

South Australia



STATUTES AMENDMENT (COMMUNITY TITLES) ACT 1996

No. 38 of 1996

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ANNO QUADRAGESIMO QUINTO

ELIZABETHAE II REGINAE

A.D. 1996

No. 38 of 1996

An Act to amend the Strata Titles Act 1988 and other Acts as a consequence of the enactment of the Community Titles Act 1996.

[Assented to 9 May 1996]

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Statutes Amendment (Community Titles) Act 1996*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. A reference in this Act to the principal Act is a reference to the Act referred to in the heading of the Part in which the reference occurs.

**PART 2
AMENDMENT OF CORPORATIONS (SOUTH AUSTRALIA) ACT 1990**

Amendment of s. 97—Certain land transfers by companies not to constitute reduction of share capital

4. Section 97 of the principal Act is amended—

(a) by inserting after paragraph (a) the following paragraph:

(aa) a community plan deposited under the *Community Titles Act 1996*;

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

(ca) a lot on the community plan;

PART 3
AMENDMENT OF DEVELOPMENT ACT 1993

Amendment of s. 4—Definitions**5. Section 4 of the principal Act is amended—**

- (a) by striking out the definition of "allotment" and substituting the following definition:

"allotment" has the same meaning as in Part 19AB of the *Real Property Act 1886* and in addition includes a community lot, development lot and common property within the meaning of the *Community Titles Act 1996* and a unit and common property within the meaning of the *Strata Titles Act 1988*;

- (b) by striking out "by strata plan" from paragraph (a) of the definition of "division" and substituting "by community plan under the *Community Titles Act 1996* and by strata plan under the *Strata Titles Act 1988*".

Amendment of s. 33—Matters against which a development must be assessed**6. Section 33 of the principal Act is amended—**

- (a) by striking out "by strata plan" from paragraph (c) of subsection (1) and substituting "by strata plan under the *Community Titles Act 1996* or the *Strata Titles Act 1988*";
- (b) by striking out "relevant Minister" from subparagraph (iv) of paragraph (c) of subsection (1) and substituting "South Australian Water Corporation";
- (c) by inserting after subparagraph (iv) of paragraph (c) of subsection (1) the following subparagraph:
- (iva) where land is to be vested in a council or other authority—the council or authority consents to the vesting;
- (d) by inserting after "a division of land by strata plan" in paragraph (d) of subsection (1) "under the *Community Titles Act 1996* or the *Strata Titles Act 1988*";
- (e) by striking out "unit" wherever occurring from subparagraphs (i) and (ii) of paragraph (d) of subsection (1) and substituting, in each case, "lot or unit";
- (f) by striking out "a unit or units" from subparagraph (iv) of paragraph (d) of subsection (1) and substituting "a lot or lots or a unit or units";
- (g) by inserting after subparagraph (vi) of paragraph (d) of subsection (1) the following subparagraphs:
- (vii) the requirements of the South Australian Water Corporation relating to the provision of water supply and sewerage services are satisfied;
- (viii) requirements set out in the regulations made for the purposes of this provision are satisfied.

Amendment of s. 50—Open space contribution system

7. Section 50 of the principal Act is amended—

- (a) by striking out "(except by strata plan)" from subsection (1);
- (b) by striking out paragraph (b) of subsection (2) and substituting the following paragraph:
 - (b) the division of land by strata plan under the *Community Titles Act 1996* or the *Strata Titles Act 1988*;
- (c) by striking out "unit" from paragraphs (a) and (b) of subsection (5) and substituting, in each case, "strata lot";
- (d) by striking out "units" from the definition of "NA" in subsection (7) and substituting "strata lots";
- (e) by striking out "units" wherever occurring in subsection (8) and substituting, in each case, "strata lots";
- (f) by striking out "unit" from subsection (8) and substituting "strata lot";
- (g) by striking out "In this section—" and the definition of "allotment" from subsection (13) and substitute the following:

In this section, unless the contrary intention appears—

"allotment" has the same meaning as in Part 19AB of the *Real Property Act 1886* and in addition includes a community lot (not being a strata lot) and a development lot within the meaning of the *Community Titles Act 1996* but does not include—

- (a) a strata lot within the meaning of the *Community Titles Act 1996* or a unit within the meaning of the *Strata Titles Act 1988* or common property within the meaning of either of those Acts; or
- (b) a road, street, thoroughfare, reserve or other similar open space delineated on the relevant plan;

"strata lot" means a strata lot within the meaning of the *Community Titles Act 1996* and includes a unit created by a strata plan under the *Strata Titles Act 1988*;;

- (h) by striking out the definition of "unit" from subsection (13).

PART 4**AMENDMENT OF LAND AND BUSINESS (SALE AND CONVEYANCING) ACT 1994****Amendment of s. 3—Interpretation**

8. Section 3 of the principal Act is amended—

- (a) by inserting the following definition after the definition of "agent":

"allotment" has the same meaning as in Part 19AB of the *Real Property Act 1886* and in addition includes a community lot (not being a strata lot) within the meaning of the *Community Titles Act 1996*;

- (b) by striking out from the definition of "subdivided land" "vacant allotments of land" and substituting "allotments comprising vacant land".

PART 5
AMENDMENT OF LAND TAX ACT 1936

Insertion of s. 10B

9. The following section is inserted after section 10A of the principal Act:

Assessment of tax against land divided by a community or strata plan

10B. (1) Where land is divided by a primary, secondary or tertiary plan of community division under the *Community Titles Act 1996*—

- (a) in the case of the division of land by a primary plan—land tax will be assessed against the primary lots that are not divided by a secondary plan and against a development lot or lots (if any);
- (b) in the case of the division of land by a secondary plan—land tax will be assessed against the secondary lots that are not divided by a tertiary plan and against the development lot or lots (if any);
- (c) in the case of the division of land by a tertiary plan—land tax will be assessed against the tertiary lots and a development lot or lots (if any).

