

**House of Assembly (2021-03-03)****Classification: Bills***Bills***STATUTES AMENDMENT (COMMUNITY AND STRATA TITLES) BILL***Introduction and First Reading*

**The Hon. V.A. CHAPMAN (Bragg—Deputy Premier, Attorney-General, Minister for Planning and Local Government) (16:07):**

Obtained leave and introduced a bill for an act to amend the Community Titles Act 1996 and the Strata Titles Act 1988. Read a first time.

*Second Reading*

**The Hon. V.A. CHAPMAN (Bragg—Deputy Premier, Attorney-General, Minister for Planning and Local Government) (16:08):** I

move:

That this bill be now read a second time.

I am pleased to introduce the Statutes Amendment (Community and Strata Titles) Bill 2021. The bill will make changes to the Community Titles Act 1996 and the Strata Titles Act 1988, which govern the creation and management of community and strata-titled properties respectively. These changes to the community and strata titles legislation will implement recommendations made in the 81<sup>st</sup> report of the Environment, Resources and Development Committee of this parliament, titled Strata Titles, as well as additional changes requested by interested parties in consultation on the bill and also subsequently in letters received from members of the public and others.

May I say that was a report commenced back in March 2015. I think two members of that committee have now retired and one is about to. I just want to place on the record my appreciation for that report. It did ultimately report in March 2018 and the report was signed and received by the then Speaker Atkinson later that year. All good things come to those who wait.

Part of the terms of reference of the ERD Committee's inquiry into strata titles regulation was to review the legislation changes that were made to the community and strata titles legislation in 2013. Several of the changes in this bill will build on those changes, in some cases to tighten provisions to ensure they have the intended effect.

Several other changes in the bill are designed to achieve greater consistency between the Community Titles Act and the Strata Titles Act, noting that the Strata Titles Act generally governs strata title developments established before the commencement of the Community Titles Act in 1996. The Community Titles Act in turn governs new community and strata divisions and community corporations established after that time. This move to consistency wherever possible between the two acts will make it easier for body corporate managers who assist with the management of community and strata corporations.

The bill will support a key priority of the government's justice agenda in keeping the law and our policies current and relevant. In summary, this bill will make the following changes to the Community Titles Act and the Strata Titles Act:

1. Amend the Community Titles Act section 78D and Strata Titles Act section 27D to address the practice of re-invoicing by body corporate managers by requiring that a body corporate manager must clearly disclose the amount of any fee or commission being charged to the corporation for arranging a contract with another service provider.

2. Amend the Community Titles Act and Strata Titles Act to make it clear that the caps on fees that apply to corporations also apply to a manager providing information and copy documents on behalf of the corporation to an owner or prospective owner under Strata Titles Act section 41 and Community Titles Act section 139.

