

ANNEXURE

Explanation of proposed changes in draft Bill and draft variation regulations

The draft Bill would make the following changes to the *Community Titles Act 1996* (CTA) and *Strata Titles Act 1988* (STA):

- amend CTA section 78B(8)/ STA section 27B(8) to ensure that the pamphlet explaining owners' rights under a proposed body corporate management contract be required to be supplied to (served on) owners rather than merely "being made available for inspection" 5 days prior to a meeting at which it is proposed to vote to appoint the manager - to address concerns about owners not receiving this information;
- amend CTA s78B/ STA s27B to address concerns about the practice of body corporate managers (managers) adding a fee or commission to the amount owed on an invoice for insurance or other goods or services that the manager has arranged on behalf of a corporation ('re-invoicing') and making it clear that all fees to be charged by a manager - whether these be regular general management fees or extra ad hoc fees charged in the form of "re-invoicing" - must be disclosed in the management contract, for example as an amount or percentage rate, otherwise the manager is not entitled to the fee or charge. Further, CTA s78D/ STA s27D are amended to provide that it is an offence to "re-invoice" without prior disclosure, either in the contract in the case of a manager or before arranging for the purchase of the good or service in the case of another person acting on behalf of the corporation;
- amend CTA s83(4) for consistency with the STA by adopting the STA s33(5) formula for achieving a quorum at general meetings of corporations;
- amend CTA s104(2)/ STA s31(2), reg 9 to increase the prescribed minimum amount of community and strata mandatory public liability insurance from \$10 million to \$20 million;
- amend CTA s139 / STA s41 to require the plan of division for a community or strata title scheme and any sinking fund plan (statement of expenditure required for larger groups under CTA s113/ STA s33A) to be supplied to owners or prospective purchasers under CTA s139 and STA s41 as part of strata and community property searches;
- amend CTA and STA s139 / STA s41 to make it clear that the fee caps for provision of access to and copies of corporation records that apply to a corporation also apply to a manager providing information and copy documents on behalf of the corporation to an owner or prospective owner.

The draft variation regulations would make the following changes to the *Community Titles Regulations 2011* (CTR) and *Strata Titles Regulations 2018* (STR):

- vary CTR regulation 14/ STR regulation 12 to require body corporate management contracts (required to be provided to owners prior to appointing a manager) to disclose existing relationships that a manager has with businesses

that provide services to community and strata corporations (eg to disclose a related building maintenance company, etc);

- vary CTR reg 16C(a)(i)/ STR reg 15(2)(i) to clarify that the minimum fidelity guarantee insurance coverage is the greater of \$50,000 or the maximum balance of the corporation's bank accounts over the preceding three financial years. This was not an ERD Committee recommendation but rather an issue previously raised with the Attorney-General's Department;
- vary CTR reg 18A/ STR reg 16 to provide that mandatory sinking fund plans for all non-exempt community and strata corporations (ie for all groups of 7 or more lots or units) must be for a 10 year period rather than the existing 3 or 5 years and that these 10 year plans must be reviewed every 5 years. This was not an ERD Committee recommendation, rather was suggested in consultation on the remaking of the *Strata Titles Regulations 2003*, which automatically expired on 1 September 2018. This change also requires amendment to CTA s113(1)(aa)/ STA s 33A(1) to increase the existing five year limit on plan duration;
- vary CTR reg 25 to increase the fee caps for providing access to and copy documents to \$8 and \$40, consistent with the recent increases made to the equivalent fees on remaking the *Strata Titles Regulations 2003* (which expired on 1/9/18) and vary both CTR reg 25/ STR reg 31 to prescribe a higher fee cap for urgent requests to provide the information within 48 hours);
- vary CTR reg 40/ insert new STR reg 32 to prescribe an education campaign about reporting breaches of the legislation to support implementation of the ERD Committee's recommendation for a compliance program relating to managers' disclosure obligations;
- substitute CTR Pt 3 Div 2 provisions relating manager's (agent's) trust accounts to restore consistency with the equivalent STR provisions, which were updated on 1 September 2018 when those regulations needed to be remade due to impending expiry, in particular to:
 - remove requirements for a hard copy report to be produced at the end of each month for records kept electronically;
 - add a general requirement for electronic records to be capable of being produced in hard copy on request at any time; and
 - make other minor updates to modernise language and reflect increased reliance on electronic record keeping systems.

In addition to the above proposed changes, submissions are welcomed on whether there are any further unjustified inconsistencies between the CTA and STA that should be addressed as part of these legislation changes.