(2) Where land is divided by a primary, secondary or tertiary plan of community division under the *Community Titles Act 1996*—

- (a) in the case of the division of land by a primary plan—where the use of the common property or part of it is, in the opinion of the Valuer-General reasonably incidental to the use of one or more of the primary lots, land tax will not be levied against the common property, or that part of it, but the interest in the common property, or that part of it, that attaches to each primary lot will be regarded for the purposes of valuation as part of the lot;
- (b) in the case of the division of land by a secondary plan—where the use of the common property or part of it is, in the opinion of the Valuer-General reasonably incidental to the use of one or more of the secondary lots, land tax will not be levied against the common property, or that part of it, but the interest in the common property, or that part of it, (and in the common property of the primary scheme referred to in paragraph (a) (if any)) that attaches to each secondary lot will be regarded for the purposes of valuation as part of the lot;

- (c) in the case of the division of land by a tertiary plan—where the use of the common property or part of it is, in the opinion of the Valuer-General reasonably incidental to the use of one or more of the tertiary lots, land tax will not be levied against the common property, or that part of it, but the interest in the common property, or that part of it, (and in the common property of the primary and secondary schemes referred to in paragraphs (a) and (b) (if any)) that attaches to each tertiary lot will be regarded for the purposes of valuation as part of the lot.

(3) Where land is divided by a primary, secondary or tertiary plan of community division under the *Community Titles Act 1996* and the use of the common property or any part of it is not, in the opinion of the Valuer-General reasonably incidental to the use of any of the community lots, land tax will be levied against the common property or that part of it and the relevant community corporation is liable for the tax as though it were the owner of the common property.

(4) Where land is divided by a strata plan under the *Strata Titles Act 1988*, land tax will be assessed against the strata units but not against the common property.

Amendment of s. 66—Land tax to be a first charge on land

10. Section 66 of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

(2) Where land tax is levied against the common property, or part of the common property, of a community scheme under the *Community Titles Act 1996*, the tax is not a charge on the common property but is, instead, a first charge on each of the community lots of the community scheme.

PART 6

AMENDMENT OF LEGAL PRACTITIONERS ACT 1981

Amendment of s. 21—Entitlement to practise

11. Section 21 of the principal Act is amended by inserting after "the *Real Property Act 1886*," in paragraph (o) of subsection (3) "the *Community Titles Act 1996*,".

PART 7

AMENDMENT OF LOCAL GOVERNMENT ACT 1934

Amendment of s. 5—Interpretation

12. Section 5 of the principal Act is amended—

- (a) by striking out paragraph (c) of the definition of "land" in subsection (1) and substituting the following paragraph:
- (c) a strata lot under the *Community Titles Act 1996* and a unit under the *Strata Titles Act 1988*;
- (b) by inserting after "foreshore" in the definition of "public place" in subsection (1) "but does not include any part of a community parcel divided by a plan of community division under the *Community Titles Act 1996*".

Amendment of s. 168—Ratability of land**13. Section 168 of the principal Act is amended—**

(a) by inserting after "strata plan" in subsection (4) "under the *Strata Titles Act 1988*";

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

(4a) Where land is divided by a primary, secondary or tertiary plan of community division under the *Community Titles Act 1996*—

(a) in the case of the division of land by a primary plan—rates will be assessed against the primary lots that are not divided by a secondary plan and against a development lot or lots (if any);

(b) in the case of the division of land by a secondary plan—rates will be assessed against the secondary lots that are not divided by a tertiary plan and against the development lot or lots (if any);

(c) in the case of the division of land by a tertiary plan—rates will be assessed against the tertiary lots and a development lot or lots (if any).

(4b) Where land is divided by a primary, secondary or tertiary plan of community division under the *Community Titles Act 1996*—

(a) in the case of the division of land by a primary plan—where the use of the common property or part of it is, in the opinion of the Valuer-General, reasonably incidental to the use of one or more of the primary lots, rates will not be assessed against the common property, or that part of it, but the interest in the common property, or that part of it, that attaches to each primary lot will be regarded for the purposes of valuation as part of the lot;

(b) in the case of the division of land by a secondary plan—where the use of the common property or part of it is, in the opinion of the Valuer-General, reasonably incidental to the use of one or more of the secondary lots, rates will not be assessed against the common property, or that part of it, but the interest in the common property, or that part of it, (and in the common property of the primary scheme referred to in paragraph (a) (if any)) that attaches to each secondary lot will be regarded for the purposes of valuation as part of the lot;

(c) in the case of the division of land by a tertiary plan—where the use of the common property or part of it is, in the opinion of the Valuer-General reasonably incidental to the use of one or more of the tertiary lots, rates will not be assessed against the common property, or that part of it, but the interest in the common property, or that part of it, (and in the common property of the primary and secondary schemes referred to in paragraphs (a) and (b) (if any)) that attaches to each tertiary lot will be regarded for the purposes of valuation as part of the lot.

(4c) Where land is divided by a primary, secondary or tertiary plan of community division under the *Community Titles Act 1996* and the use of common property or any part of it is not, in the opinion of the Valuer-General reasonably incidental to the use of any of the community lots, rates will be assessed against the common property or that part of it and the relevant community corporation is liable for those rates as though it were the owner of the common property.