3. Amend the Community Titles Act and Strata Titles Act to require the plan of division for a community or strata titles scheme to be supplied to owners or prospective purchasers under the Community Titles Act section 139 and Strata Titles Act section 41 as part of strata and community title property searches.
4. Amend the Strata Titles Act section 33(5) for consistency with the Community Titles Act by adopting the formula for achieving a quorum at general meetings of corporations contained in the Community Titles Act section 83.
5. Amend the Community Titles Act and Strata Titles Act to require the statement of expenditure (or 'sinking fund plan') required to be prepared and reviewed by corporations under the Community Titles Act section 113 and Strata Titles Act section 33A to be supplied to the owners or prospective purchasers under the Community Titles Act section 139 and Strata Titles Act section 41 as part of strata and community property searches.
6. Amend the Community Titles Act and Strata Titles Act to increase the prescribed minimum amount of mandatory public liability insurance that must be held by a corporation under Strata Titles Act section 31(2) and Community Titles Act section 104(2) from \$10 million to \$20 million.
7. Amend the Community Titles Act and Strata Titles Act to ensure that the pamphlet required under Community Titles Act section 78B and Strata Titles Act section 27B explaining owners' rights under a proposed contract with a body corporate manager (including to inspect corporation documents held by the manager, to apply to the Magistrates Court to resolve disputes and the rights to terminate the contract) be required to be supplied to owners rather than merely being made available for inspection prior to a meeting at which it is proposed to vote to appoint the manager.
8. Amend Strata Titles Act section 34 for consistency with Community Titles Act section 84 to provide that an owner in arrears may not vote at strata corporation meetings.
9. Amend the Community Titles Act and Strata Titles Act to address the problem of inquorate corporation meetings by adopting an approach recently introduced in Western Australia, whereby a quorum may be declared from those present after 30 minutes of the appointed time for a duly convened meeting, avoiding the need to adjourn and reconvene the meeting at a later date.
10. Amend the Strata Titles Act, for consistency with the Community Titles Act, to adopt the Community Titles Act position on which officers can call a general meeting of the corporation.
11. Amend the Strata Titles Act, for consistency with the Community Titles Act, to adopt the Community Titles Act position on who may vote at a corporation meeting if there is more than one owner of a lot and they disagree. Under the Strata Titles Act, currently the first named person on the certificate of title may vote, whereas neither votes under Community Titles Act section 84(7). The Strata Titles Act position is arbitrary and body corporate managers prefer the Community Titles Act position.
12. Amend the Community Titles Act to increase the threshold for mandatory audits for community titled corporations to align the Community Titles Act more closely to the Victorian approach to audits, such that self-managed community corporations will be required to have their accounts audited where contributions exceed \$100,000 per year or there are over 100 lots in the group. Other community titled groups can still resolve to have their accounts audited if they wish after balancing perceived risk against audit costs. The requirements for body corporate manager trust accounts to be audited are unchanged.
13. Amend the Community Titles Act and Strata Titles Act to remove the requirement for corporations to have a common seal, consistent with changes previously made under the Corporations Law.
14. Amend the Community Titles Act to extend the prescribed time for lodgements of amendments to by-laws with the Registrar-General from 14 to 21 days since 14 days has proved difficult to achieve and to create discretionary powers for the Registrar-General to dispense with the requirement for the consent of certain parties to minor prescribed technical amendments of, or to correct clear errors in, a scheme description for a staged development. This will improve efficiency and reduce the significant costs that can arise from the need to obtain consents from a broad range of parties to minor changes to the scheme description.

15. Amend the Community Titles Act to explicitly empower a community corporation to make by-laws to regulate smoking of tobacco and related products on the shared common property and to prevent smoke drift from private lots onto other lots or common property. A community corporation will be able to vote by special resolution to vary its by-laws to regulate smoking in this way. This particular amendment is included at the urging of the Heart Foundation in South Australia, supported by Drug and Alcohol Services SA in SA Health. It follows equivalent reforms in New South Wales in 2016 and also recently passed in Victoria.

I commend the bill to members and I seek leave to have the explanation of clauses inserted into *Hansard* without my reading the same.

Leave granted.

#### EXPLANATION OF CLAUSES

##### Part 1—Preliminary

###### 1—Short title

###### 2—Commencement

###### 3—Amendment provisions

These clauses are formal.

##### Part 2—Amendment of *Community Titles Act 1996*

###### 4—Amendment of section 12—First by-laws

This clause makes a minor technical amendment.

###### 5—Amendment of section 32—Persons whose consents are required

This clause amends section 32 to give the Registrar-General power to dispense with certain consents required under the section in specified circumstances.

###### 6—Amendment of section 34—By-laws

This clause allows by-laws to regulate or prohibit smoking in the common property or the drifting of tobacco smoke from one lot to another or to the common property.

###### 7—Amendment of section 39—Variation of by-laws

This clause extends the time within which a copy of varied by-laws must be lodged with the Registrar-General from 14 days to 21 days.

###### 8—Amendment of section 73—Execution of documents

This clause removes the requirement for a community corporation to have a common seal and provides for the execution of documents by the corporation without a common seal and the signing of contracts on behalf of the corporation.

###### 9—Amendment of section 78B—Body corporate managers

This clause amends section 78B to require that a pamphlet setting out the role of the body corporate manager and the rights of the community corporation and its members, (including any matters prescribed by regulation) be served on each member of the corporation at least 5 clear days before the date of the meeting at which the corporation is to consider whether or not to enter into a contract with the body corporate manager. The clause also includes an interpretative provision specifying that all fees and commissions payable by the corporation are considered part of the body corporate manager's remuneration.