Draft

30.8.2018 (4)

South Australia

Community Titles (Miscellaneous) Variation Regulations 2018

under the *Community Titles Act 1996*

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Variation provisions

Part 2—Variation of *Community Titles Regulations 2011*

- 4 Variation of Regulation 14—Body corporate managers (section 78B of Act)
 - 5 Variation of regulation 14A—Return of records and trust money when delegations revoked (section 78D of Act)
 - 6 Variation of regulation 16C—Fidelity guarantee insurance (section 104 of Act)
 - 7 Variation of regulation 18A—Statement of expenditure etc (section 113 of Act)
 - 8 Variation of regulation 25—Fee for provision of information
 - 9 Substitution of Part 3 Division 2
 - Division 2—Agent's trust accounts
 - Subdivision 1—Withdrawal of money from trust account and authorised trust accounts
 - 27 Withdrawal of money from trust account
 - 28 Authorised trust accounts
 - Subdivision 2—Keeping of records
 - 29 Application of Subdivision
 - 30 Electronic records
 - 31 Cash books
 - 32 Trust ledger accounts and transfer journals
 - 33 Reconciliation statements
 - 34 Payments of trust money
 - 35 Receipts
 - Subdivision 3—Audit of trust accounts
 - 36 Audit of trust accounts
 - 37 Agent's statement
 - 37A Certain persons may not audit accounts and records of agents
 - 10 Substitution of regulation 40
 - 40 Indemnity fund under *Land Agents Act 1994* (section 155A of Act)
-

Part 1—Preliminary

1—Short title

These regulations may be cited as the *Community Titles (Miscellaneous) Variation Regulations 2018*.

2—Commencement

These regulations will come into operation on the day on which Part 2 of the *Statutes Amendment (Community and Strata Titles) Act 2018* comes into operation.

3—Variation provisions

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

Part 2—Variation of *Community Titles Regulations 2011*

4—Variation of Regulation 14—Body corporate managers (section 78B of Act)

- (1) Regulation 14(3)—after paragraph (b) insert:
 - (c) a statement setting out any financial interest that the body corporate manager has in a business or service provider that is in the business of providing services to community corporations.
- (2) Regulation 14(4)—delete "the body corporate manager must ensure the availability of a copy of a pamphlet that sets" and substitute:

the pamphlet required to be served on each member of the corporation must set

5—Variation of regulation 14A—Return of records and trust money when delegations revoked (section 78D of Act)

- (1) Regulation 14A(1)—delete subregulation (1) and substitute:
 - (1) For the purposes of section 78D(6)(a) of the Act, records—
 - (a) must be returned to the corporation within 10 business days of the delegation being revoked—
 - (i) in the case of electronic records—by emailing the records to an email address provided by the corporation for that purpose or by sending a USB or other electronic form of the records by registered post; or
 - (ii) in any other case—by registered post; or
 - (b) must be made available for collection by the corporation within 10 business days following the revocation of the delegations.
- (2) Regulation 14A(3)—delete "\$1.20" and substitute:

\$1.40

6—Variation of regulation 16C—Fidelity guarantee insurance (section 104 of Act)

- Regulation 16C(a)(i)—delete "3 years" and substitute:

3 financial years

7—Variation of regulation 18A—Statement of expenditure etc (section 113 of Act)

Regulation 18A(1) and (2)—delete subregulations (1) and (2) and substitute:

- (1) For the purposes of section 113(1)(aa) of the Act, the prescribed period is, in the case of a community corporation consisting of at least 7 community lots—10 years.
- (2) For the purposes of section 113(1a) of the Act, new information must be prepared for the purposes of section 113(1)(aa) of the Act—every 5 years.

8—Variation of regulation 25—Fee for provision of information

- (1) Regulation 25(1)—delete "subregulation (2)" and substitute:

subregulations (1a) and (2)

- (2) Regulation 25(1)—delete "\$25" wherever occurring and substitute in each case:

\$40

- (3) Regulation 25(1)(b)(i)—delete "\$5" and substitute:

\$8

- (4) Regulation 25(1)(c)(ii)—delete "\$5" and substitute:

\$8

- (5) Regulation 25—after subregulation (1) insert:

(1a) If—

- (a) an application under subregulations (1) seeks information or copies of documentary material to be provided within 48 hours of the making of the application; and
- (b) the fee (but for this subregulation) per application under subregulation (1) would be \$40,

the fee for the application is \$70.

9—Substitution of Part 3 Division 2

Division 2—delete Division 2 and substitute:

Division 2—Agent's trust accounts

Subdivision 1—Withdrawal of money from trust account and authorised trust accounts

27—Withdrawal of money from trust account

- (1) For the purposes of section 123(b) of the Act, such fees, costs or disbursements that the corporation has agreed in writing to pay to the agent are authorised.

- (2) An agent who becomes entitled to money held in the agent's trust account in or towards satisfaction of the agent's fees, costs or disbursements must, as soon as practicable and in any event, within 3 months, transfer the money to an account maintained by the agent for receipts other than trust money.

Maximum penalty: \$500.

28—Authorised trust accounts

For the purposes of section 124 of the Act, accounts for the time being approved by the Commissioner for Consumer Affairs in relation to the holding of trust money under the *Land Agents Act 1994* and the *Conveyancers Act 1994* are prescribed.