(4d) Despite paragraph (b) of subsection (4) and subsection (4b) the interest in that part of the common property of a strata scheme under the *Strata Titles Act 1988* or the *Community Titles Act 1996* that comprises the building divided into units or lots by the scheme will not be taken into account if rates are based on site value.

Amendment of s. 182—Rates are charges against land

14. Section 182 of the principal Act is amended—

- (a) by striking out "Rates" and substituting "Subject to subsection (2), rates";
- (b) by inserting after its present contents as amended by paragraph (a) (now to be designated as subsection (1)) the following subsection:

(2) Where rates are assessed against the common property, or part of the common property, of a community scheme under the *Community Titles Act 1996*, the rates are not a charge on the common property but are, instead, a charge on each of the community lots of the community scheme.

Amendment of s. 319—Cost of constructing public street

15. Section 319 of the principal Act is amended—

- (a) by striking out "within a deposited strata plan within the meaning of the *Strata Titles Act 1988*" from subsection (2) and substituting "within a community plan deposited under the *Community Titles Act 1996* or a strata plan deposited under the *Strata Titles Act 1988*";
- (b) by striking out "the units" from paragraph (e) of subsection (2) and substituting "the lots or units";
- (c) by striking out "the units" twice occurring from paragraph (f) of subsection (2) and substituting, in each case, "the lots or units";
- (d) by striking out "the unit entitlements" from paragraph (f) of subsection (2) and substituting "the lot entitlements or unit entitlements".

Amendment of s. 328—Power to pave footways

16. Section 328 of the principal Act is amended—

- (a) by striking out "within a deposited strata plan within the meaning of the *Strata Titles Act 1988*" from subsection (2) and substituting "within a community plan deposited under the *Community Titles Act 1996* or a strata plan deposited under the *Strata titles Act 1988*";
- (b) by striking out "the units" wherever occurring from paragraphs (a) and (b) of subsection (2) and substituting, in each case, "the lots or units";

- (c) by striking out "the unit entitlements" from paragraph (b) of subsection (2) and substituting "the lot entitlements or unit entitlements".

Amendment of s. 342—Construction and repair of private streets in the City of Adelaide

17. Section 342 of the principal Act is amended—

- (a) by striking out "within a deposited strata plan within the meaning of the *Strata Titles Act 1988*" from subsection (12a) and substituting "within a community plan deposited under the *Community Titles Act 1996* or a strata plan deposited under the *Strata Titles Act 1988*";
- (b) by striking out "units" wherever occurring from paragraphs (a), (b) and (c) of subsection (12a) and substituting, in each case, "lots or units";
- (c) by striking out "unit entitlements" from paragraph (c) of subsection (12a) and substituting "lot entitlements or unit entitlements";
- (d) by striking out "strata" from paragraph (c) of subsection (12a).

Amendment of s. 343—Powers of other councils to make private streets and road

18. Section 343 of the principal Act is amended—

- (a) by striking out "within a deposited strata plan within the meaning of the *Strata Titles Act 1988*" from subsection (7a) and substituting "within a community plan deposited under the *Community Titles Act 1996* or a strata plan deposited under the *Strata Titles Act 1988*";
- (b) by striking out "units" wherever occurring from paragraphs (a), (b) and (c) of subsection (7a) and substituting, in each case, "lots or units";
- (c) by striking out "unit entitlements" from paragraph (c) of subsection (7a) and substituting "lot entitlements or unit entitlements";
- (d) by striking out "strata" from paragraph (c) of subsection (7a).

Amendment of s. 344A—Construction and repair of private roads

19. Section 344A of the principal Act is amended—

- (a) by striking out "within a deposited strata plan within the meaning of the *Strata Titles Act 1988*" from subsection (5a) and substituting "within a community plan deposited under the *Community Titles Act 1996* or a strata plan deposited under the *Strata Titles Act 1988*";
- (b) by striking out "units" wherever occurring from paragraphs (a), (b) and (c) of subsection (5a) and substituting, in each case, "lots or units";
- (c) by striking out "unit entitlements" from paragraph (c) of subsection (5a) and substituting "lot entitlements or unit entitlements";
- (d) Strike out "strata" from paragraph (c) of subsection (5a).

Amendment of s. 345—Power of council to order land adjoining street to be fenced

20. Section 345 of the principal Act is amended—

- (a) by striking out "within a deposited strata plan within the meaning of the *Strata Titles Act 1988*" from subsection (4) and substituting "within a community plan deposited under the *Community Titles Act 1996* or a strata plan deposited under the *Strata Titles Act 1988*";
- (b) by striking out "units" wherever occurring from paragraphs (a), (b) and (c) of subsection (4) and substituting, in each case, "lots or units";
- (c) by striking out "unit entitlements" from paragraph (c) of subsection (4) and substituting "lot entitlements or unit entitlements";
- (d) by striking out "strata" from paragraph (c) of subsection (4);
- (e) by striking "unit" secondly, thirdly and fourthly occurring in paragraph (c) of subsection (4) and substituting, in each case, "lot or unit".