#### 10—Amendment of section 78D—Offences

This clause creates a new offence for a delegate who charges an undisclosed fee or commission to the corporation in respect of the performance of delegated functions or powers. The penalty is a maximum fine of \$500.

#### 11—Amendment of section 80—Business at first statutory general meeting

This is consequential to clause 8.

#### 12—Amendment of section 83—Procedure at meetings

This clause amends the general meeting quorum requirement to provide that a quorum is determined by dividing the number of persons who are entitled to attend the meeting and exercise the voting power in respect of a lot by 2, disregarding any fraction and adding 1. In addition it is provided that if a quorum is not present after 30 minutes from the meeting's scheduled starting time, the persons entitled to vote who are present are taken to constitute a quorum.

#### 13—Amendment of section 104—Other insurance by community corporation

This clause increases the minimum amount of mandatory public liability insurance from \$10,000,000 to \$20,000,000.

#### 14—Amendment of section 113—Statement of expenditure etc

The statement of expenditure presented at the annual general meeting must set out proposed expenditure (other than recurrent expenditure) for the period prescribed by the regulations, which currently cannot exceed 5 years. This clause deletes that 5 year limitation.

#### 15—Amendment of section 138—Audit

This clause reduces the number of community corporations that will be required to have their annual statement of accounts audited.

#### 16—Amendment of section 139—Information to be provided by corporation

This clause adds to the list of material that is available on application by or on behalf of an owner or prospective owner or a registered mortgagee or prospective mortgagee. The section will now also allow for provision of a copy of the plan of community division and a copy of the most recent statement under section 113 (the statement of expenditure). The clause also amends the offence provision in subsection (3) to ensure it can also be committed by a person who is acting on behalf of a community corporation.

#### 17—Amendment of section 155—Service

This clause makes a minor amendment to the service provision which will ensure it also applies to the pamphlet that will be required to be served under the proposed changes to section 78B.

#### Part 3—Amendment of *Strata Titles Act 1988*

#### 18—Amendment of section 16—Amalgamation of adjacent sites

This is consequential to clause 21.

19—Amendment of section 17—Cancellation

This is consequential to clause 21.

20—Amendment of section 18—Name of strata corporation

This is consequential to clause 21.

21—Substitution of section 24

This clause provides that a strata corporation may (but is not required to) have a common seal and provides for the execution of documents by the corporation without a common seal and the signing of contracts on behalf of the corporation.

22—Amendment of section 27B—Body corporate managers

This clause amends section 27B to require that a pamphlet setting out the role of the body corporate manager and the rights of the strata corporation and its members, (including any matters prescribed by regulation) be served on each member at least 5 clear days before the date of the meeting at which the corporation is to consider whether or not to enter into a contract with the body corporate manager. The clause also includes an interpretative provision specifying that all fees and commissions payable by the corporation are considered part of the body corporate manager's remuneration.

23—Amendment of section 27D—Offences

This clause creates a new offence for a delegate who charges an undisclosed fee or commission to the corporation in respect of the performance of delegated functions or powers. The penalty is a maximum fine of \$500.

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

This clause increases the minimum amount of mandatory public liability insurance from \$5,000,000 to \$20,000,000.

25—Amendment of section 33—Holding of general meetings

This clause allows the presiding officer or treasurer to convene a general meeting (in addition to the existing categories of people who can do so).

The clause also amends the general meeting quorum requirement to match the new provision in section 83 of the *Community Titles Act 1996*.

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

The statement of expenditure presented at the annual general meeting must set out proposed expenditure (other than recurrent expenditure) for the period prescribed by the regulations, which currently cannot exceed 5 years. This clause deletes that 5 year limitation.

27—Amendment of section 34—Voting at general meetings

This clause amends section 34(3)(b) to provide that, where there are 2 or more unit holders in respect of the same unit and they do not agree on how to exercise a vote, then none of them is entitled to vote.

The clause also amends section 34(7) to make it consistent with section 84(14) of the *Community Titles Act 1996* by ensuring that an owner who is in arrears cannot exercise voting rights.