Subdivision 2—Keeping of records

29—Application of Subdivision

This Subdivision applies in relation to the keeping of records for the purposes of section 126 of the Act.

30—Electronic records

- (1) Records required to be made under this Subdivision may be made in electronic form.
- (2) If records are made in electronic form—
 - (a) each alteration of the record must be recorded electronically within 24 hours of the alteration; and
 - (b) a back-up version of all electronic records must be made at least once per week and must be accessible from premises other than those at which the original record was made; and
 - (c) the records must not be deleted unless a hard copy is made of them; and
 - (d) a hard copy of the records must be capable of being produced on request at any time; and
 - (e) an up-to-date electronic copy of the computer program or application used by the agent to keep the records must be accessible from premises other than those at which the records were originally made.

31—Cash books

- (1) An agent must keep a cash book containing the following details in relation to each amount of trust money received or paid by the agent:
 - (a) the date of the receipt or payment;
 - (b) evidence of the receipt or payment including—
 - (i) in the case of an EFT—the EFT confirmation; and
 - (ii) in the case of a cheque—the reference number of the cheque;

- (c) the amount received or paid;
 - (d) the name of the person from whom the money is received or to whom the payment is made;
 - (e) the name of the community corporation or reference to which the transaction relates;
 - (f) brief particulars of the purpose of the receipt or payment.
- (2) The details required to be recorded under subregulation (1) in relation to a receipt or payment must—
- (a) appear together in chronological order of—
 - (i) in the case of receipt or payment by EFT—the EFT confirmation; or
 - (ii) in any other case—the date of the receipt or payment; and
 - (b) be recorded within 2 business days following the receipt or payment or, in the case of an EFT, the EFT confirmation.

32—Trust ledger accounts and transfer journals

- (1) An agent must keep a separate trust ledger account in accordance with this regulation—
- (a) for each of the agent's clients; and
 - (b) if the agent performs services for a community corporation in respect of a number of transactions between different parties—for each such transaction.
- (2) Each trust ledger account—
- (a) must specify, in each of the separate accounts—
 - (i) the name and address of the corporation to which the accounts relate; and
 - (ii) a brief description of the service provided and the transaction to which the accounts relate; and
 - (b) must contain the following details in relation to each amount of trust money received or paid:
 - (i) the date of the receipt or payment;
 - (ii) evidence of the receipt or payment including—
 - (A) in the case of an EFT—the EFT confirmation; and
 - (B) in the case of a cheque—the reference number of the cheque;
 - (iii) the amount received or paid;
 - (iv) the name of the person from whom the money is received or to whom the payment is made;

- (v) brief particulars of the purpose of the receipt or payment.
- (3) The agent must record each transfer of money between any of the agent's separate accounts—
 - (a) in each account; and
 - (b) in a transfer journal (which may be in electronic form), in sufficient detail that the transfer may be clearly understood.
- (4) All the details required to be recorded in a trust ledger account or a transfer journal under this regulation must—
 - (a) appear together in chronological order of—
 - (i) in the case of receipt or payment by EFT—the EFT confirmation; or
 - (ii) in any other case—the date of the receipt or payment; and
 - (b) be recorded within 2 business days following the receipt or payment or, in the case of an EFT, the relevant EFT confirmation.

33—Reconciliation statements

The following provisions apply in relation to the preparation of reconciliation statements:

- (a) an agent must, at the end of each month, prepare reconciliation statements—
 - (i) reconciling the balance of the agent's cash books kept under regulation 31 with the balance of the agent's trust account; and
 - (ii) reconciling the balances of the ledgers comprised in the agent's trust ledger accounts with the balance of the agent's trust account;
- (b) reconciliation statements are not required to contain a list of individual balances, or the names of the corporations on whose behalf money is held.

34—Payments of trust money

- (1) An agent must not make a payment of trust money in cash.
Maximum penalty: \$500.
- (2) If an agent makes a payment of trust money by cheque—
 - (a) the cheque must be marked with the name of the agent and the words "Trust Account"; and
 - (b) —
 - (i) the cheque must be crossed and endorsed "Not negotiable"; or

- (ii) the agent must obtain from the person receiving the cheque a receipt that is legible and contains the following information:
 - (A) the date and reference number of the cheque;
 - (B) particulars identifying the trust account against which the cheque is drawn;
 - (C) the name of the payee;
 - (D) brief particulars of the purpose of the payment;
 - (E) the amount of the cheque.

