act is amended by omitting “administrative fund” and substituting “funds”.

29. Section 90 amended (Power to make by-laws)

Section 90(5) of the Principal Act is amended as follows:

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- (a) by omitting “required under this Act to be dealt with in the by-laws” and substituting “dealt with by the by-laws set out in Schedule 1”;
- (b) by omitting “the” fifth occurring and substituting “that”.

30. Section 94 amended (Exclusive use by-laws)

Section 94(1) of the Principal Act is amended by omitting “unanimous” and substituting “ordinary”.

31. Section 99 amended (Insurance of buildings, &c., by body corporate)

Section 99 of the Principal Act is amended as follows:

- (a) by omitting subsection (1) and substituting the following subsection:
 - (1) The body corporate for a strata scheme must take out and maintain a policy of insurance for the buildings and other improvements (if any) on the site in accordance with this section.

Penalty: Fine not exceeding 50 penalty units.

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- (b) by omitting subparagraph (i) from subsection (2)(a) and substituting the following subparagraphs:
 - (i) damage from fire, storm, tempest or explosion; and
 - (ia) any other prescribed risks; and
- (c) by inserting the following subsection after subsection (3):
 - (3A) A body corporate may insure against –
 - (a) loss from dishonesty, negligence or other wrongful conduct; or
 - (b) other risks.
- (d) by omitting from subsection (4) “insurance policy” first occurring and substituting “policy of insurance but subject to subsection (5)”;
- (e) by omitting from subsection (4) “an insurance” and substituting “the”;
- (f) by inserting the following subsections after subsection (4):
 - (5) If an amount payable by way of excess under a policy of insurance taken out by the body corporate under this section arises from an event affecting only one lot, the owner of the lot is liable

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to pay the excess unless the body corporate decides, by ordinary resolution, that it would be unreasonable that he or she alone be required to pay the excess.

- (6) If an insurer of the body corporate accepts a claim by the body corporate based on an act or omission by an owner of a lot, the insurer has no right of subrogation in respect of the owner unless it is proved that the act or omission was wilful.
- (7) It is a defence to a charge for an offence against subsection (1) if the body corporate can show that, despite the body corporate having taken all reasonable steps available to it to comply with that subsection, no insurer is willing to enter into a policy of insurance, on reasonable terms, that meets the obligations imposed by this section.

32. Section 101 amended (Other insurance)

Section 101 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “common property” and substituting “site”;

- (b) by omitting subsections (2) and (3).

33. Section 126 substituted

Section 126 of the Principal Act is repealed and the following section is substituted:

126. Orders regarding insurance

- (1) If, on an application for relief under this Part, the Recorder is satisfied that the amount for which the body corporate has taken out insurance is unreasonable, the Recorder may order the body corporate to increase or decrease the amount of the insurance.
- (2) If, on an application for relief under this Part, the Recorder is satisfied that an owner of a lot has taken out or maintained insurance following a breach by the body corporate of its obligation to do so, the Recorder may order the body corporate to reimburse the owner the cost of that insurance.

34. Section 129 repealed

Section 129 of the Principal Act is repealed.

35. Section 131 substituted

Section 131 of the Principal Act is repealed and the following section is substituted:

131. Orders relating to new building or structural alteration or addition to lot

(1) If, on an application for relief under this Part, the Recorder is satisfied that a consent, approval or authorisation of the body corporate is required under the by-laws of the body corporate for –

(a) making or permitting a change to the exterior character, design or finish of buildings or structural improvements on a lot; or

(b) constructing any new building or make any structural improvements on a lot –

and the consent, approval or authorisation has been unreasonably withheld, the Recorder may make an order authorising the relevant change, construction or improvements on terms and conditions specified in the order.

(2) If, on an application for relief under this Part, the Recorder is satisfied that a change, construction or improvements are being, or have been, made contrary to the by-laws, the Recorder may order the owner of the lot to restore the lot to its former condition.

36. Section 134 repealed

Section 134 of the Principal Act is repealed.

37. Section 137 amended (Enforcement of orders)

Section 137(1) of the Principal Act is amended as follows:

- (a) by inserting “or refrain from taking” after “order to take”;
- (b) by inserting in paragraph (a) “or refrain from taking” after “take”;
- (c) by omitting from paragraph (b) “requiring” and substituting “if appropriate, requiring”.

38. Section 139 amended (Order may have effect as resolution of body corporate)

Section 139 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “, a special resolution”;
- (b) by omitting from subsection (2) “, a special resolution”.

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39. Section 151 substituted

Section 151 of the Principal Act is repealed and the following section is substituted:

151. General provision about use of lots

- (1) The owner or occupier of a lot established by a scheme under this Act must not use the lot or permit its use –
 - (a) for a purpose other than a purpose for which the lot is established as indicated in the relevant registered plan or scheme; or
 - (b) contrary to a restriction indicated in the relevant registered plan or scheme.
- (2) A notation on a registered plan or scheme under this section may be endorsed on part or all of a lot or part or all of the common property.
- (3) A deletion or alteration to a notation on a registered plan or scheme under this section may be effected only by an amendment under Division 6 of Part 2.

40. Schedule 1 amended (Model by-laws)

Schedule 1 to the Principal Act is amended as follows:

- (a) by omitting subclause (3) from clause 1 and substituting the following subclause:

(3) The owner of a lot must not, without the written permission of the body corporate –

(a) make or permit a change to the exterior character, design or finish of buildings or structural improvements on the lot; or

(b) construct any new building or make any structural improvements on the lot unless they conform to the exterior character, design and finish of any existing buildings or structural improvements on the site.

- (b) by inserting the following clauses after clause 8:

9. Parking of motor vehicles

Where a space for vehicle parking has been allocated to a lot under section 81(1)(da), only the owner or occupier of that lot or his or her invitee may park a vehicle in that space.

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10. Quorum

A quorum at a meeting of the body corporate is a majority of the total number of the members of the body corporate.