Amendment of s. 348—Duty to construct retaining walls in certain cases

21. Section 348 of the principal Act is amended—

- (a) by striking out "within a deposited strata plan within the meaning of the *Strata Titles Act 1988*" from subsection (3a) and substituting "within a community plan deposited under the *Community Titles Act 1996* or a strata plan deposited under the *Strata Titles Act 1988*";
- (b) by striking out "units" wherever occurring from paragraphs (a), (b) and (c) of subsection (3a) and substituting, in each case, "lots or units";
- (c) by striking out "unit entitlements" from paragraph (c) of subsection (3a) and substituting "lot entitlements or unit entitlements";
- (d) by striking out "strata" from paragraph (c) of subsection (3a);
- (e) by striking out "unit" secondly, thirdly and fourthly occurring in paragraph (c) of subsection (3a) and substituting, in each case, "lot or unit"

PART 8**AMENDMENT OF PASSENGER TRANSPORT ACT 1994****Amendment of s. 22—Powers of the Board**

22. Section 22 of the principal Act is amended by striking out subparagraph (i) of paragraph (k) of subsection (2) and substitute the following subparagraph:

- (i) an interest in a lot under the *Community Titles Act 1996* or an interest in a unit under the *Strata Titles Act 1988*;

Amendment of schedule 2

23. Schedule 2 of the principal Act is amended by striking out subparagraph (i) of paragraph (i) of subclause (3) of clause 3 and substituting the following subparagraph:

- (i) an interest in a lot under the *Community Titles Act 1996* or an interest in a unit under the *Strata Titles Act 1988*;

PART 9
AMENDMENT OF REAL PROPERTY ACT 1886

Amendment of s. 223la—Interpretation

24. Section 223la of the principal Act is amended—

(a) by striking out paragraph (a) of the definition of "allotment" in subsection (1) and substituting the following paragraph:

(a) the whole of the land comprised in a certificate except for a community or development lot or common property within the meaning of the *Community Titles Act 1996* or a unit or common property within the meaning of the *Strata Titles Act 1988*;

(b) by inserting after paragraph (f) of the definition of "allotment" of subsection (1) the following paragraph:

(g) where a primary plan of community division has been cancelled under Part 7 Division 3 of the *Community Titles Act 1996* or a strata plan has been cancelled under Part 2 Division 7 of the *Strata Titles Act 1988*—the land comprising the former community parcel or site shown on the plan.;

(c) by striking out from the definition of "allotment" in subsection (1) "but does not include any such land or piece of land that has ceased to be an allotment by virtue of subsection (5)" and substituting the following:

"but does not include—

(h) any such land or piece of land that has ceased to be an allotment by virtue of subsection (5); or

(i) land divided by a primary plan of community division under the *Community Titles Act 1996* or a strata plan under the *Strata Titles Act 1988*;"

(d) by striking out from the definition of "division" in subsection (1) "or the division of land by strata plan" and substituting "or the division of land by community plan under the *Community Titles Act 1996* or by strata plan under the *Strata Titles Act 1988*";

(e) by striking out paragraph (a) of the definition of "service easement" in subsection (1) and substituting the following paragraph:

(a) South Australian Water Corporation (or a predecessor or successor of the Corporation) for sewerage or water supply purposes.;

Amendment of s. 223lb—Unlawful division of land

25. Section 223lb of the principal Act is amended—

(a) by striking out subparagraph (ii) of paragraph (a) of subsection (5) and substituting the following subparagraph:

(ii) by strata plan under the *Strata Titles Act 1988* or by community plan under the *Community Titles Act 1996*;

- (b) by striking out "or strata plan" from paragraph (c) of subsection (5) and substituting ", strata plan or community plan";
- (c) by inserting before the definition of "estate" in subsection (8) the following definition:

"allotment" includes a community lot, a development lot and common property within the meaning of the *Community Titles Act 1996* and a unit and common property within the meaning of the *Strata Titles Act 1988*;

Amendment of s. 223lg—Service easements

26. Section 223lg of the principal Act is amended—

- (a) by striking out subsection (1) and substituting the following subsection:

(1) Where it appears from a plan of division deposited in the Lands Titles Registration Office that any land delineated on the plan is subject, or intended to be subject, to an easement in favour of the South Australian Water Corporation (or a predecessor or successor of the Corporation) for sewerage purposes or for water supply purposes, the land is subject to an easement in favour of the Corporation (or its successor) entitling the Corporation its agents, servants and workmen at any time to break the surface of, dig, open up and use the land for the purpose of laying down, fixing, taking up, repairing, re-laying or examining pipes and of using and maintaining those pipes for sewerage or water supply purposes, as the case may be, and to enter the land at any time (if necessary with vehicles and equipment) for any of those purposes.;

- (b) by striking out "The Electricity Trust of South Australia" from subsection (7) and substituting "ETSA Corporation".

Amendment of s. 223lla—Interpretation

27. Section 223lla of the principal Act is amended by striking out the definition of "division" and substituting the following definitions:

"division" includes division of land by community plan under the *Community Titles Act 1996* (including division by strata plan under that Act) and by strata plan under the *Strata Titles Act 1988*;

"strata plan" means a strata plan under the *Community Titles Act 1996* or a strata plan under the *Strata Titles Act 1988*.

Amendment of s. 223llb—Amalgamation in exchange for division

28. Section 223llb of the principal Act is amended—

- (a) by striking out "strata units" from subparagraph (ii) of paragraph (a) of subsection (2) and substituting "strata lots or strata units";
- (b) by striking out "strata units" from paragraph (ab) of subsection (2) and substituting "strata lots or strata units".

Amendment of s. 223llc—Creation of amalgamation units

29. Section 223llc of the principal Act is amended by striking out "Division IV" from subsection (1) and substituting "Division III".

Amendment of s. 242—Diagrams of land in certificates of title

30. Section 242 of the principal Act is amended by striking out ", except a certificate for a unit that is represented on a strata plan" and substituting "(except a certificate for a strata lot within the meaning of the *Community Titles Act 1996* or a unit within the meaning of the *Strata Titles Act 1988*)".

**PART 10
AMENDMENT OF RETAIL SHOP LEASES ACT 1995**

Amendment of s. 3—Interpretation

31. Section 3 of the principal Act is amended by striking out "or comprise units within a single strata plan under the *Strata Titles Act 1988*" from paragraph (b) of the definition of "retail shopping centre" in subsection (1) and substitute "or comprise lots within the same community plan under the *Community Titles Act 1996* or units within the same strata plan under the *Strata Titles Act 1988*."