35—Receipts

For the purposes of section 126(2)(a) of the Act, the following requirements relating to receipts of trust money are specified:

- (a) each receipt must contain the following information:
 - (i) —
 - (A) in the case of a payment made by EFT into an agent's trust account—the date on which the agent makes out the receipt;
 - (B) in any other case—the date of the payment;
 - (ii) the name of the person making the payment;
 - (iii) whether the payment is by cash, EFT, cheque or bank cheque into the agent's trust account and, if the payment is by cheque or bank cheque, the name of the drawer of the cheque;
 - (iv) the name of the community corporation for which the money is received;
 - (v) brief particulars of the purpose of the payment;
 - (vi) the amount of the payment;
- (b) a hard copy of each receipt must be produced in duplicate and marked with the name of the agent and the words "Trust Account";
- (c) each receipt must show, by means of a pre-numbered referencing system, the chronological order of its production;
- (d) the duplicate receipts must be in consecutive order;
- (e) receipts must be produced—

- (i) in the case of a payment by EFT—immediately after the agent receives official confirmation that the payment has been made (whether by EFT confirmation or some other confirmation, whichever occurs sooner); or
- (ii) in any other case—immediately on receipt of the payment.

Subdivision 3—Audit of trust accounts

36—Audit of trust accounts

- (1) For the purposes of section 127(1)(a) of the Act, the audit period in respect of which an agent must have the accounts and records audited is each financial year.
- (2) In carrying out an audit, the auditor must—
 - (a) make checks that will enable the auditor to give an opinion as to whether the agent has, during the period covered by the audit, complied with the Act and these regulations relating to the agent's accounts and records; and
 - (b) ascertain what trust accounts were kept by the agent during that period; and
 - (c) make a general test examination of any trust account kept by the agent and of the pass books and statements relating to any such account during that period; and
 - (d) make a comparison as to no fewer than 2 dates (1 to be the last day of the period of the audit and 1 other to be a date within that period selected by the auditor) between—
 - (i) the liabilities of the agent to the agent's clients as shown by the agent's trust ledger accounts and the records kept under these regulations; and
 - (ii) the aggregate of the balances standing to the credit of the agent's trust account; and
 - (e) ask for such information and explanations as the auditor may require for the purposes of this regulation.
- (3) For the purposes of section 127(1)(b) of the Act, the statement relating to the audit must be prepared by the auditor and must include all matters relating to the agent's accounts and records that should, in the auditor's opinion, be communicated to the community corporation and, in particular, deal with each of the following matters:
 - (a) whether the accounts and records appear to have been kept regularly and properly written up at all times;
 - (b) whether the accounts and records have been ready for examination at the periods appointed by the auditor;

- (c) whether the agent has complied with the auditor's requirements;
 - (d) whether, at any time during the period of the audit, the agent's trust account was overdrawn and, if so, the full explanation for that given by the agent;
 - (e) whether the agent has, or has had, any debit balances in his or her trust account and the explanation or reason for such a debit given by the agent;
 - (f) whether the auditor has received and examined the notice given to the auditor under regulation 37 and the result of that examination;
 - (g) if the agent's accounts and records are kept electronically, whether the accounts and records are able to be conveniently and properly audited.
- (4) The auditor must attach to the auditor's statement a copy of the agent's notice delivered to the auditor under regulation 37(1).
- (5) The auditor must verify the statement by statutory declaration and give a signed copy of the statement to the agent.
- (6) If the auditor in the course of auditing the agent's accounts and records discovers—
- (a) that they are not kept in a manner that enables them to be properly audited; or
 - (b) a matter that appears to the auditor to involve dishonesty or a breach of the law by the agent; or
 - (c) a loss or deficiency of trust money or a failure to pay or account for trust money; or
 - (d) a failure to comply with the Act or these regulations,
- the auditor must, as soon as possible, give a report in respect of the discovery to the Minister and the agent concerned.
- Maximum penalty: \$500.
- (7) However, the auditor is not required to give a report to the Minister in respect of the discovery of a loss, deficiency or failure if the auditor is satisfied that—
- (a) bringing the discovery to the attention of the agent or community corporation will adequately deal with the matter; and
 - (b) the loss, deficiency or failure does not involve dishonesty or a breach of the law.
- (8) For the purposes of section 127(2)(b) of the Act, an agent must forward an audit statement or declaration within 2 months after the end of each audit period.

37—Agent's statement

- (1) An agent who is required to have accounts and records audited must, before the completion of the audit, certify—
- (a) under the agent's hand; or
 - (b) in the case of a firm of agents—under the hands of not less than 2 partners of the firm; or
 - (c) in the case of a body corporate agent—under the hands of not less than 2 directors of the body,
- and deliver to the auditor a notice setting out in detail, as of the last day of the period to which the audit relates, particulars of—
- (d) the names of all corporations on whose behalf the agent is holding trust money and the amount of the credit of each such corporation; and
 - (e) all negotiable or bearer securities or deposit receipts in the name of the agent which represent money drawn from the agent's trust account and which were held by the agent on that day; and
 - (f) —
 - (i) the names of the trust accounts in which the balance of the agent's trust money is lodged and the balances on that date of those accounts; and
 - (ii) if the trust account balances are not in agreement with the balances of the agent's ledger accounts—a statement reconciling those balances.

Maximum penalty: \$500.