## 28—Amendment of section 41—Information to be furnished

This clause adds to the list of material that is available on application by or on behalf of an owner or prospective owner or a registered mortgagee or prospective mortgagee. The section will now also allow for provision of a copy of the strata plan and a copy of the most recent statement under section 33A (the statement of expenditure). The clause also amends the offence provision in subsection (2a) to ensure it can also be committed by a person who is acting on behalf of a strata corporation.

## 29—Amendment of section 49—Service

This clause amends the service provision to make it consistent with the provision under section 155 of the *Community Titles Act 1996* (consequentially to the amendment in clause 22).

Debate adjourned on motion of Mr Odenwalder.

**House of Assembly—No 118**

As laid on the table and read a first time, 3 March 2021

South Australia

**Statutes Amendment (Community and Strata  
Titles) Bill 2021**

A BILL FOR

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

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## 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 2021*.

#### 2—Commencement

This Act comes 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*

### 5 4—Amendment of section 12—First by-laws

Section 12(1)—delete "may be" and substitute:  
are

### 5—Amendment of section 32—Persons whose consents are required

Section 32—after subsection (3) insert:

- 10 (3a) The Registrar-General may dispense with the consent of a person referred to in subsection (1)(d) or in subsection (2)(a)(iii) or (b)(iii) if the Registrar-General is satisfied that—
- (a) the amendment to the scheme description is to correct a clear error; or
  - 15 (b) the amendment is a minor amendment of a kind prescribed by the regulations.

### 6—Amendment of section 34—By-laws

Section 34(3)—after paragraph (c) insert:

- 20 (caa) regulate or prohibit smoking in the common property or the drifting of tobacco smoke from one lot to another or to the common property;  
or

### 7—Amendment of section 39—Variation of by-laws

Section 39(2)—delete "14 days" and substitute:  
21 days

### 25 8—Amendment of section 73—Execution of documents

(1) Section 73(1)—delete subsection (1) and substitute:

- (1) A community corporation may have a common seal bearing its name for the purpose of executing documents.

(2) Section 73—after subsection (3) insert:

- 30 (4) A community corporation may execute a document without using a common seal if the document is signed by—
- (a) any 2 of the presiding officer, treasurer and secretary of the corporation; or
  - (b) where all 3 of those offices are held by 1 person—by that person.
- 35 (5) A contract may be entered into by an officer or agent authorised by the corporation to enter into the contract on its behalf.

## 9—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.

## 10—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).

## 11—Amendment of section 80—Business at first statutory general meeting

(1) Section 80(1)(i)—delete paragraph (i)

(2) Section 80(2)(b)—delete paragraph (b) and substitute:

- (b) the manner in which the corporation will execute documents and, if the corporation is to have a common seal, custody of the corporation's common seal and the manner of its use;

5 **12—Amendment of section 83—Procedure at meetings**

Section 83(4), (5) and (6)—delete subsections (4), (5) and (6) and substitute:

- (4) Subject to subsection (6), no business may be transacted at a general meeting of the corporation unless a quorum is present at the time when the meeting proceeds to business.
- 10 (5) The quorum for the transaction of business at a general meeting is determined by dividing the number of persons who are entitled to attend the meeting and exercise the voting power in respect of a lot by 2, disregarding any fraction and adding 1.
- 15 (6) If a quorum is not present after 30 minutes has elapsed from the time appointed for a general meeting of the corporation, the persons entitled to vote who are present at the meeting are taken to constitute a quorum for the purposes of that meeting.

**13—Amendment of section 104—Other insurance by community corporation**

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

20 \$20 000 000

**14—Amendment of section 113—Statement of expenditure etc**

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

**15—Amendment of section 138—Audit**

(1) Section 138(1)—delete subsection (1) and substitute:

- 25 (1) Subject to subsection (4), a community corporation must have the annual statement of accounts audited if—
  - (a) the aggregate of the contributions made or to be made by members of the corporation in respect of that year exceeds the prescribed amount; or
  - 30 (b) the community scheme consists of more than 100 lots.