Amendment of s. 62—Special provision for strata and community shopping centres

32. Section 62 of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

(2) If a retail shop is a community lot under the *Community Titles Act 1996*, and the shop is subject to a retail shop lease, this Act applies with necessary modifications (and also any modifications prescribed by regulation) to requirements, limitations and restrictions imposed by the scheme description or the by-laws of the scheme as if they formed part of the lease.

**PART 11
AMENDMENT OF RETIREMENT VILLAGES ACT 1987**

Amendment of s. 3—Interpretation

33. Section 3 of the principal Act is amended—

(a) by inserting after the definition of "the Commissioner" the following definition:

"community retirement village" means a retirement village divided into separate residential units and common property by a community plan under the *Community Titles Act 1996* or a strata plan under the *Strata Titles Act 1988*;

(b) by striking out the definition of "strata retirement village".

Amendment of s. 9—Contractual rights of residents

34. Section 9 of the principal Act is amended by striking out "strata" from paragraph (b) of subsection (4) and substituting "community".

Amendment of s. 10—Meetings of residents

35. Section 10 of the principal Act is amended by striking out subsection (10) and substituting the following subsection:

(10) In the case of a community retirement village, a meeting under this section may be held in conjunction with a meeting of the community corporation or the strata corporation.

PART 12
AMENDMENT OF SEWERAGE ACT 1929

Amendment of s. 47—Capital contribution where capacity of undertaking increased

36. Section 47 of the principal Act is amended by striking out "or by strata plan" from the definition of "division" in subsection (4) and substituting "or by community plan under the *Community Titles Act 1996* or by strata plan under the *Strata Titles Act 1988*".

Amendment of s. 78—Liability for rates

37. Section 78 of the principal Act is amended by striking out "sewerage rates shall be payable" from subsection (2) and substituting "sewerage rates are, subject to section 78AAA, payable".

Insertion of s. 78AAA

38. The following section is inserted after section 78 of the principal Act:

Liability for rates where land divided by community or strata plan

78AAA. (1) Where land is divided by a primary, secondary or tertiary plan of community division under the *Community Titles Act 1996*—

- (a) in the case of the division of land by a primary plan—sewerage rates will be assessed against the primary lots that are not divided by a secondary plan and against a development lot or lots (if any);
- (b) in the case of the division of land by a secondary plan—sewerage rates will be assessed against the secondary lots that are not divided by a tertiary plan and against the development lot or lots (if any);
- (c) in the case of the division of land by a tertiary plan—sewerage rates will be assessed against the tertiary lots and a development lot or lots (if any).

(2) Where land is divided by a primary, secondary or tertiary plan of community division under the *Community Titles Act 1996*—

- (a) in the case of the division of land by a primary plan—where the use of the common property or part of it is, in the opinion of the Valuer-General reasonably incidental to the use of one or more of the primary lots, sewerage rates will not be levied against the common property, or that part of it, but the interest in the common property, or that part of it, that attaches to each primary lot will be regarded for the purposes of valuation as part of the lot;
- (b) in the case of the division of land by a secondary plan—where the use of the common property or part of it is, in the opinion of the Valuer-General reasonably incidental to the use of one or more of the secondary lots, sewerage rates will not be levied against the common property, or that part of it, but the interest in the common property, or that part of it, (and in the common property of the primary scheme referred to in paragraph (a) (if any)) that attaches to each secondary lot will be regarded for the purposes of valuation as part of the lot;

- (c) in the case of the division of land by a tertiary plan—where the use of the common property or part of it is, in the opinion of the Valuer-General, reasonably incidental to the use of one or more of the tertiary lots, sewerage rates will not be levied against the common property, or that part of it, but the interest in the common property, or that part of it, (and in the common property of the primary and secondary schemes referred to in paragraphs (a) and (b) (if any)) that attaches to each tertiary lot will be regarded for the purposes of valuation as part of the lot.

(3) Where land is divided by a primary, secondary or tertiary plan of community division under the *Community Titles Act 1996* and the use of the common property or any part of it is not, in the opinion of the Valuer-General, reasonably incidental to the use of any of the community lots, sewerage rates will be levied against the common property or that part of it and the relevant community corporation is liable for those rates as though it were the owner of the common property.

(4) Where land is divided by a strata plan under the *Strata Titles Act 1988*—

- (a) sewerage rates will be assessed against the units and not against the common property; but
- (b) the equitable interest in the common property that attaches to each unit will be regarded, for the purposes of valuation, as part of the unit.

Amendment of s. 93—Amounts due to Corporation a charge on land

39. Section 93 of the principal Act is amended—

- (a) by striking out from subsection (1) "The amount of all sewerage rates" and substituting "Subject to subsection (4), the amount of all sewerage rates";
- (b) by inserting the following subsection after subsection (3):

(4) Where sewerage rates are levied against the common property, or part of the common property, of a community scheme under the *Community Titles Act 1996*, the rates are not a charge on the common property but are, instead, a first charge on each of the community lots of the community scheme.

PART 13

AMENDMENT OF STAMP DUTIES ACT 1923

Amendment of s. 60—Interpretation

40. Section 60 of the principal Act is amended by inserting after "*Real Property Act 1886*" in paragraph (a) of the definition of "conveyance" "or the *Community Titles Act 1996*".