- (2) The notice must be verified by statutory declaration—
- (a) of the agent; or
 - (b) in the case of a firm of agents—of not less than 2 of the partners of the firm; or
 - (c) in the case of a body corporate agent—of not less than 2 directors of the body.
- (3) The agent must give the auditor making the next succeeding audit of the agent's accounts and records—
- (a) at the request of the auditor, a copy of the notice, together with a signed copy of the auditor's statement of the last preceding audit of the agent's accounts and records; or

- (b) if the agent's accounts and records are being audited for the first time or, if for any other reason a copy of the notice cannot be produced for the purpose of the audit—before completion of the audit, a notice containing the same particulars as to money, negotiable or bearer securities and deposit receipts held on the first day of the period to which the audit relates.

Maximum penalty: \$500.

37A—Certain persons may not audit accounts and records of agents

A person must not audit the accounts and records of an agent if the person—

- (a) is, or has been within 2 years, an employee or partner of the agent; or
- (b) is an employee of another agent actually carrying on business as an agent; or
- (c) is, himself or herself, an agent carrying on business as an agent.

Maximum penalty: \$500.

10—Substitution of regulation 40

Regulation 40—delete the regulation and substitute:

40—Indemnity fund under *Land Agents Act 1994* (section 155A of Act)

For the purposes of section 155A(c) of the Act, an education program informing property owners about body corporate managers' obligations under the Act and how property owners can make a complaint alleging a breach of the Act by a body corporate manager is prescribed.

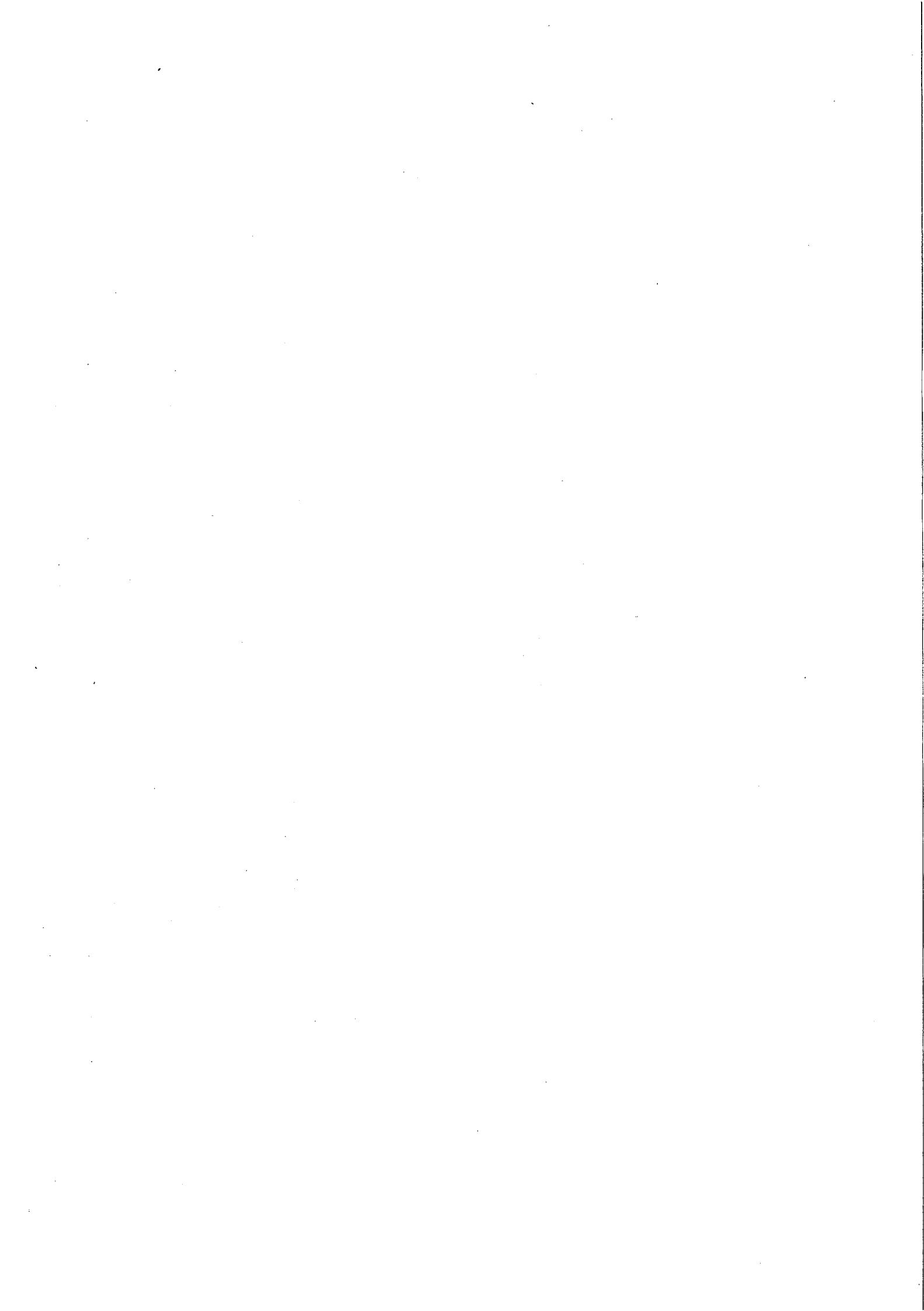
Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on