(2) Section 138(4)—delete subsection (4) and substitute:

- (4) The annual statement of accounts of a community corporation in respect of a financial year need not be audited if—
  - (a) if all community lots are owned by the same person; or
  - 35 (b) the community corporation is exempted from the requirement by the regulations.

**16—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

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

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

**17—Amendment of section 155—Service**

Section 155—after "notice" wherever occurring insert:

or other document

10 **Part 3—Amendment of *Strata Titles Act 1988***

**18—Amendment of section 16—Amalgamation of adjacent sites**

Section 16(2)(a)—delete "under the common seals of" and substitute:

executed by

**19—Amendment of section 17—Cancellation**

15 Section 17(2)—delete "under the seal of" and substitute:

executed by

**20—Amendment of section 18—Name of strata corporation**

Section 18(3)—delete subsection (3)

**21—Substitution of section 24**

20 Section 24—delete the section and substitute:

**24—Execution of documents etc**

(1) A strata corporation may have a common seal bearing its name for the purpose of executing documents.

25 (2) The seal may only be used in a manner directed by the corporation in general meeting or, if the corporation has not given such a direction, may only be used in the presence of any 2 of the presiding officer, treasurer and secretary of the corporation both of whom must sign the document to which the seal is affixed as witnesses.

30 (3) Where all 3 of those offices are held by 1 person, the presence of that person is sufficient for compliance with subsection (2).

(4) A strata corporation may execute a document without using a common seal if the document is signed by—

(a) any 2 of the presiding officer, treasurer and secretary of the corporation; or

35 (b) where all 3 of those offices are held by 1 person—by that person.

- (5) A contract may be entered into by an officer or agent authorised by the corporation to enter into the contract on its behalf.

## 22—Amendment of section 27B—Body corporate managers

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

- 5 (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—
- 10 (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
- 15 (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).

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

- 20 (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.

## 23—Amendment of section 27D—Offences

- Section 27D—after subsection (4) insert:

- 25 (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—
- 30 (a) in the case of a body corporate manager—in the contract with the corporation in accordance with section 27B; or
- (b) in any other case—in writing to the corporation before performing the functions or powers.

Maximum penalty: \$500.

- 35 **Example—**

40 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 27B(2).

**24—Amendment of section 31—Other insurance by strata corporation**

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

\$20 000 000

**25—Amendment of section 33—Holding of general meetings**

5 (1) Section 33(2)(a)—after "the" insert:

presiding officer, treasurer or

(2) Section 33(5), (6) and (7)—delete subsections (5), (6) and (7) and substitute:

10 (5) Subject to subsection (7), no business may be transacted at a general meeting of the corporation unless a quorum is present at the time when the meeting proceeds to business.

(6) The quorum for the transaction of business at a general meeting is determined by dividing the number of persons who are entitled to attend the meeting and exercise the voting power in respect of a unit by 2, disregarding any fraction and adding 1.

15 (7) If a quorum is not present after 30 minutes has elapsed from the time appointed for a general meeting of the corporation, the persons entitled to vote who are present at the meeting are taken to constitute a quorum for the purposes of that meeting.

**26—Amendment of section 33A—Statement of expenditure etc**

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

**27—Amendment of section 34—Voting at general meetings**

(1) Section 34(3)(b)(ii)—delete "or, if there is no such agreement, by the unit holder whose name appears first on the certificate of title for the unit" and substitute:

but, if there is no such agreement, none of them is entitled to vote

25 (2) 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.

**28—Amendment of section 41—Information to be furnished**

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

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

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

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

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

## 29—Amendment of section 49—Service

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

- 5
- (1) A notice or other document 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;
- 10 (c) by posting it to the person at his or her last known address;
- (d) if the person consents to receiving the notice or other document by email—by transmitting the notice or other document by email to the email address provided by the person for that purpose;
- 15 (e) where the person is the owner or occupier of a unit—by fixing the notice or other document in the manner prescribed by regulation in a prominent position on the unit.
- (1a) Where a notice or other document is to be served on the owner of a unit and the owner has died, the notice or other document 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 or other document in the manner prescribed by regulation in a prominent position on the unit.
- 20
- (1b) If there are 2 or more owners or occupiers of a unit, a notice or other document will be taken to have been served on all of them if it is served on any 1 of them.
- 25