PART 14

AMENDMENT OF STRATA TITLES ACT 1988

Amendment of s. 8—Deposit of strata plan

41. Section 8 of the principal Act is amended—

- (a) by inserting in subsection (1) after "the Registrar-General will" ", subject to subsection (1a),";

(b) by inserting after subsection (1) the following subsections:

(1a) The Registrar-General may only deposit a strata plan under subsection (1) if proceedings for the deposit of the plan were commenced before the commencement of the *Community Titles Act 1996*.

(1b) Proceedings for the deposit of a strata plan will be taken to have commenced when the application to the relevant authority or authorities for approval for the deposit of the plan or for authorisation to divide the land by strata plan was made under Part 2 Division 5 of this Act (before that Division was repealed) or under the *Development Act 1993*.

Amendment of s. 12—Application for amendment

42. Section 12 of the principal Act is amended by inserting after subsection (7) the following subsection:

(8) If, on amendment of a deposited strata plan, part, but not the whole, of an allotment within the meaning of Part 19AB of the *Real Property Act 1886* is to be included in the site or land is to be removed from the site, the application under this section will be taken to be an application for division under Part 19AB of the *Real Property Act 1886* as well as being an application under this section and accordingly—

- (a) both this section and Part 19AB apply to and in relation to the application; and
- (b) if part of an allotment is to be included from outside the site, the application must be made jointly by the strata corporation and the registered proprietor of the allotment to be divided; and
- (c) the Registrar-General may direct that a combined plan or two separate plans be lodged with the application.

Amendment of s. 17—Cancellation

43. Section 17 of the principal Act is amended by inserting after subsection (8) the following subsection:

(9) On cancellation of a deposited strata plan, the site becomes an allotment for the purposes of Part 19AB of the *Real Property Act 1886* but if that land had been comprised of two or more allotments before division under this Act those allotments are not revived.

Insertion of Part 2 Division 7A

44. The following Division is inserting after section 17 of the principal Act:

DIVISION 7A—DIVISION OF SITE UNDER PART 19AB

Application for division

17AAA. (1) A strata corporation may apply to the Registrar-General for the division of the site under Part 19AB of the *Real Property Act 1886* and for that purpose the site will be taken to be an allotment within the meaning of Part 19AB and the strata corporation will be taken to be the registered proprietor of the site.

(2) The plan of division lodged with the application must be endorsed with the consent of the owners of the units comprising the site as well as the consents of the other persons required by Part 19AB Division 2 of the *Real Property Act 1886*.

(3) On deposit of the plan of division under Part 19AB the strata plan is cancelled, the strata corporation is dissolved and—

- (a) the liabilities of the former corporation attach directly to the owners of the former units jointly and severally (but they will be entitled to contribution amongst each other in proportions determined by reference to the unit entitlements of the former units);
- (b) the assets of the former strata corporation (excluding the common property) will be divided between the owners of the former units in proportions determined by reference to the unit entitlements of the former units.

(4) The cancellation of a strata plan on the deposit of a plan of division under Part 19AB revokes the articles of the strata corporation.

(5) If, on the division of a site under this Division, the land comprising the former site is transferred to the owners of the former units in the same shares as if the strata plan had been cancelled under Division 7, no duty is payable under the *Stamp Duties Act 1923* in respect of the transfer.;

Insertion of Part 3 Division 6A

45. The following Division is inserted after section 36 of the principal Act:

DIVISION 6A—AGENTS' TRUST ACCOUNTS

Application of Division

36A. This Division applies where a strata corporation has authorised a person ("the agent") (not being a bank, building society, credit union or other financial institution) to receive money from another person (not being the corporation) and to hold the money on behalf of the corporation or to deal with it in accordance with this Division.

Interpretation

36B. In this Division, unless the contrary intention appears—

"agent" means a person, not being a bank, building society, credit union or other financial institution, who has been authorised by a strata corporation to receive money on its behalf and to hold it or to deal with it in accordance with this Division;

"auditor" means a registered company auditor within the meaning of the Corporations Law;

"financial institution" means an institution of a kind declared by regulation to be a financial institution;

"trust account" means an account in which trust money is required to be deposited by an agent;

"trust money" means money received by an agent on behalf of a strata corporation.

Trust money to be deposited in trust account

36C. (1) An agent must, as soon as practicable after receiving trust money, deposit the money in an account authorised by this Division in the name of the agent.

Penalty: Division 5 fine.

(2) An agent must not pay any money except trust money into the agent's trust account.

Penalty: Division 5 fine.

(3) An agent must not withdraw, or permit another person to withdraw, money from a trust account except in accordance with this Part.

Penalty: Division 5 fine.

(4) An agent must, when applying to open a trust account, inform the bank, building society, credit union or other financial institution that the account is to be a trust account for the purposes of this Division.

Penalty: Division 5 fine.

Withdrawal of money from trust account

36D. An agent may withdraw money from a trust account—

- (a) in exercise of powers delegated to the agent by the strata corporation; or
- (b) in satisfaction of a claim for fees, costs or disbursements (that are authorised by the regulations) that the agent has against the corporation; or
- (c) to satisfy an order of a court against the corporation; or
- (d) for making any other payment authorised by law.

Authorised trust accounts

36E. An account at a bank, building society or credit union or at any other financial institution prescribed for the purposes of this section by regulation that provides for the payment of interest on money held in the account in accordance with the regulations is authorised for the purposes of this Division.

Application of interest

36F. If money received by an agent on behalf of two or more strata corporations is held in the same trust account, interest credited to the trust account must be credited by the agent proportionately to the strata corporations on whose behalf that money is held.

Keeping of records

36G. (1) An agent must keep detailed records of all trust money received by the agent and of any disbursement of, or other dealing with, that money and must compile detailed accounts of those receipts and disbursements or other dealings that—

- (a) accurately disclose the state of the trust account maintained by the agent; and
- (b) enable the receipt and disposition of trust money to be conveniently and properly audited; and
- (c) comply with all other requirements specified by regulation.