No of 2018



Draft

27.8.2018 (4)

South Australia

Statutes Amendment (Community and Strata Titles) Bill 2018

A BILL FOR

An Act to amend the *Community Titles Act 1996* and the *Strata Titles Act 1988*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *Community Titles Act 1996*

- 4 Amendment of section 78B—Body corporate managers
- 5 Amendment of section 78D—Offences
- 6 Amendment of section 83—Procedure at meetings
- 7 Amendment of section 104—Other insurance by community corporation
- 8 Amendment of Statement of expenditure etc
- 9 Amendment of section 139—Information to be provided by corporation

Part 3—Amendment of *Strata Titles Act 1988*

- 10 Amendment of section 27B—Body corporate managers
 - 11 Amendment of section 27D—Offences
 - 12 Amendment of section 31—Other insurance by strata corporation
 - 13 Amendment of section 33A—Statement of expenditure etc
 - 14 Amendment of section 34—Voting at general meetings
 - 15 Amendment of section 41—Information to be furnished
 - 16 Amendment of section 49—Service
-

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (Community and Strata Titles) Act 2018*.

5

2—Commencement

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

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Community Titles Act 1996***4—Amendment of section 78B—Body corporate managers**

(1) Section 78B(8)—delete subsection (8) and substitute:

(8) The body corporate manager must, at least 5 clear days before the date of the meeting at which the corporation is to consider whether or not to enter into the contract—

- (a) serve on each member of the corporation a pamphlet that sets out the role of the body corporate manager and the rights of the community corporation and its members, including any matters prescribed by regulation; and
- (b) ensure that a copy of the contract, and any other prescribed information or document of a kind prescribed by regulation, is available for inspection by members of the corporation in a manner specified in the pamphlet served on members under paragraph (a).

(2) Section 78B—after subsection (11) insert:

(11a) For the avoidance of doubt, a body corporate manager's remuneration in respect of work performed in exercising delegated functions or powers is taken to include any fee or commission payable by the corporation in respect of the performance of the delegated functions or powers.

5—Amendment of section 78D—Offences

Section 78D—after subsection (4) insert:

- (4a) A delegate of a community corporation must not charge a fee or commission to the corporation in respect of the performance of delegated functions or powers unless the delegate has disclosed the amount of the fee or commission, or the basis on which it will be calculated—
 - (a) in the case of a body corporate manager—in the contract with the corporation in accordance with section 78B; or
 - (b) in any other case—in writing to the corporation before performing the functions or powers.

Maximum penalty: \$500.

Example—

For example, if a body corporate manager wants to charge a fee or commission to the community corporation for work undertaken for the corporation in arranging for the performance of building work, or for the purchase of insurance, but the amount of that fee or commission, or the basis for calculating it, was not disclosed in the contract under section 78B(3)(e), the body corporate manager cannot charge the fee or commission. See also section 78B(2)..

6—Amendment of section 83—Procedure at meetings

Section 83(4)—delete subsection (4) and substitute:

- (4) Subject to subsection (5), no business may be transacted at a general meeting of the corporation unless a quorum, consisting of persons entitled to exercise the voting power in respect of not less than one-half of the lots, is present at the time when the meeting proceeds to business.

7—Amendment of section 104—Other insurance by community corporation

Section 104(2)—delete "ten million dollars" and substitute:

\$20 000 000

8—Amendment of Statement of expenditure etc

Section 113(1)(aa)—delete "(which must not exceed 5 years)"

9—Amendment of section 139—Information to be provided by corporation

(1) Section 139(1)—after paragraph (b) insert:

- (ba) provide a copy of the plan of community division; and
(bb) provide a copy of the most recent statement under section 113; and

(2) Section 139(3)—after "community corporation" insert:

, or a person acting on behalf of a community corporation,

Part 3—Amendment of *Strata Titles Act 1988*

10—Amendment of section 27B—Body corporate managers

(1) Section 27B(8)—delete subsection (8) and substitute:

(8) The body corporate manager must, at least 5 clear days before the date of the meeting at which the corporation is to consider whether or not to enter into the contract—

- (a) serve on a unit holder a pamphlet that sets out the role of the body corporate manager and the rights of the strata corporation and its unit holders, including any matters prescribed by regulation; and

- (b) ensure that a copy of the contract, and any other prescribed information or document of a kind prescribed by regulation, is available for inspection by unit holders in a manner specified in the pamphlet served on unit holders under paragraph (a).

5

(2) Section 27B—after subsection (11) insert:

- (11a) For the avoidance of doubt, a body corporate manager's remuneration in respect of work performed in exercising delegated functions or powers is taken to include any fee or commission payable by the corporation in respect of the performance of the delegated functions or powers.

10

11—Amendment of section 27D—Offences

Section 27D—after subsection (4) insert:

- (4a) A delegate of a strata corporation must not charge a fee or commission to the corporation in respect of the performance of delegated functions or powers unless the delegate has disclosed the amount of the fee or commission, or the basis on which it will be calculated—

15

- (a) in the case of a body corporate manager—in the contract with the corporation in accordance with section 27B; or

20

- (b) in any other case—in writing to the corporation before performing the functions or powers.

Maximum penalty: \$500.

Example—

25

For example, if a body corporate manager wants to charge a fee or commission to the strata corporation for work undertaken for the corporation in arranging for the performance of building work, or for the purchase of insurance, but the amount of that fee or commission or the basis for calculating it was not disclosed in the contract under section 27B(3)(e), the body corporate manager cannot charge the fee or commission. See also section 78B(2).

30

12—Amendment of section 31—Other insurance by strata corporation

Section 31(2)—delete "\$5 000 000" and substitute:

\$20 000 000

35

13—Amendment of section 33A—Statement of expenditure etc

Section 33A(1)(a)—delete "(which must not exceed 5 years)"

14—Amendment of section 34—Voting at general meetings

Section 34(7)—delete subsection (7) and substitute:

- (7) A vote cannot be exercised in relation to a unit unless all amounts payable to the corporation in respect of the unit have been paid.

40

15—Amendment of section 41—Information to be furnished

(1) Section 41(1)—after paragraph (b) insert:

(ba) provide a copy of the strata plan; and

(bb) provide a copy of the most recent statement under section 33A; and

5 (2) Section 41(2a)—after "strata corporation" insert:

, or a person acting on behalf of a strata corporation,

16—Amendment of section 49—Service

Section 49(1)—delete subsection (1) and substitute:

10 (1) A notice to be served on a person under this Act may be served as follows:

(a) by giving it to the person or an agent of the person;

(b) by leaving it for the person with someone apparently over the age of 16 years at his or her place of residence or at any place at which he or she carries on business;

15 (c) by posting it to the person at his or her last known address;

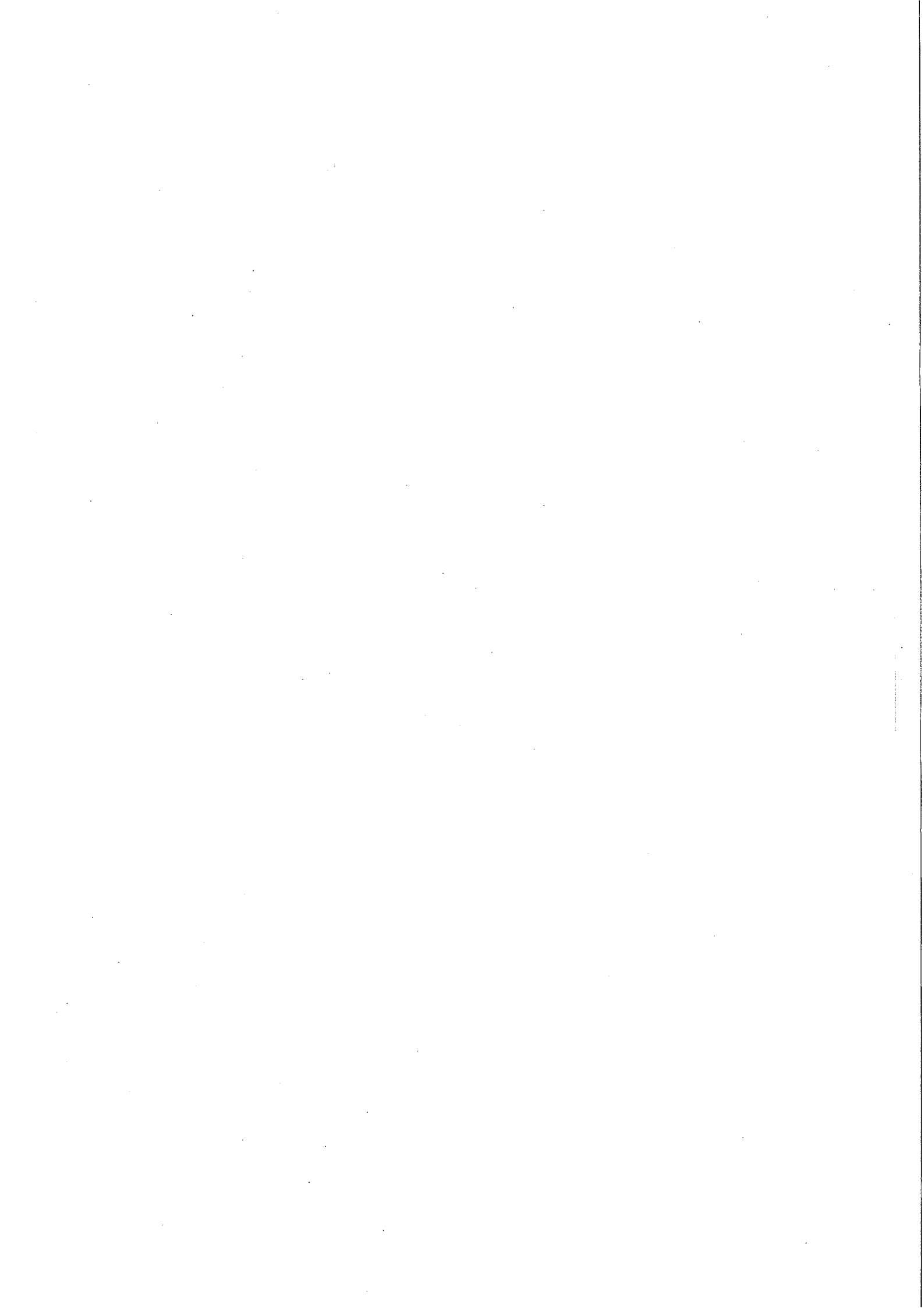
(d) if the person consents to receiving the notice by email—by transmitting the notice by email to the email address provided by the person for that purpose;

20 (e) where the person is the owner or occupier of a unit—by fixing the notice in the manner prescribed by regulation in a prominent position on the unit.

(1a) Where a notice is to be served on the owner of a unit and the owner has died, the notice may be served on the executor or administrator of the owner's estate or, where an executor or administrator has not been appointed, by fixing the notice in the manner prescribed by regulation in a prominent position on the unit.

25

(1b) If there are 2 or more owners or occupiers of a unit, a notice will be taken to have been served on all of them if it is served on any 1 of them.



Draft

30.8.2018 (4)

South Australia

Strata Titles (Miscellaneous) Variation Regulations 2018

under the *Strata Titles Act 1988*

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Variation provisions

Part 2—Variation of *Strata Titles Regulations 2018*

- 4 Variation of regulation 12—Body corporate managers
 - 5 Variation of regulation 14—Other insurance by strata corporation
 - 6 Variation of regulation 16—Statement of expenditure etc
 - 7 Variation of regulation 31—Fee for provision of information
 - 8 Insertion of regulation 32
32 Indemnity fund under *Land Agents Act 1994*
-

Part 1—Preliminary

1—Short title

These regulations may be cited as the *Strata Titles (Miscellaneous) Variation Regulations 2018*.

2—Commencement

These regulations will come into operation on the day on which Part 3 of the *Statutes Amendment (Community and Strata Titles) Act 2018* comes into operation.

3—Variation provisions

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

Part 2—Variation of *Strata Titles Regulations 2018*

4—Variation of regulation 12—Body corporate managers

- (1) Regulation 12(3)—after paragraph (b) insert:
 - (c) a statement setting out any financial interest that the body corporate manager has in a business or service provider that is in the business of providing services to strata corporations.

- (2) Regulation (4)—delete "the body corporate manager must ensure the availability of a copy of a pamphlet that sets" and substitute:

the pamphlet required to be served on each member of the corporation must set

5—Variation of regulation 14—Other insurance by strata corporation

- (1) Regulation 14(1)—delete subregulation (1)
(2) Regulation 14(2)(a)(i)—delete "3 years" and substitute:

3 financial years

6—Variation of regulation 16—Statement of expenditure etc

Regulation 16(1) and (2)—delete subregulations (1) and (2) and substitute:

- (1) For the purposes of section 33A(1)(a) of the Act, in the case of a strata corporation consisting of at least 7 strata lots—the prescribed period is 10 years.
(2) For the purposes of section 33A(2) of the Act, new information must be prepared for the purposes of section 33A(1)(a) of the Act—every 5 years.

7—Variation of regulation 31—Fee for provision of information

- (1) Regulation 31(2)—delete "subregulation (3)" and substitute:

subregulations (2a) and (3)

- (2) Regulation 31—after subregulation (2) insert:

(2a) If—

- (a) an application under subregulation (2) seeks information or copies of documentary material to be provided within 48 hours of the making of the application; and
(b) the fee (but for this subregulation) per application under subregulation (2) would be \$40,

the fee for the application is \$70.

8—Insertion of regulation 32

After regulation 31 insert:

32—Indemnity fund under *Land Agents Act 1994*

For the purposes of section 50A(c) of the Act, an education program informing property owners about body corporate managers' obligations under the Act and how property owners can make a complaint alleging a breach of the Act by a body corporate manager is prescribed.

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Draft

Strata Titles (Miscellaneous) Variation Regulations 2018
Variation of Strata Titles Regulations 2018—Part 2

Made by the Governor

with the advice and consent of the Executive Council
on

No of 2018