Penalty: Division 5 fine.

(2) In particular, the agent must, in respect of the receipt of trust money—

- (a) make available to the person making payment a receipt that sets out the information specified by regulation in the form specified by regulation; and
- (b) make and retain a copy of the receipt as part of the agent's records.

Penalty: Division 5 fine.

(3) An agent must, at the request of a strata corporation provide the corporation with a statement setting out details of dealings by the agent with the corporation's money.

Penalty: Division 5 fine.

(4) An agent must keep the accounts and records referred to in this section in a legible written form, or so as to be readily convertible into such a form, for at least five years.

Penalty: Division 5 fine.

Audit of trust accounts

36H. (1) An agent who maintains a trust account must—

- (a) have the accounts and records kept under this Division audited by an auditor in respect of each audit period specified by regulation; and
- (b) lodge with the community corporation a statement relating to the audit that sets out the information specified by regulation.

(2) An agent who—

- (a) fails to have accounts and records audited as required; or
- (b) fails to lodge the audit statement within the time allowed by or under the regulations,

is guilty of an offence.

Penalty: Division 5 fine.

Obtaining information for purposes of audit or examination

36I. An auditor employed by an agent to make an audit of the trust accounts of the agent, may require the agent or any other person in a position to do so—

- (a) to produce all the accounts (including accounts that are not trust accounts) relating to the business of the agent and all documents and records relating to those accounts, including written records that reproduce in a readily understandable form information kept by computer, microfilm or other process; and
- (b) to provide any relevant information relating to the operation of the accounts.

(2) The manager or other principal officer of a bank, building society, credit union or other financial institution with which an agent has deposited money, whether in his or her own account or in a general or separate trust account, must, on being required to do so by an auditor employed or appointed to make an audit under this Division, disclose every such account (including all deposit slips, cancelled cheques and other documents relating to the operation of the account) to the auditor.

Penalty: Division 5 fine.

(3) A person who is required by this section to produce documents to an auditor must permit the auditor to make a copy of the whole, or any part, of those documents.

Penalty: Division 5 fine.

(4) In this section—

"account" includes a record required to be kept under this Division in relation to the receipt of and disbursement of or other dealing with trust money;

"agent" includes a former agent.

Banks, etc., to report deficiencies in trust accounts

36J. A bank, building society, credit union or other financial institution with which a trust account has been established must, as soon as practicable, and in any event within 14 days, after becoming aware of a deficiency in that account, report the deficiency to the Minister.

Penalty: Division 5 fine.

Confidentiality

36K. An auditor must not divulge information that has come to his or her knowledge in the course of performing functions under this Division except—

- (a) to the agent; or
- (b) to the Minister; or
- (c) as otherwise required by law.

Penalty: Division 5 fine.

Banks, etc., not affected by notice of trust

36L. (1) Subject to subsection (2), a bank, building society, credit union or other financial institution is not affected by notice of a specific trust to which money deposited in a trust account is subject, and is not bound to satisfy itself of the due application of that money.

(2) This section does not relieve a bank, building society, credit union or other financial institution of liability for negligence.

PART 15
AMENDMENT OF VALUATION OF LAND ACT 1971

Amendment of s. 55—Interpretation

46. Section 5 of the principal Act is amended by striking out subsection (2) and substituting the following subsections:

(2) Where land is—

- (a) a primary strata lot in a strata scheme under the *Community Titles Act 1996* in which none of the primary lots has been divided by a secondary plan; or
- (b) a unit under the *Strata Titles Act 1988*,

the unimproved value or site value of the lot or unit will be determined as follows:

- (c) the capital value of all lots or units shown on the plan will be assessed; and
- (d) the unimproved value or site value (as the case may require) of the parcel or site will be assessed; and
- (e) the unimproved value or site value of the strata lot or unit will be taken to be the value that bears to the unimproved value or site value of the parcel or site the same proportion as the capital value of the lot or unit bears to the aggregate capital value of all the strata lots or units shown on the plan.

(3) Where any of the primary strata lots created by the deposit of a primary strata plan under the *Community Titles Act 1996* have been divided by a secondary plan the unimproved value or site value of the primary lots that have not been divided by a secondary plan (if any), the secondary lots that have not been divided by a tertiary plan (if any) and the tertiary lots (if any) will be determined as follows:

- (a) the capital value of all the undivided primary and secondary lots and the tertiary lots shown on the plan will be assessed; and
- (b) the unimproved value or site value (as the case may require) of the primary parcel will be assessed; and

- (c) the unimproved value or site value of a primary, secondary or tertiary lot will be taken to be the value that bears to the unimproved value or site value of the primary parcel the same proportion as the capital value of the lot bears to the aggregate capital value of all the undivided primary and secondary lots and the tertiary lots shown on the plan.

Insertion of s. 16A

47. The following section is inserted after section 16 of the principal Act:

Valuation in community schemes

16A. Where a rate or tax is assessed under one of the rating or taxing Acts against the common property, or part of the common property, created by division of land under the *Community Titles Act 1996* separately from a community lot created by the division, the value of the lot for the purposes of an assessment under that Act must not include a component attributable to the interest in the common property or that part of it that attaches to the lot.

PART 16
AMENDMENT OF WATERWORKS ACT 1932

Amendment of s. 86A—Liability for rates in strata schemes

48. Section 86A of the principal Act is amended—

- (a) by striking out subsections (1) to (4) and substituting the following subsections:

(1) Subject to subsection (3), where land is divided by a strata plan under the *Community Titles Act 1996* or the *Strata Titles Act 1988*—

- (a) the owner of each lot or unit is liable for payment of the supply charge in respect of the lot or unit; and
- (b) the community or strata corporation is liable for payment of the supply charge (if any) in respect of the common property or a part of the common property; and
- (c) the community or strata corporation is liable for payment of the water consumption rate in respect of the strata scheme.

(2) A community or strata corporation may advise the Corporation by written notice that the corporation has decided that the water consumption rate will be shared between the lots or units equally or in some other proportion specified in the notice.

(3) Where a notice under subsection (2) is in operation in respect of a financial year, the owner of a lot or unit (and not the community or strata corporation) is liable for the payment of a proportion of the water consumption rate for that year in accordance with the notice.

(4) A community or strata corporation may revoke a notice under subsection (2) by written notice given to the Corporation.;

(b) by striking out subsection (6) and substituting the following subsection:

(6) A notice given to the Corporation under this section must have been authorised by a special resolution of the community or strata corporation but if it was not so authorised—

- (a) the owners of the lots or units or the community or strata corporation are nevertheless liable to the Corporation for payment of the water consumption rate as though the notice has been so authorised;
- (b) the owner of a lot or unit or a community or strata corporation that is liable to pay to the Corporation a greater share of the water consumption rate than he, she or it would have been liable for if the notice had not been given to the Corporation is entitled to contribution from the lot or unit holders or the community or strata corporation (whichever is applicable) on the basis of what their respective liabilities would have been if the notice had not been given to the Corporation.;

(c) by striking out subsection (9) and substituting the following subsection:

(9) In this section—

"owner" in relation to a lot or unit includes subsequent owners of the lot or unit.

Insertion of s. 86AA

49. The following section is inserted after section 86A of the principal Act:

Liability for rates where land divided by community plan

86AA. (1) Where land is divided by a primary, secondary or tertiary plan of community division under the *Community Titles Act 1996*—

- (a) in the case of the division of land by a primary plan—water rates are payable in respect of the primary lots that are not divided by a secondary plan and in respect of a development lot or lots (if any);
- (b) in the case of the division of land by a secondary plan—water rates are payable in respect of the secondary lots that are not divided by a tertiary plan and in respect of the development lot or lots (if any);
- (c) in the case of the division of land by a tertiary plan—water rates are payable in respect of the tertiary lots and a development lot or lots (if any).

(2) Where land is divided by a primary, secondary or tertiary plan of community division under the *Community Titles Act 1996* and the lots created by the plan comprise commercial land—

- (a) in the case of the division of land by a primary plan—where the use of the common property or part of it is, in the opinion of the Valuer-General reasonably incidental to the use of one or more of the primary lots, a supply charge will not be levied against the common property, or that part of it, but the interest in the common property, or that part of it, that attaches to each primary lot will be regarded for the purposes of valuation as part of the lot;

- (b) in the case of the division of land by a secondary plan—where the use of the common property or part of it is, in the opinion of the Valuer-General reasonably incidental to the use of one or more of the secondary lots, a supply charge will not be levied against the common property, or that part of it, but the interest in the common property, or that part of it, (and in the common property of the primary scheme referred to in paragraph (a) (if any)) that attaches to each secondary lot will be regarded for the purposes of valuation as part of the lot;
 - (c) in the case of the division of land by a tertiary plan—where the use of the common property or part of it is, in the opinion of the Valuer-General, reasonably incidental to the use of one or more of the tertiary lots, a supply charge will not be levied against the common property, or that part of it, but the interest in the common property, or that part of it, (and in the common property of the primary and secondary schemes referred to in paragraphs (a) and (b) (if any)) that attaches to each tertiary lot will be regarded for the purposes of valuation as part of the lot.
- (3) Where—
- (a) land is divided by a primary, secondary or tertiary plan of community division under the *Community Titles Act 1996*; and
 - (b) the lots created by the plan comprise commercial land; and
 - (c) the use of the common property or any part of it is not, in the opinion of the Valuer-General, reasonably incidental to the use of any of the community lots,

a supply charge may be levied against the common property or that part of it and the relevant community corporation is liable for the supply charge as though it were the owner of the common property.

(4) Subject to this Act, where land is divided by a plan of community division and water rates are levied separately against the common property, or part of the common property, the community corporation is liable for those rates as though it were the owner of the common property.

(5) In this section—

"commercial land" has the same meaning as in Division 1.

Amendment of s. 86B—Sharing water consumption rate in certain circumstances

50. Section 86B of the principal Act is amended by striking out "strata plan" from subsection (4) and substituting "strata plan under the *Community Titles Act 1996* or the *Strata Titles Act 1988*".

Amendment of s. 93—Recovery of amounts due to Corporation

51. Section 93 of the principal Act is amended—

- (a) by striking out from subsection (1) "Any amount" and substituting "Subject to subsection (1a), any amount";

(b) by inserting after subsection (1) the following subsection:

(1a) An amount due to the Corporation under this Act or under an agreement to defer payment of an amount due under this Act that is payable in respect to land, or to a meter or fitting on land, that comprises the whole or part of the common property of a scheme under the *Community Titles Act 1996* or the *Strata Titles Act 1988* is not a charge on the common property but is, instead, a first charge on each of the lots or units of the community or strata scheme.

Amendment of s. 109B—Capital contribution where capacity of waterworks increased

52. Section 109B of the principal Act is amended by striking out "or by strata plan" from the definition of "division" in subsection (4) and substituting "or by community plan under the *Community Titles Act 1996* or by strata plan under the *Community Titles Act 1996* or the *Strata Titles Act 1988*".

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor